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Unrecorded Justice: The (Non-)Archival Practices of Medieval Jewish Courts

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Sefer Zikhron Yehudah, Responsum No. 92

Introduction

In the summer of 1298, a wave of anti-Jewish violence incited by a German nobleman named Rindfleisch swept through Franconia and the neighboring vicinities. In Würzburg, local burghers joined gangs of murderous knights to massacre nearly 900 Jews. Among the victims was Simeon ben Jacob (R. Shim'on ben R. Ya'akov), a resident of Worms who had come to Würzburg to pay and collect business debts. Following the riots, three witnesses reported that they had seen Simeon's dead body; and on the basis of these testimonies, the Jewish court in Worms declared Simeon's wife a widow and granted her permission to remarry, which she soon did.

Some time later, the father of Simeon's widow, acting as her legal representative, appeared before a second Jewish court in Speyer to claim her *ketubah* payment from Simeon's estate, only part of which had been allocated to her in Worms. This time, the widow's claim was contested by Simeon's heir, his son from a previous marriage. He was represented by his own agent, a well-known scholar by the name of R. Yedidyah ben Israel of Nürnberg. On behalf of his client, R. Yedidyah asserted that the witnesses to Simeon's death in Würzburg were invalid because they had been apostates living as Christians at the time of the massacre, which discredited their testimony even though they subsequently repented. A protracted court battle ensued, involving judges, scholars, and rabbinic decisors from Germany, Austria, and even northern Spain.

The testimony of the witnesses, the original court ruling from Worms, the endorsement of the court in Speyer, and three sets of counter-claims written and presented by the representatives of the widow and the heir were preserved in *Sefer Zikhron Yehudah*, an anthology of responsa collected by R. Yehudah ben Asher of Toledo, son of the famous R. Asher ben Yehiel (known as "Rosh," c. 1250–1327). The learned opinions of several prominent scholars that were solicited by the court in Speyer and the ultimate ruling of the Speyer *beit din* were recorded there as well. As one of the judges on the Speyer court, it is likely that R. Asher brought this complete file with him when he emigrated from Germany to Spain several

years after the case in question, and thus the records made their way to the hands of his son, R. Judah. Indeed, the dossier also contains a long responsum penned by R. Asher himself when the orphan's agent subsequently challenged the ruling of the court in Speyer, as well as the text of that passionately-argued and long-winded appeal.

This collection of materials comprises one of the most complete surviving Jewish court files from medieval Ashkenaz, which renders it extremely valuable for understanding the way that judicial institutions functioned there, procedurally and politically. In addition to demonstrating the existence and activities of several rabbinic courts and the connections and correspondence between the judges and scholars who staffed them, it sheds rare light on the record-keeping practices of these forums. Most sources concerning the Jewish courts of medieval Germany suggest that whereas the Jewish courts did issue written documents, from deeds of sale to bills of divorce, litigants were expected to preserve their own copies, and the courts did not maintain an official archive or repository of such instruments. The systematic archiving of court rulings also seems to have been uncommon: litigants occasionally possessed written copies or claimed to possess them, but the courts themselves rarely if ever referred to such records. The Simeon ben Jacob court file from late thirteenth-century Speyer may complicate that picture, and we will examine this source with an eye to such issues.

The following passages represent a selection of texts from the aforementioned “dossier” that showcase the creation, use, and preservation of written records in the course of legal proceedings.

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Zikhron Yehudah 92¹

These are the testimonies that were presented to permit the widow to remarry. And these are the claims of the agent (*apotropos*) of the widow and the claims of the agent of the deceased, as the receivers of the testimony and the claims (*mekablei ha-eduyot ve-ha-te'anut*) sent them to the scholars, to know the rulings of justice (*mishpetei zedek*).

[The testimonies presented to permit the widow to remarry]

[1] Before us, the undersigned witnesses, came a young man – in front of the courtyard of the synagogue of Germaiza (i.e. Worms). And he said in our presence, in innocence (*lefi tumo*), that he saw the rabbi, R. Shim'on son of the rabbi, R. Ya'akov, murdered [and] left lying in front of his house. And we investigated and examined him, 'But other witnesses testified that he was left lying inside his house!' And he responded, 'Indeed, initially he was killed in[side] his house, but in the end, they dragged him outside.' And what we heard, we have written and signed.

Yehudah son of R. Simhah.
Meshulam son of R. Elyakim.

[2] We, the undersigned, were selected to be judges between my (i.e. our) teacher, the rabbi, R. Yediyah, agent of the orphan, son of R. Shimon the martyr (*ha-kadosh*); and my (i.e. our) teacher, R. Yakar Ha-Kohen. And it was testified before us, in a verified document (*be-ketav mekuyam*), that he saw R. Shimon dead.² And what we saw and was testified before us, we have written and signed.

Hezkiah BSB"̄H (i.e. son of Shevah son of Hezkiah), may he live.
Natan Buzi son of R. Yoel Ha-Kohen, may his memory be a blessing.
Elyakim son of R. Yehudah Ha-Levi, may his memory be a blessing.

