Pre-Expulsion England in the Responsa

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It must have been a rash moment when I undertook to read a paper on Pre-Expulsion England in the Responsa before a gathering composed largely of experts. I confess that I was under no illusion from the very outset as to the difficulties involved. I saw before me a few small green patches that had already attracted the notice of former gleaners in the field of Anglo-Jewish history. But it was only after applying myself to the task that I discovered to what extent these patches had been left denuded. Nevertheless, bearing in mind the saying that no man having set his hand to the plough and looking back is fit for the kingdom of heaven, I determined to persevere. And here I stand this evening with all diffidence venturing to offer you my handful of gleanings in the hope that they will not be entirely devoid of quality or value.

As a preliminary to the subject, a few remarks of a general nature on that branch of Rabbinic literature known as Responsa and of the sources I have utilized would not be out of place. Briefly, the Responsa are rulings and judgments given by Rabbis in reply to questions addressed to them by communities as well as individuals in search for guidance on all kinds of subjects—religious, domestic, social, economic, and political. Based as they are on the problems of the day, the Responsa throw much light on contemporaneous affairs, on Jewish external and internal organization, and communal social and moral relations, all of which serve to illustrate the condi-

tions of the times in which they were penned. The Responsa have thus proved an attractive and fruitful source of investigation for the history of the Jews of the Middle Ages. The mass of data they supply helps to fill many a gap in the story of the vicissitudes of our people in different countries and climes.

Turning to Anglo-Jewish history, there is little which these Rabbinic records could add to the fullness of information we already possess, thanks to the unparalleled wealth of official records or Rolls, on the social, economic and general secular life of the early English Jews. The only aspects on which the Responsa might well be expected to shed new light are those relating to their internal affairs and religious life. But here, unfortunately, we meet with disappointment. The material is much too scanty and sparse to satisfy our requirements. The wholesale destruction of Hebrew writings at the time of the Expulsion involved, as it is now known, the loss of a whole literature, including numerous and extensive Halachic works. The few literary productions in the domain of Rabbinics that have somehow escaped annihilation, the *Etz Hayyim* of Jacob b. Judah, the *Hazzan* of London,[1] and the Commentary on the Tractate Berachoth and Order Zeraim by Elijah Menahem of London, discovered recently in the Hebrew University Library of Jerusalem, still await publication.[2] The only printed material available is largely that which has been preserved in the Halachic compilation of Mordecai ben Hillel, a thirteenth-century German Rabbi, in the form of legal decisions of English scholars. In the circumstances to limit the investigation to printed works is to court certain failure. I have, however, been able to obtain additional data from two manuscripts—the Mordecai MS. No. 534 in the possession of Mr. D. S. Sassoon which he kindly allowed me to consult,[3] and the Montefiore MS. No. 108,

[1] A full description of the MS. and its history has been furnished by Kauffmann, D., *J.Q.R.*, v. pp. 353ff.; see also iv. pp. 20ff. and pp. 50ff. A specimen of the *Etz Hayyim* has been published by Adler, H., in *Steinschneider's Festschrift* (Leipzig, 1896), Hebrew section pp. 185–208.

[2] See Epstein, J. N. פרישת רבינו אליהו מנחם בר' משה מלונדרוש לברכות וזרעים in מדעי היהדות (Jerusalem, 1926), i. pp. 51ff., and Marmorstein, A., *Trans.*, xii. p. 113.

[3] See Marmorstein, A., *J.Q.R.* (N.S.), xix. pp. 31–2.

now at Jews' College, consisting of an Italian fourteenth-century Halachic compilation which has already been described by Dr. Marmorstein in a paper read before this Society in 1927.[4] Finding the material still inadequate, I considered it advisable to interpret the term Responsa in a broad sense so as to include all such writings as were compiled under Rabbinic influence or guidance, and have thus included within my scope of investigation the *Shetaroth*.[5] Such, then, are the leading sources from which the information embodied in this Paper has been drawn.

I.

Of the Anglo-Jewish Rabbinic authorities, whose legal Responsa I have been able to utilize, the names are as follows: Yomtob and his son Moses, both of London, the latter being probably the author of a ritual work on the laws of kashering meat, הלכות מליחה, preserved in an Oxford manuscript;[6] Benjamin of Canterbury, a disciple of Rabbenu Tam;[7] Elijah Menachem of London and his brother Berachia of Lincoln, both the sons of Moses b. Yomtob;[8] Joseph of Lincoln;[9] Meir of Angleterre, author of a work on the laws of mourning, הלכות אבלות;[10] Jacob b. Judah, the compiler of the notable work *Etz Hayyim*; Eliezer of London, and Isaac b. Peretz of London.[11] This list is not as impressive as that which Joseph Jacobs, with the excessive though somewhat pardonable zeal of a pioneer, pressed into the service of Anglo-Jewish history.[12] But it has the merit of having admitted the names of such scholars only whose contributions to

[4] See *Trans.*, xii. pp. 103ff.

[5] Edited by (*a*) Myer D. Davis, *Shetaroth*; (*b*) Abrahams, I.; Stokes, H. P., and Loewe, H., *Starrs and Jewish Charters in the British Museum*.

