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Non-Jewish Courts in Yemen: The Story of Rural Community Matchmaking

By Aharon Gaimani*

Abstract

In the following article a case is exposed regarding the long familiarity between two young people from South Yemen, during the 1940s, leading to an initial meeting between the two families and the marriage brokers in order to formalize the relationship towards a marriage. The woman's cousin asked for her hand, and her parents preferred the new match, causing a conflict to erupt between the original couple's families. The case eventually was turned over from the Jewish to the non-Jewish courts, and the Muslim judge was able to pass his ruling. Thanks to his enforcement authority the case came to a close.

As the case is explored, salient are the differences between city and village life: the contrast of city life and the separation between men and women in comparison to the openness found in the village, preference for marriage within the extended family in Yemen, and the subject of litigation in non-Jewish courts. The importance of the documents published in the article, combined with a number of other documents published on the same subject, lies in the use of non-Jewish courts by Jews in Yemen, an area of research still in its infancy.

A. Introduction

In this article I shall explicate an incident concerning matchmaking in southern Yemen which made its way from the Jewish Religious Court to the non-Jewish courts. I was made aware of this episode from a member of the family involved who was a witness to the incident, and he even provided me with the details of this episode as well as the Muslim court rulings that are in his possession. While dealing with the topic of turning to non-Jewish courts, we shall examine the differences between village and urban life in the areas relevant for understanding the topic under discussion.

B. The Episode and Its Explanation

The details of the episode were taken from the information related to me by the brother of one of the women, Shalom Dughma, as well as from

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two documents that discuss the incident at the Muslim court, which he gave to me.¹

The event took place in the Ta'izz region in southern Yemen at the end of the 1940s. Sham'a the daughter of Rabbi Avraham Ḥaddād and Ḥassan ben Yiḥya al-Shebami from the settlement al-Ḥushā'² had been acquainted for a long time, which led to an initial meeting between the two families and to the matching of the couple, in order to formalize their connection toward marriage. Sham'a's cousin, Yehuda b. Sālim Sa'īd from Khiyariyeh,³ came to the village of al-Ḥushā' with his parents and asked for her hand. Sham'a's parents preferred the new match because the family involved was wealthy and also because they were relatives. After the agreement of the parents to the new match, Sham'a broke off her contacts with Ḥassan al-Shebami.

This resulted in a dispute between the two families, and Ḥassan al-Shebami, who felt insulted by this incident, sued the family of his former girlfriend for adjudication in the Jewish Religious Court of the nearby community, that of Dur'an,⁴ to be heard by Mori Sa'īd 'Awwād. When the Religious Court did not succeed in resolving the dispute and reaching a compromise between the two families, the matter was apparently transferred to the Muslim court.

In the first decision by the Muslim judge, seemingly the argument put forward by Ḥassan al-Shebami was that Sham'a had been engaged to him and that he paid toward that four Riyal as part of the payment, which is apparently the bride-price, but she refused to marry him.⁵ It further states that Ḥassan al-Shebami married a different woman, prettier than Sham'a. From the decision, it is clear that Ḥassan was seriously humiliated by the

1 He died on 19 Kislev 5771 (26.11.2010). He lived in Moshav Azriel in the Sharon and was one of the leaders of the moshav.

2 M. GAVRA, *קהילות תימן* [henceforth: *קהילות תימן*], Bnei Brak 2005, p. 242, entry *Ḥushā'*.

3 GAVRA, *קהילות תימן* (n. 2 above), p. 268, entry *Khiyariyeh*.

4 GAVRA, *קהילות תימן* (n. 2 above), p. 477, entry *Dur'an*.

5 In the negotiations between the families, the sum of the bride-price, which the groom's family gives to the father of the bride, was set. In a number of communities in the Shar'ab region of southern Yemen the situation of the bride's family was taken into consideration, and customarily no less than three rial was set for a virgin. See Rabbi S. ḤOZEH, *ספר תולדות הרב שלום שבזי ... ומנהגי*, 2 vols., Jerusalem 5733-42 / 1973-82, vol. I, p. 90. In the document under consideration it turns out that the payment was much higher.

cancellation of the match and that apparently the *dayyan* had not managed to force his rendering on Ḥassan and had passed it on for the determination of the Muslim judge.