[3] Before us, the undersigned, R. Seligman son of R. Avraham, called Murnak, testified that he saw the martyr R. Shim'on son of R. Ya'akov Ha-Levi in Würzburg, the City of Blood (*ir ha-damim*). And this R. Seligman who testified was disfigured (lit. tormented), for he was a hunchback. And he said, as proof for

¹ *Sefer Zikhron Yehudah 92* was published by Juda Rosenberg in Berlin in 1846 and reprinted in Jerusalem in 1968. A new edition, edited by Avraham Y. Havatzelet, was published in Jerusalem by Makhon Yerushalayim in 2005. I have provided the Hebrew text from the 1968 edition, which is included in the Bar-Ilan Project, with the exception of certain additions and corrections in accordance with the Havatzelet edition that I have noted in the Hebrew text. I have added paragraph numbers to both the Hebrew text and its English translation, for ease of reference.

² Alternatively: dying (*met*).

his report, that he saw him dead and left lying next to a landslide. And what he testified before us, we have written and signed.

Yehudah son of the martyr R. Avraham, may the memory of the righteous be a blessing.

Yosef son of R. Aryeh, may his memory be a blessing, *amiz*.³

Meir son of R. Menahem, may his memory be a blessing.

The seal is true, son of R. Yitzhak Ha-Levi.

These are the testimon[ies] that they testified to permit the widow to remarry.

And these are the claims that are being claimed by the agent of the widow and the agent of the deceased.

[4] [Claims of Re`uven,⁴ the agent of the widow]

I, Reuben, agent of my daughter, the widow, and my granddaughter, the orphan, came to Speyer and claimed her marriage settlement (*ketubah*), because her husband was martyred and left behind landed property.

And I brought a witness who was accepted by the Jewish court in her town (lit. place),⁵ and they permitted her to [re]marry by his word; and the Jewish court in Speyer also endorsed him. And another witness was accepted by two [who gave] their testimony in my town (lit. place).⁶ And there I brought the two of them before the Jewish court, and they testified – with investigation and examination (*be-hakirah ve-drishah*) – that they heard from a witness, whose name was Yehonatan, and he said that he was a descendant of our master R. Yehonatan,⁷ and they heard from his mouth that he saw Dan son of Naftali,⁸ who was my son-in-law, the husband of my daughter, murdered.

...

And this is what the Jewish court relied upon and permitted her to [re]marry, as well as (the Talmudic argument that) ‘she will be vigilant and (only then) marry.’⁹

³ This significance of this appellation is not entirely clear.

⁴ ‘Re`uven’ is the pseudonym used in the court materials for R. Yakar Ha-Kohen, agent and father of the widow.

⁵ The widow lived in Worms.

⁶ Ostensibly the widow’s agent (who was her father) also lived in Worms; thus, it is not clear why he seems to differentiate ‘my place’ from ‘her place.’

⁷ This may be a reference to R. Yehonatan of Würzburg, a Tosafist scholar.

⁸ ‘Dan ben Naftali’ is the pseudonym used in the court materials for the victim, R. Shim’on ben R. Ya’akov.

⁹ See, e.g. BT Yev 93b.

And furthermore, if they issue a call (lit. ban) in the synagogue, several groups of witnesses will come for me [to testify that] they mentioned his soul (i.e. memorialized him) in all of the communities [together] with the other martyrs. And I am also claiming the moveable property that was his, which is in the possession of R. Yitzhak the judge. And since I will bring witnesses that the time to collect the *ketubah* has arrived, I ask from the Jewish court that they enable her to collect without delay and that they not postpone justice for a widow and an orphan.

And furthermore, [with regard to] the witness, on whose word she was permitted (to remarry) – R. Seligman the son-in-law of R. Hillel of Mainz, a scholar of great importance, testified about him before the Jewish court, that this witness was modest and outstanding his whole life, and he lived with him in Würzburg until the time that he was compelled [to apostatize]. And what he testified before the orphan's agent – I have a ruling about that. And if you say that the second one (i.e. the second witness) was not accepted by the agent for [providing] testimony for a wife (to permit her to remarry), we will say further that at a gathering of all the rabbis they ruled that we collect marriage settlements and inheritances on their word (i.e. on the word of apostate witnesses). And several such rulings have already been issued.

[5] And Shim'on,¹⁰ the agent of the orphan Zevulun son of Dan,¹¹ responds to the words of Re'uven.

That which he brings as proof – that Re'uven says that that particular Seligman testified that his son-in-law Dan son of Naftali was killed – from what [Rabbi] Seligman said – [but] there are witnesses [who testify] about him that he eats non-kosher meat with appetite and is disqualified (from testifying) [according to] the (Talmudic) chapter 'Ben Sorer'¹²... And if they permitted her to [re]marry before we knew that he is disqualified [in accordance with] biblical law, now that we know, the permission (*ha-hatarah*) is retroactively nullified...

And that Yehonatan is not credible either...