[6] See Neubauer, A., *Catalogue of the Hebrew Manuscripts of the Bodleian Library*, No. 882, pp. 104–5. הילך הלכות מליחות בשר ובל הדינים כאשר סדרם ר' מ"ה מלונדרושא ת"נ"ב"ה'

[7] See Marmorstein, *Trans.*, xii., pp. 104 and 114. Adler, Michael, *Jews of Medieval England*, pp. 50–1, following Joseph Jacobs, places his home in Cambridge.

[8] See Marmorstein, *op. cit.*, p. 104, n.9.

[9] See below, p. 201.

[10] See below, p. 204.

[11] See below, p. 195.

[12] For the list of authorities used by Joseph Jacobs, see his *Jews of Angevin England*, pp. 39ff.

English Halachic studies are beyond dispute. Most of the names are shadowy, almost nothing being known of the life and activities of their bearers. The only one who emerges somewhat in relief from an all-enveloping darkness is Elijah Menachem, son of Moses, son of Yomtob, identified with the Magister Elias fil' Mosseus of the *Shetaroth*.[13] He was thus a member of a distinguished Anglo-Jewish family who, for generations, had represented in this country the ideal blending of *Torah* and *Derech Eretz*—Jewish learning and worldly wisdom. The foremost authority in the thirteenth century, he is often referred to as *Ram* (an abbreviation of Rabbi Menachem) of London,[14] and it is he who appears as adjudicator in most of the civil cases on record.[15] He was, in addition, a prolific Rabbinic author. Reference has already been made to his Commentary on the Tractate Berachoth and Order Zeraim which was regarded so brilliant a contribution to Talmudic lore that Rabbi Yomtob Lipmann Heller, the famous Polish Rabbi of the seventeenth century, made copious extracts from it for his classical Commentary of the Mishnah, the Tosafoth Yomtob.[16] He is also spoken of as an author of a Midrash,[17] and of a tract on oaths, which seems to have been appended to a commentary of his on a Talmudic Tractate, probably Shebuoth.[18] The Tosafoth to the Tractate Rosh Hashanah are also ascribed to him.[19] His eminence in Halachah is testified by the fact that he is not afraid to oppose the ruling of the Geonim.[20] With all his supremacy, we gain of him the impression of a kindly and lovable personality, free from arrogance and self-conceit, deferential to the opinions

[13] Died about 1284. See Epstein, J. N., *op. cit.*, p. 52; also Jacobs, *op. cit.*, p. 287.

[14] See Epstein, J. N., *op. cit.*, pp. 53–4.

[15] See below, p. 197.

[16] See above, p. 188.

[17] See MS. Montefiore, §376: מצאתי במרדש מהרר' מנחם מלונדרוש

[18] *Ibid.*, §804: סדוד שבועות בפי' ר' מנחם מלונדרוש

[19] See Epstein, J. N., *op. cit.*, pp. 67–8.

[20] See MS. Sassoon, p. 28. *A* had given money to *B* to pass it on to *C* for trading purposes. *B*, disregarding *A*'s instructions, traded with the money himself. Rabbi Menachem declared *A* to be entitled to the whole of the profit made by *B* with the money in opposition to a תשובת הגאונים which would allow him only a share in the profit.

of others and ready to admit a mistake and rectify an error.[21] To his manifold activities he added that of a Reader[22] and Baal Koreh, reciting the *Misheberach* that attends the reading of the Law.[23] In this connection, he appears as an innovator in that he disapproved of the practice of reciting the *Misheberach* after each person who is called up, introducing in its place an "omnibus" *Misheberach* at the conclusion of the reading.[24] To have the authority of so eminent a Rabbi for this departure from general practice is indeed something from which those of our modern Anglo-Jewish Synagogues who have abolished the individual *Misheberach* may indeed take heart.

II.

In examining the legal decisions and pronouncements of the English pre-Expulsion Rabbis, we see them not only as great masters of Rabbinic lore and teaching, but as men of independent mind, who in their interpretation and application of the law contributed to the progress and development of the Halachah. This finds striking illustration in the two new rulings in connection with the *Agunah* that originated with English Rabbis. It is known that the Talmud has relaxed considerably the laws of evidence in case of the *Agunah*,

[21] See MS. Sassoon, p. 92: מעשה בא לידינו בימי שמת והיו לו פקדון ומלוה ביד אחרים והי' עליו כתובה ובעל חוב ונשבעו שבועה המוטלת עליהם ויש מקצת מרבותי להגבות לבעל חוב או לכתובת אשה וטעמייהו משום דכיון דטעמי' דר"ע משום שכולן צריכין שבועה לבד היורשין הגו שנשבעו יזכו בהן וכן עלה בדעתי ונחמתי כי מצאתי בתלמוד ירושלמי דמשמע דכיון שמן הדין צריכין לשבע אף אם נשבעו הורע כוחם ויפה כח היורש. See also below, Note 24.

[22] See Epstein, J. N., *op. cit.*, p. 63: מימן רע לשולחיו שכיון שנכשל בידוע שאינה מקובלת ולא לרצון תחשב כך מקובלני מאבותי ואני נסיתיו ובחנתיו.

[23] See next note.

