

{III, 29bc *Responsa in Abraham Ben Yijū's Hand: Legitimacy of a Manumitted Slave Girl's Marriage and Status of Her Children*

Yemen, possibly ca. 1140

III, 29b. TS G 2, f. 59

III, 29c. TS K 25, f. 285

The first, second and fourth rulings were published by Friedman, *Polygyny*, 209–399, where they were arranged in a different order and the connection to Ben Yijū's family was not considered.

Four legal opinions, all written in Abraham b. Yijū's hand, which deal with the legitimacy of an Indian slave girl's marriage to her former owner and the status of her children. Based on the subject matter of the different rulings, we can reconstruct the sequence as III, 29cv, III, 29cr, and III, 29b.

(1) No. III, 29cv discusses the validity of a slave girl's betrothal (*qiddūshin*), whose formula included a proviso that it take effect only after her emancipation. This was done in the case under review, when a Jewish man ('Reuben,' i.e., John Doe) in India betrothed a slave girl he had acquired there. When a slave girl was purchased, she was required by Jewish law to immerse in a ritual bath, after which she was obligated to perform some of the commandments and had a semi-Jewish status. The immersion was to be repeated at emancipation, when she became a full proselyte. Jewish law strictly forbids sexual relations between a slave girl and her owner. The owner may have felt that there was some semblance of legitimacy to such relations, if the slave girl underwent a provisory betrothal ceremony. He would presumably emancipate her, if she became pregnant. This procedure would also guarantee that she remain under his control, since a manumitted slave girl was considered a free agent, not obligated to marry her emancipator.

The case under review was the object of dispute among legal experts. Someone had claimed that since there was no evidence that the slave girl had immersed in the ritual bath and thereby proselytized, before the betrothal, that act was invalid, and her former owner had to perform with her a second *qiddūshin*. Our writer rejects this claim. He argues that the concluding words of 'you are betrothed to me after your emancipation' are like any other condition; once it is fulfilled, the betrothal takes effect. In doing so, he quotes M. Qiddushin 3:5 as if it says the opposite of all preserved texts (according to which such betrothal was invalid) and interprets other Talmudic texts in a unique fashion.

(2) Obviously someone had argued that since 'Reuben' was suspect of having had illicit relations with his slave girl before her emancipation, the marriage was illegal; he was obligated to divorce her and would be barred from remarrying her. In III, 29cr the juriconsult quotes Talmudic passages, from which he proves that in such a case, specifically if the marriage had already taken place, it was upheld and no action was to be taken against the husband.¹

(3) In its first portion III, 29b quotes, in Arabic translation, a responsum written by Yehudai Gaon (Iraq, second half of eighth century), which deals with a leviratic widow, who married a stranger, without having received from her brother-in-law the release (*ḥalīṣā*) prescribed by Deut. 25:9. Normally, the religious authorities would require her second husband to divorce her and the brother-in-law to then perform the release ceremony, after which she would be forbidden to marry either of them. Yehudai ruled that if the woman had surviving children from her second husband, he would not be required to divorce her, to prevent anyone from questioning the children's legitimacy. From Yehudai's ruling the writer draws an analogy to other cases, where there was some impropriety in the marriage. Here too, were there surviving children, the marriage should be allowed to continue, to prevent anyone from questioning the children's legitimacy. The writer does not specify to which cases this applied, but I assume he intended the slave girl, whose former owner was suspected of having engaged in an illicit affair with her.

(4) In the continuation of III, 29b, the writer rules that the children of an emancipated slave girl are legitimate Jews, and the son inherits his father's estate:

Furthermore, we conclude that *the son of an emancipated slave girl* inherits his father's estate and is *considered a Jew for all purposes*, from the words of the sages, peace be on them:

Whoever has a son from anywhere² exempts his sister-in-law from the levirate, and he is considered his son for all purposes, except for one who has a son from a slave girl or a Gentile.³

¹ {Maimonides (*Responsa*, 2:373–75, no. 211), on the other hand, extended the Talmudic post facto provision and encouraged such marriages, so that men would feel free to legitimize their illicit relations with slave girls. His action is indicative of how widespread this behavior had become.

² Even a bastard.

³ M. Yevamot 2:5. Because of the matrilineal rule for matters of personal status, this child is considered a slave or Gentile and not the son of his biological father.