It turns out that Seligman is disqualified because he is an apostate who eats non-kosher meat with appetite, and Yehonatan is (like) a witness during war and disqualified.¹³

...

¹⁰ 'Shim'on' is the pseudonym used in the court materials for R. Yediyah ben Yisrael, a well-known scholar, who served as the agent of the murdered man's son.

¹¹ 'Zevulun ben Dan' is the pseudonym used in the court materials for the murdered R. Shim'on ben Ya'akov's orphaned son.

¹² See BT Sanh 26b.

¹³ A (single) witness during war is suspected of too-quickly assuming the victim is dead and abandoning him, lest his own life be endangered; see BT Yev 115a.

And I sue her for the cost of her children's education, for the father has owed [this] for three years already and, furthermore, the father is obligated to teach his son Torah; and all his father's property is in her possession.

And what Re`uven wrote, that they authorized [her remarriage], no such thing ever occurred. And even if she was authorized, she was authorized mistakenly, as I have written – and there are many other proofs, which the instructors will understand themselves.

And what he wrote, that several women were authorized by their (i.e. the said witnesses') words, (God) forbid that they were authorized other than in accordance with apostate witnesses who apostatized (for reasons) other than rebelliousness or appetite. And that they 'mentioned his name' (among the dead) – a certain Jewess, daughter-in-law of R. Zalman the Scribe, was mentioned as dead and it was testified about her [death] before her husband – and subsequently she appeared before us!

...

And let the teachers (i.e. judges) contemplate these things and instruct with the help of His name.

[6] [The second claims of Re`uven, agent of his daughter the widow]

...

[7] [The second response of Shim'on]

...

[8] [The words of Re`uven the third time]

And Re`uven the agent of his daughter responds.

Let the teacher see to permit [her to remarry] based on the young man who testified in innocence before the courtyard of the synagogue of Worms, and I wrote [down] his testimony. And so [with] all of them, I have the signatures (*hatimot*) [of those that] received their testimony and their expressions (*leshonam*).

And I brought a sealed document (*ketav hatum*) from the rabbis of Mainz, Worms, [and] Speyer, who released a levirate wife to the marketplace (i.e. permitted her to remarry) on the word of a certain young man, and a married woman is no different according to Chapter 'Ha-Arel.'

And furthermore, [in the] authorization (*ha-harsha`ah*) that made him an agent, they wrote there ‘the orphan Zevulun son of Dan, the martyr’ – meaning, the agent is disingenuous.

And the orphan is wealthy beyond the 400 *litrin* that came to him by way of his father’s brothers, from what his grandmother set aside. But the orphan [daughter] has nothing, [not] even from the marriage settlement, as will be proven when she takes the oath...

[9] [The third response of Shim’on]

And Shim’on, the agent of the orphan Zevulun son of Dan, responds.

The witness who testified in Worms – the witnesses say that he came [intending] to release her. And even if he did come to testify in innocence, I already wrote that *Aviyasaf* disqualified him.

And that levirate wife that they released in Mainz [was released] on the word of a young man who was qualified (*kasher*) [to testify about] the complete and entire Torah, the grandson of R. Seligman Nakdan of Rothenburg.

And his proofs from the fact that they made mention of his soul and wrote [‘martyr’] in the authorization [document] (*ba-harsha`ah*) – they are empty words, for the scribe relied on the witnesses that I disqualified. And in life he was also a martyr, because he did not apostatize like his witnesses did.

And what he says, that the orphan has 400 *litrin*, no such thing ever was.

...

Therefore, they should not authorize her [to remarry] at all, and she should be prohibited in the future. And so it is worthy to instruct.

[10] [The words of the Speyer judges]

We the undersigned were selected to be the receivers of claims (*mekablei te’anot*) from these two lions pontificating with tempest and storm, ‘Waheb in Suphah.’¹⁴ And we are sending the matter to the mountains, to know the answer in truth, to our teacher R. Azriel and his assistant R. Yedidyah son of R. Shlomo. And if they are in agreement (concerning the matter), let them send the messenger back to us with the ruling; and if not, let them take R. Shlomo to decide, or another. Only may

¹⁴ The reference is to a well-known Talmudic interpretation of Num. 21:14 that claims the ‘battles of Torah’ ultimately restore harmony between their participants; see BT Kid 30b and Rashi’s commentary *ad loc.*

the law be established by two or three, so that we might rely in the matter on the triple-strand cord,¹⁵ and guide us to respite by an open passageway.

Hezkiah BSB”H (i.e. son of Shevah son of Hezkiah), may he live.
Wretched of the wretched ones, Yehosef son of R. Elyakim Ha-Levi, may his memory be a blessing.
Meir son of HAF”Z (?) R. Yehudah, the flowing stream.

And please, our masters, do not pay heed to any writing (*ketav*), if it has been sent to you on this matter. And if anything has already been made known to you, do not pay heed to it.

The claims have been completed.

[11] [Responsum of R. Azriel ben Yehiel]

...

And in my opinion, this woman is permitted to marry and collects her marriage settlement...