[24] See Adler, H., *op. cit.*, p. 189: ולא הורגל בכך לברך הקוראים בהורה כי אם אחר קריאת התורה כולם יחד והוי כתפילת רבים.
The reason for this innovation was because he considered the *Misheberach* formula to constitute a petition and as such not to be recited on behalf of a private person on the Sabbath. He similarly on the same grounds refused first to recite the *Misheberach* for the sick, though in this case he ultimately retracted his opinion. ובכן לא הורגלתי לברך חולים בשבת ואחר כתבי זאת נחמתי דעל היחידין מתריעין.
See Epstein, J. N., *op. cit.*, p. 53.

going so far as to allow a woman to re-marry on the report made at random by a non-Jew as to the death of her husband. The question however arose whether credence was to be given to a statement made by a non-Jew who claimed at the same time to have murdered her husband. In such a case, it was argued, the statement might well have been a mere invention of the non-Jew designed to terrorise his Jewish listeners. Authorities were for long undecided on the subject. It was an English Rabbi, Eliezer of London, who was the first to lay down the law which has ultimately been incorporated in the *Schulchan Aruch* permitting re-marriage even on the basis of such slender evidence.[25] This precedent thus established found its extension in another ruling of English Rabbis who permitted a woman, Judith by name, to re-marry on the strength of a confession made by a non-Jew that he had murdered a Jew between York and Lincoln when he was carrying the sum of ten pounds to the latter city, although he did not mention the name of the victim, attending circumstances on inquiry having proved that the lady in question had sent that amount through her husband to her brother in Lincoln.[26]

Joseph Jacobs, on the basis of references to English Jews which he collected from Rabbinic literature, declares it as curious and characteristic that most of the Anglo-Jewish enactments relate to the customary dietary laws.[27] It is hardly credible that a Jewry, whose conception of Judaism was one that concerned itself largely with what may or may not be eaten or drunk, could have produced from its midst spiritual leaders capable of tackling with such signal courage intricate *Agunah* problems. But apart from this consideration, there is additional evidence of a wide range of Anglo-Jewish enactments affecting

[25] *Haggahoth Mordecai, Kiddushin*, 550, and Naphtali Levi, *Nahalath Naphtali*, p. 24.

[26] See Mordecai Yebamoth: מעשה בעובד כוכבים שאמר בשעה שדנוהו למיתה מעולם לא פשעתי כי אם פעם אחת הרגתי יהודי בין ניקולא לאוריק שהיה מוליך י' ליטרין ששלחה מרת יהודית לאחיה בניקולא והתירו אשתו משום מסיח לפי תומה ע"י ששאלו לה אם שלחה המעות ואעפ"י שלא הזכיר שם היהודי.

Naphtali Levi, *loc. cit.*, identifies this lady with Judith the daughter of Belaset, the daughter of Berachiah of Lincoln mentioned by Davis, *Shetaroth*, pp. 302 and 309.

[27] *Op. cit.*, p. 337, note.

many departments of life, economic, social, communal and political, which proceeded from English Rabbis. Among the many problems which engaged the attention of the Rabbis of that period was the relation of the Jewish law to the law of the State. The Jews, as is known, enjoyed in England a right of jurisdiction among themselves. Such jurisdiction was administered by a Court consisting as a rule of three judges or by a single eminent Rabbi to whom the Jews chose to bring their cases.[28] In the administration of justice the Jewish judges, though guided on the whole by Jewish Law, would often take into consideration the law of the land. This was in conformity with the Talmudic principle that declares the law of the State to be divine law: דינא דמלכותא דינא.[29] This dual system of jurisdiction made it necessary for the Rabbis to define the validity of the law of the State, how far it was binding upon them when it came in conflict with Jewish law. Such a problem meets us in connection with the transfer of debts. We know from the *Shetaroth* and other documents that the Jews were in the habit of transferring their debts from Christians to each other. Such assignments were not always recognised by the king who, as the legal creditor, would not hesitate to seize the transferred bond on any pretext for any payment for which the original creditor might have been rendered liable. To provide against such a contingency we often find in the *Shetaroth* the insertion of a special clause whereby the creditor undertakes to indemnify the transferee against any loss that he may suffer as the result of the transaction. One such clause appearing in a *Shetar* dated 1254 reads as follows:

> "But if heaven forfend it (the bond) should be seized by the king or queen under any pretence or for any debt which I may be liable, I undertake for myself, and my heirs to pay him (the transferee) or his attorneys producing this bill all that pertains to my share, principal or interest within a month of its being presented, granting a lien on my effects, movable or immovable that I possess under the whole heaven."[30]

[28] See *op. cit.*, p. 372.
[29] See e.g., Baba Bathra, 55a.
[30] See Davis, *op. cit.*, p. 215.

This right of confiscation exercised by the Crown, the Jewish authorities did not dispute. Acting on the Talmudic principle in regard to the law of the State, they upheld the validity of such royal confiscations, and the transferee was accordingly declared by them to be entitled to indemnification. This rule, however, according to a decision of a London Rabbi, whose name is not given, was limited to the case where the confiscation was in default of tax payments.[31] Where, however, it was on account of a liability in regard to fines, using the term in its broad medieval sense, as comprising amercements for transgressions and payments for a great variety of licences and privileges, the transferee had no claim; for whereas tax payments were regarded as regular and constitutional entitling the king to confiscate the debts of the defaulter, fines were considered irregular and arbitrary exactions. Similarly, English Rabbis refused to recognise the validity of baronial confiscations, and in the case where a baron misappropriated to himself the property of a Jew and sold it to another Jew, the transaction was considered void, and the victim held to be in his right to reclaim his property without any payment to the buyer. An exception was, however, made by Rabbi Elijah Menachem of London in respect of Hebrew books. In this case, the buyer of the books was entitled to recover from the original owner the amount he had paid for them up to their value, as otherwise no Jew would buy them, and the baron, in his disregard of the Hebrew books left on his hands, would throw them away with contempt.[32]

