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INTRODUCTION TO SECTION JURISPRUDENCE.

WITH the present volume we begin the Section "Damages," also called "Jurisprudence," from the occurrence of discussions on criminal law. This section forms the fourth in the old edition, and comprises the following treatises: "First Gate," "Middle Gate," "Last Gate," "Sanhedrin," "Stripes," "Oaths," "Testimonies," "Idolatry," "Fathers" (or "Ethics of the Fathers of the Synagogue"), and "Decisions."

Notwithstanding the fact that in the old edition of the Talmud "Fathers" stands next to the last tract, we have placed it at the head of the section, relying upon the decision of Sherira Gaon in his letter (Goldberg edition, Mayence, 1872, p. 14) declaring that it is perfectly permissible to change the order of sequence of tracts in the several sections. Therefore, because the treatise entitled "Fathers" deals entirely with the ethics of life, we have deemed it best to give it precedence over the other treatises. Just as in the Pentateuch we find the ten commandments--the basis of all ethical religion--heading the subsequent detailed laws and ordinances, so it seems but fit that the Section "Damages" should be headed by the tract setting forth the main ethical principles, and be continued by the detailed discussions. We are further borne out by the Talmud itself, which reads (First Gate, Chap. III., Mishna 3): "One who wishes to be pious should observe the laws of damages. Rabhina said: 'He should observe the teachings of the Fathers.'" Rabhina's statement should, in our opinion, not be taken literally, but as indicative of the opinion that the decisions contained both in "Fathers" and in "Damages" generally are equivalent.

"Fathers" is one of the few treatises which consists of Mishna only; *i. e.*, has no supplementary Gemara either in the Babylonian or the Palestinian Talmud, although interspersed throughout the contents of the entire Talmud may be found amplifications or comments on some of the sentences of the "Fathers." There is, however, a Tosephtha entitled "Fathers of Rabbi

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[[paragraph continues](#)] Nathan" which discusses most sentences of the original "Fathers" separately; in fact, begins the discussion of each sentence with the interrogation "How so?" Forming, therefore, a valuable addition to the much-valued literature of the "Fathers," we have considered it our duty to incorporate it in our edition, and we have therefore inserted the said Tosephtha in the place where, in other tracts, we have placed the Gemara.

Owing to the fact that the Tosephtha named above bears the name of Rabbi Nathan of Babylon, one of the most distinguished masters of his generation, but at the same time contains ethics similar to those of the Mishna, as well as lectures and discussions which could not have been compiled by that author and are evidently contributions from scholars of a later period, the historians of modern times, from Zunz in his "Gottesdienstliche Vortraege" to Brill in his

"Jahrbuecher" and Weiss in his "Dor Dor Vedorshov," engage in elaborate speculation as to who was the compiler of the "Fathers of R. Nathan" and at what time it was compiled. The complicated nature of the Tosephtha in question brought to the front a number of commentators and text-revisers, and finally Solomon Tausik and Solomon Shechter made a search of manuscripts, and published new editions of the Tosephtha, with additions from the material found in the manuscripts. The latter, in fact, searched so thoroughly that he found an entirely different version of the Tosephtha, and then published in his edition two separate texts, calling them First Text and Second Text, respectively, with his own corrections, notes, and a long introduction (Vienna, 1887).

True to our methods of translating the Talmud, we have, however, ignored the new versions of "Fathers of Rabbi Nathan," and have merely adapted the old version which forms part of the Talmud, simply adhering to the corrections made by Elias Wilner and the commentaries of Joshua Falk and others contained in the great Wilna (1890) edition of the Talmud. Further, in accordance with our wont we have omitted such of the passages as have already appeared in the preceding tracts of our edition, merely indicating the places where they can be found. Wherever necessary, of course, we have added footnotes, remarks, etc.

Our reasons for not making use of the new versions of the Tosephtha in question are as follows:

In a previous article touching upon the subject, which appeared in our publication "Hakol," we have pointed out that

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we cannot give preference to recently discovered manuscripts over those used by the compilers of the Talmud, and for a reason that is perfectly obvious, viz.: If those manuscripts were in existence during the construction period of the Talmud, the compilers, who sifted every manuscript with the utmost care, undoubtedly rejected them as valueless. If, on the other hand, they were at that time not in existence, but were written at a later period, they certainly cannot be used as a medium for correcting the antedating manuscripts.