And what seems [right] to me, I have written. And I have signed, Azriel, son of the Hasid R. Yehiel, may the memory of the righteous be a blessing.

[12] [Responsum of R. Shlomo ben Elyakim Ha-Levi]

The opinion of a student should not determine, if only because I am uneducated and do not have the strength of a worm. And what purpose would his (i.e. my) determination serve, I have not even seen the words of my teacher, my uncle R. Yediyah, son of my teacher R. Shlomo, that I could decide between him and my teacher R. Azriel, as the judges wrote. However, so that they do not say I withdrew from them, I will focus on (the words of) my teacher.

...

And since the woman is authorized to marry, she may collect her marriage settlement.

...

Sincerely, Shlomo son of R. Elyakim Ha-Levi DS”N TV”A.¹⁶

[13] [Responsum of R. Yediyah ben Shlomo]

¹⁵ The reference is to Eccles 4:12, “A threefold cord is not readily broken.”

¹⁶ This significance of this appellation is not entirely clear.

Know for yourselves, my masters, that you relied on a broken stalk when you took me as a deputy for R. Azriel, and about me it is said ‘The case of the man who is alone with no companion.’¹⁷ And therefore I beseeched my teacher R. Azriel to send it to R. Shlomo, the son of my sister, before I would sign; and therefore, I waited for his response. And do not send any further [matters for] judgement to me. And in conclusion, [both] the words of my teacher R. Azriel and the words of my nephew seem [correct] to me, for they do not disagree.

And peace. Yedidyah son of R. Shlomo, may the memory of the righteous be a blessing.

[14] [Endorsement of the Speyer judges]

We the undersigned have been called upon to send the claims of my (i.e. our) teacher, R. Yitzhak Yakar Ha-Kohen, agent of his daughter the widow of Shim'on; and he came with authorization (*ba be-harsha'ah*). And my (i.e. our) teacher, R. Yedidyah was appointed agent of the orphan Ya'akov son of R. Shim'on, by authority of the agent that the orphan appointed, and with their authorization. And the two of them wrote their claims in their own handwriting, to send to those who instruct in justice (*ha-morim zedek*), to grant [what is due] to the eligible one. And so we have done.

And what they ruled – and our masters noted on the ruling were in agreement – to marry [off] the woman and to collect her marriage settlement, in accordance with our mission and the processing of the claims, we have written and signed.

Hezkiah BSB”H (i.e. son of Shevah son of Hezkiah), may he live.
Meir son of R. Yehudah, the flowing stream.

As they have ruled, so too it seems [to us], that she should [re]marry and collect her marriage settlement.

Yitzhak son of R. Meir, may his rest be in Eden.

Asher son of R. Yehiel, may the memory of the righteous be a blessing.

The wretched Yitzhak son of R. Yehudah Ha-Levi, may he be remembered for life in the World to Come.

[15] [Shim'on's first appeal]

And these are the words of R. Yedidyah son of R. Yisrael, may his memory be a blessing.

¹⁷ Eccl. 4:8.

I will present my argument before my masters. And please do not be annoyed with me, for it is Torah and I must learn it. It is also necessary to be exacting regarding the judgement of an orphan of good stock, who has no father or mother, lest he be expelled from his inheritance.

What you wrote, that she is permitted (to remarry) based on the witnesses... Your (own) eyes see that it was testified regarding Seligman and Jonathan that all the days they lived among the non-Jews after they apostatized they did not refrain from any transgressions committed among the non-Jews, whether in private or in public, and they worshipped idols and they ate all of their impurities – and they themselves admitted (this) and asked for atonement. And Jonathan told me himself that he remained among the non-Jews for more than half a year... And according to your (own) words, since you concede that a thief according to Torah law is disqualified from testifying on behalf of a (married) woman, they are both disqualified, Seligman and Jonathan – for it has been testified that they were absolute non-Jews (*goyim gemurim*), and so they admitted themselves.

...

And now, do not regard me as arrogant, do not reject me, do not make me reject (my tradition), a layman presenting his opinion before great ones, my teacher and master, R. Azriel, and R. Yedidiah, whose name is similar to mine, and R. Shlomo Ha-Levi. And we considered all that is written in the written materials (*be-khol kitvei ha-ketuvim*), front and back, regarding the judgment [pertaining to] the orphan of good stock, whose father did not find fulfillment with his wife, so that his inheritance not end up with strangers.

And many things that appear in my responsum were not written in the claims, because you taught us that every time one brings a proof he upsets the verdict, like the Mishnah in [Chapter] ‘Zeh Borer’...¹⁸

And imagine my face were like the face of a poor old man spread before you. And I did not speak due to close relations, for I’m not even related to the orphan by fourth degree; rather... I feared that the punishment for delaying justice is severe. And (God) forbid I should suspect you (even) like the hole of a needle. For I know that all seven good characteristics that Yitro determined (for judges) were fulfilled in you. And peace and blessing and life – to my masters and to their Torah, and to their community.

Sincerely, the wretched, Yedidiah son of R. Israel, may his memory be a blessing.