The second decision, rendered about a month after the first, states that everything done by Yehuda ben Sālīm, and his intention to marry Sham‘a, was completely fit and proper. On the back of the document is confirmation that Ḥassan al-Shebami had paid all of his debts and bills, and the document that was handed over to him grants him damages.

Ḥassan al-Shebami married Kadhiyya the daughter of Mori Sālīm [Heb.: Shalom] ben Yiḥya Dughma⁶ from the village of al-Maḡdār in the Ta‘izz region. Both couples immigrated to Israel with the “On Wings of Eagles” campaign.⁷ Yehuda and Sham‘a settled in Tenuvot in the Sharon, while Ḥassan and Kadhiyya situated themselves in Rosh ha-Ayin.

To understand this episode, I shall discuss in brief three areas of Yemenite culture that we learn from this incident: the world of men and women in the city versus the village, family marriages, and litigation in non-Jewish courts. In urban society the world of men and women was separate: Rabbi Yosef Qafiḥ, a native of Ṣan‘ā’, wrote of this:

As with the Sages expression, “women are a separate [independent] people” (bShab 62a), so it was that the women in Yemen were separate; they did not become involved in celebrations with the men, and likewise not the men with the women. Even when there was a wedding feast and the like, then in addition to the relatives and neighbours whose invitation is shared jointly by both members of the couple, the head of the household invites his friends and acquaintances from the synagogue and from work and commercial connections etc. In contrast, the mother of the family invites her friends from her own family and all those with whom she has a common web of relations. They would come with their daughters without their husbands and sons, while the others came without their wives and their daughters. For the son is always attached to the father and the daughter to her mother. So it was that the men and the women had two separate worlds.⁸

6 The sister of Shalom b. Shalom Dughma mentioned above at the beginning of the section. In Yemen it was the custom to call a son by the identical name of his father. See A. GAIMANI, שמות פרטיים בקהילות תימן: מחקר שמות על פי שטרי, כתובה ואלה שמות: מחקרים באוצר, in: A. DEMSKY, J. A. REIF, and J. TABORI (eds.), השמות היהודיים, vol. I, Ramat Gan 1997, pp. 49-61, p. 51.

7 This is the mass immigration of the Jews of Yemen after the establishment of Israel, in 1948–1950, in which some 50,000 people participated.

8 Rabbi Y. QAFIḤ, מעמד האישה היהודית בתימן, in: IDEM, כתבים, ed. Y. TOBI and U. MELAMED, 3 vols., Jerusalem 5749-61 [1989-2001], vol. II, pp. 966-969, p. 968.

In this reality of separation of the two sexes, acquaintance between potential spouses for the purpose of marriage was made through the parents. On this custom of acquaintanceship in his community, Rabbi Qafiḥ wrote:

They do not get to know each other, not through speaking and not through conversing and certainly not through meetings and outings with one another. This should not be done among the Jews. Rather, the way they would become acquainted was as follows: On Sabbath eve, in the early afternoon, the girls would go out as usual to clean the drainage ditches⁹ and the pipes to their homes. At that time they would go out in work clothes, with their faces completely uncovered. Usually they would not leave the entrance to their house without at least part of their faces covered with a *lihfe* scarf on their heads. But with the rush of work on Sabbath eve—they were not meticulous about this. And just at this opportunity, the young men would go out and walk about the streets so as to *yishdifu*—that is, catch a quick glance, inadvertently as it were, as passers-by and innocent strollers. Another chance to see the young woman with her face exposed, and dressed in simple clothing, was during the collection of the *mitzva*,¹⁰ since most often the young woman who was home approached the gate to the house in order to hand over the *mitzva* to the collector. Another chance to look at the girls was when they went to draw water from the well in the orchard, which was located in the center of the Jewish quarter of Şan‘ā’. This look was the “acquaintanceship” a young man made with a young woman. Precisely because of that they were warned not “to look” or “get to know” a girl when she was dressed in her festive Sabbath or holiday garb, since beautiful garments are likely to mislead and the girl would look pretty even when she really was not. People used to say: *Lā yegurrannak banāt al-‘īd wa-lā baqar ‘allan* (Let not the girls of the holiday deceive you nor the cows of spring), since on festivals the girls wear fine clothes and look prettier than they really are, and the cows in the spring seem(!) better and healthier owing to the plenitude of pasture grass and gentle air, even if they are not really good (!).¹¹

