LIBRARY COPYRIGHT NOTICE

www.huc.edu/libraries

Regulated Warning

See Code of Federal Regulations, Title 37, Volume 1, Section 201.14:

The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

The Origin, Purposes, and Development
of the Kethubah, according to the Talmud.

by

Theodore Lifschitz.

ראשית הכתובה
והתפתחותה

מאת טוביה ליפשיץ

כ לחדש אדר ב'
תרפ"ד

TO

PHILIP LAVIN BOOKSTABER;

Whose helpful Companionship
is a Blessing; whose loyal
Friendship an absolute
Reliance

In

Gratitude and Affection

מוקדש בחבה

לשרגא דוד בוקשטייבער

חברי היותר יקר־
ידידי היותר נאמן

"רק המוות יפריד בין שנינו,"

מאת המחבר

CONTENTS

BIBLIOGRAPHY

of volumes to which references are made, and of those which treat the subject generally and which are used by the author:

1) Kinship and Marriage.....Robertson Smith

2) Eastern Customs.....Trustion

3) Oriental Studies.....Trumbal

4) History of Human Marriage.....Ed. Westermarck

5) Cyclopedia of Religion and Ethics.....Hastings, Editor

6) Dictionary of the Bible

7) The Civilization of Babylonia and Assyria.....Morris Jastrow, Jr.

8) The Oldest Code of Laws in the World.....C. N. W. Johns

9) Jew's College Jubilee Volume 1906

10) The Jewish Law of Marriage and Divorce.....M. Mielziner

11) The Jewish Law of Divorce.....D. W. Amram

12) Jewish Quarterly Review Volumes

13) Rechte d. Israeliten Athener und Romer.....Dr. Samuel Mayer

14) Grundzüge des babylonisch talmudischen Eherechts...Dr. A. Billauer

15) Die Gesetze Hammurabis und die Mosaische Gesetzgebung in 1902-3 Jahrsbericht der Israelitische-theologische Lehrenanstalt. Dr. H. Müller

16) Monatschrift für Wissenhaft des Judenthüms

17) Jahrbuch der juedisch literarischen Gesellschaft Vol. 6 and 8.

18) Vol. 2. דור דור ודורשיו I. H. Weiss

19) אוצר הגאונים

20) סדר תקוני שטרות תרנ"ח E. Adler

21) נחלת שבעה

22) מאמר האחדות W. Jevetz.

23) שלחן ערוך אבן העזר Joseph Karo

24) ספר גן עדן

25) Hebrew Quarterly, 1903: ירושלים A. M. Lunca, Ed.

26) הלכות אישות רמב"ם

27) ספר היובל שנת 1904

28) ריו השלח

29) תלמוד particularly סדר נשים

30) Revue des Etudes Juives. V.48

INTRODUCTION.

In an effort to learn the origin, development, and purpose of the marriage settlement known in Jewish literature as the Kethubah, with which this study will concern itself, it will be necessary to examine briefly the institution of marriage as it prevailed amongst primitive man, and the gradual process of evolution which it experienced. A discussion of the Biblical method of contracting marriage, and of the marriage laws as found in the Code of Hammurabi will follow. Lastly Rabbinic legislation concerning marriage as found in the Talmud and embodied in the accepted codes will help us in determining the origin etc. of the institution of the Kethubah.

Chapter I EARLY FORMS OF MARRIAGE.

CAPTURE: Historical accounts record the earliest form of marriage to have been by capture. This was the most primitive method of introducing some form of regulation of the sexual relationship. The man by capturing the female, either from a neighboring tribe, or enemy camp would make her one of his wives, and have exclusive claim to her body and products. Elaborate treatment of this interesting phase of human advancement is to be found in Westermarck's "History of Human Marriage."

The Bible nowhere makes mention of this mode of regulating sex relations. It would therefore be only just to infer that the Jews as a people never resorted to this extremely objectionable manner of providing themselves with mates. Apparently when the Jewish people appeared on the scene of history this barbaric practise had already become absolete, having given way to a more refined and more satisfactory arrangement of obtaining absolute ownership of females--namely, that of purchase.

PURCHASE: Purchase of wives was resorted to obviate the very stern necessity of capturing same, since a woman was always the property of her father, or of the clan in which she claimed membership. She constituted a money-value to all concerned, since she always engaged in work of a useful kind which the individual members of the tribe utilized. Marriage meant departing from home of father or tribe and entering that of mother for whom she would continue to render the very valuable service that her former owners received. Some compensation for this serxious financial loss was necessary to induce the father to surrender the daughter, (and at times to appease him) 1)

---

1) Robertson Smith, "Kin and Marriage," p 96.

Purchase supplanted capture of females for two reasons. First, capture proved a very unreliable method of obtaining possession. It necessitated constant watching and vigilance over the captive. The savage who was continuously on the go found this very unsatisfactory and gradually realized the advantages to be obtained from purchasing the desired female and thereby establish his claims against all opponents who rightly believed to enjoy equal right with him to her favors.

A second but equally plausible reason for the disappearance of capture is the progressive cultural and social advancement that the savage experienced. As time went on he began to realize the brutality of capturing one against her free will, and also commenced to experience the profound necessity for genuine sympathy. This gradual awakening of the more humane instinct led to the universal disapproving of the prevailing custom and hastened the arrival of marriage by purchase.

Just as capture was at an early period universal so was purchase. Even in Greece, where culture was not unknown, the father received gifts from the suitor. 2) Aristotle supplies even more indisputable proof by frankly stating that early Greeks bought their wives. 3) Frequently the price was paid thru actual service rendered by the groom to the father of the maiden. In the opinion of Westermarck 4) this mode of obtaining mates prevailed in all branches of the Semitic race.

---

2) Seymour, "Life in Homeric Ages," p 129

3) Ibid

4) Westermarck, p 394, History of Human Marriage.

Chapter II FIXATION OF PRICE.

The price of the maiden, which the prospective groom had to pay to her father or clan, varied with the excellence of the woman desired. Westermarck in his History of Human Marriage" p 392, says as follows: "A pretty, healthy and able bodied girl commanded of course a better price than one who was mean, and poor; a virgin better than a widow or a repudiated wife...Among the Californian Kanok a wife is seldom purchased for less than half of a string of dentae shell, but when she belongs to an aristocratic family is petty, sometimes costs as high as two strings." Amongst some, marriages ~~take~~ took place on credit, though generally wife and children could not leave the parental home till price ~~is~~ was paid in full. 5)

Another factor in determining the price ~~was~~ is the abundance or scarcity of females. This R. Smith says that our 6) whole evidence goes to show that the prices asked for in Ancient Arabia were very high and there were many men who could not afford a wife. It may be of interest to mention that this manner of obtaining wives still prevails in many parts of the world, particularly in Arabia. There, we are told, "An Arab father still regards his daughter as he ~~would~~ does his sheep or cattle, selling them for a greater or lesser pice, according to his rank, fortune, and their beauty. 7) "Almost universally in the east is betrothal based upon an agreement of dowry, to be paid by the husband to the family of the wife. 8)

---

5) p 394, History of Human Marriage.

6) Kinship and Marriage, p 151.

7) Eastern Customs, p 92, Tristian.

8) Orietal Studies, p 131. Trumball.

Chapter III WOMAN UNDER BIBLICAL LAW.

The bible does not grant woman full equality with man. As a matter of fact, she does not enjoy even that to-day, and most likely never will, unless she undergoes radical biological changes. The life of the woman is divided into three distinct periods, each of which is the subject for careful legislation. From birth to eleven years and a day, the female person is known as a נערה and is completely under control and domination of the father. She enjoys no freedom whatever—and is legally the subject of the parent. On completing eleven years and a day, she enters the status of a נערה, which lasts but one year. During this year she becomes semi-master of herself, At the end of the year she becomes a בוגרת—and full master of herself. The father enjoys absolutely no right over a maiden who has reached the grade of בוגרת. She may do anything she pleases, even marry without parent's consent.

In the first stages of physical development the father enjoyed almost unlimited rights—the most important of which was that of giving the maiden in marriage to whomsoever he chose, regardless of the pleasure of the girl. This privilege the Rabbis later abolished and prohibited a father from exercising same. Upon marriage the woman passed automatically from the משמרת control of her father to that of her husband, who assumed the duties and enjoyed the rights that were formerly the father's. It naturally follows therefore that a woman was free only after she had reached בוגרת and if she were single.

These provisions simply indicate the attitude towards woman in the Bible, an attitude which universally prevailed during the period of its composition, that at no time was woman to enjoy complete f

freedom excepting in the rare instance previously stated. The most important fact to note is the father's exclusive right to give his daughter in marriage without any regard to her wishes. With these three distinct legal periods in the life of a woman we can proceed to examine the institution of marriage as the Bible knows it.

Chapter IV MARRIAGE IN THE BIBLE.

As already stated, our Bible contains no mention of any marriage contracted by capture. The only way of forming a union between man and woman that is found thruout the Bible is through purchase. The Pentateuch knows of no other marriage form, and the remaining books of the Bible though they speak of this union in the most sublime and ethical of terms seem to take this method of acquiring a mate for granted. Apparently in the days of the authors the purchasing of wives did not carry that odium which we to-day attach to the practice.

Thruout the Bible the purchase price, i.e. the sum of money the groom had to pay to the father of the girl, is denoted by the word מֹהַר, which is designated as the price to be paid for the virginity of the maiden. That this is the correct significance of the term can not be doubted, though our Jewish prejudices, which should be accentuated and intensified, may prevent us from acknowledging this. The word is not exclusively Hebrew, but the property of all Semitic tongues. In Arabic the term in a slightly varying form is used even to-day, to denote the puchase price. 9) Both Smith and Westermarck 10) agree that mohar or mahar is synonymous with purchase price.

An examination of several Biblical passages in which the term occurs will prvoe conclusively that it designates the purchase price to be paid to the father for tokens of his daughter's virginity.

In Gen. 34, we read of the rape of Dinah, the daughter of

9) Our whole evidence goes to show that the prices asked for women in ancient Arabia under the name of Mahar were often very high. Kinship and Marriage, p 151.

10) History of Human Marriage, p 395.

Jacob. After Hamor had violated the maiden he proceeds to her father and brothers and asks that Dinah be given him for a wife. In v.12 of the chapter we meet the very significant sentence הרבו עלי מהר ומתן ואתנה כאשר תאמרו אלי ואך תנו לי את הנערה לאשה: "Ask me never so much dowry and gift, and I will give according as ye shall say unto me; but give me the damsel to wife," in which Hamor announces his readiness to pay any sum that they may choose to assess him with in consideration of which Dinah is to be given him for a wife. Hamor attempts to acquire a wife in the manner in vogue then. The word הרבו here used justifies in infering that an enormous price was frequently an obstacle that hindered the conclusion of a marriage. To this Smith testifies 11). What interest us most here is that marriage is treated as a commercial transaction, resembling that which involves the transferrence of a piece of property. The only impediment to the marriage or the transaction in this case is the fact that the groom or buyer is uncircumsized.

The first book of Samuel offers additional evidence that the purchase of woman was the acceptable and perhaps the only form of concluding a marriage known to Biblical authors. In vs. 17--22 of chapter 18 Saul promises David one of his daughters for a wife. David, however, derides the very possibility of such a union because he is but איש רש ונקלה (v23) poor and of very low estate, and therefore will be unable to pay the necessary purchase price. In v25 we read of Saul's assurance that the price for his daughter will not be a מהר of a financial nature, but will consist of foreskins of

---

11) Kinship and Marriage, p 151.

one thousand Philistines, i.e. military victory that he is to gain over the arch enemies of Israel. The conclusion of this incident found in II Samuel 3:14, is extremely illuminating. There the author tells us that David actually demands the daughter of Saul for a wife, since he had purchased her with the foreskins of one thousand Philistines.

This incident proves conclusively the Biblical nature of marriage, that of paying for the maiden the assessment of her legal owners, which of course varied with the physical condition of the former and with the social status of the latter.

Joshua 15:16 repeats an episode exceedingly similar in its essence to the one just treated. Chaleb gives his beautiful daughter Ochsah for a wife to Othniel, in consideration for capturing the powerful city, Kiraath-Sefer, which the father deemed as advantageous to him as money--the price a wealthy candidate would have given him for the hand of his daughter.

In Hosea III:2, the prophet Hosea acquires a wife thru purchase, in accordance with the custom then prevailing.