[16] [Shim’on’s second appeal]

¹⁸ M Sanh 3:8, BT Sanh 31a.

Shmuel son of R. Yehudah Ha-Levi, may he live.

Please consider all the responses I have written.

...

And peace, life, and blessing [to] you and your Torah, and R. Natan, and the entire community.

Yedidyah, your wretched student, son of R. Yisrael, may his memory be a blessing.

[17] And this is the expression of R. Asher, may his memory be a blessing.

I have already affirmed the words of my teacher R. Azriel.

...

We must not disqualify them out of doubt, for the majority of those who apostatized did not eat non-kosher meat with appetite, rather apostatized out of fear of death, and this fear obligated them to behave in their (non-Jewish) ways so that they would not kill them, and it is all considered coercion... And it is slightly (troublesome) that they remained among the non-Jews after they had the opportunity to flee, but the sword of God slashes and the fire of God rages around them... therefore they did not know what was up and what was down, until they heard that God had remembered His people and given them respite – then they hurried to fear God. And there were those who remained for the sake of Heaven, to save their children, and not one of them acted with abandon, to eat non-kosher meat with appetite, for if they had done so willingly, why did they (subsequently) return and repent? And my master wrote that he has witnesses that they ate non-kosher meat with appetite, but we have still not seen or heard (this testimony). And who could testify to this, for do they see into their hearts, such that they could testify that they did so with appetite? And even I who was not present there can testify that they ate non-kosher meat and performed other violations, and this they were obligated to do out of fear, and it is all considered coerced, as I have written – but there is no person who can testify that they did so with appetite.

...

And peace to all my masters. Sincerely, your student,
Asher son of R. Yehiel, may the memory of the righteous be a blessing.

[18] [Final ruling of the Speyer judges]

The matter has already been determined permissively by our masters, and we consented to them, all the more so now that my (i.e. our) teacher, R. Asher, wrote too and added several explicit, pure, and clear proofs. And the matter is simple, these witnesses are not inferior to a woman, or a slave, or a non-Jew who testifies in innocence. And the sages were extremely lenient concerning testimony [to permit] a wife [to remarry], due to the severe end consequences.

And the woman is permitted to [re]marry, and she may collect her marriage settlement even from the orphans. And there should be no hesitation, for even our teacher R. Yedidiah himself was counted among us to permit the woman to [re]marry based on the testimony of individuals who repented.

And peace unto the judges of Israel.

Yitzhak son of R. Meir, may his soul be in the eternal repository.

The wretched Yitzhak son of R. Yehudah Ha-Levi, may he be remembered for life in the World to Come.

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Unrecorded Justice: The (Non-)Archival Practices of Medieval Jewish Courts
Rachel Furst, Ludwig Maximilians Universität (LMU) Munich

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שו"ת זכרון יהודה סימן צב

אלה העדויות שהעידו להתיר את האלמנה להינשא. ואלה טענות אפוטרופוס האלמנה וטענות אפוטרופוס המת, כאשר שלחום מקבלי העדויות והטענות אל החכמים לדעת משפטי צדק.¹

[העדויות שהעידו להתיר את האלמנה להינשא]

[1] בפנינו עדים חתומים מטה בא בחור אחד לפני חצר בית הכנסת די גרמייזא ואמר לפנינו לפי תומו שראה הר"ר שמעון בן הר"ר יעקב הרוג מוטל לפני ביתו וחקרנו ודרשנו מאתו הלא עדים אחרים העידו שהיה מוטל בתוך ביתו והשיב אמת מתחילה נהרג בביתו ולבסוף גררוהו החוצה ומה ששמענו כתבנו וחתמנו.

יהודה בר שמחה
משולם בר אליקים

[2] נחנו ח"מ הוברנו להיות דיינים בין מורי הר"ר ירמיה אפוטרופוס של היתום בן הר' שמעון הקדוש ובין מורי הר' יקר הכהן והועד בפנינו בכתב מקויים שראה את הר' שמעון מת ומה שראינו והועד בפנינו כתבנו וחתמנו.

חזקי בשבח שיי
נתן בוזי בר יואל הכהן ז"ל
אליקים ב"ר יהודה הלוי ז"ל

[3] בפנינו ח"מ העיד ר' זלקמן ב"ר אברהם מורנק שראה את הקדוש הר' שמעון בהר' יעקב הלוי בורצבורק עיר הדמים ואותו ר' זעלקמן שהעיד היה מיוסר שהיה לו גבן על גביו ואמר ראוי לדבריו שראה אותו מת ומונח אצל מפולת אי ומה שהעיד בפנינו כתבנו וחתמנו.

יהודה בן הקדוש ר' אברהם ז"ל
יוסף ב"ר ארי' ז"ל אמיץ
מאיר בן הר' מנחם ז"ל
החותמת אמת בן הר' יצחק הלוי

אלה העדות שהעידו להתיר האלמנה להנשא.

ואלה הם הטענות שטוענים האפוטרופוס מן האלמנה והאפוטרופוס של המת.