From this we surmise and deduce that were she an *emancipated slave girl* or a *proselytized Gentile*, the matter would be decided contrariwise; and the child would be *his son for all purposes* and inherit his father's estate and would be *considered a Jew for all purposes*. We have verified *through valid witnesses* that this son and this daughter are the children of an *emancipated slave girl*. This discussion lacks nothing whatsoever.⁴

I suggest that nos. 3–4 deal with the same case as nos. 1–2. We are thus concerned with a Jew, who purchased a slave girl in India, betrothed her on condition that the betrothal take effect after her emancipation, and she subsequently bore him a son and a daughter. After the legitimacy of the marriage and the status of the children were challenged, legal opinions were produced, which upheld both.

It is tempting to assume that Ben Yijū and his family are the subjects of these legal opinions. As we have seen, the text of the bill of manumission, which he issued his slave girl Ashū in Mangalore, India in 1132 (III, 17), suggests that he may have believed that she assumed the status of a Jewish proselyte when he purchased her. He had two sons and one daughter, but one son died as a young child in India (see III, 41, line 14). When this respectable, wealthy merchant traveled with his family from India to Yemen, local conservative members of the Jewish community may have looked askance at his wife and children and challenged their legitimacy.⁵ Though III, 29bc are in Ben Yijū's handwriting and he did author responsa, I doubt that he authored these rulings. More likely he commissioned them from some legal expert in Yemen or from the Tunisian judge Labraṭ b. Moses, whose praise Ben Yijū sings in the poem (III, 29a), a rough draft of which is found on the reverse side of rulings 3–4, that is on TS G 2, f. 59v. Ben Yijū seems to have arrived in Yemen for an extended visit ca. 1140, the tentative date assigned to the poem in Maḍmūn's b. Ḥasan's honor, and the draft of some stanzas of that poem are written on TS G 2, f. 59v as well. {These responsa may very well have been written about the same time.}

⁴ On the question whether the son would inherit his father, if his mother had been emancipated only after his conception, see the sources in Friedman, *Polygyny*, 300, n. 5.

⁵ As I have suggested interpreting II, 37, lines 25–32; see the discussion above, pages 75–76.)

III, 30 *Letter from Perahyā b. Joseph to Abraham b. Elijah, al-Mahdiyya, Inquiring about Perahyā's Uncle Abraham Ben Yijū*

Mazara, Sicily, 1151/2

Bodl. MS. Heb. d. 66 (Cat. 2878), fol. 139

Perahyā's handwriting, known to us also from III, 43, 45, 50, and 55 {also III, 52, 55a, 56, 57 and other documents}, is somewhat similar to that of his uncle, but more elegant and cursive. As we learn from III, 43, margin, he actually occupied himself with the copying of books. His script in this letter is indeed that used for literary texts.

The style of the letter, at least in the preamble, is unusually elaborate and involved, which is the more conspicuous, as the writer is ignorant of classical Arabic.

The year 911, referred to in line 8, abridged from 4911, is according to the era of the Creation, which was in common use in the western Mediterranean countries. That year began on September 23, 1150 and ended on September 12, 1151. At least a year, but most probably a slightly longer period, had elapsed from the date of Abraham Yijū's letter III, 29, mentioned here in line 9, before the family of his brother Joseph first heard of it in Mazara, a town in the western part of the island of Sicily. On the other hand, we learn here that Mevassēr, Abraham's other brother, had already joined him in Aden, after having received that letter in Messina, the well-known port on the east coast of Sicily. {Cf. III, 41, lines 6–7.}

The most interesting detail to be learned from this letter is the fact that the whereabouts of Abraham Ben Yijū had remained unknown to his brothers 'for ages' *kabrat sinān*, lines 7–8.

There exist three possibilities how this letter, which was addressed to Tunisia, finally reached the Cairo Geniza. The receiver might have forwarded the letter to Ben Yijū (cf. lines 13–15), whose correspondence, as we witness in this volume, was to a large extent disposed of in the Geniza. Or, the addressee, who had returned from the East, made another trip there, passing through Cairo. On the other hand, it is possible, that the letter was not sent at all, because the Yijūs in Mazara had received a message from the two brothers out in Aden, before they had an opportunity to dispatch it. Thus, it reached the Geniza with other papers emanating from the family of Joseph Yijū (chap. 3, sec. F).

{The notation on verso, *tajribat qalam*, 'a pen trial,' seems to be in Perahyā's hand. Accordingly, we can assume that the letter was never sent,