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A RARE DOCUMENT FOUND

by

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Mr. Eric Cohen, Trustee and Treasurer of the Melbourne Hebrew Congregation, submitted to me two original documents relating to the marriage of his great grandfather Morris Cohen in 1857: A *Kethubah*, the traditional marriage contract in Aramaic, and a *Shtar Chalitzah* (see later) in Hebrew. Both documents are of historical interest, especially the latter, and worthy of some comment.

THE KETHUBAH

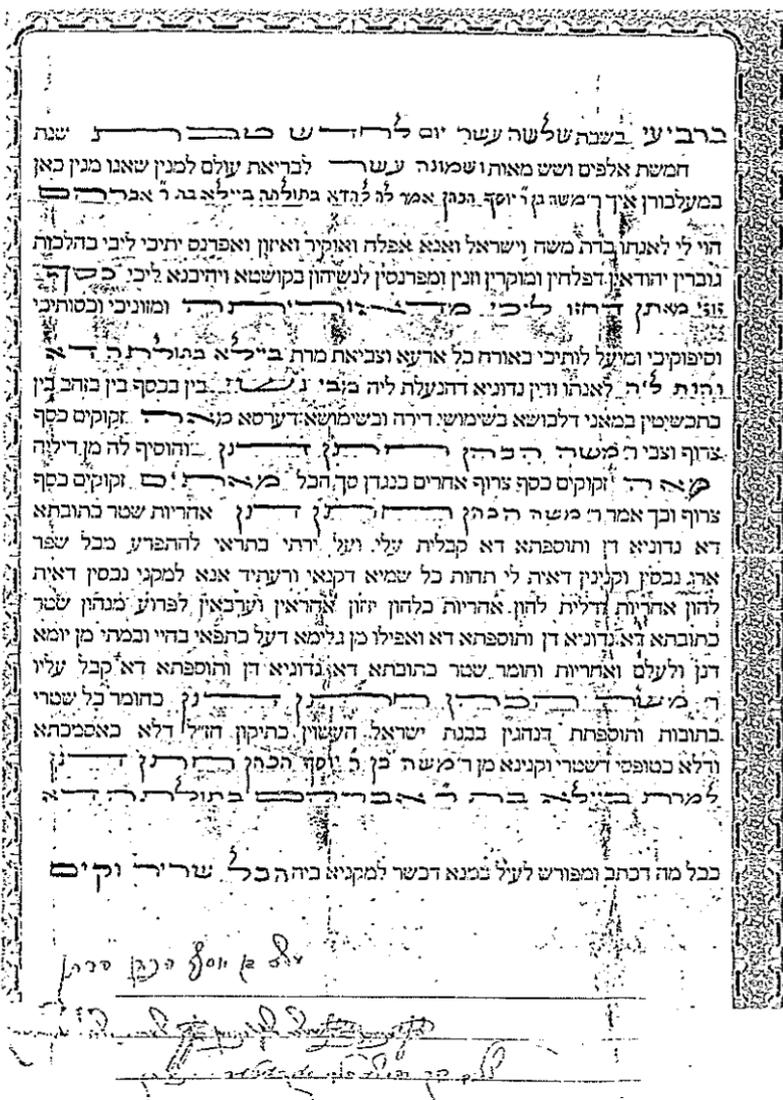
The Kethubah testifies to the marriage in Melbourne on Wednesday the thirteenth day of the month of Tebeth in the year 5618 A.M., corresponding to the thirtieth of December 1857, of Moses son of Yosef HaCohen, to Beila daughter of Abraham. The Kethubah is printed, presumably imported from England, but the personal details such as name, date, place etc., are handwritten. The text follows the pattern applied to the first marriage of the bride (i.e. she is not a widow or divorcee) whose father was no longer alive.