[4] [טענות ראובן, אפוטרופוס האלמנה]

¹ This paragraph has been added in accordance with the 2005 edition.

הנני ראובן אפוטרופוס אלמנת בתי ויתומת בת בתי בא לשפירא ותבעתי כתובתה כי בעלה קדש השם והניח קרקע.

והבאתי עד שקבלו ב"ד במקומה והתירוה לינשא ע"פ גם החזיקו ב"ד בשפירא ועד אחר קבלו שנים בעדותן במקומי והבאתי השנים שם בפני ב"ד והעידו ששמעו מפי עד ושמו יהונתן ואמר כי הוא מזרע רבנו יהונתן הוא ושמעו מפיו שראה דן בן נפתלי שהיה חתני בעל בתי הרוג בחקירה ודרישה.

...

וע"ז סמכו ב"ד והתירוה לינשא וגם דייקא ומנסבא.

ועוד אם יחרימו בבה"כ יבואו לי כמה כיתי עדים שהזכירו נשמתם בכל הקהלות עם שאר הקדושים גם תובע אני המטלטלין שהיו שלו והן ביד הר' יצחק השופט ומאחר שהביא עדים שבאה עת גביית כתובה אבקש מב"ד שיגבוה בלי איחור ולא יענו דין אלמנה ויתום.

ועוד העד שהותרה ע"פ הר' זילמן חתן ר' הילל ממגנציא חשוב בהפלגה² העיד עליו בפני ב"ד שהעד הי' צנוע ומעלי כל ימיו והי' דר אצלו בורצבורג עד אותו זמן שנאנס ומה שהעיד בפני האפוטרופוס של היתום יש לי פסק ע"ז וא"ת השני לא נתקבל בפני האפוטרופוס לעדות אשה נאמר עוד באסיפת כל הרבנים פסקו שמוציאין כתובות וירושות על פיהם וכמה פסקים נפסקו בשכבר כן.

[5] ושמעון האפוטרופוס של היתום זבולן בן דן משיב על³ דברי ראובן.

מה שהביא רא"י שאומר ראובן כי אותו זעלקמן העיד שנהרג חתנו דן בן נפתלי ממה שאמר זעלקמן יש עליו עדים שאוכל נבלות לתאבון ופסלין לי' פ' זה בורר... ואם התירוה להנשא קודם שידענו שהוא פסול דאורייתא עתה שידעו ההתרה היא בטלה למפרע...

וגם אותו יהונתן אינו נאמן...

נמצא זעלקמן פסול מפני שהוא משומד אוכל נבלות לתיאבון ויהונתן והוא עד במלחמה ונפסל...

והנני תובע ממנה שכר לימוד בניה שהאב חייב כבר ג' שנים ועוד כי האב חייב בבנו ללמדו תורה וכל נכסי אביו הן בידה.

ומה שכתב ראובן שהתירו להד"מ ואפי' הותרה בטעות הותרה כאשר כתבתי ועוד ראיות רבות שיבינו המורים עצמם.

ומה שכתב שהתירו כמה נשים ע"פ חלילה שהותרו אך ע"פ אנוסים שאינן משומדים לא להכעיס ולא לתאבון ומה שהזכירו בשמו יהודית אחת כלת ר' זאלמן הסופר הזכירו שמתה והועד עליה לבעלה ובאת לפנינו אחרי זאת.

...

ויתכוונו המורים בדברים הללו ויורו כן בע"ש.

...

² This phrase has been added in accordance with the 2005 edition.

³ This word has been corrected in accordance with the 2005 edition.

[6] [טענות שניות של ראובן אפוטרופוס בתו האלמנה]

וראובן אפוטרופוס בתו טוען....

[7] [תשובה שניה של שמעון]

ושמעון אפוטרופוס של היתום זבולן בן דן משיב....

[8] [דברי ראובן בפעם שלישית]

וראובן אפוטרופוס בתו משיב ירא המורה להתיר ע"י בחור שהעיד לפי תומו לפני חצר בה"כ וורמיזא וכתבתי עדותו וכן כלם חתימות שקבלו עדותן ולשונם יש לי ואני הבאתי כתב חתום מרבני מגנצא גרמיזא שפירא שהתירו יבמה לשוק ע"פ בחור א' ולא שנא א"א בפי הערל ועוד ההרשאה שעשאוהו אפוטרופוס כתבו שם היתום זבולן בן דן הקדוש אלמא שהאפוטרופוס בודה מלבו

והיתום עשיר יותר מת' לטרין שנפלו לו מכח אחי אביו מה שיחדה זקנתו אבל היתומה אין לה כלום גם מהכתובה כמו שמוכיח כשתשבע....

[9] [תשובה שלישית של שמעון]

ושמעון האפוטרופוס של היתום זבולן בן דן משיב.

העד שהעיד⁴ בוורמיזא העדים אומרים שבא להתיר ואפ"י בא להעיד לפי תומו כבר כתבתי שפסלו אביאסף.