Of greater interest to us is chapter 29 of the book of Genesis, which contains the narrative of the marriage of Jacob to Leah and Rachel. That account reveals better than anything else the commercial nature of the institution. Jacob comes to Laban penilless, and is, hence, unable to obtain Rachel whom he loves, for a wife. The price Laban demands is excessive, and it takes seven years of hard labor upon the part of Jacob to earn that amount. After being deceived, and still lacking the necessary price for Rachel, Jacob is compelled to render seven additional years of service to his prospective father-in-law, and only at the completion of the period is he given Rachel for his wife.

Not only does this prove that the daughter was sold as any other commodity but also that in default of cash funds, several years of service were rendered the father. In either case, however, the father did not relinquish his claims upon the person of the daughter, only after the full price had been paid, either in cash or thru service.

Tho the מהר or purchase price varied with the quality of the female, yet the Biblical authors, to maintain what was then most assurcdly deemed to be dignity of womanhood, thought it advisable to stipulate the very minimum whereas the maximum they left undetermined. In Ex. 15 and 16 of Chapter 22, where the law of the seducer is formulated, it is ordained that the violator of a virgin must pay her father a sum equal to the מהר הבתולת, i.e. price of virginity. To the author of this code, the sum was well known, since he does not find it necessary to state the amount.

However, in Deut 22:29, the exact sum to be paid to a father for the tokens of virginity is set at fifty pieces of silver חמשים כסף. That a virgin daughter constitued a source of positive ec economic value is no longer to be doubted. For this sum had to be paid regardless whether or not the violator marries the victim o r not.

One of the most decisive proofs of that the Bible knows no other form of marriage excepting that of purchase, is the terminology employed when legislating about the institution. That the man is the active agent, and the woman purely passive we know from the previous pages. But in speaking of acquiring a wife the term כי יקח is constantly used, and לקח thruout the Bible has an undeniable commercial connotation. The Rabbis took purchase-marriage for granted and laid down regulations governing the case of he who acquires a wife by purchase, מקדש בכסף. It is however incredible that such custom

obtained in their days, and their concern for it is due to Biblical provision only, which they lacked the power to abrogate. They treated the question not because it was a problem, but for no other reason than that it appeared in the Bible. Further discussion of this point will be found in latter part of this study.

Chapter V THE DISAPPEARANCE OF PURCHASE.

Westmarck in his "History of Human Marriage" devotes an entire chapter to the discussion of "The Decay of Marriage by Purchase" which contains a brief and very excellent summary of all that can be authoritatively said of the cessation of the practise. Here but a brief statement of the general conclusions of the chapter will be given.

The very same reason assigned for the gradual abandonment of capture, namely, the higher cultural development of the people, can help us in attempting to account for the decay of the purchase-marriage. In the course of time, women came to occupy a somewhat more important and civilized position. Men ceased to regard woman as chattel. This new mental attitude resulted in a modification of the actual practise. The idea of purchasing a wife became abhorrent to the majority who no longer regarded woman as a commodity to be offered to the highest bidder. The position woman occupies is a correct criterion for measuring the general level of culture, plane of intelligence, a people enjoy. The supplanting of capture by purhhase, the decay of the latter indicates the constant advancement, tedious and gradual of primitive man.

What development the practise of purchase- marriage underwent can not be determined with any positive degree of certainty. The matter is highly hypothetical and nothing but tentative opinion can be offered, which if not disproven by later investigation will be regarded as trustworthy.

That the old custom was at once abrogated is of course impossible to concieve. Indeed no official abrogation of any kind ever took place--but people commenced to evade and to nullify its provisions by two distinct methods. First, the purchase money gadually shrinked and decreased in amount. So insignificant a sum did it become, that in many cases

it took the form of purely arbitrary presents. Only a relic of the ancient custom survived, frequently appearing as a sham sale, with nothing but the symbolic traces of the sale present.

Another mode of pretending to have duly purchased a wife was the giving of a receipt of real value, which was immediately returned to the giver. The symbol of a sale, was here again preserved, but an actual sale had not transpired. 12) This relic of purchase led most probably to the institution of the dower--one that still obtains and which is frequently a great factor in many present-day marriages. First the groom, instead of actually paying for the bride sent her gifts, the nature of which was determined by his position. 13) To render the position of his daughter somewhat secure in the home of her new master, the father instead of demanding a price, bestowed gifts upon the daughter, which remained her property, though the husband was usually given the use of the income. Jewish law divided this property into two classes-- מוהר ונדוניא.

This gift to the bride by father or tribesman which at first was purely voluntary, became, after long practise, compulsory. This money, to which the husband very frequently contributed served different purposes at different periods. The chief function of this fund seems to have been not to leave the woman helpless in case of death of husband or divorce, for the dissolution of marriage established the woman's full right to the dower--which thus provided ample security for her in any emergency. Undoubtedly the possession of a handsome dowry raised the estimation, and

---

12) Westermarck p 405

13) Sending of presents a relic of a previous custom of marrying by purchase (Source either Hastings or Westmarck.)

and increased the prestige of the wife. "It must have been a strong protection to the wife against a husband's caprice, and in many households must have made her virtually mistress of the situation." 14)

---

14) Hastings, Encyclopedia of Religions and Ethics, V.8, p 448.

Chapter VI RELICS OF PURCHASE MARRIAGE IN TALMUD.

Peoples not bound by codes of law, believed to be divinely inspired, or by sacred books, can modify even vital arrangements with ease, or at least without much delay or difficulty. Codes to which no supernatural sanction is ascribed can be revised or amended, once popular pressure is exerted in favor of a change. The provisions found in sacred books, however, cannot be altered, particularly when the belief in the literal divine inspiration of its words and letters is deeply rooted in the consciousness of the people, professing belief in same.

No people ever ascribed the same degree of sanctity and immutability to any sacred book as did our people to the Pentateuch. Sincerely believing in its divine origin, an avowed suspension or abrogation of any of its provisions was not to be thought of. Marriage by purchase therefore could not be openly prohibited and permanently supplanted by a more advanced practise, since the Pentateuch knows of no other method of contracting the bond. However, as its disuse was more and more discernible in the course of time, the Rabbis, who had the authority to interpret the law as laid down in the Pentateuch devised the necessary legal forms which offered escape from the rigidity of the law--by violating the letter but preserving the spirit.

The Pentateuch most definitely provides for the purchase of the bride, and makes the payment of the מֹהַר obligatory. The latter was payment, pure and simple, for the tokens of virginity, for the sum was always returned the groom in case he was deceived and found the maiden to have been not a virgin.

The Rabbis in providing for the relations between man and woman could not ignore these very plain laws. Thus they declare that a

woman can be acquired in three ways, one of which is, purchase. 15) The term כסף קדושין purchase-money, occurs very frequently in the Talmud, and the phrase כי יקח in the Bible points conclusively to its Biblical sanction (אין קידה אלא בכסף b. Kiddushin 4b)

However, the price set at so low a figure as to actually destroy the true intent of the law is unimpeachable evidence of the disappearance of the practise. The mimimum of this כסף קדושין was declared to be a פרוטה, and thereby the entire practise was rendered absurd and obsolete. The Biblical provision survived merely in the symbolical form of פרוטה שוה--but of course that did not make any compensation to the father for the loss of his daugher, as the Biblical law intended it should.

Another factor that enters into the origin of dowery or is the scarcity of mates, and excess of females. Not only were the fathers unable to force a man to compensate for daughters, but, were frequently anxious to marry off their daughters and thus be relieved of their maintenance. Financial considerations of one sort or another always entered in obtaining a suitable mate. And now to enhance the attraction and value of daughters, fathers, instead of receiving gifts, gave heavy sums to the groom. In this manner was the custom of purchase of wives reversed into that of dowry, or, what it often amounts to, to purchasing husbands. The latter has survived down to our own times, and because of the greater resistance men display towards marriage is constantly growing less repulsive and more fashionable.

The complete reversal of the process was realized only after fathers yielded to the very unpleasant necessity as one of the best means

---

15) Kiddushin 1a: הא אשה נקנית בכסף בשטר ובביאה

of contracting marriages for their daughters. As the new custom obtained universal sanction it was enacted into law. Thus do we find in Kethubah 66a, the provision that a father should endow his daughter upon marriage with no less than fifty zuzin. And in case the father is dead the heirs must properly endow their sister upon her marriage. Even an orphaned girl received this minimum amount from the community.

This radical reversal of Biblical legislation was now given full legality, an indication of the prevalence and popularity of this new custom. A Mishnaic provision permits a groom to break his promise to marry, where the father of the bride cannot pay the dower agreed upon. The once promised became an obligation from which no escape was possible. 16)

The exact date of the reversal, and of the origin of the dower cannot be accurately determined. Since the Bible still know nothing of the new practise, it would be safe to conclude that it appeared after the exile, when the economic conditions of the people made different economic arrangements necessary, and marriage naturally underwent very serious transformation.

The exile and the subsequent sojourn in Babylon changed radically the fortunes of many, making wealthy poor; and the poor, wealthy. Many a man of good breeding and aristocratic birth lacked the nesessary funds to acquire a wife of equal social position. In anxiety for contracting a suitable marriage for a daughter, a father not only surrendered his legal right to demand the purchase money, but was ready to offer gifts to the son-in-law, or at least to the daughter, upon her marriage.

---

16) Kethuboth 108a-& Mishna 109B:
הפוסק מעות לחתנו ופשט לו את הרגל תשב עד שתלבין (את) ראשה:

This gift is usually known as מתן נדוניא.

The etymological origin of the word, about which much has been written, is of little or no concern to us. The term occurs in the Book of Ezekiel, and there too it has the meaning of a gift--the exact nature of which cannot be determined. 17) That the process of reversion just discussed had indeed transpired is also the opinion of the author of the article on in the Jewish Encyclopedia. 18) The latter believes that "the mohar was superceded by the practise of giving a dower to a daughter," i.e. נדוניא. This was the origin of giving dowry or מהר, which also provided some comfort and security to the bride. Appropriation of dowry became customary, and later obligatory. In all cases, it was conserved as capital, and therefore in event of husband's death, or arbitrary divorce, it furnished a useful povision. 19)

---

17) Ezekiel 16:33: לכל זונות יתנו נדה ואת נתת את נדניך לכל מאהביך

18) Jewish Encyclopedia, V 4, p 465.

19) Dictionary of the Bible, V 3, p 270

Chapter VII NOT EXCLUSIVELY SEMITIC OR JEWISH.

Westermarck in his volume dealing with the institution of marriage makes it very clear that the practise of dowry was not an exclusively Semitic rite. A gift to the bride by the parent was a very common custom amongst all early peoples. 20) Some codes regulated the amount of the gift, and whether it was to be given in kind or cash. Frequently the gift consisted of the sum the groom paid the father for the bride, i.e. a return of the purchase price. The very minuted provisions drawn up for the administration of the dower indicates to what extent the custom was current. 21)

The Jews in all liklihood learned of the custom after the exile, when they came in intimate contant with the Babylonians and their civilization. Amongst them the laws regulating the question of money in connection with marriage were minutely worked out, as is evidenced by the Code of Hammurabi 22). The code speaks of the marriage portion and the bride price as two distinct institutions, in force at one and the same time, concerning the father and gorrom, respectively. Most likely marriage-purhhase had already commenced to deteriorate, and the marriage portion was nothing else than the bride-price returned to the woman, the income of which the husband was entitled to utilize, though he never could acquire possession of same. It has already been noted, this closely resembles the Talmudic כתובה נדוניא. The almost identical distinctions in the kinds of property and the similar provision for administration of same do not permit any doubt that the Rabbis were acquainted with Babylonian practises,

---

20) Westermarck: History of Human Marriage p 406-408
21) " " " " " , p 408ff.
22) The code used by the writer and to which all notes in this study refer is that translated and edited by C. H. W. Johns, Edinburgh, 1911, the title of the volume being "Oldest Code of Laws in the World."

and this perhaps will in some measure account for the remarkable parallels.

The long and prosperous sojourn of Jews in Babylon made the incorporation of Babylonian practises and ideas less objectionable, that it would have otherwise been. Of all institutions most prone to be affected by environment that of marriage yields most readily. Its roots being strongly biological, religion cannot combat this strongest of nature's urges, and to avoid defeat must accept a compromise of one sort or another. Very naturally then did the marriage rites of the Jews, which had Biblical approval suffer from contact with the Babylonians, whose friendship and affection Jews, particularly of the higher classes, sought, obtained, and prided in. It is also necessary to remember that some of the marriage laws of the Babylonians, then the most cultured and civilized people on earth were better formulated, and more comprehensive than those of the Pentateuch.

