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A Manuscript of Joab ben Jeremiah's Responsa

BY SOLOMON B. FREEHOF, *Pittsburgh*

IN THE SUMMER OF 1953, I bought from the bookseller, Nathan Steiner, in Tel Aviv, a manuscript volume of responsa on *Even ha-'Ezer*, by Joab ben Jeremiah, one of the great legal authorities of Hungary at the end of the eighteenth century.

The manuscript, now bound in book form, is written in a fairly clear Ashkenazic script on good, hand-laid paper. The size of the pages is 13-1/8 by 8-1/8 inches. The pages are numbered in square letters, but in about twenty pages the upper left hand corner is worn away and the page number gone. The text contains thirty-nine responsa and there are eighty pages (Fig. 1, title page and Fig. 2, page 24).

At the beginning of the manuscript in the same writing as the rest of it, is the following:

Imre No'am, Part Two, on Even ha-'Ezer, begun with God's help on Friday, the 21st day of Adar in the year 558 (i.e. 1798) here in the city of Krolo; in the Beth ha-Midrash of the late well-known benefactor (i.e., the "Katsin") Reb Ozer of blessed memory. Thus saith the humble one Joab, author of *Sha'are Binah* and *Moda'ah Zuta*.

It was evident, even at first glance, that the manuscript was in the handwriting of the author. On many pages there are full marginal additions and frequently there were inter-linear additions. These additions, marginal and interlinear, were not critical comments but amplifications and were in the same handwriting as the rest of the manuscript. Had this been a copy of the original, the copyist would certainly have included these additions into the main text. Besides, the paper is, as we have said, fine, hand-laid paper which was still universally used even in copybooks before 1800. The author died about 1800.

It would, of course, be very difficult to trace completely the entire chain of the successive possessors of the manuscript. But it is possible to identify some of its owners.

The first reference to the manuscript is by the author himself, at the beginning of his published responsa, *Imre No'am* (to *Orah Hayim* and *Yore De'ah*; Muncasz, 1884). The editor is Chaim Vitrial who had been the rabbi of the Sephardic congregation at Miskolc. He was the grandson-in-law of the author and evidently found the heading written by the author on the manuscript. It is as follows: "God who has given me strength to write the three books: *Sha'are Binah* (Vienna, 1794) and *Moda'ah Zuta* (Lemberg, 1798) which have been printed, and the book *Hen Tov* which I have prepared on Section 17 of *Even ha-'Ezer*." (Here follows a parenthesis: "Now already printed." This parenthesis may have been added by a later hand. *Hen Tov* was published in Zolkiev, 1806). "May He give me strength to finish my responsa on all four parts of the *Shulhan 'Arukh* which I have called *Imre No'am* which adds up to the gematria of my name, Joab son of Raizel, my mother, whose honored repose is in Paradise."

Evidently the manuscript of his responsa was largely finished. He had already selected its title. The next owner of the manuscript must have been Moses Samuel Isaac, rabbi of Six, who was the son of the author and the father-in-law of the present editor, Chaim Vitriah. My copy of *Moda'ah ve-Ones* must have belonged to him. On the top of the title page is written, "Samuel Isaac, son of the Gaon Joab." There could hardly have been any other Samuel Isaac, son of some other Joab. Zunz said in Geiger's *Wissenschaftliche Zeitschrift*, III, 57 ff., that the name Joab almost never occurs among Ashkenazic Jews and that the only one he knows of is that of Joab ben Jeremiah. In fact, Meir Ash, in his approbation to *Imre No'am* says that the rabbi of Six had the manuscript for some time, and that another son-in-law, Samson Naphtali, rabbi of Ofaly, tried in vain to get it published. Now the grandson-in-law, Vitriah, says that the manuscript "was exiled from place to place" and that he had it for ten years before he could get it published. But he says that he could not gather enough subscribers to publish the entire manuscript and that therefore he divided the manuscript and published only the first part on *Orah Hayim* and *Yoreh De'ah*. Our manuscript is clearly the second part of it (on *Even ha-Ezer*). The third part on *Hoshen Mishpat* may still exist. Joab said that he had written on all four parts of the *Shulhan 'Arukh*, and he was certainly an expert on *Hoshen Mishpat*, as his commentary *Moda'ah Zuta* to Hayim Shabsi's *Moda'ah ve-Ones* testifies.