ואותה יבמה שהותרה במגענצא ע"פ בחור כשר לכל התורה כלה בן בנו של ר' זעלקמן מרוטנברג.

וראיותיו ממה שהזכירו נשמתו וכתבו בהרשאה דברי תוהו כי סמך הסופר על העדים שפסלתי וגם מחיים הוא קדוש כי לא המיר כמו שעשו עדיו.

ומה שהוא אומר שיש ליתום ת' לטרין להד"מ....

לכן אין להתירה כלל ויש לאוסרה להבא וכן ראוי למורה.

[10] [דברי דייני שפירא]

נחנו ח"מ הוברנו להיות מקבלי טענות מאלו ב' אריות הנואמים בסערה וסופה את והב בסופה ואנו שולחין הדבר הרמתה לידע תשובתה על אמיתתה למורנו הר' עזריאל ומסעדו הר' ידידי בן הר' שלמה ואם ישו דעתם יחזרו לנו השליח עם הפסק ואם לא יקחו להכריע את הר' שלמה או אחר רק יפסק הדין על ב' או ג' כדי שנתלה הדבר בחוט המשולש ותדריכנו מנוחה באורח מפולש.

חזקי בשכח ש"י
עלוב עלובים יהוסף בר אלקים /אולי צ"ל אליקים/ הלוי ז"ל
מאיר בן חעפ"ץ
הר' יהודה מעין נובע

⁴ This word has been corrected in accordance with the 2005 edition.

ונא רבותי אל תפנו אל שום כתב אם נשתלח לכם מזה הענין ואם נודע לכם שום דבר כבר אל תפנו אליו.

כלו הטענות.

[11] [תשובת הר' עזריאל]

...
ולפי דעתי האי איתתא שריא לאינסובי וגביא כתובתה...

והנראה בעיני כתבתי. וחתמתי עזריאל בן החסיד ר' יחיאל זצו"ל

[12] [תשובת ר' שלמה]

אין דעת תלמיד מכרעת ואף כי נבער מדעת ואין בי כח כי תולעת ומה תולעת בהכריע גם לא ראיתי דברי מורי דודי הר' ידידי בן מורי זקני הר' שלמה 37 שהי לי להכריע בינו ובין מורי הר' עזריאל כאשר כתבו הדיינין אכן שלא יאמרו חלץ מהם אתגדר⁵ אחרי מרי.

...

ואחרי שהאשה מותרת לנשא תטול כתובתה...

כנפש שלמה בר אליקים הלוי דש"ן ת"א.

[13] [תשובת ר' ידידיה]

דעו לכם רבותי שנסמכתם על קנה רצוץ כאשר לקחתם אותי למשנה להר' עזריאל ועלי נאמר לדבר הזה יש אחד ואין שני ולכן חליתי פני מרי הר' עזריאל לשלוח אל הר' שלמה בן אחותי קודם שאחותם ולכן המתנתי לתשובתו ואל תוסיפו לשלוח שום דין אלי.

וסוף דבר נראין בעיני דברי מורי הר' עזריאל וגם דברי בן אחותי בי לא נחלקו.

ושלום ידידיה בן הר' שלמה זצו"ל.

[14] [אישור של דייני שפירא]

נחנו ח"מ הוזקקנו לשלוח הטענות של מורי הר' יצחק יקר הכהן אפוטרופוס בתו אלמנת שמעון ובא בהרשאה ונתמנה מורי הר' ידידי אפוטרופוס של היתום יעקב בן הר' שמעון מכח האפוטרופוס אשר מנה היתום ובהרשאתם וכתבו שניהם טענתם בכתיבת ידם לשלחם אל המורים צדק לזכות את הזכאי וכן עשינו.

ומה שפסקו והשוו דעת רבותינו הנקובם בפסק להנשא האשה ולטול כתובה מחמת שליחותינו וקבלת הטענות כתבנו וחתמנו.

חזקי בשב"ח ש"י

מאיר בן הר' יהודה מעין נובע

כאשר פסקו ג"כ נראה שתנשא ותטול כתובתה

⁵ This word has been corrected in accordance with the 2005 edition.

יצחק בן הר' מאיר נבי"ע
אשר בן הר' יחיאל זצ"ל
העלוב יצחק בן הר' יהודה הלוי זלה"ה.

[15] אלה דברי ה"ר ידידיה בן ה"ר ישראל ז"ל.⁶

אדון לפני רבותי בקרקע ונא אל יקפידו כי תורה היא וללמוד אני צריך גם צריך לדקדק על דין
יתום בן טובים שאין לו אב ואם פן יתגרש מנחלתו.

מה שכתבתם דאיתתא שריא על סמך העדים... והנה עיניכם רואות שהועד על זעלקמן ועל
יהונתן שכל ימי היותם בין הע"א משנשתמדו שלא נמנעו מכל עבירות אשר עבדו בין הע"א בין
בצנעא בין בפרהסיא ועבדו ע"ז ואכלו כל טומאתם וג"כ הודו בעצמם ובקשו כפרה ע"ז ויהונתן
סיפר לי בעצמו ששהה בין ע"א יותר מחצי שנה... ולפי דבריכם שאתם מודים דגזלן דאורייתא
פסול לעדות אשה שניהם פסולין זעלקמן ויהונתן אחר שהועד עליהם שהי' ע"א גמורים וכן
הודו בעצמם...