The Pentateuch contains very meagre legislation concerning the marital relations of man and woman. In Exodus 21:9 brief mention is made of the duties of husband toward the wife; and in Deut. 24:1-4 the question of divorce is treated in a very unsatisfactory manner, since the grounds are not explicitely given and the exact procedure not clarified. The numerous complications that arise in connection with matrimony particularly amongst non-agricultural peoples are not touched upn--and these the Rabbis had to take care of. That they should be guided by Babylonian practise is only natural--and detracts nothing from their originality or greatness.

One of the vital subjects affecting the success or failure of any marriage is the amicable settlement of the question of money or monies that the two parties come to own jointly upon marriage. The Bible fails to treat this problem--but the Babylonians made a most careful and detailed analysis of the question, the results of which are embodied in the

Code of Hammurabi.

The Kethubah being essentially a financial adjustment between husband and wife it would be best to consider the Babylonian laws concerning the kinds of money particularly the dower that entered into the completion of a marriage, and thereby understand our own institution more intelligently.

Chapter VIII: MONEY INCIDENT TO MARRIAGE AS FOUND IN THE CODE OF HAMMURABI--

The code draws careful and genuine distinctions between three kinds of money, that change hands, at every marriage. The first, is the Tihartu or Dowry, which the groom gave to the father as the purchase-money for the daughter. The second is the "Serigti" or marriage portion which the father gave the daughter, upon leaving his home. Thus the primitive custom of purchase-marriage, and the more advanced practise which later completely supplanted it, the bridal portion, exist side by side. The third kind of money that always entered a Babylonian marriage is the Nudunnii, or Morgengabe in German, and this the husband promised in writing to his newly acquired wife.

As to the nature of the dowry, the precise amount, how to be paid, the code contains no helpful information. The term "dowry" is employed only in connection with divorce or death or wife and to say the least is very ambiguous. Prof. Müller 23) translates the term "itihartu" Kaufpreis, and uses as its Hebrew equivalent the Biblical מהר.

Section 138 of the code prescribes that in case of divorce the husband must pay the divorcee the marriage portion (given her by the father, but income utilized by him) and her full dowry. The dowry, naturally, depended on a variety of considerations.

Section 163 of the code orders the return of the dower, i.e. purchase-price, in case no issue resulted from the union, and when the woman is responsible for such absence. The marriage portion the husband returns to the father of the woman he divorces, and he receives from the father the purchase money he paid for the woman.

---

23) Die Gesetztze Hamurabis, Wien, 1903, No. 160.

Section 139 permits us to infer that the father was under no obligation to bestow upon daughter a marriage protion since the husband is ordered to give upon divorce the minimum of a מנה of silver -- whatever that may amount to--,when a father had not given any marriage portion.

In case of divorce, the marriage portion reverts to the woman, in case of death to her heirs--as this always remained the property of the woman. Yet, though title to it was vested in her, she could not dispose of it. How closely it resembles the Talmudic dictum האשה שמכרה בנכסי צאן מלוג לא נשתה ולא כלום is very evident. Traces of similarity between this provision and those of the כתובת בנין זכרין can also be found, and will be discussed later.

According to the code, no divorce could be given unless it were accompanied by the marriage portion and the settlement embodied in writing which the husband had made upon marriage. Only where the divorce is rendered necessary by improper conduct on the part of the woman is the husband free from returning the marriage portion, i.e. paying the money agreed to. (Section 141) Immodest behaviour the Rabbis deem as sufficient ground for divorce and regard the forfeiture of her Kethubah allowance as proper punishment.

Biblical law gives the father the exclusive right to dispose of his daughter as he sees fit, and Rabbinic law affirms this right, though adding several serious restrictions thereto. The code contains an identical provision. The father contracts the marrigge--and he alone can fulfill the contract by prmitting the marriage, or break it by refusing to surrender his daughter. The מהר, in case the father refuses to abide by his previous decision, is returned to the disappointed suitor; when the

suitor refuses to keep his agreement after he had already pid the purchase-price, that sum ~~of~~ is forfieted (Sec. 159 and 160) The daughter must ~~forfiet~~ fulfill the contract the father entered into in her behalf, no matter how distasteful or injurious the latter may be.

For this study the most significant provision of the code is Section 128, which declares a marriage that is not accompanied by a written contract, illegal. The phraseology is very ambigious, and the nature of this indispensable instrument can not be determined. However, since the financial adjustments before and after marriage were minutely regulated by law, and never left to the good-will of the parties affected, it is very likely that this "written" document contained the financial arrangements as they concerned the three parties. Since no marriage was legal in the absence of such a writ we can safely assume that such was present at every ceremony. To be absolutely secure--since without such document one could not be a legal wife--every woman naturally demanded and received ~~on~~ such a written statement.

Section 171 is equally of extreme importance to us. In case the husband dies the provision is made that "the wife shall take her marriage portion, and the settlement which the husband gave her and wrote in deed for her." We can rightly conclude that the third kind of money previously discussed was promised by the husband to the woman in written form, and that the absence of such written contract invalidated the marriage.

Prof. Müller in his study of the code, already mentioned, assigns a twofold purpose to this contract, first, to safeguard the woman against harsh treatment, and secondly to protect her against hasty divorce. The financial settlement that a man was compelled to make to the woman upon divorcing her served as a barier 24) against the contemplated action. It

certainly provided at least a temporary means of support and the divorced woman was thus never left helpless--a prey to all. Prof. Müller does not indicate his authority for the purposes he believes the written contract to have served. One is at a loss to determine as to whether external proof for such assumptions was accessible, or whether later Rabbinic provisions, of an exactly similar nature led him to these inferences.

---

24) Müller, Geo. H. p 116
Section 139, stipulates that where the marriage portion was not given the woman by the father, the husband upon divorcing her must give her a minimum sum of מנה מאתים.

Chapter IXN SPECIMENS OF BABYLONIAN MARRIAGE CONTRACTS.

Dr. Morris Jastrow, Jr. in his volumen entitled "The Civilization of Babylon and Assyria" 25) gives a detailed analysis of the Hammurabi Code, which enables to reconstruct the social life of the Babylonians. The volume contains some very illuminating extracts from actual marriage contracts that were entered into by Babylonians. After carefully studying these contracts, Dr. Jastrow concludes that purchase-marriage existed in the days of the Code of Hammurabi as a symbol only. Woman had then already obtained a position of semi-independence, and the father no longer possessed the previously legal right to dispose of his daughter as it suited his interests best. The purchase tradition was symbolically continued in the gift of the groom gave the father, but this the law provided had to be returned to the bride. Both monies, given by groom to father and father to daughter were regarded as the joint property of husband and wife, and its administration was minutely regulated.

That written marriage contracts were an indispensable element in giving legality to any union, Dr. Jastrow believes, the code makes very clear and positive. The contracts quoted are extremely interesting though they do not yield all the information we would like to obtain.

On page 346 of the volume we find the following interesting specimens of marriage contract: Bashtum, daughter of Belizunu, the priestess of Shamash, daughter of Uzihitum has been taken to wife by Rimum, the son of Shamkhatum...shekels of silver as the amount of her "gift" she has already received. Her heart is satisfied. If Bashtum says to Rimum, her husband, "thou art not my husband" she is bound and thrown into the river; and if Rimum says to Bashtum, "thou art not my wife" he weighs out

---

25) Civilization of Babylon and Assyria, Chap. 6, ps 283-366.

to her ten shekels as divorce money. In the name of Shamash, Marduk, Sam-su-iluna and the city of Sippar they have sworn."

The form of the contract resembles that of other papers ratifying agreements of a commercial nature. There are the two parties--buyer and seller, the sum is stipulated, and the document, as Dr. Jastrow informs us later on, is properly attested by seven witnesses, one of which is a woman. That purchase-marriage survived only as a symbol, the contract stipulations testify to most positively. The amount of the gift the groom is to give to the father is not readable, and in a foot-note 26) the author tells us, what has already been proven in these pages, that "the amount of the gift varies naturally according to the financial status of the parents." A very important clause is "Her heart is satisfied," proving as it does that the consent of the bride to the union had to be procured. The most interesting feature of the document is the provision the groom makes for the bride in case of divorce, the wrighing out to her of ten shekels as "divorce money."

In another marriage contract 27) which is not quoted but the contents of which are stated we meet the following facts and stipulations: It records that the bride brought her husband dowry of nineteen shekels. In case of divorce, not only does this dowry return to the wife, but the husband agrees to pay the woman "half a minna" Should the wife demand a divorce, upon her receipt of same she pays the husband "half a minna" and forfeits her dowry to him. The approximate date of the both contracts is 2080-2043 B. C. E.

---

26) Civilization of Babylonia and Assyria, p 346 note.

27) Ibid, p 347.

The consideration of the early forms of marriage—particularly th t found in the Pentateuch has proven conclusively that at one time marriage by purchase was the acceptable and legal mode of contracting the union. The analysis of the Code of Hammurabi has made accessible to us some of the financial adjustments that among the Babylonians accompanied every marriage. That a written statement was necessary, in which were set forth the conditions of the marriage was also established. With these extremely important fact before us we can now proceed to determine the nature, purpose, origin, etc. of the Kethuba, as we know it to-day.

Chapter X: CONTENTS OF THE KETHUBAH.

First and last, the kethubah is a marriage contract, and being a contract contains data that give legality e.g. date, name of parties, witnesses, etc. The most decisive feature of the entire document is the prominence given to financial matters incident to the new relationships entered upon by groom and bride. Indeed, the Kethubah, at least to-day, concerns itself with but one exception, 28) completely with the commercial phase of the marriage. From beining down to the very end it is a document of a distinctly commercial nature, which contains every precaution possible to take under Jewish law, to safeguard the woman in those rights which the Rabbis have deemed essential that she should possess and granted her. The document closes every avenue of escape to him who wishes to divorce his wife without compensating her the sum agreed upon, at the marriage, and which the Rabbis made obligatory.

There are several classes or kinds of money, the document speaks of in great detail, and these naturally are of vital interest to us. After publicly agreeing to support and maintain his wife the groom further covenants to give to the bride מאתן זוזי בתולבי כספ , the sum of two hundred zuz (whatever that may amount to) as the purchase price for her tokens of virginity, which sum is due in accordance with Biblical law. 29) This significant clause cannot be interpreted to mean other than the translation of the words would emply, and which has just been rendered.

---

28) and almost similar statement ומיל לוותיכי קאורח כל ארעא והוות ליה לאינתו
These are the primary elements in the marriage relationship. Refusal to cohabit, either on part of husband or of wife, nullifying as it does the purpose of marriage, constitues a sufficient ground for divorce.

29) The Ketubah document, to whi h this and all subsequent references will

Knowing, as we now do, that the Bible, as was customary in early times, places a money value on virginity, this clause in the Kethubah points but in one direction, that the authors, when framing the document had the Biblical practise and law actually in mind, and that they wished to fulfill its literal meaning. The last phrase of the quotation דחני ליכי מדאורייתא "that is due you in accordance with the Biblical provision" is absolutely true, for the Bible does ordain a price for virginity to be paid to the father, and this sum constitued the purchase price, whereby the maiden passed out of the authority of the father, and entered into that of her husband. In this phraseology, the Kethubah has remained true to Biblical regulation.

A second distinct type of money, the transmission of which is regulated by the Kethubah, is that which the father gives his daughter as a gilft upon her marriage. ודין נדוניא דהעלת ליה מבי אבוה. Such money finds absolutely no authorization in the Bible, for nowhere do we meet specific injunctions making it obligatory upon the father to give money-gifts to a daughter. In truth such practise violates the very spirit of Biblical lggislation. However after it had obtained universal approval the Rabbis did not hesitate to make such endowment an obligation, since it gave the woman prestige and defense, which the husband was bound to respect 30)

The practise of making a gift to a daughter upon her marriage, in the opinion of so eminent an authority as Westermarck has supplanted the purchase-money. The opening pages of this study discussed in some detail this reversal of practise. The Code Of Hammurabi treats the gift as

---

be made is to be found, unless otherwise indicated in Doc 0,(Nine)
סדר תקון שטרות עמ אדלר

a long established institution and merely regulates its administr tion and utilization is detail. Though the bestowal of such gift is not a law, yet it can be safely taken for granted that fathers never failed to confer such presents, providing as they did an excellent protection against a cruel, unprincipled husband.

That our Kethubah makes provision for such a gift is extremely imprtant. Even more so is the alien nomenclature designating it--אזונא Both the very provision and the term denoting it indicate the source of the practise at least as far as Jews are concerned. Of course positive proof of any Babylonian origin cannot be adduced, since such does not exist. But the striking similarity between Jewish and Babylonian custom does point to the origin--partial, if not absolute.