Another instance of the application of the validity of the law of

[31] See Mordecai, Baba Kamma, 152: פסק הרב מלונדריש שאם יש לשמעון חותם אחד וכתוב על שם ראובן ויש לראובן חותמות אחרים כתובים על שמו ובא המלך ונוטל חותם שמעון בשביל מתנת ראובן שאין לראובן לשלם לשמעון מפני שהמתנה אינה דומה למסים.
The text is in disorder but the reading as reproduced here is evidently the correct one. מסים stands for taxes in general. מתנה is the Hebrew equivalent of the term *donum* which was used in the general sense of fines, e.g., the *Donum of Northampton* of 1194. *Cf.* Gross, Ch., *Exchequer of the Jews of England, Papers, Anglo-Jewish Historical Exhibition* (1887), p. 194.

[32] See Mordecai, *loc. cit.* The name of the authority for this decision is supplied by MS. Sassoon, p. 14: כתב הרב אליהו מלונדרוש באדם שמניח ספרים בעיר וברח ונשארו etc., continuing as in the printed editions of the Mordecai. See also *Choshen ha-Mishpat*, 237.

the State in Anglo-Jewish jurisdiction is found in the ruling of Rabbi Isaac b. Peretz of London declaring that the law of the State permitting the sale of pledges after a year in the case of defaulting debtors[33] was operative even with debts of Jews between themselves, although this is against Talmudic law.[34] And the application of the same principle also occurs in connection with money-lending on interest to converted Jews. A converted Jew is, in the eyes of Jewish law, still a Jew. אע"פי שחטא ישראל הוא: and the law which prohibits the lending of money on interest to a Jew applies equally to a converted Jew. Nevertheless, it was decided that once the debt had been contracted and the principal and interest payable entered in the bond, the Jew was permitted to exact the interest from the converted Jew. This legal point, which is of a rather intricate and technical character, does not lend itself to a full discussion on this occasion. But the principle on which this decision is based is that of the validity of the law of the State. For in the words of the *Shibbole Haleḳet* (in manuscript) where this ruling is preserved, "the bonds (חותמות) which are drawn up in England are regarded as definite money bills for those who produce them, according to the law of the kingdom, and in consequence the prohibition against the Biblical exaction of interest does not apply in regard to them."[35]

Money-lending for profit, being forbidden to Christians in England by the Church, was practically in Jewish hands. Although most of the loans on interest were contracted by non-Jews, it must not be imagined that Jews did not engage in money-lending among themselves. They overcame the Biblical prohibition by resorting to

[33] See Jacobs, *op. cit.*, p. 331.

[34] Mordecai, Baba Kamma, 154.

[35] Montefiore MS. (Jews' College) No. 126 (H.237), fol. 61v. כי חותמות העשוין באנגליטרא חשוב לענין שומא כשטר גמור מדינא דמלכותא לגוים ולטוענין בהם. On the limitations regarding the application of the principle דינא דמלכותא דינא, see Epstein, I., *Responsa of Adreth*, p. 73. An illustration of a case where Anglo-Jewish authorities hesitated to apply it is afforded by the uncertainty of the "Sages of Norwich," חכמי נורניש, whether a creditor was allowed to put a defaulting debtor to work for repayment of his debt: נסתפקו חכמי נורניש אם רשאי שום מלוה לתפוס נוף הלוה בכח השטר חוב. See MS. Sassoon, p. 100. On חכמי נורניש see Adler, H., *Papers, Anglo-Jewish Historical Exhibition*, pp. 272ff.

a legal device whereby the transaction was conducted through the aid and by the medium of a Christian friend.[36] We are informed of a Jew paying the necessary expenses in order to obtain a decision from the Beth Din whether this procedure was permitted.[37] We have no record of the verdict. But the fact that this practice was, as we learn from the *Shetaroth*, in vogue in our period shows that, though the ecclesiastical authorities may not have expressly sanctioned this evasion of the law, they at least adopted an attitude of, what might be called, benevolent neutrality in regard to the matter.

Money-lending was not, of course, the only business occupation of the Jew. The majority of the Jews eked out their living mostly in huckstering and peddling in all kinds of wares among themselves as well as among their neighbours. Much business was carried on by means of travelling agents, who worked either on a commission, or who retained all profits beyond a fixed margin to themselves. The risks of the journey in those days were considerable. The roads were unsafe, and the losses incurred often occasioned litigation. Elijah Menachem adjudicating in a dispute of such a kind draws a distinction in the matter of responsibility between the two types of agents. The agent who works on commission, he declares, works equally for his principal as for himself, and consequently is entitled to demand of the principal a share in the loss, whereas the agent retaining profits, works entirely for himself and must alone bear the loss.[38] We also have on record several cases of partnerships formed between Jews

[36] Davis, *Shetaroth*, p. 47 (1251); p. 64 (1253).