...

ועתה אל תזחיוני ותזניחוני ותזיחוני עם הארץ הדין בקרקע לפני גדולים מרי ורבי הר' עזריאל
והר' ידידי אשר שמי בקרבו והר' שלמה הלוי והתבוננו בכל כתבי הכתובים פנים ואחור על דין
יתום בן טובים שלא מצא אביו צדיק וישר קורת רוח באשתו שלא תשיב נחלתו לזרים נכרים
ולא טובים

והרבה דברים מה שיש בתשובתי מה שלא נכתב בטענות כי שניתם לנו כ"ז שמביא רא"י סותר
את הדין כמתניתין דזה בורר ומתחילה לא ידענו דיהונתן פסול אך עתה שבא לפנינו וראינוהו
באמת שהוא בן אחות מה"ר עקיבא מרישבורג הלא אח עשו ליעקב ועבור עד א' במלחמה ועד
א' בקטטה נכתוב לכם כל האורך לשון רבנו שמחה לא כן לא הצרכתם אחרי שנפסלו מן
התורה והשלישי בעי היכרא כמו שהוכיח רבנו שמחה

ועשו כאילו דיוקן עני זקן שטוח לפניכם כמוני ולא מפני קורבה דברתי כי אפילו רביעי אינני
עם היתום אכן בבגידת הזמן שנשפכו דמים רבים ויראתי שעונש עוות הדין גדול וחלילה לי
לחשוד אתכם כנקב מחט סדקית כי ידעתי שכל ז' מדות שבחר יתרו בכם נתקיימו ושלוש
וברכה וחיים לרבותי ולתורתם ולקהלם

כנפש העלוב ידידי בן הר' ישראל ז"ל

[16] שמואל ב"ה יהודה הלוי שיחי

נא התבונן בכל התשובות שכתבתי...

ותזכור האהבה לעולם ועד ושלוש חיים ברכה אתה ותורתך והר' נתן וכל הקהל.

ידידי תלמידך העלוב בן הר' ישראל ז"ל.

[17] וז"ל הר' אשר ז"ל

כבר קיימתי דברי מרי הר' עזריאל...

⁶ This sentence has been added in accordance with the 2005 edition.

אין לפסלם מספק כי רוב אותם שהמירו לא אכלו נבלות לתיאבון אלא מיראת מות המירו ומאותה יראה הוצרכו לילך בחוקותם שלא יהרגום והכל קרוי אונס כדאיתא בכתובות והא קא ממטיין להו נהמא מחמת יראה והא משלחין להו גירא מחמת יראה ומעט מזעיר מהם שהם בין ע"א בתר דמצו למזיל מנפשיהו אלא שחרב ה' שוטטה וטמאה וליהטה אש השם סביבותיהם ואמרו בגוים לא יוסיף עוד לתת פליטה לארץ אשכנז לשונאינו לכן לא ידעו אנה ואנה עד אשר שמעו אשר פקד ה' את עמו לתת להם שאר כמעט אז חשו ומיהו ליראת ה' ויש שנשתהו לש"ש להציל זרעם וא' מהם לא נתפקר לאכול נבלות לתיאבון דאי לתיאבון עשו למה חזרו ושבו מתאותם ומרי כ' שיש לו עדים שאכלו נבלות לתיאבון ועדיין לא שמענו ולא ראינו ומי יוכל להעיד ע"ז וכי בתוונה דליבי יתבי שיוכלו להעיד שלתיאבון עשו גם אני אף על פי שלא הייתי שמה יכול להעיד שאכלו נבלות ושהלכו בחקות ע"א וזה הוצרכו לעשות מחמת יראה והכל נקרא אונס כמ"ש אבל ליכא אינש שיוכל להעיד שלתיאבון עשו.

...

ושלום לכל רבותי כנפש תלמידכם
אשר בן הר' יחיאל זצו"ל.

[18] כבר יצא הדבר בהתיר מפי רבותינו והסכמנו על ידיהם כ"ש עתה שמורי הר' אשר הוסיף לכתוב ולהביא כמה ראיות ברורות וצחורות ומחורות והדבר פשוט דלא גרעו העדים אלו מאשה ועבד וע"א מסל"ת ומאד הקלו חכמים גבי עדות אשה משום חומר שהחמרת עלי' בסופה והאשה מותרת לינשא ותגבה כתובתה אפי' מיתמי ואין לפקפק כי אפי' מורנו הר' ידידיה עצמו נמנה עמנו להתיר האשה לינשא ע"י עדות בעלי תשובות.

ושלום על דיניי ישראל
יצחק בן הר' מאיר נב"ע (נשמתו בגנזי עולמים)
העלוב יצחק ב"ר יהודה זלה"ה