The third type of maney mentioned in our Kethuba is that known as the תוספת כתובה, which the groom gave to the bride, and it reads as follows: והוסיף לה מדליה עד חמשין This gift appears in connection with marriage after purchase had become absolete. Numerous instances of this practise abound both amongst primitive and more advanced peoples. Amongst some of the nature and amount of the gift are subject to minute regulation. 32) The Code of Hammubabi 33) makes special provision for such presents, and apparently the custom had already gained a strong footing. The amount of this gift, as that of all other monies that changed hands upon a marriage were regulated as the minimum only, but never as to the maximum. 34)

---

30) Kethuboth 66a.
31) Ezek. 16:33: לכל זונה יתנו נדה
32) Westmarck, History of Human Marriage, p 411ff.
33) Section 150
34) Jewish Encyclopedia, V. 4, p 645.

The rest of the document concerns itself with enumerating every conceivable form of property which is declared to be security that the widow or divorcee will collect what is due her, the sum total of the three types of money considered and promised. After carefully mentioning the amounts of the various monies given the woman the husband furthermore declares "I take upon myself and my heirs the responsibility for the amount due according to the Kethubah, and of the marriage portion, and of the additional sum (by which I promised to increase it), so that all this shall be paid from the best part of my property, real and personal, such as I now possess or may hereafter acquire. All my property, even the mantle on my shoulders, shall be mortgaged for the security of the claims above stated, until paid, now and forever." 35) The instrument closes with a declaration on part of the husband that he considers it valid, binding and absolutely legal.

This in brief concludes the analysis of the contents of the document. With the single exception already noted the only concern of the Kethubah is to make proper provision for the administration of the monies that change owners at all marriages, and to safeguard the wife against any possible form of deception or trickery the husband, or his heir may resort to. Every conceivable loophole whereby the husband might escape from making proper provision for his widow or divorced wife. The only alternative open to him who refuses, or cannot afford, to pay the stipulated sum is to refrain from giving the divorce.

It is worth while to remember that our Kethubah is not a bill of sale in which a buyer and seller agree on a stipulated price for a definite commodity. It is a marriage contract, in which the groom recognizes his obligations and assumes same towards the woman who had become his wife thru the religious ceremony that had already taken place. The Kethubah

35) Quotation taken from Meilizener's "Marriage and Divorce" p 87.

proves conclusively that marriage is not a purchase procedure. The name of the father of the bride appears in the document for identification purposes only--and for a like reason is the Groom's father mentioned. The maiden's father plays however not even an insignificant role in the actual agreement. He neither sells his daughter nor receives gifts of any kind from the groom to compensate him for the loss he sustained in the marriage.

The document also contains a clause to the effect that the bride has consented to become the wife of the man issuing the Kethubah--

ורויח ליה בציניתו. This provision is more than sufficient reason to assume that the father, who plays no part in the actual proceedings, had then already lost his right to dispose of the daughter as pleased him most. Later, the Rabbis made such behaviour on the part of a father, without any regard to the daughter's wishes, a crime.

Chapter XI: ORIGIN.

The origin of the Kethuba document has given much concern Jewish authorities in every age. The closest analogy in Jewish practise is found in the Biblical requirement of מוהר--the real significance of which has been overlooked by many. As already discussed, in greater or lesser detail, the מוהר was the sum of maoney the groom paid a father for his daughter, i.e. the purchase price. In the course of time the purchase of wives either fell in disfavor or the males no longer fund this method necessary to procure wives for themselves, and the entire practise disappeared, even amongst Jews.

However the Biblical provision for the purchase of wives remained and no amendation was possible, The Biblical injunction however did not hinder the progress of a spreading and enlightened reform, and it soon became, as many legal provisions frequently do, a dead letter. When fashion or custom insisted that the father bestow gifts upon his daughter, the receipt of a purchase-sum was beyond question. The institution of marriage gained in prestige and respect, and it lost, if not all at least the more crude and objectionable traces of a commercial nature. Though the מוהר practise no longer prevailed amongst the people, the law remained in the Pentateuch unchanged and soon experienced a rejuvenation through a thorough reinterpretation.

Thus, the makers of the Talmud, found the germs of the Kethubah in existence. Through out the pages of the Talmud we meet again and again the apparently important question whether the Kethubah has Biblical sanction or merely Rabbinic 36) (מדאורייתא או מדרבנן). This question afforded many an occasion for a scholarly disputation--but was

---

36) Kethuboth10 a.

never settled definitely, as indeed it could not be, by its very nature. The very best that the believers in the Biblical origin of the Kethubah could do was to find only a resemblance of institution in the Torah. This was easily supplied by one of the sentences in the chapter dealing with the case of seducer, where the latter is ordered "to offer as much money as the price of virginity." This phrase proved to be to many Biblical support for the Kethubah by affirming that since the fine of the seducer equals that of the purchase-money, the מקדר, the מהר should therefore equal the amount of the Kethubah 37).

The linking of the Kethubah with the מהר is significant for the reason that the exact relation of one to the other is sensed. The maker of the analogy could find no Biblical sanction for Kethubah, unless he regard it as a revised form of the מקדר--and this he acknowledges it to be. He believed it to be a survival of the מקדר-which when transformed into the Kethubah, again became a potent influence in the lives of the people.

It is interesting to note how all post-Talmudic authorities either consciously or unconsciously establish some relationship between the two pactisas 38). An examination of the salient features of the מהר and the Kethubah, will verify this relationship, and will reveal some striking similarities, pointing to significant conclustions.

The greater majority of the makers of the Talmud believed the Kethubah to be a Rabbinic ordinance, the pages of the Talmud contain genuine verbal and mental struggles in the attempt to account for its origin

---

37) כסף ישקל כמהר הבתולות שיהא נמי כמהר הבתולות
Kel. 10a.

38) א) כתובה מדרבנן אך מכל מקום מן התורה יש לה מהר:
נחלת שבעה p46A
ב) אולם בתקופה שלאחר הגלות נשתנה המהר למובן כתובה
היובל (p 318) (1901 ed.)

and to assign it an unmistakable purpose, Had it truly been a Biblical requirement the entire discussion would have been irrelevant. The disputants always refer to the Kethubah as תקנה, thereby granting its Rabbinic origin 39). The effort to ascribe to the ordinance Biblical sanction and authority is not at all novel--for the identical attempt had been made with every Rabbinic institution, for which a Biblical phrase or verse could lend some support. Many however truly believed that the instituion was Biblical, having found for it, sufficient support in the Bible. This difference of opinion was manifested in regard to many a Jewish practise.

---

39) Kethubath 11 A: שנמצא מאי תקינו רבנן כתובה

Chapter XII: Kethubah and Mohar Contrasted.

The Kethubah and the Mohar present striking similarities--and these prove their ultimate kinship, and even more that the former was merely an offshoot of the latter. A virgin only was entitled to the Mohar, and where the tokens of virginity were lacking the mohar was returned to the husband, the father of the maiden having no claim to that consideration. Where one deprived forcibly a maiden of her virginity, he gave the father the mohar regardless whether he made the injured woman his wife, or not. 40). In its essence, the mohar was a price paid to the father for his d daughter's virginity, and where such was lacking in the daughter the father forfeited the stipulated sum.

The same criterion--virginity--that decided who should and should not receive the mohar, determined who should be entitled to the fullKethubah allowance of two hundred מנה (חנה ב א) זוז, a and who should not. In the careful enumeration as to who should and should not receive the two hundred זוז מנה 41) one principle is discernible--when the woman possessed her virginity when she became the wife she was allowed the full sum; when she lacked the necessary tokens, either because of previous marriage, accident or rape, she is granted only one half of the original amount 42)

---

41) Kethuboth 11a, Mishna and 11b כתובתן מאתים וישלהן שענת בתולין: כתובתן מנה ואין להן שענת בתולין:

40) Deut 22:29. Ex. 22:16.

42) Hilcoth Ishut - Mimuni 11:8; 11:9-12 - כל בתולה שכתובתה מאתים יש לה שענת בתולין וכל שכתובתה מאה או שלא תקנן לה כתובה אין לה שענת בתולין:

Deception on the part of the woman as regards to her virginity in the opinion of some, resulted in the forfeiture of entire Kethubah allowance, even that usually allowed a woman on her second marriage. 43)

This significant similarity proves that the Kethubah has its origin in the purchase-price, that it is the mohar in a revised form; for in each case the test for the claim is virginity. Even when a mere suspicion exists that one lacks the token of virginity, as where one has been captured, the Kethubah is automatically reduced. Those who cannot take sufficient care to preserve their virgin state, such as the deaf, mute, etc. no Kethubah whatever has been granted. 44) This guiding principle that determines who is, and who is not entitled to the Kethubah has been tersely enunciated by the clause 45). כל שיש לה קנס-יש לה

כתובה .She who when seduced and violated is entitled to the

קנס i.e. that her violator give the mohar to her parent, is, when married entitled to the Kethubah. The Palestinian Talmud thus places the two institutions on an exactly similar level, for one is but a modification of, or an advance upon the other.

Another point of similarity exists in the amounts of the

מאתים and Kethubah. The Rabbinic Kethubah allowance of two hundred zuz through inticate pilpulistic subtleties is computed by many if not all, to equal the fifty pieces of silver, the Bible prescribes as the mohar 46).

---

43) Kethuboth 12a: קנסה בחנקת בתולה ונסקלה בעולה אין לה אכילו מנה:

44) Hilcoth Isuth 11:4: החרשת והשוטה לא תקנו להן כתובה

45) Jer. Kethuboth 3:5:2.

46) p 318, 1904 היובל (year-

Again, both the Rabbis and the Biblical authors stipulated only the minimum, regardless of beauty, health, position, etc. but leave the maximem undetermined. These facts are explicable only when we assume that the Kethubah is the supplanter of the former, and not a new institution.

All authorities are agreed that the Kethubah document does not constitute or make the marriage 47) The marriage if properly contracted is valid, legal, and binding upon both parties, with or without the Kethubah. If one has issued the instrument prior ot the marriage ceremony, the woman still enjoys the status of a בתולה, and becomes a נשואה only after the actual ceremony had taken place 48).

Since the Kethubah is not an essential element in the marriage ceremony proper, why do the Rabbis insist the none cohabit with his wife, unless the document is in the latter's possession? 49) R. Meir goes a step farther and declares that he who endows a virgin less than two hundred zuz, and a widow a hundred, on having sex relations with such

---

47) The Kethubah is in fact a marriage settlement, rather than a marriage contract, and though it usually accompanies the ceremony it is not an essential prt of the Jewish ceremony of marriage. J. Q. Review, v 20

48) הסארס את האשה וכתב לה כתובה ולא נכנס לחופה עדיין ארוסה היא ואינה נשואה שאין הכתובה עושה נשואין (Eben HaEzer 55:6)

Story of Hillel also proves this. Ibid. 66:3

49) אסור לאדם לדור עם אשתו אפילו שעה אחת בלא כתובה -

one is committing as serious an offense as if he were cohabiting with a harlot 50). The instrument neither validates the marriage, nor does its absence invalidate. Why, then this insistence on the document? Why the severity in cases where it has not been executed?

The answer to the above lies, I believe, in the true character of the Kethubah. The document being a more advanced substitute for the mohar, its absence simply signifies that the husband failed to make the financial adjustments the Bible demands. In default of so doing, he has no right to the body of his wife, and more specifically to her tokens of virginity, for which the Bible assesses the price of fity pieces of silver. Before the marriage may be consummated with a virgin there must be given her Kethubah, i.e. her father paid for the virginity token, or give, what the Kethubah, amounts to, a written promise to makesuch payment at some future time, when the woman will demand it. 51) These minute provisions tending to restrain one from sexual intercourse unless his wife does have the Kethubah in her possession indicate to some extent, origin and nature.

Another equally valid reason for this rigid requirement is the protection of the woman. The prohibition of cohabitation, in the absence of the document, is the best guarantee that it will never be absent.

---

50) Kethuboth 54b: רמאיר אומר כל הפותח בבתולה מקח טעות אצלמדנה מנה הרי זו בועל בעילת זנות

51) אסור להתיחד עם הכלה קודם שיכתב לה כתובה (Eben Haezer 66.6) (South Hatachonoth - Vol I p57)

The most undisputable evidence that the Kethubah is primarily intended to provide compensation--though postponed till divorced or widowed--for virginity is the actual wording of the document. No more definite language can be employed than the following--found in all present day Kethuboths-- ויהי בנא ליכי מוהר בתוליכי כסף זוזי מאתן דחזי ליכי מדאורייתא:, that the groom agrees to pay the price for the tokens of virginity the sum of two hundred zuz, which he acknowledges to be due the bride because of Biblical--not Rabbinic--sanction. This clause reveals most irrefutably the correct origin of the Kethubah--to serve as a substitue for the discarded מהר.