[37] See *op. cit.*, p. viii.

[38] MS. Sassoon, p. 89: שאל להרר אליהו מלונדרוש ז״ל שאם ימכור אדם להבירו הפץ למכור ונותן לו שכר טרחו הוי המוכר עלי׳ ש״ש כיון שאין כל הנאה שלו אבל אם עשוי למכור חפצים ובא סרסור ובקש לתנו לו למוכרו אולי ירוויח בו דבר נעשה המוכר שואל שלא הי׳ בדעת זה המוכר לשוגרו למוכרו אלא שנתכוון לטובת המוכר ומחייב המוכר באונסין. A similar principle underlies the decision of Rabbi Elijah's father, R. Moses of London, in a case in which a woman agent was involved as recorded *loc. cit.*: וז״ל אביו ר׳ משה מלונדריש מעשה באשה אחת מוכרת בגדים שנאנסו ממנה בגד אחד שנתן לה למכור ושאלו לו מה לעשות והשיב דנראה לחלק כי לפעמים מוסרין לכרסורים בגדים וכלים למכור בכדי שיוכלו בלא קצבה ולא יהא להם שכר אם לא ימכרו ופעמים אמר מכור בבך וכך והמותר שלך ולאותו נ״ל דבההיא הנאה דקא מודי לנבי׳ שמסתמיו שוי טפי הוי ש״ש מכל הני נראה לחייב האשה בנדון דידן. משה בהר״ר יו״ט זצ״ל.

for general trading purposes, with one of the partners acting as a traveller, while the other traded locally. Here, too, the insecurity of the roads gave rise to litigation, and, in one instance, where the travelling partner on his journey fell in with robbers, and was obliged to ransom himself, Elijah Menachem decided that he had no claim against the other partner, as he had no right to expose himself and his merchandise to the risks of dangerous places.[39] And not only for trading in petty wares were partnerships formed. We have an instance of two Jews going into partnership and investing money on interest with a non-Jew.[40] This indeed is noteworthy, as we have it on the authority of Joseph Jacobs that the king would not allow Jewish financiers to form a partnership, because it would affect adversely his royal interests. For when a Jewish money-lender died, his possessions became the absolute property of the king. Where, however, the money was held in partnership, the death of one of the partners would bring the king no such windfall, and the king would thus lose his chief advantage of his Jews.[41]

Apart from the risks of the journey, common to all travellers, Jewish enterprise was especially exposed to all kinds of danger from the general attitude of the population to Jewish property. A grim flash revealing the Jewish experiences in this respect is reflected in the following decision of Elijah Menachem. We are told that a Jew hired a horse from another Jew and allowed a Christian to ride on it. The horse died, and the owner brought a claim for negligence against the person who hired it. Elijah Menachem declared him liable, on the ground that it was an act of negligence on the part of the Jew to entrust the horse he had hired to a non-Jew, who would have little regard for the belongings of a Jew.[42]

As already stated, justice in civil cases between Jews was admini-

[39] See Mordecai, Baba Bathra, 660.

[40] MS. Sassoon, p. 97: מעשה בא לפני חר״מ מלונדר״יש שני אנשים שהי׳ להם חוב בשותפות ואמר האחד לחבירו להכריח הגוי לפרוע וחבירו אומר נרויח טפי ופסק הרב דיכול לעכב מההיא דפרק המקבל וחלוקין עליו חביריו מההיא דפ׳ אלו מציאות איסור ורב ספרא.

[41] See *Trans.*, iii. p. 167.

[42] MS. Montefiore §774: מעשה באחד ששבר סום מחבירו והרכיב עליו גוי ונפטר הסום ופיר״ם שישראל פושע כי אין חגוי חש על ממונו של ישראל וחייב לשלם.

stered by the Beth Din. Very often special arbitrators would be appointed for matters which required expert knowledge in commerce and finance.[43] Such appointments were usually made in the presence of a special convocation of ten Jews, which it appears was attended by a kind of adjuration of the arbitrators to dispense justice in fairness and equity.[44] The two parties to the lawsuit would make a written declaration undertaking on an oath pronounced on the Ten Commandments, a Scroll of the Law, or some sacred vestment,[45] and under a stipulated fine to abide by the award of the arbitrators, such a fine being payable either to the Crown, to the local governor, the Synagogue, or, as we have it in some cases, to the cemetery of London or the Hospital.[46]

The execution of judgment was, however, still reserved for the Crown or its representative.[47] But this was only in the last resort. Though possessing no physical power of their own on which they could rely, the Jewish authorities were able to wield the formidable weapon of the *Herem*, the ban of excommunication, which proved sufficiently effective in enforcing discipline and ensuring obedience. Chiefly with the help of these sanctions were they able to frame measures and introduce enactments regulating the many aspects of communal life. Several of the enactments recorded in our sources relate to matrimony. It is noteworthy that Anglo-Jewry was one of the few early communities where the old method of *Erusin* betrothal proper, whereby a woman became on betrothal legally bound to a man, had almost been displaced, except in the case of child marriage,

[43] See Davis, *Shetaroth*, e.g., pp. 137, 144.