Under these circumstances of choosing a wife with only a hasty glance there sometimes occurred cases of mistaken identity of the future spouse, and even after the formal matchmaking, when the error became known, this did not cause the wedding to be cancelled. Rabbi Qafiḥ tells of one of these instances:

9 Depressions at the edge of the paths used for carrying rainwater.

10 On Fridays, after noon, the גבאים in Şan‘ā’ would pass among the householders and collect loaves of bread for the Sabbath needs of the poor, and the identifying mark for the purpose of their request was the word מצוה. See A. GAIMANI, הנהגת הקהילות בתימן ובעית העניים בעת בחדשה, in: J. HACKER and Y. HAREL (eds.), לא יסור שבט מיהודה: הנהגה, רבנות וקהילה בתולדות ישראל, מחקרים, Jerusalem 2011, pp. 157-176, p. 166.

11 Rabbi Y. QAFIḤ, הליכות תימן: חיי היהודים בצנעא ובנותיה, Jerusalem 1962, p. 108. On the matching of couples in Şan‘ā’, see Y. L. NAḤUM, מצפונות יהודי תימן, Tel Aviv 1962, pp. 147–48.

And there was a case in which some girl was offered to a fellow, and they told him that she would be going out of the house at a certain time, and on that day, by chance, exiting the house was the son's wife,¹² who was more charming than the girl. The young man saw her and agreed [to the match], but when the bride entered his house after the benedictions under the *huppah*, he realized that this was not the young woman he had seen, and then the mistake became evident. But as noted, the purpose of marriage is "Carry off your purchase in the name of Heaven, only on one condition that you adorn us with jewels of gold,"¹³ so the groom accepted the situation, and they lived in peace, and had sons and daughters, and they are living in harmony to this day.¹⁴

In contrast to the separation described here in the life of the urban people, in the village there was openness between the sexes as well as between Jews and non-Jews. Ḥayyim Oshri, a native of al-Mi'rād in the Yarim district, who had first-hand knowledge of these differences in the lives of the Yemenite Jews, wrote of this:

The way of life and daily routine of the Jewish rural women in Yemen differed to a wide extent from those of their sisters in the cities, who lived in a different reality of life and other environmental conditions. The village woman frequently left her home to work in the field, in the pasture, in the gathering of wood for heating her home. Open spaces and freedom were a natural part of her daily life. The urban woman, in contrast, spent most of her days sequestered in her home, and left it only for the purpose of visiting neighbours or relatives, or for family events. Therefore the village women were more open and daring, both in their appearance and in their behaviour. They were not embarrassed to sing and dance on festive occasions, and they even were seen in the marketplace. The urban women, conversely, were more conservative, introverted, and restrained.¹⁵

In a similar manner he further wrote:

The urban woman was, as noted, more restrained and refined in her behaviour than her counterpart in the village. She demonstrated modesty and conservatism in her clothing, her life style, and her relations with her surroundings. Her social encounters and events were specifically for women only, and her activities were more refined and feminine: sewing, embroidery, decorating, beading, and

12 In Yemen, the unmarried women, too, covered their heads so one could not tell that she was already married. Rabbi YA'AQOV SAPPUR on his visit to Yemen in 5619 (1859) took note of this issue: "Also the unmarried women cover their hair" (אבן ספיר, 2 vols., Lyck / Mainz 1866-74 [reprint: Jerusalem 1966], vol. I, p. 60a.

13 bTa'anit 31a.

14 Rabbi Y. QAFIḤ, כל כבודה בת מלך פנימה, in: SH. SERI (ed.), בת תימן: עולמה של, האשה היהודיה, Tel Aviv 1994, pp. 105-110, p. 108. As far as I was told it was the groom's mother who persuaded her son not to annul the wedding.