This unconscious revision of the Bible practise of מהר, saved the institution from complete abandonment. Through the Kethubah, the husband promises to pay this Biblically prescribed sum at a future date, either after his death or when he chooses to divorce the woman. The husband was no longer obliged to make immediate payment to the father but issued a promissory note to be paid when his relations with the woman will have come to an end 52)

---

52) Maimuni, Hilcoth Isuth, 16:3: לא ניתנה כתובה לגבות מחיים: אין הכתובה נגבית אלא אחר מיתת הבעל או אם גרשה:

Chapter XIII: PURPOSE OF THE KETHUBAH.

The essential character of the מוהר having been radically transformed, and thereby having lost its raison de etre, commenced to function in a new capacity with the almost new institution. The unfortunate condition of woman and the concern for the welfare of the wife played immeasureable roles in the evolution of the מוהר into the Kethubah.

Though the Biblical motive of the practise could not be thoroughly concealed or completely uprooted yet the purpose assigned to the practise and the remarkable success with which it was applied caused the old intent of the practise to disappear and to be forgotten.

In spite of the numerous efforts to find for the Kethubah Biblical sanction, the very just query טעמא מאי תקנו רבנן כתובה what prompted the Rabbis to ordain the Kethubah recurs again and again thruout the pages of the Talmud. The answer is always to be found in the Rabbinic purpose of the Kethuba כדי שלא תהא קלה בעינין לגרשה that he (the husband) may not find it so easy to divorce her (the wife) 53). Divorce then as now not only destroyed the family unit but left the woman helpless--a prey to all conditions and to all men. To check the growing evil which inevitably leads to immorality and family disintegration the Rabbis resorted to the device of he Kethubah. By imposing a heavy financial penalty on him who divorces his wife, without just cause, the prevalence of the demoralyzing habit was lessend. The payment of the sum was often a hardship which proved an unsurmountable barrier to one who was too ready and anxious to divorce a wife.

This new purpose, so frequently assigned to the Kethubah in the Talmud will be elaborately treated under the question of the develop-

53) Tractate Kethuboth 11a, 82b.

ment of the Kethubah. The various stages of growth it experienced indicate better than anything else can its true purpose--and its efficacious functioning.

Chapter XIV: COURSE OF DEVELOPMENT.

To trace accurately the process of growth the Kethubah followed is not an easy matter. Numerous stray references, different versions of which are numerous, abound in plenty, and only by an analysis of these can the history of the Kethubah be determined, and its real intent made clear.

The hypothesis, set forth in the previous pages, that the Kethubah was merely a written promise to pay the mohar at a specific occassion is borne out by these references. Two versions of the historical development exist 54) and these contain both striking differences, and remarkable points of agreement. Both agree that at one time the document was deposited with the father--the one person who according to Biblical provision had a claim to the money promised. That a definite sum was at one time laid aside to meet the obligation when it would fall due is also very evident. These two provisions are unmistakable traces of the mohar and were included to insure the father and bride against any possible loss. The document in possession of the father could not be destroyed by the husband; neither could the latter claim inability to pay for lack of funds, since the entire amount was deposited with the bride's father.

---

54) Talmud Jerushalmi, Kethuboth, end of chap. 8.
בראשונה היתה מונחת כתובתה אצל אביה והיתה קלה בעיניו
להוציאה: וחזרו והתקינו שתהא כתובתה אצל בעלה אף על פי כן היתה
קלה בעיניו להוציאה וחזרו והתקינו שיהא אדם לוקח בכתובת
אשתו כוסות וקערים:

Kethuboth, 82b: בראשונה הין כותבין לבתולה מאתים אלמנה
מנה והין מניקין עד היו נושאין נשים כתקינו שיהין מניחין
אותה בבית אביה ועדיין כשהוא כועס עליה אומר לה אצל
כתובתיך כתקינו שיהו מניחין אותה בבית חמיה... ועדיין
כשהוא כועס היה אומר לה אל כתובתיך ואצאי עד שבא שמעון
בן שטח ותיקן שיהא כותב לה נכסיו אחראין לכתובתה:

The unusual prevalence of divorce led a further modification in this practise--identical with the mohar, since both the promissory note, and the money was left in the possession of the father. Divorce was still exceedingly simple matter--and the Breitha is correct. Whenever a wife displeased the husband all that was necessary for him to do was to send her to her father's house, and where she could obtain both the document, and the moneypromised her, for according to the Bible a man may divorce his wife without having to give any reason for such action (Deut 24:1) This procedure was soon discovered to be faulty and a modification was introduced, whereby the document remained with the husband--this according to the Talmud Jerushalmi. The Babli holds that the document was transferred from the safe-keeping of the bride's Father, to that of her father-in-law. This change, however, failed to produce the desired result, namely, to check the existing evil of divorce, since the fund allocated to meet the obligation assumed under the Kethubah was still held intact to the detriment of the wife.

To put a more genuine abstacle to hasty divorce it was necessary to remove another trace of the mohar--which guaranteed the father payment for his daughter, by discontinuing the fund. Instead of withholding the money from any use whatever, the husband was permitted--and frequently urged,--to expend the sum in the purchase of articles and utensils for the use of himself and wife, in the home. However, even this serious departure from the mohar provisions proved ineffective--for in case of any displeasure the husband would had his wife the bill of divorce and give her the utensils, he purchased, in lieu of her Kethubah allowance. And legally the husband was within his rights.

The Babli version quoted has it that the woman would use the money in acquiring certain objects--the exact nature of which is not clear. 55). The two however agree that the fund was discontinued and its expen-

diture either by husband or wife, permitted by law.

This constant revision, each more sweeping than the preceeding, indicate the sad plight of th woman because the husband enjoyed the absolute right, given him by the Bible to divorce his wife at will. Not being able to abrogate, or deny him the right, the Rabbis did the next best thing and made the conditions under which he might exercise his privilege so unpleasant nay, even burdensome, as to limit the use of the privilege very seriously.

The serious limitation upon a husband's absolute right to dismiss his wife at will, and without cause was created, according to tradition, which we have no reason to doubt, by Simeon b. Setah-- שמעון בן שטח who lived in the troublesome days of Alexander Jannaeus, when the bitterness between the Pharisees and Sadducees was very severe 56) To him are attributed several radical, תקנות, innovations, and being the leader of the Pharasaic party and the chief of the Sanhedrin, he undoubtedly was responsible for a goodly number of these if not for all. He was unusually courageous--defying priest and king when Pharasaic principles were at stake. So successful was he in strengthening the cause of Pharisaism--Rabbinic Judaism--that of him is it said that he returned to the Torah its former prestige and glory. 57)

Simeon, like all other leaders, saw the abuse of the husbands right to divorce--and the resultant family disintegration. The instrument of the Kethubah offered to him an excellent device of correcting this abuse and of practicelly suspending the Biblical law, giving a husband the right to divorce his wife at will. The latter necessary condition was accomplished

55) Kethuboth 82b, end of page.

56) שמעון בן שטח תיקן כתובה באשה - שבת יד:ב

57) Kiddushin 66a: שמעון בן שטח החזיר התורה לישנה

by making the provisions of theKethubah more elastic in one direction, but exceedingly more rigid in nother. The elasticity of the document was increased by abolishing the Kethubah fund completely, and by permitting the husband to use that money-endowment for whatsoever purpose he deemed best--including business. This change reacted to thegreat advantage of the husband, since it freed him from submitting to any regulation regarding the expenditure of the Kethubah fund. He was no longer required to hold a sum of money in reserve for the fulfillment of the written promise he had given his wife on his marriage.

But though the husband was freed from keeping a certain sum of money out of circulation he was compelled to acknowledge the Kethubah endowment as a mortgage on every conceivable form of property--real, personal, chattel--he possessed at the time of the execution of the Kethubah, or might acquire possession of in future years. In the course of time the responsiblity for the Kethubah payment passed on to the heirs--and repudiation bec me an absolute impossiblity. This ~~is the~~ significant change, which is attributed to Simeon 54) marks the last stage in the development of the Kethubah. This, or, perhaps he, completely uprooted the remaining vestiges of the Biblical מוהר.

Only now does the Rabbinic purpose assigned to the Kethubah, namely, to interfere with hasty divorce become truly genuine. The right of the husband to issue a divorce was not infringed upon--but this divorce--had to be accompanied by the payment of the entire amount atipulated in the Kethubah, and which frequently reached into a number of figures. With no money at hand, the husband could not divorce his wife, and a true check to hasty divorce was devised.

How effectual a barrier it proved against divorce is attested to by interpretations given by two Amoraim to Biblical verses. Rav Chisda in commenting on the verse, "God has delivered me into hands from which I cannot escape" explains it to refer to a cruel wife who possessed a Kethubah containing a huge endowment 58) R. Nachman enterprets the verse "Behold I will bring an evil from which they will be unable to escape" to refer to a cruel wife having a large Kethubah endowment 59) These two comments prove conclusively what an insurmountable impediment the Kethubah was, even in the case of a cruel wife deserving divorce. The Midrash 60) relates a story illustrating the hopeless condition of a husband who was married to a wicked wife, but who lacked the necessary money with which to pay her the Kethubah. In this manner did the Rabbis succeed in limiting or prohibiting what the Bible freely permits--the right of a husband to divorce a wife.

In discussions on this subject, both in Talmudic and post-Talmudic literature, the disputants are conscious of the original motive of the mohar, yet strive their utmost to assign the new institution that purpose, which it indeed served admirably till modern times. However, the new purpose neither holds good or true in many instances—and whereever such is advanced the older form of the mohar can be easily detected. The legislation concerning it is at best a compromise between an old and obsolete practise and a necessary ~~divorce~~ reform to curb the spread of a great evil.

---

58) נתנני ה' בידי לא אוכל קום-זו אשה רעה (יבמות 63b)
וכתובתה מרובה:

59) הנני מביא רעה אשר לא יוכלו לה לצאת ממנה (Ibid)
זו אשה רעה וכתובתה מרובה:

60) Leviticus R 34.

Were the alleged purpose, to hinder divorce, the only one, why the difference in amount allowed to virgins and to non-virgins, the minimum for the former being two hundred zuz, and for the latter one hundred. Were the Rabbis more anxious to protect a virgin against arbitrary divorce, than one who had already been a wife? Why the distinction? Why the difference in the sums allowed? Does not a woman marrying a second time merit the exact degree of protection as she who marries for the first?

The answers to the above questions can be found in the laws governing the mohar. A virgin always received more than a non-virgin, and even to-day enjoys more prestige than one who had already been a wife. No one would think of offering the same price for a repudiated wife as for a virgin. The vital difference in value between one who possessed virginity and one who had lost it was retained in the Kathubah legislation--which therefore contains the most salient feature of the mohar practise.

In tractate Ketuboth 61) we read that maidens who belonged to the socially prominent familes were as a general rule endowed more than the stipulated minimum. This was done in accordance with the practise that obtained among the priestly families, who always secured for their daughters large Kethubah endowments. The only explanation that can be offered for this increased allowance is that the daughter belonging to these families formerly constituted greater economic value than other maidens, and that such recognition had to be made in the Kethubah--it being but a revised form of the mohar. The distinction is but a survival of marriage by purchase.

---

61) Kethuboth 12b: משפחות הכהונה שבישראל אם רצו לעשות כדרך שבית-דין של כהנים עושין עושין

That the Rabbid were anxious, but powerless, to destroy this difference can be inferred from the Mishnah 62) where mention of this usage is made. There, it is stated that the priestly court, בית דין של כהנים, most likely Sadducean, insisted on an allowance of four hundred zuz for maiden of the priestly clan, and וגם מיחו חכמים בידם the teachers--Pharasaic--did not enterfere with the court. The absence of enterference here does not imply approval, but, I believe, lack of authority upon which to have valid objection. According to Biblical law, the priestly courts had the right to demand that price for maidens of priestly descent which they deemed to be in keeping with their social status and dignity. These groups exercised such rights when the practise of the mohar in its original Biblical form prevailed and now refused to relinquish that privilege--which the authorities could not foribly cancel.

However that which the Pharasaic teachers were unable to a accomplish, public opinion did. In the course of time, priestly familes, as well as those מיוחסות, of a higher social standing found it impossible to exact the high sum demanded. Few men were willing to endow a woman that had already been married two hundred zuz, merely because she belonged to a certain clan, particularly so when that sum could procure a virgin, of non-priestly descent.