As for Schechter's revised and corrected texts, we cannot accept them for the reason that he presumes to remark, anent Elias Wilner's corrections, "I do not favor them," or, "They are unnecessary." After careful investigation we have, however, found that almost all the corrections made by Elias Wilner, and adopted by us, are founded directly on Talmudical and Midrashic passages scattered throughout the Talmud, a fact the learned Dr. Schechter no doubt overlooked.

On the other hand, we find that the commentaries published in the above-mentioned Wilna edition and credited to Joshua Falk, Chayim Joseph David Azulayi, and Baruch Frankel Theomim are referred directly to passages of the Talmud in the several treatises. Therefore we have used these well-known authorities in our translation, eliminating merely their lengthy discussions and adductions of proof.

As to the origin of the sayings of the "Fathers of Rabbi Nathan," the period during which they were compiled, and other historical events attending their conception, we refrain from rendering our opinion, even though it has become customary to do this in an introduction, leaving these

matters to the philologists and historians in whose province such discussions properly fall. Our sole reason for the translation is that the said sayings have never before been rendered into any modern language and without them our work would not be complete.

The "Fathers of Rabbi Nathan" contains in the original forty-one chapters. As we render them, however, in the form of a Gemara to the Mishna of "Fathers," we have not numbered the chapters, but merely indicated at the foot of the page to which chapter each paragraph belongs.

Regarding the translation of "Fathers," *i.e.*, the original Mishna in the first five chapters, we have found that the translation of C. Taylor (Cambridge, 1877) is entirely too literal and almost incomprehensible without foot-notes and commentaries.

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On the other hand, the partial translation contained in the Home Prayer Book, compiled in the main by Dr. G. Gottheil and Dr. F. De Sola Mendes, is lucid and in accord with the original text. We have therefore made use of the latter rendition, with slight changes. The part remaining untranslated in the Prayer Book we have adapted from C. Taylor's version, rendering it somewhat more comprehensively. In the rendition of the sixth chapter, which does not really form part of the Mishna but is added by the sages in Mishnaic language, we have followed Taylor, making numerous notes and corrections, in order to make it intelligible to the lay reader.

We have not deemed it necessary to add a commentary to the "Fathers" as we did to Tracts Shekalim and Ebel Rabbathi, because the "Fathers" has been translated into all modern languages and because there is already considerable literature concerning the ethics of Judaism, especially the recent publication by Prof. Dr. M. Lazarus entitled "Ethik des Judenthums" an admirable work, issued at Leipzig (1899), and giving a masterly exposition of the philosophical tendencies of "Fathers." We have also devoted a special chapter to this subject in our forthcoming "History of the Talmud."

We have also thought it well to give in this volume, which treats exclusively of the ethics of Judaism, the two Tracts Derech Eretz (Rabba and Zuta), which contain the essential "rules of conduct of life," as construed by Dr. Mielziner, or Worldly Affairs, as named by us, which latter is the prevailing interpretation among Hebrew readers.

As to the origin of these two tracts, elaborate discussions may be found in Zunz, "Gottesdienstliche Vortraege," pp. 110-112, as well as in "Der Talmud--Tract Derech Erez Sutta Kritisch bearbeitet, übersetzt und erläutert" (Berlin, 1885), by Abr. Tawrogi. For Tawrogi's reasons for not translating Derech Eretz Rabba, see his work; nevertheless, inasmuch as Derech Eretz Rabba has never been translated into any language, and of Derech Eretz Zuta, while there is a critical translation into German, there is none in English, in order to make this volume, which treats of the ethics of Judaism, complete, we have considered it expedient to translate into English both tracts almost literally, although they are not counted among the thirty-seven treatises proper of the Babylonian Talmud, but only among the minor treatises added to them. We do not, however, deem it necessary to add any commentary, for the reason that the sayings

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are very plain and lucid, and can easily be understood even by those who are not students of the Talmud.

Because of the similarity in language and style of these two treatises and of the so-called Mishnayoth of the sixth chapter of Aboth, they appear in the same large type as the Mishnayoth. Following this treatise will be published the other tracts of this section in the regular sequence of the old edition.

THE EDITOR AND TRANSLATOR.

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[Next: Synopsis of Tract Aboth \(Fathers of the Synagogue\).](#)