[44] *Op. cit.*, p. 298: הוברנו והתברכנו בעשרה להיות ב"ד

[45] *Op. cit.*, נשבעה בעשרת הדברות, p. 149; נשבעה בנטילת חפץ, p. 199; נשבעה בפנינו בתפישת התורה, p. 193. This latter procedure is indeed noteworthy as the custom of holding a scroll of the law on taking an oath had been generally discontinued in the days of the Geonim. See Ginzberg, L., *Geonica*, ii. p. 147, also Stokes, H. P., *Trans.*, viii. p. 80.

[46] See Davis, *op. cit.*; p. 9 to the King (1246); p. 141 to the London hospital, לבית ההפשית מלונדרוש (1266); p. 118 to the Synagogue (Norwich, 1264); p. 180 to the London cemetery לבית הקברות מלונדרוש (no date).

[47] See below, p. 202.

by the modern engagement, attended by *Tenaim*,[48] at which a promise of marriage at some fixed date was contracted by the young couple and the parents under a stipulated fine that was to be paid by the defaulter to the other party. In England, however, the statutes governing the *Tenaim* undertakings were very vigorous. In virtue of an enactment adopted by the Anglo-Jewish communities, the party that failed to present itself for marriage at the stipulated date was rendered liable to the ban of excommunication, apart from the fine which had been previously agreed upon.[49] There was also a regulation forbidding the betrothal of any maiden without the consent of her parents, or the nearest relative in the land. And Rabbi Yomtob ruled that the man who had betrothed a woman in contravention of this regulation was to be compelled to give her her freedom by means of a bill of divorce.[50]

Another enactment which makes its appearance in this country at this period is that £100—a considerable sum in those days—was fixed as the minimum amount which a husband had to settle on his wife for her *Kethubah*. This we read was customary throughout the Island.[51] The heavy charge on the husband's estate which the *Kethubah* thus involved explains the stringent procedure, attendant on the collection by the woman of her marriage settlement, which was adopted by the Anglo-Jewish Courts—a procedure which went beyond that provided for in the Codes. The woman had to take a solemn oath, which was confirmed in turn by the ban of excom-

[48] See Davis, *op. cit.*, p. 43.

[49] See Davis, *op. cit.*, pp. 33ff.: ועל פי דברים אלה נכנס ר׳ יו״ט האמור בחרם וצווי ב״ד ותקנת חקהלות; also Baer, F., *Die Juden im Christlichen Spanien*, i. p. 1000.

[50] MS. Sassoon, quoting *Etz Hayyim*: פסק הר׳ יו״ט מי שעבר על גזירת הקדמונים מעשין אותו לגרש כאשר מעשין לפסולות וכן למקדש אשה שלא מדעת מיוחד אב או קרובים אם ישנו בארץ הרי יכולים לנדותו ולהחרימו ולהענישו על המלך וחשרים ולא ימולו בניו ולא יקברוהו אם לא ינרש מדעתו בנט כשר עפ״י חכמי עירם.

[51] See Davis, *op. cit.*, p. 302: ולעשות לה כתובה ממאה לטרין כמנהג האי (1271). See the text of the Betrothal Contract in Adler, M., *op. cit.*, p. 43. The 100-pound standard *Kethubah* originated in Germany before the year 1000, whence it was adopted as a basis of the money clauses of the *Kethuboth* by all other Ashkenazic Jewries to the present day. For a full discussion see Agus, Irving A., *J.Q.R.* (*N.S.*), xxx. pp. 221ff. According to Naphtali Levi, *op. cit.*, p. 26, it was R. Elijah Menachem who introduced it into this country.

munication, that she had not collected any part of her jointure during the lifetime of her husband or after his death.[52] It further accounts for the regulation that if a widow on re-marriage brought in more property than she was entitled under the terms of her *Kethubah*, her second husband had to return the surplus to the orphans.[53] And not only by the husbands were the women fairly well provided for. It was also usual for parents to furnish their daughters with substantial dowries, and for this reason it was customary for parents to stipulate for the return of the dowry or part of it should the daughter die *at any time* without issue.[54] One further ruling reflects the chivalrous attitude of the Anglo-Jewish Rabbinate to the weaker sex. According to Talmudic law, a divorce by proxy may be effected in two ways. Either the husband appoints an agent to take the *Get* to the woman, in which case the woman is not divorced until the *Get* is delivered into her hands; or the woman appoints an agent to receive on her behalf the bill of divorce from her husband, in which case she gains her freedom as soon as the *Get* reaches the hands of the agent, although it had not been yet delivered to her. The reason for the law requiring the woman to be in actual receipt of the *Get*, where the agent is appointed by the husband, is because it is assumed that divorce generally operates to the disadvantage of a woman, and it is a principle that one cannot take possession of anything on behalf of a person in a matter which is harmful to the person concerned without his or her own express wish. From this it would follow that, where it is evidently to the advantage of the woman to be divorced from her husband, the husband might in such a circumstance appoint an agent to receive the divorce on behalf of the wife, releasing her from the matrimonial bond the very moment the agent accepts it from the husband. There is, however, no record apart from the case where the husband became an apostate that the Rabbis drew this conclusion. Rabbi Moses of London was the first,

[52] See Davis, *op. cit.*: וגזרנו בחומר אלה ותשבענוה בשבועת התורה אם קבלה מכתובתה, p. 137; אדרונה בב"ד ואשבעונה חוץ לב"ד, p. 337.

[53] MS. Sassoon in the name of *Etz Hayyim*. *Cf.* Eben ha-Ezer, 96, 5.