The I believe is the underlying meaning of the Breitha 63) which in the name of Rav Ashi states that the Rabbis legislated the larger sum for the maidens of the priestly families, but when that amount proved a

---

62) Kethuboth 12b.
63) Kethuboth 12a and b--particularly the tosefos on 12b:
א"ל אשי שתי תקנות התם-מעיקרא תקינו לכהן בבתולה
בבות בך ארבע מאות זוז אלמנה מינה כיון דחזי דמיבעי
להו תקינו מאתן

hindrance reduced it to the usual allowance. The Amora here makes the Rabbis responsible for the shifting in the Kethubah allowance of the better families. Not being fully conscious of the correct origin of Kethubah he could no account for the discrepancy in the various allowances, except by believing the Rabbis so ordained תקנו. The Mishnah however, much earlier than the Breitha, by frankly stating that the Rabbis did not object indicates that they never consented, but were compelled to tolerate it because of the Biblical provision of mohar, the latter being determined exclusively by the father of the maiden or her tribal chiefs.

Tosefos 64) in Kethubah propounds an extremely pertinent and illumining question. In view of the purpose of the Kethubah being to protect the woman against ill-considered divorce, why does a widow, upon the death of the husband receive the full Kethubah allowance and why does she possess equal rights with the divorced to collect that amount in any manner possible? Why, inbrief did the Rabbis ordain the Kethubah, where the husband dies? The answer offered, because of pity and increase her prestige and thereby render her more attractive to men, which is already mentioned in the Talmud, is not as instructive as the question. We, I believe, can advance a more plausible answer--that the true purpose was not the protection of woman but the fulfillment of the Biblical requirement of mohar. Hence, it matters not whether husband dies or divorces the woman, she must receive the money promised her in the Kethubah, which became hers upon marriage. No modification of the mohar could completely uproot all its provisions.

That the Rabbinic purpose assigned to the Kethubah does not wholly account for its origin is again evidenced by the fact that a woman

---

64) Kethuboth 39bhhTosefos: כיון דאמרא שלא תהא קלה בעיניו מהוצאה אלמנה אמאי תקינו רבנן כתובה? משום חינה

on her re-marriage received a Kethubah allowance of only one hundred zuz--and not two hundred, as does the virgin. Why should the degree of protection against a hasty divorce a woman may enjoy be based on her possessing or lacking tokens of virginity? The same danger exists, the same emergency may transpire in case of a woman marrying a second or third time. Why not erect the same barrier to divorce in the way of a husband who marries a widow or a divorced woman, as is placed against him who takes avirgin for a wife? The question my be justly put--of what avail the תקנה of the sages, when the sum of a hundred zuz is provided for a non-virgin. 65)

The answer to the above, lies again in the laws of the mohar. According to Biblical provision only a virgin is entitled to the mohar--i.e. the Kethubah. The Rabbis ~~could~~ not put the same premium upn a repudiated wife, or one who is no longer a virgin, as the Bible places upon a virgin. A compromise was resorted to and the allowance of non-virgins was reduced to half the amount given to a virgin. And the answer of the Talmud to the last question of the previous paragraph-- משום חיי אשה--because of pity is indeed correct. By granting a non-virgin an allowance her prestige was maintained, and by reducing it considerably she was rendered more attractive, and less expensive to men.

In Talmudic as well as Biblical times a very serious distinction was drawn between an ארוסה a maiden betrothed, and a נשואה, one already married. The two states were not legal fictions, but actual facts, which in certain instances, proved to be of tremendous imprtance. A betrothed maiden, on her marriage to another, either because of divorce by, or death of fiance, received the full Kethubah allowance of two hundred due a virgin--which she presumably is, or at least should be. 66) Does not this

65) V2, p86 Sefer Ha Takonoth: מה קוראין תכמים בתקנתן אם תקנתן מועלת לאלמנה: תקנינו מועלת בין בארוסין בין בנשואים:

66) Kethboth54b, Mishnah 10a, Maimni--Kethuboth Ishuth 11:1:

again point to the true origin of the Kethubah--since the sum allowed depends solely on whether the woman is a virgin or not?

Now, both the origin of the Kethubah has been made clear and its Rabbinic purpose established beyond any doubt. Its roots lie in the Biblical mohar, although in its present form only one trace of the old requirement and the most vital one is very evident. Even orthodox writers, who usually are not prone to investigate origins and even less ready to admit such when they are conclusively proven do acknowledge the true significance of the Kethubah. Thus Mr. Friedman in his analysis of the Kethubah 67) comes to a conclusion exactly similar to the one set forth in these pages.

---

67) הוא הדהר והיא הכתובה ורק לפי העינין יקבנו בשם Friedman: חדש —אגרת על דבר הכתובה (א)
(ב) בתקופה השלישית נשתנה הדהר למהר בתובה אוצר ישראל

Chapter XV: THE KETHUBAH AS FOUND IN THE MISHNAH, ETC.

Though the origins of the Kethubah were exceedingly lowly it soon commenced to play a very respectable and a very necessary role in clarifying and adjusting relations between husband and wife. In the course of time its nature was exceedingly amplified and it contained not only a brief statement of the financial debt due the woman but, a careful discription of the numerous duties a man was obligated to fulfill towards his wife--by virtue of Rabbinic enactment. The Kethubah became a true marriage contract, and proved a source of protection and of help to women, who were married to unscrupulous men. Several of these provisions are clearly mentioned by the Mishna as never to be omitted articles of the Kethubah--and these we will now briefly consider.

In Kethuboth 51b mention is made of כתובת בנין דכרין and it is stipulated that the Kethubah should allow the male children the woman bore with him to inherit the money of her Kethubah, without dividing same equally amongst all children--presuming of course that some were present thru a previous marriage of the father. Where such stipulation had not been recorded, the same ruleapplies. In behalf of the female children--

בנן נוקבין that will result ~~from~~ the ~~marriage~~ the groom agrees to permit them to dwell in his house,and to be maintained at his expense, till their marriage. In case of his death, a final clause permits the widowed wife to dwell in his house and be supported from the income of his property during all the days of her widowhood. These extremely important considerations according to the Mishnah, must be included in every Kethubah, but whether included or not are due the wife. 68)

---

68) Kethuboth Mishnah 51b: לא כתב לה בנין דכרין דיקיר ליכי מינאי אנון יהתון בספ כתובתך יותר על חולקהון דעמי אחו הון חייב שקיא תנאי בית דין בנן נוקבין דיקיר ליכי מינאי יהזין יתבן בביתי ומיתזנא מנכסי חייב...את תקא יתבא בביתי ומיתזנא מנכסי כל ימי אלמנותך חייב...

On 51a of Tractate Kethuboth we find additional provisions which the Mishnah declares must be embodied in every Kethubah, and failure to make mention of these in the document does not free the husband from the obligation to fulfill them. Even in the absence of a Kethubah, the Mishnah stipulates that a virgin collects two hundred zuz and a widow a hundred; that all of the husband's property is to be held at a mortgage for the payment of bove sum; that when captured, the husband must ransom her and take her back as his wife, excepting when a priest who must return her to her own city; and lastly that he must povide her with medical care and attention. The Mishnah closes with a very significant statement that when a wife is taken captive or falls sick the husband cannot divorce her and give her the Kethubah, and thereby be freed from the duty to pay a ransom or to provide medical assistance 69) The opening of each Mishnah indicates, that the omission of these provisions was of very common occurence--and that knowledge and acceptance of them was general. Perhaps this can account for their total absence from present day KethubaHs.

A very interesting incident is related in several places in the Talmud, but in varying form.It is recorded that in Alexandria it was legitimate or, at least customary, for men to carry off brides during the marriage ceremony. This objectionable pactise led the Rabbis to declare the children of the issue bastards--since their mothers were not legally married to those who carried them away. Hillel, however, who was anxious

---

69) Kethuboth Mishnah 51a: לא כתב לה כתובה בתולה אובה מאתים
ואלמנה מנה מפני שהוא תנאי בית-דין כתב לה...לא כתב
לה כל נכסים אחרין לכתובתיך חייב ...לא כתב לה אם תשתבאי
אפריקנך אותיבנך לי לאינתו ובקדנת אהדרינך למדינתך חייב...
ואם אמר הרי גיטך לכתובתיך יתפיא את שמיה לא
אמר ולא כלום.

to save the children from such a fate, had the mothers examine their Kethubah, marriage contracts, and these contained a clause to the effect that only after the chupph ceremony should they become wives. This last provision rendered the children legitimate. 70)

The story indicates that articles were occasionally inserted to meet a local condition which if not remedied would prove of serious consequences to the parties concerned. Various versions undoubtedly were in use and this Hillel incident proves the very decisive character of the document as well as the possibility of adding modifying clauses to the principal articles.

That different communities employed different formulas is also evident from Kethuboth 51b--which mentions specifically three Jewish communities, two of which used one formula, while the third, that of Judah, used another. 71) Still another reference to local conditions is found in Tractate B. Metsebah -- 72) where it is stated that in some places

---

70) בבא מציעא 104 A

71) כך הין אנשי ירושלים כותבין אנשי גליל הין כותבין כאנשי ירושלים: אנשי יהודה הין כותבין עד שירצו הלורשין ליתן לך כתובתיך:

72) מקום שנהגו לעשות כתובה מלוה גובה
מלוה - ב"מציעא 104A

it is customary to treat the Kethubah as a loan--

The surprising feature of the Kethubah of to-day is that it lacks completely these significant Mishnaic provisions--with the exception of allowing the wife the legal sum and of declaring the husband's property as a mortgage for the payment of this debt. However, all the other Rabbinic provisions are not mentioned in these documents of to-day. A plausible reason for the omission has already been advanced--namely, the universal knowledge and acceptance of the conditions.

Chapter XVI: FURTHER DEVELOPMENT.

As already mentioned the gift which the groom gave to the bride and which described in the Kethubah, is known as תוספת כתובה--additions to the Kethubah amount. No limit has been set to this gift, which was determined by the position and financial status of the grom. Originally, this "additional" allowance was subscribed with the intention of paying, and hence only the well-to-do made such promises. Several Talmudic references prove the impediment created by a large Kethubah for any addition to the Biblical endowment was as much of a debt, as the minimum, given to all 73).

These large endowments became an indication of one's position and wealth. Many who were unable to subscribe large amounts did so for purposes of display and vanity. Very soon it became the custom for all grooms to make large additions to the original sum--and this perhaps contributed in great measure to the decay of the entire institution.

In Ex. 21:9 the three duties of a husband towards a wife are mentioned-- שארה כסותה ועונה--food, clothing, and fulfillment of conjugal duties--which form, even to-day, the basis of any hapy union. When these three essentials can be properly adjusted marriage proves a blessing.

These three requirements are basic in the Kethubah and constitute the burden of the declaration the groom makes to his wife to be. As the simple life gave way to a more complex civilization, new emergencies arose--and these demanded immediate attention. The Rabbis then created the תנאי כתובה, the seven additional duties which the husband agreed to fulfill towards the wife, and none of these are set forth in the Kethubah. The latter were invested with the same binding force that the Biblical duties had, and the ten now constitute the elements of any marriage contract.

---

73) דין תוספת כתובה קדין הנזיקה

Upon marriage a man obligates himself as follows: to support the woman, (2) to clothe her, (3) to cohabit with her (these three Biblical) (4) to provide for her medical attention in case of illness, (5) to ransom her when captured, (6) to pay her funeral expense, in case of death, (7) to permit her to live in his house and to be supported from his property during the days of her widowhood, (8) that the female issue, resulting of this union, will be maintained till their marriage, (9) that the male issue will receive her Kethubah allowance in full, not in equal division with sons he may have from a previous marriage, (10) to endow her with the עיקר of two hundred, or one hundred, depending of course whether or not the woman is a virgin 74). The first three duties being specifically Biblical at least so the majority of authorities hold, the wife can not consent, prior to her marriage, to their abrogation. The next six rights being purely Rabbinic she is at liberty to waive any or all, if she so chooses, 75) Under no condition however can the woman release her husband from payment of the 76) principal of the Kethubah--the Biblical mohar.

Although the wish expressed by one prior to death was scrupulously carried out, yet if one on his dying bed asked that any or all of the three Biblical duties be assumed toward his wife be disregarded by heirs, such request is not fulfilled. Had the law been otherwise the entire institution would have been a failure, since one prior to death would be able to deprive the wife of the Kethubah rights 77).

---

74) 62:2

75) Maimuni 12:16 התנה בעלך או האשה התנאי ק"ם חוץ מדג' זברים:

76) Maimuni 12:8 Hilcoth Ishuth: התנה עמה לפחות מעיקר כתובתה תנאו בטל:

The woman was always free to sell her Kethubah rights, to anybody--excepting her husband, for then the document would no longer serve the function the Rabbis desired it should. When sold to another, the debt the husband owed was transferred to the buyer, and upon divorce the latter would collect the debt from the husband. 78)

---

77) Maimuni 19:13 Hilchoth Ishuth
מי שמכר בשעת מיתתו לשטר אחד מתנאי כתובה ... אין שומעין לו:

78) Maimuni 10:10

Chapter XVII: ADDITIONAL USES OF DOCUMENT.