15 Ḥ. OSHRI, קיום לדמותה של בת-תימן הכפרית, in: בת תימן (n. 14 above), pp. 51-7, p. 51.

the like. The village woman, in contrast, was not afraid to expose her face, and in some places – even part of her hair.¹⁶ At times, she looked as if dressed in the clothing of her non-Jewish neighbours, more than the Jewish woman would have been allowed to do in the city.¹⁷

The rural woman had additional tasks beyond what the city woman did, a situation that enhanced her confidence and her daring. Ḥayyim Oshri continued to go on to write about the encounter of the village girl with the world of men: “Also in the contacts of the rural women with men much more freedom is noticeable. She could trade with them in the market, she could leave her home and the village by herself, and in certain villages she was even allowed to sit in the company of the men and to take part in their conversation.”¹⁸ This openness in village life between the world of

16 This is referring to uncovering the hair above the forehead by married Jewish women as was the custom among Muslim women in their surroundings. See C. AVDAR, *הופעתה החיצונית של האישה מצרם אל-עוד*, in: *בת תימן* (n. 14 above), pp. 301–10, pp. 304–6. On this issue, I have in my possession a Note of Rebuke from al-Ḥaddād community in Southern Yemen, written by Rabbi Da’ud ben ‘Awwad Hajbi, who was the emissary of the San’a Religious Court for the examination of the ritual slaughterers throughout Yemen in the 1940s. The Note states: “Gentlemen of the Jewish community of al-Ḥaddād, led by the offerer of sacrifices upon which the Jewish people rely. Know ye that you must declare that the Jewish women of the city not reveal their hair, for this is a disgrace for female members of the Jewish community. And the Torah says that the Jewish women must be distinct, and the Lord, may he be [blessed] has made us distinct, and He said, “And I have set you apart from other p[eoples] to be mine” (Lev. 20:26). And wherein is this distinction, since they go bold[ly] and uncover their hair like the Gentile women. And if a Jewish p[erson] will come, he has no way of distinguishing between a Jewish woman and a Gentile woman, and this is ugliness in the eyes of the Lord and man. So quickly do this thing, and set a clear boundary, and after that the warning will be a correction, and with G[od] in p[ea]ce. [signed]: the humble Da’ud b. of my master, teacher, and rabbi ‘Awwad, may his Creator protect him, the lowliest of the low.” My appreciation to Rabbi Itamar Kohen of Bnei Brak who made this document accessible to me. On this episode, Rabbi Alon Avidar wrote what he had heard from his grandfather, Rabbi David (Da’ud) Hajbi, who served as the chief rabbi of Rosh ha-Ayin, and he noted that the women adhered to his call and covered their hair. See ALON AVIDAR’s work of responsa, *ספר אדני פז: כולל שאלות ותשובות וחקרי הלכות וביאורי סוגיות בענינים שונים*, 3 vols., Petah Tikva 5755–67 [1995–2006], vol. III: *Even ha-Ezer*, par. 108, p. 313.

17 OSHRI, *קוים* (n. 15 above), p. 57. Further on the tasks of the rural woman versus the urban woman, see Rabbi A. QORAH, *קורות תימן: קורות יהודי תימן*, Jerusalem 1954, pp. 117–18.

18 Ibid.

the men and the women, and their joint encounters, are what led to the lengthy, friendly links between Ḥassan al-Shebami and Sham'a d. of Rabbi Avraham Ḥaddād, as we saw in the instance discussed above.

The phenomenon of marriage among relatives was common among the Jewish population of Yemen, and they were given precedence in marital matches. From the story told by the traveler to Yemen, Rabbi Ya'aqov Sappir in 5619 (1859), one may learn about this phenomenon:

A rich man from among the dignitaries of the city, a yeshiva student about 24 years of age, had recently married a woman of seventeen.¹⁹ Now, his uncle, one of the important men of the city had a beautiful, virginal daughter about the age of 18, whom he had long refused to give to him in marriage since he was not an upright person. And he [the young man] kept his peace and married another. After some time, from another city came a wise man to whom the father of the virgin wanted to give her. And the aforementioned nephew was jealous of him and still asked his uncle to give her to him, since she was fit for him as a close relative. And the uncle refused, especially now that he had married another. And he went and cried out before the judges that even by their laws she was intended for him by his having given the bride-money of a virgin to her father, and he was favoured by the judges who judged for reward, also a bribe he took with him, and they sent for the father of the young woman and they spoke to him, and he did not listen to them either. And they kept him under guard until he would agree to take the fifty talents of silver from his nephew, the bride-price for his good daughter, and give him his daughter as a wife ... and when I marvelled at the scene, I was nothing in their eyes, and they said to me: everyday happenstances. You will see this again wherever you go.²⁰

This issue underlies the preference of Sham'a's parents, Rabbi Avraham Ḥaddād's family, to cancel the engagement to Ḥassan al-Shebami and to marry their daughter to her cousin Yehuda Sālīm Sa'īd who lived in a nearby village.