[54] See Davis, *op. cit.*, p. 162, also p. 97.

and it appears the only one to apply it in the case of a child marriage. We are told that on one occasion a man had two daughters, one of whom he gave into betrothal without mentioning the name of the girl concerned. This created, according to Jewish law, a curious situation. He could not marry either of them, as each one might be the sister of his legal wife which is prohibited by Leviticus xviii, 18, forbidding the marriage of two sisters, and divorce of the girls was the only way of escape. Such a divorce was arranged without the knowledge of the girls, because, said Moses of London, " we assume it is to the advantage of both girls to be divorced."[55] The opinion may be hazarded that it was in order to spare the girls any embarrassment that the divorce was effected unbeknown to them. This incident is, by the way, an echo of what is related in the *Haggahoth Maimonides.* It happened once in Troyes that Isaac the son of Hosea, the grandson of Rabbi Menachem, was betrothed to a daughter of Rabbi Morel of England. But the latter had three daughters and the name of the betrothed was not mentioned, so that Isaac was compelled to divorce the three.[56] It might be surmised that the two incidents are two different versions of the same story, although the number of girls differs in each case, allowance being made for the easy confusion by scribes between the letters ב and ג standing respectively for two and three.

The monogamous enactment of the eleventh-century Rabbenu Gershom, " the Light of the Exile ", prohibiting bigamy under pain of excommunication, though not intended originally to extend beyond Germany, spread already in those days to England. This gave rise to an important decision by Rabbi Joseph, probably of Lincoln, that he who accuses his wife of infidelity without being able to substantiate his charge, had to be placed under the ban, for there is a possibility that his accusation was designed to enable him to divorce his

[55] MS. Montefiore, § 375: השיב הר' משה מלונדרוש היכא שאנו יודעים בודאי שזכות הוא לאשה גט שיוכל אדם לקבל הגט שלא מדעתה ובן מעשה באחד שהיו לו ב' בנות וקבל קדושיה לאחת ולא חוזכר שמה ובא אחר וקבל גיטיו שהעריכו שלא מדעתן. See also Mordecai, Gittin, 467.

[56] Jacobs, *op. cit.*, p. 53.

wife and marry another woman, whilst by his very charge he rendered her forbidden to him.[57]

Rabbenu Gershom's enactment relating to monogamy penetrated this island by the way of France; and, in the famous divorce case of 1242, one can trace the beginnings of this penetration. The story to which M. D. Davis was the first to call attention[58] has been told several times;[59] but the legal issues involved have so far not been elucidated. The following, however, may be offered in reconstruction of the legal aspects of the case. David of Oxford wished to set aside his wife Muriel *without her consent*. As the law of Rabbenu Gershom against forcible divorce had not yet been recognised by Anglo-Jewry, the Beth Din had no alternative but to grant him his 'relief'. They, however, insisted that he should first pay up in full the *Kethubah* to Muriel. This reservation was in accordance with a Geonic ruling which disallows divorce where the husband is no position to pay his wife the *Kethubah*.[60] David, however, refused to be bound by this condition and succeeded in obtaining a writ from the Crown in virtue of which the *Get* was to be made absolute, enabling him to take to wife whomsoever he fancied.

Muriel thereupon sought to restrain her husband by invoking the monogamous enactment of Rabbenu Gershom. This regulation had not yet enjoyed at that date the force of law in Anglo-Jewry. She consequently appealed to the Paris Beth Din,[61] urging them to use their influence in having the operation of its measures extended to England. Her representations with the Paris Rabbis had the desired effect. This resulted in the issue of a second writ that no Rabbi either of England or France should venture to coerce David "to take or to hold any woman to wife except at his own free will."

[57] MS. Montefiore, quoting from *Etz Hayyim*, § 413: כתב הרב יוסף האומר אשתי זנתה טהורה עליו אחר תקנת ר' גרשום שלא לישא ב' נשים היישינין שמא עיניו נתן באחרת ויש לנדותו שאסר אשתו עליו והוא מבטל תקנת הגאונים עכ"ל הנ"ה.

[58] *J.Q.R.*, v. p. 136.

[59] See Stokes, H. P., *Trans.*, x. p. 199; Adler, M., *op. cit.*, p. 29; and Roth, C., *Anglo-Jewish Letters*, p. 13.

[60] See Solomon ben Adreth, *Responsa*, i. 1254, and Simon b. Zemach Duran, *Responsa*, iii. 223.

[61] *Cf.* Epstein, I., *op. cit.*, p. 87; also p. 120, n.63.