The bridegroom was Morris Cohen, described in the English record of the official registrar as a bachelor and a merchant by profession, aged 29 years, born in London, the son of Joseph Cohen, a watchmaker, and of Elizabeth Cohen nee Benjamin. The bride was Isabella Jacob Jones, a spinster, aged 27 years, born in London, daughter of Abraham Jacob Jones (his original name was Jacobs), stationer, and of Sarah Sophia Jacob Jones nee Goldsmid. The marriage ceremony took place at the residence of Morris Cohen in Bourke Street West, Melbourne, which is also given as the bride's address.

The officiating minister was Rev. Emanuel Moses Myers, who was Minister of the Melbourne Hebrew Congregation from 1857 to 1864. The witnesses both of the official register and of the congregational English marriage register were Jacob S. Hart and Henry Prince (who in the former register signed as Haim Prince). Hart was active in the congregation as a member of the Committee and as a volunteer for the performance of Tahara (the ritual purification of the dead) for many years, and Prince was

Treasurer of the Jewish Philanthropic Society. The President of the Congregation was then Michael Cashmore, a distant relative of Morris Cohen.

The witnesses who signed the Kethubah in Hebrew were obviously different from the signatories of the English documents. Such witnesses



Kethubah of Marriage of Morris and Elizabeth Cohen.

must be observant Jews who, also, are able to sign their name in Hebrew. In many cases ministers or congregational officials sign the Kethubah. Such was the case at this marriage. The Kethubah witnesses were: Menachem ben Moshe, Shochet-Bodek (slaughterer and examiner of animals) and minister of the congregation She'erit Yisrael in Melbourne, i.e. Melbourne Hebrew Congregation, and Shalom ben Yehoshua Halevi, secretary and minister. The Kethubah carries also the Hebrew signature of the bridegroom, Moshe ben Yosef HaCohen, the Chatan (bridegroom).

Who were the witnesses? I cannot identify the first, but the second was that of Rev. Solomon Phillips. Phillips was at one time assistant minister at the Bridge Street Synagogue, Sydney. In 1859 he moved back to Sydney to be the minister of the breakaway "New Sydney Synagogue" in Macquarie Street until 1874.

THE SHTAR CHALITZAH

The more interesting of the two documents in the possession of the Cohen family is the Shtar Chalitzah. It may be the only sample of its kind issued in Australia, and certainly the first I have ever come across.

According to Biblical Law (Deut.25, v-ix) when a man dies childless it is the duty of one of his brothers to marry the widow, and "the first-born that she bears shall succeed in the name of the brother that is dead, that his name be not blotted out of Israel". If the brother refuses to marry the widow, then, she shall undergo the ceremony of Chalitzah, i.e. of removing the brother's shoe and declare in the presence of the elders: "Thus shall be done to the man who does not build his brother's house".

In pursuance of a later rabbinic ordinance, already mentioned in the Mishnah, the Levirate Marriage of the widow is disallowed today and Chalitzah is obligatory. Without Chalitzah the widow is not free to re-marry. Chalitzah, of course, requires the co-operation of the brother, and it has often happened that the brother has malevolently misused his power and refused Chalitzah, thus making the widow an "agunah", i.e. one who is "unfree" in that she cannot re-marry.

Our rabbinic literature records many tragedies and problems that have resulted from the hostile, non-cooperative attitude of the brother. To avoid this, or at least to minimise it, a document has been devised, the Shtar Chalitzah, in which prior to a marriage ceremony the brother (or brothers) of the groom signs in the presence of two witnesses that should the groom die childless, then he (the brother) would freely and without any material benefit whatsoever assist in effecting a Chalitzah within a specified time, and in the case of default he would pay the widow a specified amount as compensation or penalty. Such a Shtar was effected either at the time of the engagement (Tenaim) or, as in our case, at the time of the marriage.

The Shtar Chalitzah was introduced in the Middle Ages and is intended for the protection of the wife, and is discussed in rabbinic literature. The prototype of the text is contained in the compendium of contracts "Nachalat Shivah" (chapter 22) of the 17th century. But it has not been obligatory or, indeed, popular in many communities, because, I presume, it is not halachically an objection-free method of assuring Chalitzah and does not provide an absolute guarantee that Chalitzah would take place — a

vicious brother-in-law could still misuse his power and blackmail the widow despite the oath and the provided fine — and, perhaps, also, because people hesitate, or regard it as a bad omen, to contemplate or discuss death at a moment of happy celebration.