Perhaps the ownership of the manuscript can be traced a step further. Menahem Mendel Broch, who published Joab's book of sermons, *Imre Joab* (Lemberg, 1895) indicates that manuscripts of Joab (perhaps the lot of them) were for a long time in the possession of Chaim Zvi Mannheimer, rabbi of Ungvar, his stepfather (see specifically the approbation of Shraga Tennenbaum, see *Shem ha-Gedolim*, Schwartz, p. 71). That is as far as the manuscript can be traced.

As to the biography of Joab ben Jeremiah, very little can be added to the scant materials given in the encyclopedias and other reference works. He was a pupil of his father in Mattersdorf, and his fellow pupil was the pioneer of Reform Judaism in Hungary, Aaron Chorin. It was through Chorin's influence that he obtained the rabbinate of Deutschkreuz (which the Jews, of course, always called Tselem). That he was highly regarded as a legal authority can be judged from the reverence voiced in the various approbations of his published books.

Perhaps a little may be added to the material hitherto published with regard to his family. We know that he had at least one son, Moses Samuel Isaac, rabbi of Six. Greenwald in *Ha-yehudim be-Ungaria*, p. 55, note 2, refers to the title page of *Imre No'am* as evidence that Samuel Isaac was the son-in-law of Joab. But he misread the reference. The two mentioned brothers-in-law were Samson, Joab's son-in-law, and Samuel Isaac, his son. He was blessed with daughters and therefore with a number of rabbinical sons-in-law. One was Isaac Frankel, rabbi of Krolo. A sermon of his is published in *Imre Joab*, pp. 73 ff. Frankel also collaborated with his father-in-law in the double com-

mentary to *Even ha-'Ezer* #15, Joab writing the commentary, *Hen Tov*, and Frankel writing the commentary, *Zeved Tov* (Zolkiev, 1806).

On the title page of *'Imre Joab*, Joab is described as "the second father-in-law of Meir Ash," the famous Hungarian authority, author of the responsa *'Imre Ash*. How Meir Ash became Joab's son-in-law is told in a rather romantic incident by Phineas Schwartz in his *Shem ha-Gedolim* (p. 101). Joab visited Moses Sofer and asked him to select a worthy student to be his son-in-law. Moses Sofer said that he had two brilliant students and could not decide between them. They were Isaac Frankel and Meir Ash. Joab spent all night discussing Torah with both young men and *he* could not decide either. He summoned his daughter and she said that she was attracted to both of them and that *she* could not decide either. Finally lots were cast and she married Isaac Frankel. When Frankel died, Meir Ash had been recently widowed, and he married her. In the responsa of Moses Sofer, *Yoreh De'ah*, 349, Ash asks his teacher whether he may marry before the twelve months of his bereavement have passed. His teacher gives his permission.

Another son-in-law was Samson Naphtali, rabbi of Ofaly (cf. approbation of Meir Ash to *Imre No'am*, and *Shem ha-Gedolim*, Greenwald, *op. cit.*, p. 102).

According to our manuscript, Joab heads the responsum on p. 66a, "Responsum from my son-in-law, Abraham Abush, rabbi of Kerestur." Abraham Abush, besides being Joab's son-in-law, was also his step-brother. His father Jeremiah had married twice and Abraham Abush was the son of his second wife by her first marriage (cf. Greenwald, *op. cit.*, p. 55). Abraham Abush was co-editor of an edition of the responsa of Isaac Alfasi (Vienna, 1794). (See reference to him by Wolf Leiter in the introduction to his edition of Alfasi, Pittsburgh, 1954.) Abraham Abush was rabbi in Kerestur and then in Six.

Joab's brother-in-law (his sister's husband) was Isaiah Fried of Krolo who, with his brother Menahem Mendel, edited Jeremiah's and Joab's chief work, *Moda'ah ve-'Ones*. The statement in the *Universal Jewish Encyclopedia* (article Mattersdorf), that it was Joab who published the work, is incorrect.

Joab ben Jeremiah was closely connected with the town of Krolo. Isaiah Fried, his brother-in-law, was the son of a rich man, Isaac Fried of Krolo. Joab's son-in-law, Isaac Frankel, was rabbi in Krolo. Joab writes in the heading of our manuscript, "In Krolo." Possibly he was living with his daughter in Krolo in his old age when he was putting the final touches to his responsa.