Documents from non-Jewish courts, as I shall show in this study, are of great importance for research into the life of the Jews of Yemen. Prof. Yehuda Ratzhabi wrote of the significance of this topic:

Two areas have not been satisfactorily illuminated in these sources: Jewish-Muslim relations in economics and in daily life; the Jews in the non-Jewish courts. There are two reasons for this. The topics were not considered worthy of being written about by authors and writers; the building stones for these matters are embedded in documents, which were written in Arabic by Muslim judges before whom the issues were brought: whether for clarification and decision through a ruling, or whether by putting them in writing as testimony and proof for coming generations. Jewish authors and writers could not make use of the documents for

19 In the Hebrew notarikon טוב [good], equal 17.

20 Rabbi Y. SAPPPIR, ספר מסע תימן, ed. A. YA'ARI, Tel Aviv 1945, p. 110.

their works, both because they contained personal-family issues and their owners had no interest in making them public and because they were written in Yemenite Arabic that only a very few people in Israel could read and decipher.²¹

In a similar spirit Prof. Ratzhabi has written elsewhere:

Yemenite-Arabic documents are a treasure trove for Jewish-Muslim relations, for Jewish and Muslim judging, and even for the history the Jews of Yemen. These documents—*basā'ir* in the language of Yemenite Jews—were found in the possession of every family, who preserved them well, for fear of monetary suits or questions of rights that were liable to arise in the future. Many families even brought them with them to Israel. Since only a very few of the Yemenite immigrants have command of Yemenite Arabic handwriting, these documents have not been the object of study or research.²²

The phenomenon of turning to non-Jewish courts was more common among village Jews than among their brethren in the cities. In his discussion on this topic, Prof. Ratzhabi wrote:

As noted, the Jews addressed their issues, small as well as great, to Muslim judges, owing to the validity for practical life that their rulings had. And this applies to the regions, which were far from the capital Ṣan'ā', from which issued Torah and teachings for the Yemenite communities. In Ṣan'ā' itself few turned to the non-Jewish courts, owing to the vigilant eye of the Jewish Religious Court and the authority it held over the community. Only in the last generation did there arise an assertive lawyer who broke through the barrier, and the chief rabbi paid him back with excommunication, and they ostracized him from the Jewish community.²³

On the phenomenon of Jews turning to non-Jewish courts, Prof. Ratzhabi noted:

The documents that have thus far been published inform us that more than a few Jews needed the Muslim courts. The trials carried on in them were rich and varied: financial matters, damages, inheritances, loans and leasing fields between Jews and Muslims; and even issues of a definitely religious nature: divorce, ritual slaughter, synagogue and prayer arrangements, and ownership of Jewish religious works.²⁴

21 Y. RATZHABI, ענייני יהודים בתימן בערכאות של גויים, in: H. BEN-SHAMMAI (ed.), חקרי עבר וערב: מוגשים ליהושע בלאו, Tel Aviv 1993, pp. 515-535, p. 515.

22 Y. RATZHABI, חיי כפר יהודי במרכז תימן לאור תעודות היסטוריות חדשות, in: *Sefunot* 4 (1989), pp. 123-164, p. 135.

23 RATZHABI, ענייני יהודים בתימן (n. 21 above), p. 517.

24 Y. RATZHABI, משפטי אישות בתימן בפני ערכאה מוסלמית, in: *Pe'amim* 63 (1995), pp. 41-63, p. 44. Prof. Ratzhabi assembled a bibliography of eight items in which Arabic documents were published. See p. 63 of the article cited. Many documents in Arabic from certain communities in Yemen were published by NISSIM BINYAMIN GAMLI'ELI, תימן בתעודות, vol. I: יהודי דמת והמחוז, Jerusalem 1998, vol. II: קהילות צואלע, מעזבה, רדאע, דמת, רצמה, אגלב, צאלע, Ramleh 2009.

Of note is that the Muslim judges were not equipped for dealing with decidedly religious issues, such as marriage and divorce, and even if Jews turned to the non-Jewish courts, they were directed back for treatment in the Jewish Religious Courts. But as for matters of inheritance, in which the woman could obtain more than was possible in the Jewish Religious Court, if the woman turned to the non-Jewish court, the Muslim judges would adjudicate the matter and give their ruling.²⁵

In our instance, which took place in one of the villages in southern Yemen, the suit resulted apparently from the will of the plaintiff, Hassan al-Shebami, to sunder the new connection that had been formed, because he had been personally harmed by it. Owing to the refusal to accept the ruling of the Jewish Religious Court for the conclusion of the matter, the case made its way to the non-Jewish courts, and thanks to its authority to implement its decisions, the litigation came to an end.