Not only did the Kethubah serve as an effective barrier to hasty divorce but it proved to be an excellent devise to compel both husband and wife to observe these conditions they agreed upon. Any violation of the latter was accompanied by an addition to, or substraction from, the original sum agreed upon. Indecent behaviour, on the part of the woman was pnished by decreasing her Kethubah allowance.

When one, unknowingly marries any of the prohibited degrees the woman must be divorced but does not receive any Kethubah, whatever. 78) All those who forfeit their Kethubah rights because of misconduct lost the entire allowance, the two hundred and the additions. Those that forfeit their Kethubah because of a condtion they are not responsible, like the מומאת נדה, do receive the תוספת, but not the original two hundred. 79) However, should the husband discover in the wife blemishes which he did not know to exist upon his marriage she loses her entire Kethubah 80).

A wife who found guilty of adultry forfeits her entire Kethubah. What a serious restraint this placed on the woman inclined to immorality is very evident. 81) She who transgresses a law of Moses or of Judah-- דת משה ויהודית --forfeits her entire allowance. 82) These laws in general prohibit improper conduct on the part of the woman, either in public or t home.

---

79) Kethuboth 101a: נשים שאמרו יוצאות ולא בתובה אין להן לא תוספת וכל שכן מומאתם ~

79) Ibid נשים שאמרו אין להן כתובת תוספת יש להן

80) Kethuboth 72b.
81) Maimuni 24:6
82) Kethuboth 72a.

Another significant function of the Kethubah was to prevent the husband and wife from "rebelling"against eath other, meaning refusal of cohabitation. When the woman is guilty of such offense seven dinarim are deducted each week from her Kethubah where the husband is the guilty party her Kethubah is increased weekly--as long as she is willing to endure such privation. Such "rebellion" on part of the wife may mean entire loss of Kethubah; on the part of Husband, an indefinite increase.

Though originally the Kethubah was designed as a substitute for the mohar it soon became in the hands of the Rabbis, a very elastic means of regulating matrimonial relations and of enforming those requirements the Rabbis saw fit to impose. Its function and purpose, very narrow at first, broadened out gradually as to include almost every condition that marriage may give rise to. In the hands of the Rabbis it became a genuine marriage contract--and served as such most admirably.

FORMULAS OF THE KETHUBAH.

Formulas of the Kethubah are found in the Mishnah and these provide for ten conditions enumerated elsewhere in this paper. It is interesting to note that our Kethubah contains only four of these stipulations--those that are of Biblical origin. The remaining six are entirely omitted from the document, and that such ommission was rather common can be inferred from the opening of the Mishnah, etc. כא כתב לך 83).

In the final phase of development every conceivable form of proprty was declared mortgaged in payment of the Kethubah. The Mishnah also speaks of such provision 84). Property, in the Talmud, is divided into three

83) Kethuboth 51b, Mishnah

84) Kethuboth 51a: כל נכסין דאית לי אתראין לכתובתיך

group--best, good, and fair respectively. The woman could collect her Kethubah only from that in the last group, that known as בורית where the other two groups existed. The poorest property could be legally offered a woman in payment of her Kethuba 85).

Originally the woman had the legal rights to collect the Kethubah from קרקע real property or מטלטלין chattel and personal. When such right proved an easy means for the husband to provide payment the law was revised and only real property קרקע was deemed suitable payment of the Kethubah sum.

About 1000 A.C.E. the original practise again became in vouge. Pssession of real estate was less common than previously, and a revision was necessitated. The Gaonim then ordained that both the personal and real property of the husband should stand surety for the payment of the Kethubah.86) The Kethubah of to-day makes every conceivable possession of man, including his clothing גלימא דעלך כתפאי responsible for the payment of the [redacted].

This radical modification in the provisionfor paying this peculiar type of debt illustrates the freedom which the Rabbis enjoyed in moulding the law in accordance with the needs of the people and times. These changes mark important links in the development of the institution--the exact date of which, however, cannot be determined.

85) Gittin 48B יתנבת אשה מנכסי בורית

86) Maimuni 16:17 and 18: תקנו הגאונים שתהיה כל אשה גובה כתובתה אחר מות בעלה אף מן המטלטלין ופשט תקנה בכל ישראל:

To collect the debt it was necessary for the woman to appear in court and present the document. The latter in her possession always entitled her to the amount stipulated after taking oath that she had never previously received payment 87). The latter included all those items purchased for the funds of the husband after his death.

---

87) Maimuni 16:21: אלמנה שהיה שטר בתובתה יצא מתחת ידה לשבעת וגובה בתובתה לעולם אפילו אחר מאה שנה

Chapter XVIII: INTERNAL PECULIARITIES: STYLE, ETC.

Talmudic and post-Talmudic authorities could not settle the question of the Rabbinic or Biblical orgin of the Kethubah. The controversy continued till very late days, and this disagreement is reflected in the opening phrases of the document. When mentioning the stipulated sum some insist on adding מדאורייתא after the words זחני ליכי at least in the case of a virgin, while others insist that מדרבנן be inserted instead. Some old specimens of the Kethubah do contain the word מדאורייתא, while others omit it 88). The controversy as to the inclusion or exclusion of this word raged bitterly, so much so that one authority forbade the husband from cohabiting with his wife, when the phrase had been included, his reason being that the Biblical injunction of actually giving the sum had not been complied with. Some sources speak of the omission of ליכי-but give no valid reason for such omission 89).

The document in its present form is issued to every bride regardless of the actual financial condition of the groom. That the statements as to the estimated gifts exchanged and wealth possessed by the husband are frequently untrue is of common occurrence. No change whatever is made in the

---

88) זכיון דכתובה מדרבנן הסכימו רוב קמאי שלא לכתוב זוני מאתי זחנך ליכי מדאו' רייתא רק ספרא זחני ליכי
Toreth HaTakonoth-Vol2-p44

89) Ibid: ובשם הריטב"א-דאם כתב מדאורייתא אסור בשהותה עד שיתן לה כתובה בפ"ג;

88) P. 40b:
89) p. 40b.

sums agreed upon--even though the groom is known to be a pauper 90) and even though he had received no dowry. That the witnesses occassionally are compelled to testify to an untruth cannot be argued away. 91) The groom mortgages all his possession, chattel and real estate and his declaration is unquestioned, though it is known that he possess neither. The personal element enters not into the writing of the Kethubah, and the form is alike for rich and poor. To this there is a single exception--namely, the condition of the bride, whether virgin, or previously married decide whether בתולתא. אתמלתא is to be employed, is always inserted to prevent possible deception.

A clause in our document confers upon the woman the legal right to collect the Kethubah from property which the husband may obtain in some future day. It is a halachic principle, that one cannot arrange for the sale of that which does not exist 92). The question now arises as to how one can mortgage that which is not in his possession? To escape this dilemma, a distinction is made between a sale of, and a mortgage upon property one will acquire in the future. 93). This difficulty which is not solved by the pilpulistic reply, proves how anxious the authors of the document were to shut off any possible form of evasion the husband might resort to escape payment.

---

90) כל הכתובות שוות ואפילו לא הכניסה לו כלום: (Eben Ha Ezer 66:)

91) Groom says זקקאי--although he possesses nothing

92) אין אדם מקנה דבר שלא בא לעולם

93) דלמ"ד אין אדם מקנה דבר שלא בא לעולם יכול לשעבד דבר שלא בא לעולם

The document differs from that of a divorce or Get in several vital instances. First it need not be written specifically for the parties concerned--like the Get. Every scribe is supplied with pointed Kethubah--and when one is needed all he does is insert the names of the parties. The Get must be written by hand, not printed, and specifically for her and to serve as a divorce.

לשמה ולשם גרושין The means for identification, are in the Get carried to an extreme--but not so in the Kethubah, which contains no mention of the exact location of the city. (One however was found in which the city was precisely identified--and Spanish Jews insert in their Kethubah such information 94).) The spelling is of course, essential. However no misspelt words will ~~not~~ invalidate the Kethubah--but any incorrect spelling does disqualify the Get, and necessitates a new one. These serious differences exist inspite of the attempts made to place the two documents on the same level of importante. 95)

The reason for the superfluous phrase כדת משה וישראל has baffled many--and fantastic explanations abound in plenty. The most satisfactory way of accounting for the phrase is by endowing it with the same significance it carries thru out the pages of the Talmud. One is justified in assuming that these words empower the husband to discipline his wife with regard to modesty and proper conduct. All violations of ordinary accepted decencies are classed as violations of דת משה וישראל and constitute valid grounds for divorce. 96). This explanation also accounts for the

94) 12:16 (נחלת שבעה): וראיתי בטופס שהביא הר"ר בעיר פלונית דעלנהר פלונית מותבא-וכן הוא מנהג הספרדים

95) Ibid: ויש לדקדק בכתובה בכל דבר שמדקדקים בגט

96) Kethuboth 72a Mishnah and 72b: ואילו יצאת שלא בכתובה בעוברת על-דת משה ויהודית

inclusion of this phrase in the very marriage formula itself. The substitution of ישראל for יהודית is, I believe, unimportant 97).

All Samaritan Kethubahs end with the name of משה בן עמרם and our phrase may be an adoptation of the old conclusion still retained by the Samaritans--but proof for this is lacking 98).

Another source of dispute has been the term ואפלח. Its literal meaning is to labor, and hence would indicate that the husband agrees to support the wife. Since this Biblical requirement is already taken care of by ואיזון, some explain ואפלח to be a refined term for cohabitation. The third word in the phrase, ואיזון makes very definite provision for sustenance, and is equivalent to the Biblical שאר. The fourth word ואפרנס is by many held to mean wearing apparel--similar to the Biblical כסות. But the second word of this group ואוקיר--adds nothing to the contract and stands in no relation to the remaining members of the group 99).

The single term possessing undeniably the meaning given it in the above paragraph is ואיזון. Nowhere do we meet ואפלח as referring to cohabitation, and ואפרנס is, as the root clearly indicates, a synonym for

---

97) "The addition is already mentioned in Tosefta Ketubah 4, as having been used in the written marriage contracts at the time of Hillel, but it was not before the 12th century that these words were generally added to the formula betrothal." Quoted from Mielziner "Marriage and Divorce" p 79, Note 1.

98) Conclusion as follows: Monatschrift V 54. p181, Article by Moses Gaster:
שלום ה' על נבי הצדיק התמים קטהר הנאמן משה
ברה עמרם איש האלהים;

99) 12:19 (נחלת שבעה)

The entire interpretation given to this phrase above is incorrect--particularly in view of the following.

After covenanting to give the Biblical mohar the groom also agrees to supply the food, clothing, and מזוניכי וקסותיכי וסיפוקיכי, and to fulfill his conjugal rights ושיעבד לותיכי כאורח כל ארעא. Each word with the sole exception of וסיפוקיכי has a very definite connotation. The first two in the phrase refer most plainly to the Biblical, food and clothing, respectively; and the second phrase, though not extremely refined refers to the Biblical עונה, cohabitation.

These two phrases to-gether with the promise of the מהר fulfill all the Biblical requirements of marriage. The clause containing ואפלח, and previously analyzed, is very ambiguous. As a matter of fact the several clauses, begining with ואנא אפלח down to קושטא are poor in construction, meaningless, and add nothing to the contract. The word ויהבנא forms a very fitting continuation to ושרינא.

Because of the irrelevancy of the several clauses and sentences aforesaid, it is my opinion they were added to the document at a later date--for purpose of embellishment. That a late interpolation has been made is most certain since the Kethubah is primarily a legal paper and such verbiage in documents of this sort is unheard of. The omission, as suggested, makes the document a unit, and frees it from vague repetitions.

Chapter XIX: COINS TO BE PAID IN.

The monetary units of divers systems that are used in the discussion of the payment of the Kethubah are confusing and form a subject for endless casuistry. This confusion already exists in the ages of the Talmud--since the authors lived in different localities and knew not a uniform system of coinage. The usual Talmudic stipulation is two hundred zuz for a virgin and one hundred zuz or a מנה for a non-virgin. This sum was computed to be the equivalent of the Biblical fifty pieces of silver--

חמשים כסף 100). Our Kethubah emphasizes that the coins must be כסף pure silver--to prevent possible depreciation in value. For further information one may consult the the article on .