It is possible to identify almost all of Joab's correspondents in this manuscript. As in his published responsa on *Orah Hayim* and *Yoreh De'ah* (Muncacz, 1884) there are a number of responsa to his father Jeremiah, rabbi of Mattersdorf. These are on pages 18a, 23b, 461a.

On page 59a there is a responsum by the well-known Zvi Hirsch (Levin) rabbi of Berlin, who had been rabbi of London. He was a close friend of Mendelssohn. His son Saul was the editor-author of the much disputed *Besamim Rosh*, a volume of responsa attributed to Asher ben Jehiel. Zvi Hirsch Berlin's responsa have never been published;

therefore any responsum of his is of especial interest. This one deals with the much-debated question of how to write nicknames or by-names in a bill of divorcement.

The two responsa on pages 1-3b are addressed to "David, rabbi of 'K. B.'" This was David Frischmann, rabbi of Kadelberg. There is no doubt of this identification. Moses Sofer received many questions from him and the answers are found in Moses Sofer's responsa. In a number of them Moses Sofer addresses David Frischmann as Rabbi of K. B. (e.g., in *Even ha-'Ezer* 1, 112, 134) and in one he writes out the name of the town in full as Kadelberg. Frischmann was a favorite pupil of Moses Sofer and that accounts for the many responsa addressed to him. (Cf. Greenwald, *Shem ha-Gedolim*, p. 62; Schwartz, *Shem ha-Gedolim*, p. 54.)

On page 4a of the manuscript there is a responsum to Jehudah Leb, rabbi of Makova. This rabbi is addressed in complimentary style by Ezekiel Landau in the responsum #138 in *Noda' Bihudah*, II, section Even ha-'Ezer. Jehudah Leb had decided a question (it concerned a bench fastened to the floor of an inconveniently deep Mikvah) and the famous rabbi of Prague praised his decision (cf. Greenwald, *Shem ha-Gedolim*, p. 79).

On page 61b of the manuscript there is a halachic letter from Rabbi Zalman Wolf. Wolf was rabbi in Krolo (where Joab worked on this manuscript) and later was rabbi in Hunsdorf where Joab at one time also served as rabbi. Zalman Wolf was the author of *Emek ha-Melekh* on the *Yad*. He died in 1818 (cf. Schwartz, *op. cit.*, p. 65).

The responsa on page 65 are by and to Joab's son-in-law, Abraham Abush Tennenbaum, mentioned above.

It may be of interest to note the themes of the responsa. This type of legal literature is never directly concerned with historical events, yet often is of historical importance by what it mentions in passing or by what social conditions are revealed in it unintentionally. Thus, in this collection, although there are only thirty-nine responsa, there is a disturbingly large proportion that reveal breaks in the strong Jewish family morality.

1. A woman found pregnant at the time of marriage.
2. A woman threatens to apostasize and has been immoral.
3. A single witness testifying to a married woman's adultery.
4. A man dies childless, but leaves his wife pregnant. The posthumous child dies at birth. Does the woman need *Ḥalitzaḥ*?
5. A man dies childless and there is doubt whether or not he had a child by a previous marriage. If he has a brother, does his widow need *Ḥalitzaḥ*?
6. A woman who is a drunkard.
7. & 8. A note (Tosefet Ketubah) permitting the widow to take garments and jewels (see photograph).
9. & 10. Comments on the *Shulḥan 'Arukh*.
11. On *Ḥalitzaḥ*.
12. A woman brings a witnessed document that she had been divorced. Is the document reliable and is she allowed to remarry?
13. & 14. Comments on the *Shulḥan 'Arukh*.
15. Comment on an Ezekiel Landau responsum *Even ha-'Ezer* #54; conditional marriage and *Ḥalitzaḥ*.
16. Witnesses disagree whether the groom was a minor at the time of marriage.

