

BILATERAL WITH  
12. A COMMENDA CONTRACT ~~for~~ 100 MITHQALS

FROM FEZ, MOROCCO

(January, 1138)

TS 12.830 plus TS 805, f.13, India Book 1154. <sup>a and b</sup> ~~2~~

Insert addition

This contract is unique in its form. Geniza documents generally represent depositions in court or before a notary signed by two or more witnesses. It is the witnesses who speak; the parties are quoted. Our document is a unilateral declaration of the manager, exactly like the very similar document from Venice, August, 1073, printed in Lopez-Raymond, pp. 176-178.

I doubt whether this was the usual procedure of the Jewish courts in Morocco and am rather inclined to regard this document as exceptional. As its *formulations*, the handwriting, and, in particular, the signature show, the writer was a dayyān mumhe le-rabbīm, a judge accepted by the community, and as such entitled to make decisions alone, (see Méd. Soc., II, p. .) He and the learned, India traveler Halfōn of Fustāt (whose brother was Jewish chief justice of Egypt) certainly were intimate friends, but a written contract was made between them in accordance with the sound principle "love one another, but make accounts."

The investor contributes here only 3/5 of the capital (9/15 instead of the usual 2/3, or 10/15) and receives the exceptional privilege <sup>of having</sup> ~~the~~ the manager join him in any country of (the Maghreb?), whenever he demands. The unilateral right of the investor to terminate the partnerships ~~at~~ any time he wishes is not found in this form elsewhere. Normally, the investor <sup>is assigned</sup> ~~receives~~ the preferential, but not <sup>the</sup> ~~exclusive~~ <sup>prerogative</sup> ~~conditions~~ in this matter.

With a good and propitious augury.<sup>1</sup>

I, Yūsuf b. Shu'ayb Ibn al-Naghira,<sup>2</sup> declare that I have taken possession of and received from the scholar R. Ḥalfōn b. Nethanel La-Levi, m(ay the) A(11 merciful keep him), 60 excellent Murābitī mithqāl of full weight, which are his exclusive property. To this I have joined from my own exclusive property 40 Murābitī mithqāls, forming together a total of 100 mithqāls.

This sum will be in my hand to sell, buy, deal, and make dispositions with it in the way of a partnership. I take upon myself <sup>faithfulness</sup> ~~to be truthful~~ before Heaven,<sup>3</sup> to follow the truth in deed and word, and to act with integrity and faithfulness in all my dealings with this sum, whether it be selling or buying, taking or giving, in accordance with what God, the exalted, has ordered us. Whatever profit God, in his mercy, will grant us, will be distributed to us in two equal shares after the invested capital has been restituted to him and to me.<sup>4</sup> I have also taken upon myself that the decision about the continuation of this partnership or its termination and dissolution is in his hand. This may happen at any time he wishes, after a short or long period, the decision in this matter is entirely in his hand, I have no right of objecting, making conditions, opposing, or protesting under any circumstances.

Moreover, I accept the condition that at any time a letter of his will reach me from any country of [the Maghreb?]<sup>5</sup> requiring that I come to him and join him, I take upon myself to do so.

I have also taken upon myself [to accept] his words as those of two witnesses admitted in court. This condition ~~is~~ <sup>is</sup> binding me and everyone representing me, and applies to all he] says and all that he might [ . . . ] and to the weights of merchandise, their purchase or sale, as long as my association and partnership with him lasts, also to anything sent to me or deposited with, or entrusted to me, as paid or unpaid keeper or borrower of

anything called by name or word.

I also have accepted him as trustworthy as two witnesses with regard to his capital invested in this partnership and taken full cognizance of the warning that any claim of mine to have delivered or sent to him a dirh<sup>e</sup>m or dinar not registered on the reverse side of this document, will be void and no obligation on him will be result from this.

(There follow thirteen and a half much damaged lines with no new subject matter, but containing the usual legalistic details concluding similar contracts, namely, (1) Ḥalfōn, being "trustworthy like two witnesses," is not obliged to give an oath under any circumstances; (2) the 60 dinars have been received by the writer; and (3) the symbolic purchase on all conditions mentioned has been made. The final passage begins with the fifth word in the first line of the fragment TS 815, f.13).

This happened during the <sup>last</sup>~~first~~ ten days of the month of Teveth of the year 4898 in the city of Fez, may God preserve it. Fixed, firm, and valid.

On this I put my signature, I, Yūsuf b. Shu'ayb Ibn al-Naghira, known as Joseph, son of Saul, M.E.<sup>6</sup>

m.e.

NOTES

- 1) This superscription is common on the top of marriage contracts because  
 "a wife is an augury" (<sup>&</sup>Bab. Talmud, Hullin 95<sup>b</sup>), i.e., if a man is  
 successful in his undertakings immediately after his wedding, this augurs  
 well for all his life; but I do not remember <sup>having</sup>~~to have~~ seen it <sup>at</sup>~~on~~ the head  
 of a commercial contract.
- 2) "The hot-tempered woman," name of ancestress which became a nickname,  
 see S. D. Goitein, "Nicknames as Family Names," JAOS 90(1970), n. 22.
- 3) This Aramaic phrase designates <sup>faithfulness, reliability, and fidelity</sup>~~trustworthiness~~ in cases where no human  
 control is possible.
- 4) The omission of the <sup>apportioning</sup>~~mentioning~~ of loss is not an oversight, but tries  
 to avoid a bad omen. The medieval lawyers often refer to such  
 omissions especially in marriage contracts, cf. n.1.
- 5) I supplement this because Halfōn used to commute between Morocco (Algiers  
 and) Spain, while in the West.
- 6) Signed in large, monumental letters, see M&d. Soc. II, p. (chap. VI,  
 sec. 11).

- 1) Regarding commenda contracts in which the parties themselves make declaration, see, Part. and Profit, pp.
- 2) Regarding the special privileges of the investor, see discussion of shart mufīd, Part. and Profit, pp.
- 3) The nature of this contract is that of a bi-lateral commenda. (It is interesting that in this, like in other Geniza documents, the term partnership (sharika) is used to indicate a wide variety of types of commercial association including the commenda). Whatever the customary division of investment and profit, there was no legal or other barrier to changing then to suit individual cases.

Since Yūsuf is doing all the work, he is theoretically entitled to all the profit on his contribution of 40 dinars. Thus the commenda covering Halfon's investment of 60 dinars, turns out to be on the basis a  $5/6 - 1/6$  profit division. This seems quite advantageous to the investor and might indicate a commercial situation in which profitable investment opportunities were abundant, and investment capital comparatively scarce. An economic background of this kind would make comprehensible Yusuf's acquiescence to the lopsided profit-division as well as to the other prerogatives assigned to Halfon.