The sum fifty has been preserved in our Kethubah--though not in its original use. It appears in connection with the gifts of the bride and groom respectively that are said to be each of חמשין value. 101)

---

100) Deut. 22:29

101) Oct. 9 Adler.

Chapter XX: SUMMARY.

Though the origin of the Kethubah has been traced to the Biblical mohar, one cannot ignore the remarkable similarities that exist between the provisions of the Kethubah and the marriage laws of Babylonia as formulated in the Code of Hammurabi.

The very pactise of endowing a wife with some money on her divorce, or at the death of her husband and thereby not leaving her penniless is found in the code. Under no condition can the husband in case of divorce, or the heirs in case of death escape thepayment of a certain sum to the wife affected. Since our Bible contains no provision of a similar nature it would bejust to credit the code as the first source when such important legislation is found.

The code also insists on a written marriage contract--without which a marriage cannot be legal (section 128) Such a requirement is not found in the pages of the Bible.

Our Kethubah is in fact both a marriage settlement, and a marriage contract. Marriage by כסף--by contract is one of three legal ways of acquiring a wife. But nowhere thruout Jewish literature do we find a marriage contracted by כסף recorded. Very probably, the authors of the Kethubah planned to incorporate it in the marriage settlement--for the opening words are unmistakable evidences of a contractual relationship. Dr. Lauterbach is strongly of the opinion that such is the case, and further investigation will I believe prove that the Kethubah is indeed a combination of the שטר קדושין and the settlement due the wife.

The Mishnah makes certain provision for the male issue of the marriage and for the widow, after the death of the husband. 102) The identical

---

102) Ketuboth 51a:

stipulations are found in the code. A parallel to the Mishnaic כתובת בתולה is Section 167 of the code,; sections 171 and 172 provide, for the widow's residence in her deceased husband's home till her remarriage, as does the Mishnah.

The aim of the code in drawing up marriage legislation and that of the Rabbis is identical. The same purpose --that of defending the woman against harsh treatment and of safeguarding her against arbitrary divorce, animated the uthors of the Kethubah and those of the code.

Our Kethubah specifies that the consent of the bride has been procured-- ורעותה ספקנא. This povision indicated beyond a doubt that a father was already pohibited from comelling his daughter to marry one who found no favor in her eyes. The Rabbis made such action on the part of a father a crime. In a Babylonian marriage contract 103) a clause is present to the effect that the consent of the bride has been pocured. The code, however, gives the absolute right to a father to marry his daughters to whomsoever he pleases (section 160), and even to break a promise he had already made to a suitor. Most assuredly, later Babylonian practise modified this pimitive code povision, just as the Talmudic authorities modified the strict letter of Biblical law, which gives a Jewish father that same privilege to dispose of his daughter which a Babylonian father enjoyed under Babylonian law.

The three kinds of money spoken of in the Kethubah are exactly those that played roles in the transitional stages of marriage by purchase--and concerning which the Hammurabi code contains detailed legislation.

---

103) Jastrow Civilization of Babylonia and Assyria, p 347,
"Her heart is satisfied."

It mentions first, the very oldest form of money that changed ownership at every marriage, namely, the purchase price, or as it is designated in the Bible, the mohar. When custom demanded that a father bestow upon his daughter certain money gifts, the gift was included in the document, and n the third stage when good usage required tht the groom too make a gift to his bride that also found eplace int he instrument. Our Kethubah combines distinct characteristics of the three stages in the evolution of marriage.

That the Hammurabi Code legislates in great detail the giving and administration of these three typs of money is peculirly significant. It is most illogical to assum that tis striking similarity, with later Jewish practice, is purely accidental.

Even in very early Talmudic times marriage settlements provided for these three types of money--and our Kethubah is therefore of ancient date. In tractate Kethuboth 66b we read that the famous Rabi Jochanan son of Zakkai once met the daughter of Nakdimon son of Gurion, who, prior to the Roman destruction of Palestine, was one of the three wealthiest men in the country, gathering food amongst dunghills. After exchanging greetings, this aristocratic woman reminds the old teacher that he had been one of the signatories to her Kethubah in which she was given by her father the gift of one hundred million dinari--in addition to tht bestowed upn her by her father in law, i.e. the groom 104). That the document also povided for the mohar may be safely assumed. This incident in which the term Kethubah occurs, and which specifies for the financial arrangements agreed upn indicated that the institution was well established many years prior to the second distruction of the Temple.

---

104) Kethuboth 66b: זכור את כשחתמתי על כתובתה של בתך ונתתי קורא בך אלף אלפי דינרי זקב מביתך אביך חוץ משלך חמיך:

That the Kethubah and the mohar are very intimately related has been fully established. Yet one cannot ignore the similarity of provisions of the Kethubah with those of Babylonian marriage settlement. Just what degree Jewish teachers were influenced by Babylonian practise one cannot precisely determine. The salient feature of the Kethubah postponed payment of the settlement made to the wife at the marriage is peculiarly Babylonian. And that the masses adopted this custom when living amongst Babylonians is extremely likely.

The Jewish leaders however in their legislation regarding this postponed payment were guided by those Biblical laws which regulate the administration of the Mohar. Perhaps the most essential feature of the custom was borrowed--since divorce was as much of a problem to the Jews as to the Babylonians. But the development was peculiarly Jewish and was thruout guided and controlled by Jewish usage. The writer does not find it possible to determine whether the mohar was responsible for the appearance of the Kethubah, or whether it was borrowed from the Babylonians, and the Biblical laws of the mohar made applicable thereto. It contains much of Babylonian practise and much of Jewish. Which influence predominated cannot be accruately determined because of the scarcity of evidence.

In the course of time the original distinction between the Kethubah and mohar was forgotten and reputable scholars came to regard the two distinct institutions as one. Thus Rashi in interpeting verse 15 of chapter twenty-two of Genesis and in an explanation of the phrase יהבר ימהרנה לו לאשה 105) expesses the opinion that when one issues a Kethuba to his wife, he is fulfilling the Biblical injunction of giving the bride a mohar. Apparently Rashi is unconscious of the vital difference between the mohar and the Kethubah. In his day, the latter had become so

105) פסוק לה מהר... שכותב לה כתובה וישאנה

universally established that the original distinction had disappeared, believing it to be the equivalent of, in not the, mohar.

In attempting to draw a genuine distinction between a wife and concubine authorities can make but one claim for the wife, that she is entitled to the Kethubah, whereas the concubine is not, forgetting that in Biblical ties the Kethubah was absent, and that the true difference between the two types of wives consisted in the purchase price the husband was compelled to pay. A curious interpretation based on the above false distinction is offered by the popular Bible exigete the Ramban, when he maintains 106) that the position of a concubine פילגש differs from that of a wife in that the former receives no Kethubah and the latter does. He also confuses the two institutions, forgetting that the Bible knows only of the mohar but not of any Kethubah.

b. Sanhedrin 21a

---

106) Genesis, Chap. 25, v 6.

Chapter XXI: CLOSING CHAPTER: SHOULD THE RACTISE BE RETAINED.

The genuine prpose of the Kethubah, namely, to check hasty divorce was never lost sight of by the Talmudic and post-Talmudic authorities. It would be but natural to conclude that where some other povision for interfering with the freedom of divorce existed, the Kethubah becoming unnecessary could be justly dispensed with.

To-day every civilized country with no exception does regulate, divorce to a greater or lesser degree. Nowhere is the husband free to dismis the wife at will--since divorce, ~~marriage~~, has become a matter for the state to approve or disapprove. The truth is that the Kethubah no longer serves the purpose its autors planned it should--and a new purpose has as yet not been assigned to it.

In the code of so orthodox and rigid an authority like Joseph Caro do we find record of the fact that in certain communities the Kethubah was entirely abolished. A very striking and significant comment by no less an recognized authority that Moses Isserless declares that in those localieties where the consent of the woman must be procured, before a legal divorce can be given her, the Kethubah may be dispensed with 107) In another place 108) the law is laid down that the seducer need not give his wife a Kethubah, since he is not at liberty to divorce her. Had the institution been truly Biblical, and not a mere survival of the mohar (which in this case has already been paid the father of the violated virgin) no such exception could have been made.

---

107) 66:3 (Eben Ezer 66;3) במקום שאין מגרשין כך מנהג הא שאין צריך לכתוב כתובה

108) 116 (Eben Ezer — המאנס את הבתולה חייב לישא אותה ואינו רשאי להוציא לעולם לפיכך אין צריך לכתוב כתובה

Frequently it is even deemed proper to make the Kethubah a mere loan, and a written document to support the claim is and apparently regarded unnecessary.

In our own country divorce is very carefully supervised by the courts. The Jewish Get receives no recognition whatever from the civil authorities. The grounds for divorce are minutely regulated, and unless such and such grounds can be discovered and established a divorce is not granted. Furthermore, both the wife and husband enjoy equal rights in court of law. Both can commence divorce proceedings and a divorce is granted by the court, and not by either of the parties concerned. This in brief being the theoretical law the Kethubah no longer functions as it formerly did, or in any other capacity. The husband's right to divorce the wife at pleasure is taken away by legal enactments. What the rabbis lacked the authority to do, the civil law accomplished.

The undeniable fact is that no conceivable purpose can to-day be assigned to the Kethubah. Its original function it no longer fulfills--since a more serious and more insurmountable obstacle has been erected as barrier to hasty, and ill-considered divorce. Conditions to-day, when the Kethubah serves no purpose, are analagous to the two instances previously quoted, where the instrument was dispensed with. Just as authorities abrogated the Kethubah where no need for it was felt, so may we do likewise to-day. The discarding of the Kethubah is, I believe, in perfect keeping with authoritative Judaism--which Reform does not always consult or consider.

However, the Kethubah question involves the problem of preserving the unity of Israel. And surely uniform marriage laws are important if we Reform Jews are to enjoy any sense of kinship with world Jewry. And the truth is that thruout the world, the Kethubah is read at every Jewish wedding, even though perfunctorily. Indeed many have come to regard it, incorrectly as a factor in determining the legality of the marriage. The

Kethubah thruout Israel has a universal value--almost even that of conferring Biblical validity to the marriage. Certainly as such it still plays a vital role in Jewish life.

Reform Jews are few in number and reform Rabbis--even fewer. The latter officiate at only a negligible number of Jewish weddings. The masses of Israel are still joined in wedlock by Rabbis who, at least outwardly profess orthodoxy and who do read the Kethubah during the ceremony.

Marriage amongst Reform Jews to possess characteristics sufficiently Jewish, must bear some resemblances to the manner in which the ceremony is solemnized amongst world Jewry. To constitute not a sect but to be part and parcel of Israel we must maintain those unique practises that Jews follow at the chief events of life, birth, marriage, and death. If these truly vital incidents in the life of an individual have none of the distinctive characteristics that Jewish tradition demands, then surely the individual is Jewish in name only--and will soon loose all relationship with Jews.

Israel has lived and will live because of its distinctiveness When the latter will disappear the Jews will follow must assuredly. It is therefore incument upon us to retain as many peculiar and unique customs as possible, excepting when the latter are repulsive or effend good taste. The Kethubah document contains, two such objectionable phrases. These can easily be excluded from the document and its reading, in English or Hebrew, at the wedding ceremony can be made to constitute something essentially Jewish.

Reform Judaism though it has discarded numerous customs hallowed by precious associations has found a method of retaining some--even though in a radically revised form. In this it has theoretically followed the principle of Pharasaic Judaism. In my opinion the Kethubah can be subjected to such a modification nd thereby saved from complete disappearance. Radical

revisions can and should be introduced in th phrascology of the document. Let us abandon as we did adherence to the actual povisions, but let us retain the spirit of it. Let the Kethubah be not a document containing in detail the petty financial arrangements that are present, at times in very subtle forms, at every marriage, but a clear statement of the ethical significance of the union of man and woman. Let the new Kethubah be an exhortation to both parties to live up to the duties and obligations of married life. Let us so change the wroding of the instrument as to invest it with a spiritual significance, that it may function as a spiritual force in the lives of the married parties. The Kethubah of old was concerned with the material welfare of the wife. Let the new Kthuba concern itself with the spiritual welfare not only of the wife but also of the husband--and let it prove to be to both a reminder of the promises of youth and as such a source of strength in temptation and hope in times of trial.

By radically transforming the character of the Kethubah or, by drawing up a new one--the institution can be preserved. And the fact that Jewry the world over does adhere to the custom of issuring a Kethuba should be sufficient reason for retaining the spirit of the practise, The latter will give the Jewish wedding ceremony something distinctively Jewish, and as such will serve no more beneficial purpose than that of strengthening Jewish consciousness.

Finis -