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| <p>17.-21. Analysis of various marriage laws and novellae of the relevant Talmud passages.</p> <p>22. Comments on <i>Shulhan 'Arukh</i>.</p> <p>23. Responsum of Zvi Hirsch Berlin on names in bills of divorce.</p> <p>24.-25. Names in the bill of divorcement.</p> <p>26. Validating a bill of divorcement.</p> <p>27. From R. Jeremiah approving a decision of his son Joab validating the bill of divorce.</p> | <p>28.-32. Comments on the <i>Shulhan 'Arukh</i>.</p> <p>33.-34. Novellae.</p> <p>35. Divorcing a woman for misbehavior.</p> <p>36. The government decree forbidding marriage below the age of twenty-four.</p> <p>37. Analysis of "rebellion" in marriage.</p> <p>38. Forced marriages.</p> <p>39. Remarriage of a nursing widow.</p> |
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There is one responsum in the manuscript which deserves special attention. It dealt with a series of decrees issued in 1783 by the Austrian government regulating the marriage laws. Since many of these regulations applied to Jewish marriages were derived from Catholic canon law, the decree created consternation in the Jewish community. For example, the new law required that the banns be proclaimed three times, one week apart, announcing the forthcoming marriage; also that the degrees of consanguinity and affinity as drawn up by Catholic canon law, apply to all marriages within the empire; that no one under the age of twenty-four might marry without special permission of the parents. Many of these restrictions were never part of Jewish law. What would happen, then, if a couple violated the government regulation and the marriage was still valid by Jewish law? This question was discussed, for example, by Eleazar Fleckeles in *Teshuvah me-'Ahavah*, 1, 117. The question comes from Raphael Ashkenazi, rabbi of Triest (which was then part of the Austrian Empire). A couple married (in a sort of elopement) in the presence of two witnesses. The marriage was valid according to Jewish law, but since the banns had not been proclaimed and since the rabbi did not officiate, the marriage was invalid according to the Austrian government law. The rabbi could not force the husband to give a "Get" since a forced "Get" is invalid. What was to be done?

Eleazar Fleckeles in Prague (being also in the Austrian Empire) was extremely cautious in his reply. He compliments the government's intention as noble, but nevertheless declares the informal marriage valid.

Abraham Eliezer Halevi, who was rabbi in Trieste after Raphael Ashkenazi, worked out a plan together with the leaders of the community whereby Jewish law in this instance could be harmonized with the government decrees. He wrote to Moses Sofer, who responded with two responsa, *Hasam Sofer, Even ha-'Ezer*, 1, 108, 9. However, from these responsa we do not learn just what the plan was. Perhaps Moses Sofer, being himself resident in the Empire, preferred not to discuss the plan in detail. Abraham Freimann, in his *Seder Kiddushin ve-Nissu'in*, pp. 314 ff., discusses the whole matter. He is able to give the entire proposal, since it was described in detail in the responsa of Chaim Isaac Mossafia, the Sephardic rabbi of Split. The responsa are still in manuscript and are in Jerusalem.

It is of considerable interest, therefore, that in this manuscript of Joab ben Jeremiah from the southern part of the empire ("the seven communities") the complete details of the plan are given. On page 66a of our manuscript, Abraham Teitelbaum gives the entire plan and writes a responsum approving it. The text begins as follows:

The responsum that was sent to me by my son-in-law, the Light of the Exile, the keen and the erudite Abraham Abush, Rabbi of Kerestur, is as follows:

[Rabbi Abraham writes, stating first the problem:]

"The law was promulgated by the king to the provinces of Italy. The decree was that there should be no marriages until the bride and groom were twenty-four years of age. Any marriages which are conducted before that age are declared void and either of the parties may be married to anybody else without a divorce and no one can object to this remarriage or hinder it, from the point of view of Jewish religious law. Now it happened (continued Rabbi Abraham in his statement of the problem) that a person married someone under the age of twenty-four and the rage of the government was aroused and it expelled the groom from the king's territory and formally permitted the bride to be married to another man without a Jewish Get from the first groom.

"As a result of all this (action on the part of the government) the leaders of the community (i.e., the Jewish authorities) made every effort to obtain from the first bridegroom a Jewish divorce. Otherwise the bride will remain an Agunah forever or she will be married to another man without a Get. Now the officers of the province asked that the sages of our time promulgate a decree according to Jewish law that all marriages below the age of twenty-four shall indeed be void and not require a Get at all."

Rabbi Abraham in his answer, begins as follows:

Asher ben Jehiel in his responsa, Kelal 35, was asked a similar question as to whether the Jewish court can make a ruling that all marriages that are entered into in violation of the rules instituted by the rabbi shall be void, and he answers in the affirmative.

Then Abraham marshalls many authorities who agree with the principle that under certain circumstances, the Jewish authorities can declare a marriage void and that in such case no Get will be needed. The responsum continues until the middle of page 67b. Then Joab ben Jeremiah begins his responsum and expresses his doubt about the entire procedure. He ends by saying that he hasn't time to write more at present. He leaves most of the page blank, evidently intending to come back to the subject later. But he never did so.