It seems, the Shtar was more popular in Central Europe and was not common in Eastern Europe. I have been informed by Dayan Rabbi David Kaplin of the London Beth Din, who sent me photostat copies of three such Shtarot from the years 1869 and 1871, that in the first half of the 19th century the Shtar Chalitzah was a frequent corollary of the Kethubah in London. In the records of the London Beth Din he found three books of copies of the Shtar Chalitzah covering the period 1862 to 1871 — the last entry was in 1871. It seems, that with the influx of East European Jews in England, the writing of the Shtar Chalitzah fell into disuse. Dayan Kaplin wrote, that today it is certainly no longer used in England.

It is relevant to mention that Dr. A. H. Freidmann in his Hebrew book Seder Kiddushin Venissuin, which is a history of the laws and customs of Jewish marriage and divorce throughout the ages, stated at page 388 that the Shtar Chalitzah was no longer helpful, because its provisions were found to be unenforceable by a Civil Court of Law.

זכרון עדות שהיתה בענינו ערמי ברבינו בשבת שלשה עשר יום לחדשו טובת שנת חמשת לפנים ושש מאות
 ושמונה עשר למדין שאנו מניין כאן במעלה בארץ ארץ שבא לפנינו האחד כי יוסף הכהן ואמנו לנו
 הוא על עדים כשרים ונאמנים והנו ממוני בהן אדם שאנו מקבל עליו בהם ובשדה בענינו ממש עדר
 שלא יהיו לנו החרה והפנה כלל כי אם על דעת אשת אחינו מרת ביילא בת ר' אברהם בעלה השטר
 וכתבו בכל לשון של זכות ופיו כלל אופן המועיל ואף חתמו ותנו ליד האשה מרת ביילא הנל
 שהיא אשת אחי ר' יוסף רבהן להיות בידה לעדות ולזכות ולראי' אף שרצונו ברצון ונשי
 הטוב שלא באונס והנדה כלל כי בלב שלום ובפש חפצה ובדעת שלם ומיושב והנני מודה
 בפניכם היום בהודאתי גמורה שרירה וקימא דלא בהשטאה ודלא בהשבעה ודלא למחדר במין וסא
 דין ולעולם שאם חו' יעדר ומסת אחי כ' משה הכהן הנל בעלה של מרת ביילא הנל בלי זק' ותקנא
 הןשמו מרת ביילא הנל וקנה לחלוץ אזי אם שתתבעני לחלוץ לה מחוייב אני לכוונה בחליצה כשויה
 בחנם שלא אקח ממנה או כסף באי פחה אפילו שיה קרוטה בעולם תכף ומיד אחר כלות שליטה
 הדשים להעדה ושל אחי בעלג הנל חו' כשתתי' ראוי לחלוץ ובלבד שהיבמה תלך אחר הניסוס וכל
 ומן שלא אפסדוק בחליצה בשבט כ' תהא' היבמה' וזונית מנכסי מימנא ומחזקת בהן ואם שתתבע
 אותי האנו הנל לפוסרה בחליצה כ' שירתי כ' לילא נפטר אותה לכל הפחות אהר כלות ששה
 הדשים משעת התביעה אזי מחוייב אני לשלם לאשת אחי מרת ביילא הנל סך עשרים
 לטורות שטערלונג עבור העיבור כל הא דל' עיל קבל עליי האחד הנל בחח' וב שדא
 ובכ' סוף כל מודעות' ובסוף כל עדי מודעות שבועולם בכל לשנא דאמרי רבנן
 דמ' בטלי בהון מודעות' ושטר חליצה זו לא יופסל ולא יוגרע כמו בשום ריעותא וגדיענותא
 בעולם מכל מה שהפך ויכל לידבר והלב החשוב ולהרהר ויהא הנל נדון ויחדש לטובות ונאות
 ולפניו כהבעלה כשטר וידה על עיניו יד המעיער על החתונה והא כח לשטר זה כאלו נעשה בדת ונאו
 דלא כממכתא ודלא כסופסי דשטרי וקנינה מן האחד כ' אל' עזר בן ר' יוסף הכהן לא שרתי אחיו
 מרת ביילא בת ר' אברהם על כל מה דכתוב ומפורש לעיל במנא דכשר למקניא ביה רב' שרירי וקרים