C. The Documents²⁶

The documents published here, which are in the possession of Shalom Dughma, were kept by him because they deal with his family and concern his brother-in-law Hassan al-Shebami and his sister Kadhiyya. He knew of their content because he was a witness to the events discussed, which took place when he was still a child of eight.

On the importance of these documents, Prof. Yehuda Ratzhabi wrote, “When the material will be exploited in full, it is likely to fill in missing links in the history of Yemenite Jewry, and even to enrich our knowledge about the Jewish sectors in the south and the north about which so little is known.”²⁷ He further noted the great difficulty in interpreting the render-

25 According to the laws of Islam a daughter inherits along with the sons. Chief Rabbi Yiḥya Yitzḥaq Halevi was asked by one of the rabbis of a community outside of Ṣan‘ā’ about a compromise made concerning an inheritance in which a portion was also given to the daughters, owing to the fear that they would go to the non-Jewish court; the Chief Rabbi’s response in 5686 (1926) was “You did well, you did well, as one who is a sage and who knows understands issues. And the compromise in this matter stands and is valid, and this is what we do at all time.” See Y. TOBI, *הקהילות היהודיות בתימן*, in: IDEM (ed.), *מורשת יהודי תימן: עיונים ומחקרים*, Jerusalem 1977, pp. 104–15; Rabbi A. YITZ-ḤAQ HALEVI (ed.), *ספר הזכרון לרבי יחיא יצחק הלוי זצוק”ל*, vol. II, Bnei Brak 2011, pp. 177–79.

26 I wish to thank Dr. Naama Ben Ami of Petah Tikva for her comment when reading the documents.

27 RATZHABI, *ענייני יהודים* (n. 21 above), p. 517.

ings as given by Muslim *qādīs* (judges) in the villages versus their colleagues in Ṣanʿāʾ, both in terms of deciphering the handwriting as well as the idioms, and as he puts it:

Documents written by educated Muslim *qādīs* in Ṣanʿāʾ are easy to read and translate: the handwriting is beautiful, and the language and grammar are standard. The same does not apply to the documents written by Arab *qādīs* and scribes in the villages and small settlements. The handwriting is miserable and their spelling is full of mistakes. To this must be added their turns of phrase and terms, which are not to be found neither in dictionaries nor in spoken language and their translation was made by approximation. Even so, the authentic material they contain justifies the great effort invested in their deciphering and elucidation.²⁸

Elsewhere he wrote:

The renderings of the Muslim *qādīs* were written by them and given to the parties in the litigation. They were written in Arabic script, of which the Jews did not have full command, expert for a few outstanding individuals. Reading and deciphering them is not easy, also owing to the lack of diacritic markings as well as to the convoluted script of the Arab *qādīs* in the small towns and villages, whose knowledge of the Arabic language and its grammar were lacking.²⁹

The difficulty in deciphering also applies to the decisions given below, and I made an effort as well to avail myself of experts so as to yield their transcription and translation in the clearest way possible.

Certificate I

Translation

In the Name of God, Most Gracious, Most Merciful.

The Shariʿa Court.³⁰ The first party complained to al-Ḥāḡḡī³¹ Muḥammad, the Shariʿa representative on behalf of the dhimmī Yehuda Sālīm Saʿīd, who lives near al-Maqḍār, to the party present, the dhimmī Ḥassan Yihya al-Shebami, as follows: In his complaint [stating] that he rescinded his request to marry him to the daughter of the dhimmī Shamʿa daughter of Beria³² al-Ḥaddād, and that he had paid four riyāl as part of the payment, and she refused to marry him. Then the dhimmī Yehuda Sālīm asked for

28 RATZHABI, ענייני יהודים (n. 21 above), p. 519.

29 RATZHABI, (1864-1950) יהודים בתימן בערכאות של גויים: י"א שטרות חדשים, in: *Mi.Mizrah u-mi-Ma'arav* 6 (1995), pp. 97-130, p. 98.