The woman in such circumstances as described above enjoyed a high status. We find her engaged in all kinds of commercial occupations and business, including money-lending, dealings in property, and we also see her acting in one case as agent for the sale of clothes on commission.[62]

Turning to matters ritual, the material apart from that already collected by Joseph Jacobs is very meagre. The following items, however, are not without interest. It has already been observed that English Jews had the reputation abroad as orthodox.[63] Nevertheless, we find English Jews somewhat lax in regard to some of the dietary laws. They had little scruples about eating non-Jewish bread. Nor did the English Rabbis seem to disapprove of this laxity. In fact Isaac b. Peretz went so far as to state that non-Jewish bread if fresh was to be given preference at benediction to Jewish bread which was stale. Elijah Menachem, however, took a somewhat stricter view, declaring, " We are sufficiently ashamed of the fact that we do eat non-Jewish bread, should we also give it preference? "[64]

English Jews used also to drink non-Jewish beer, which was forbidden by the later *Amoraim* of the Talmud, who placed it in the same category as non-Jewish wine,[65] and which was against the practice of other Jewries. This somewhat shocked the Jewish communities in other countries; though they appreciated the special circumstances which made it difficult for English Jews to abstain from drinking beer with their non-Jewish neighbours without running the risk of embittering their relations which were none too cordial.[66] Non-Jewish milk was also drunk by English Jews. Here, too, they had the authority of Joseph of Lincoln who was inclined to permit

[62] See above, p. 196, n. 38. On the woman's part in the economic life of Jewry during that period, see Adler, M., *op. cit.*, pp. 18ff.

[63] See Adler, E. N., *History of the Jews in London*, p. 48.

[64] See Adler, H., *Steinschneider's Festschrift*, p. 186: ואמר חריבר"ף (ר' יצחק בר' מכאן שאנו שאין נזהרים מפת של נוים ולפניהם פת ישראל קבר ופת נקי, נוים יברך פרץ) באיזה שירצה אבל הר"מ מלונדרש אין מורה לו דעל האכילה אנו בושים ונקחים אותו לברכה.

[65] See Tosafoth, *Abodah Zarah*, 31b. s.v. מפני

[66] MS. Montefiore (Jews' College), No. 65 (H.58), *Tosafoth R. Elhanan b. Isaac*, on *Abodah Zarah*, 72b.

it in view of the fact that non-Jews in this country rarely milked unclean animals.[67] Wine was rare in England, and was imported by non-Jews from Germany. This was conveyed in barrels with only one seal, which was against the general law in practice. We are told, however, that Rabbenu Tam, towards the end of his life, permitted it.[68] The scarcity of the wine was particularly felt on Sabbath at Kiddush, as Rabbi Isaac b. Peretz wistfully observes. "We in England, where wine is not in abundance, just taste a little from the Kiddush cup, and when we want to make another blessing we add a little fresh wine to what remains."[69] A ruling of Rabbi Meir of Angleterre, which in view of the impending fast of Ab will appear seasonable and which shows his humane outlook, is that on the Ninth of Ab when the law requires the Jew to walk about unshod, one may wear shoes in non-Jewish districts and take them off only when entering the Jews' Street רחוב היהודים.[70]

The striking humanism of Meir of Angleterre is reflected in his decision that a proselyte who loses his mother must sit *Shiva* for her, a decision which has not been accepted by the Codes.[71] The reverence for man lies behind the decision of Rabbi Eliezer of London that one may convey a corpse across the river on the Sabbath out of respect for the dead.[72] Speaking of the river, one might mention in conclusion an additional item of interest. We learn that the Jews would spend the Sabbath in the summer on the roofs of their houses in specially erected canvas tents where they would receive their visitors. On one occasion a boatman, who was short of a sail, set his eyes on a Jewish Sabbath tent and helped himself to a canvas. The Jew, who expected visitors, thereupon made for the port in the company

[67] *Shilte ha-Gibborim*, § 5, on Mordecai, Abodah Zarah, 826.

[68] *Hisronoth ha-Shass* (Konigsberg, 1860), p. 39. See Adler, M., *op. cit.*, p. 135, n.5.

[69] *Etz Hayyim* in Adler, H., *op. cit.*, p. 209: וכתב הריבר״ף שאנו בארץ האי שאין לנו יין מצוי טועמין מן הכום מעט וכשירצה עוד לברך שופך עליו מעט. See also Adler, E. N., *op. cit.*, p. 49.

[70] Mordecai, Moed Katan, 913. On רחוב היהודים see Adler, M., *op. cit.*, p. 68.

[71] Mordecai, Moed Katan, 970.

[72] *Haggahoth Mordecai*, Sabbath, xix.

of a non-Jew and procured there some canvas which he had made into a tent by the non-Jew. This act was declared permissible in honour of the guests. Rabbi Eliezer, however, disapproved of it, and wrote a long Responsum in support of his view.[73]

All this is, of course, very sketchy and very imperfect. However, with all the sins of omission and commission of which I plead guilty, I hope I have succeeded in bringing to the light of the day some Anglo-Jewish characteristic specimens of Responsa literature worthy of our attention and curiosity. The light which these reflect is admittedly faint. Perhaps the publication of the *Etz Hayyim* which is now being planned by the Mekitzé Nirdamim Society in Jerusalem may shoot revealing searchlights into obscure recesses hitherto undivined. For this reason only, apart from all other considerations, Anglo-Jewry ought to associate itself with the undertaking and assist in the release to an expectant world of Jewish scholarship of the only great Anglo-Jewish literary production to have survived the ravages of plunderers and centuries. But, however that may be, the orderliness of communal life reflected in the account I have attempted to present, affords convincing proof of the vitality of the governing power of Anglo-Jewish communities. It also bears testimony to an Anglo-Jewish tradition of תורה and יראת שמים, learning and piety, culture and religious devotion—a tradition which is gradually being resuscitated after the oblivion of centuries, with the power to inspire and to move.

[73] Mordecai, Sabbath, סליק ד׳ וה׳