אויס אן יוסף הכהן

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The fact that the register of Shitrei Chalitzah at the London Beth Din ends abruptly in 1871 suggests that about that time a test case came before a Civil Court and was dismissed. I have not been able to produce evidence of such a case in London.

When in use, the Shtar text, like that of the Kethubah, was available in print, and only the personal data were filled in in handwriting. The Melbourne Shtar is wholly handwritten, and, it seems, by one who was an experienced scribe, even though both the Kethubah and the Shtar contain a few minor errors, which, however, are of no consequence. It is quite obvious that our Shtar was copied from a London specimen, even to the extent of using the same penalty for the non-fulfilment of the undertaking, viz. £20 sterling, found in the London samples I received.

As to Australia, ours seems to be the first Shtar Chalitzah discovered so far. Yet, it is interesting to note, that according to "The Story of the Melbourne Hebrew Congregation 1841-1941", issued in commemoration of its centenary (page 19), the congregation decided on 3 February 1856 "that when a man made application to be married his brother had to sign an undertaking to give Halitza should the necessity arise". How often this provision was implemented we do not know. No such resolution has, to my knowledge, been found in the records of the Great Synagogue, Sydney. Throughout my ministry I have not come across a single such document, nor have the colleagues I consulted.

Our Shtar (reproduced here in facsimile) is well preserved. It is signed in Hebrew by the same two witnesses who signed the Kethubah and by the brother of the bridegroom, also in Hebrew, Eliezer ben Yosef HaCohen, whose English name, I am told, was Lawrence Cohen.

The following is a much abbreviated and free translation of the document:

This is a memorandum of evidence that in the presence of us the undersigned witnesses, on Wednesday the thirteenth day of Tebeth 5618 in Melbourne, the brother (of the bridegroom), Eliezer son of Joseph HaCohen, declared before us and affirmed with a legal Kinyan (symbolic act of affirmation), saying: I voluntarily, wholeheartedly and irrevocably obligate myself under the threat of severe excommunication and with a Biblical oath — and let this document be placed in the hands of Beila daughter of Abraham, wife of my brother Moses ben Yosef HaCohen, as evidence — that if my brother Moses ben Yosef HaCohen should, G'd forbid, die childless I shall after the passage of the requisite three months from the demise of my brother, and at the request of his widow, release her through a valid Chalitzah gratis and without any payment whatsoever. Until the Chalitzah is performed the widow shall be entitled to maintenance from the estate of the deceased brother, and if after six months from the date of her request for Chalitzah I have not acted according to this request I obligate myself to pay my sister-in-law the sum of £20 sterling as penalty for the delay. All this the brother-in-law undertakes with the full strength of a solemn Biblical oath and the penalty of excommunication as an unchallengeable and definite obligation which has been validated by a legal Kinyan from the

brother Eliezer ben Yoseph in favour of Beila daughter of Abraham, and the above declaration is firmed and established as if effected by a recognised Beth Din . . .

This document bears the signature of the brother of the bridegroom on the left hand side, Eliezer ben Yosef HaCohen, and on the right hand side the signatures of the two witnesses, Menachem ben Moshe, and Shalom ben Yehoshua Halevi.

Rev. E. M. Myers, the officiating minister, was not a qualified Rabbi, although the famous Rabbi Jacob Saphir, the travelling Rabbi who visited Australia, in his book *Eben Saphir* describes him as "a learned gentleman" (see Vol. I, p.89). Myers later combined the position of minister with that of secretary. He was poorly paid and landed in financial difficulty. He resigned from the congregation and emigrated to Canada where he accepted a position at a synagogue in Montreal.