30 The court according to Islamic law.

31 The title *Ḥāḡḡī* is given to someone who has made the pilgrimage to Mecca.

32 Apparently meaning the name Avraham.

her hand for himself and married her. Then the dhimmī Yehuda Sālīm asked for her hand for himself and married her. And it was not possible that the dhimmī Ḥassan Yiḥya al-Shebami to have been engaged to her first and to have signed the document to marry the dhimmī Sham‘a. And al-Shebami’s situation came to the knowledge of a number of worthless fellows, namely to Aḥmad Ḥassan Abbādī, for his help. And she is now married. He requested only of Ġaber to reply to Ḥassan [in litigation], the representative on behalf of the dhimmī Ḥassan Yiḥya al-Shebami, that I deny in the name of my client what the plaintiff claims in the registration that he is married, my client knows nothing of this. As to his statements about the previous engagement, everyone has already dealt with this to his satisfaction and choice, and the person whom I represent has already married another dhimmī woman, prettier than the dhimmī Sham‘a. And this entire argument about the person I represent is through the Ḥakham, the dhimmī Sa‘īd ‘Awwād, since my client is not able to appease him. And this is my reply... to the Shari‘a directed to the complainant is clearly just, and the representative of the complainant was present in order to see it and its execution, Muḥammad Ṣāliḥ Muḥsan, witness to the exalted Lord to stand before me, that he heard the dhimmī Ḥassan al-Shebami say to the dhimmī Yehuda Sālīm, by God they cannot since he has not married his fiancée, and this is the testimony before Yehuda Sālīm married. And he attested that Ṣāliḥ al-Khawarath that he heard the dhimmī Ḥassan al-Shebami say to the dhimmī Yehuda, by God they cannot. This testimony was taken before the representative of the respondent, and he was asked about what he is saying, for I am close to their false testimony, and the Lord showed him this whosoever transgressed the law [?] and they appeared there, and they brought the representative of the respondent to give testimony and he gave it. Sa‘īd Mathna Duran testified before the Lord in confrontation that he had heard about Ṣāliḥ, that he was saying that his testimony was a ruse for the dhimmī Sa‘īda.³³ And ‘Abd Allāh Muḥammad al-Mas‘ad testified that he heard the dhimmī Sa‘īda and the dhimmī Yehuda Sālīm say to the witnesses mentioned, go testify and we will pay you even five Riyal. Then they said, we have no testimony; so declare that you are witnesses and what you witnessed. And when the representative of the plaintiff announced that the representative of the respondent was the one who had written the testimony of the witnesses and told them, go and testify in such and such language; and he has an

33 Apparently Sham‘a’s mother.

explanation for that. After that they got together and came to the place, and they brought the representative of the plaintiff for testimony and implementation. Ḥassan Muḥsan al-Muqadar testified in the name of the Lord that he had heard the dhimmī Ḥassan al-Shebami say: By God, he will not forgive the dhimmī Sham‘a daughter of Beria al-Ḥaddād, even if Allah were to burn him in the eye of the sun. And when the representative of the respondent heard, he announced that he had proof that would be beneficial, that he had said on the spot that he does not have true testimony of Muḥammad Ṣāliḥ al-Muqadar. And he testified to the Lord in the confrontation, that on the past Monday Ḥassan Muḥsan had informed him, do you have testimony, he said, they allowed me to take half a Riyal. But the testimony is false, and is based on the claim and response and the witnesses’ testimony, and it has already become clear because of the testimony that the dhimmī Ḥassan Yiḥya al-Shebami had met earlier with the dhimmī Sham‘a daughter of Beria al-Ḥaddād, to write down and sign the document of her engagement, and she had not agreed to become engaged to him. Therefore, he must be arrested until he will release the spell³⁴ on the dhimmī Sham‘a, and he must pay a fine to the dhimmī Yehuda Sālim. And that is what I have determined, and to the Lord is success [...].

[Month] Rabī‘ al-Awwal year 69.³⁵

Certificate II

Translation

Ruling handed down on this matter according to the reasons [...] read the main arguments in response to these claims [...] and sent the ruling and the reasons and the divine Sharī‘a responses [...] as required [...] on the date of 18 Rabī‘ al-Awwal [year] 69.

In the Name of the Lord.

I am sending the explications to our master, head of the Royal Council of the Imam, May the exalted God reinforce him. And this concerns the

34 Such an act of sorcery performed by someone who desires the harm of another person is called in Yemen also by the term *kesbira*. See Rabbi Y. RATZHABI, שולחן ערוך המקוצר, vol. VII: נישואים, Bnei Brak 2003, par. 206 n. 420, pp. 228–30; vol. VIII: ממנוח, par. 224 n. 26, p. 229. See also vol. IV: איסור והיתר, par. 148 n. 45, p. 429.

35 5710/1950.

matter of the ruling that was published on behalf of the *al-bath* [perhaps: decisive] judge on the date Rabī' al-Awwal 1369; document no. 485. I have read the ruling and I have found it faulty for a number of reasons.

First, the suit was presented on behalf of the trustee of Yehuda Sālim, but the claim does not directly relate to him but rather refers to the dhimmī Sham'a the daughter of the dhimmī Beria al-Ḥaddād, as this representative declared in his claim. Yet, the representative did not have proof, not on her behalf nor on behalf of her benefactors nor on behalf of his honor the judge. Even if we assume that the representative could not be found, and the mind of the aforementioned dhimmī Sham'a became confused, then the proper steps should have been taken according to the law. And this most salient flaw should be examined by our master, the chief of the believers, may God reinforce him. So therefore, by his having presented the engagement document and having paid four rial prior to this dhimmī, Yehuda Sālim, having becoming engaged to her, his engagement is invalid, as determined by law.

Second, the aforementioned representative declared in his suit as follows: that he had signed the document and married the aforementioned dhimmī Sham'a, and that his assistant in these secret matters was Aḥmad Ḥassan Abbādī. He did not specify what the meaning of that assistance in secret matters was. According to his argument from the litigation held, it turned out to be a document written and signed in my handwriting, and all the processes were proper, and he did this so as to raise this false claim and to fine me unjustifiably, and thereby imitate our master, may God reinforce him.

Third, the witnesses brought by the representative of the dhimmī Yehuda Sālim, I say their testimony is unknown and was not given according to the law. It was already rejected at the time, as written in that ruling. By their statements, their testimony was hearsay. As for that, I say: May the Lord forgive them, and they did not specify the meaning of the issues, and about what they were testifying, so that the judge would rely on that and decide as he did in that ruling. And this is in addition to the decision that derived from the practical part of the justification, the testimony was rejected. For the judge ruled about the testimony of these witnesses, and it was already rejected at the time. But rather if this happened, then the Lord, who knows the revealed and the hidden, perhaps will be able to bear their transgression as they took his name in vain so as to obtain recompense for the claimant without his suing for them.

And on that please consider the appendix of the trial procedures and so on. Then it will become clear to you, when you read the ruling issued by the judge in al-Ḥushā'. And [this was] written on the date [...] in the month of Rabī' ath-Thānī [in the year] 1369.

These explications are being submitted by the dhimmī Ḥassan Yiḥya al-Shebami, through his representative, 'Alī Ḥassan Qassim al-Ḥashā'.

On the reverse of the certificate

In the Name of the Lord.

'Ali Hassan testified before us that he had collected all the sums due him from the dhimmī Ḥassan Yiḥya al-Shebami, payments of bills, fines and fees, by virtue of being the representative, as clarified in the ruling and the explications written to you in the body of the document. Therefore he has no demand or claim toward the aforementioned dhimmī. Written on the date 24 [in the month of] Rabī' al-Ākhir [in the year] 1369,³⁶ in the presence of Muḥammad Nāṣir Ṣāliḥ, Muḥammad al-Ḥāggī Ṣāliḥ and others. Written down by the humble 'Alī Ḥassan Muḥammad [...]. This document in the hands of the dhimmī Ḥassan Yiḥya al-Shebami grants him recompense.

D. Summary

The episode discussed in this article has provided us with a view of one instance in the life of Jews in southern Yemen, and it can teach us not only about this specific case but also about life in the environment discussed. This episode gave us a peek into the differences between urban and rural life in the separation between the worlds of men and women in the city versus the openness in village life, the preference in Yemen for marriages within the extended family as well as the issue of the sequence of events in litigation in non-Jewish courts. The importance of the document in the article is in its joining the other few documents that have been published on the topic of non-Jewish courts in Yemen, a field of research in which as yet more is unknown than known.

36 26 Shevat 5710 (13.2.1950).