Painting of Isaiah Moses (1772–1857)
(Courtesy Judith and Hershel Shanks)

Painting of Rebecca Isaiah Phillips Moses (1792–1872)
(Courtesy Judith and Hershel Shanks)

A Writ of Release from Levirate Marriage (*Shtar Halitzah*) in 1807 Charleston

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Introduction

On 12 November 1807, the day following her marriage to Isaiah Moses, Rebecca Phillips of Charleston, South Carolina, received what most modern readers—and most of Rebecca's contemporaries—would consider a strange and somewhat unsettling wedding present. It was a document written in rabbinic Hebrew and Aramaic, languages Rebecca would not have understood. In this document, Rebecca's brother-in-law, Levy Moses, promises that in the event that Rebecca's husband should die leaving no children, he will release her from the obligation of levirate marriage by means of a ceremony known as *halitzah*.[1]

The document, known as a *shtar halitzah*, a writ of release, is well-attested-to in Jewish legal writing from the late Middle Ages into modernity—though rarely in early America. The document was common enough to have a standard text that was published in a book of forms for Jewish legal documents. The question is: How did such a document come to be written in the early nineteenth century in Charleston, South Carolina, a community with no rabbis or scholars? What might this *shtar halitzah* tell us about the individuals whose names are mentioned in it and about Jewish religious life and sensibilities in early-nineteenth-century North America?

Levirate Marriage and *Halitzah* in Classical Judaism

Levirate marriage (*yibbum*) is a union between the widow of a man who dies without children and his brother; in most cultures that employ levirate marriage, the offspring of the union are generally considered the children of the deceased rather than of their biological father.[2] The Book of Deuteronomy mandates levirate marriage in cases "[w]hen brothers dwell together and one of them dies and leaves no son"[3] and states that the oldest son of the levirate union "shall be accounted to the dead brother, that his name may not be blotted out in Israel."[4] Levirate marriage also factors into the story of Judah and Tamar in Genesis 38, and some scholars think it an issue in the Book of Ruth.[5] Based on Deuteronomy 25, later Jewish commentators and codifiers regard levirate marriage as a biblically based commandment.[6]

The Bible acknowledges that a man may not wish to marry his widowed sister-in-law or provide offspring for his brother.[7] Such a man has the option of submitting to a ritual of release. This ritual, known as *halitzah*, involves the spurned widow removing her brother-in-law's shoe, spitting in his direction,

and proclaiming, "Thus shall be done to the man who will not build up his brother's house."[8] Clearly imagined by the Deuteronomist as a ritual of shaming, *halitzah* later became socially acceptable and legally appropriate.[9] Many of the early rabbis preferred *halitzah* to levirate marriage, and it seems to have been the preferred practice among Palestinian Jews during the rabbinic period.[10] It was later the preferred practice of Ashkenazi Jews, particularly in light of the *herem* (ban) of Rabbi Gershom of Mayence forbidding polygamy. In 1950, shortly after the establishment of the State of Israel, the chief rabbinate declared *halitzah* to be the only valid response to a levirate situation.[11] While not common, some traditional Jews still practice *halitzah* today in cases when a childless man dies leaving a widow and at least one brother.

While *halitzah* offers men an avenue to escape levirate marriage, there is no comparable mechanism available to a widow who does not wish to marry her deceased husband's brother. The early rabbis, while conceding that a woman could not be betrothed without her consent, insisted that levirate marriage was valid even if the woman was forced, that is, raped by her brother-in-law.[12] Although the Tosefta prescribes a form of betrothal as the first step in completing a levirate marriage, the union can be formalized through intercourse without any accompanying ritual.[13]

The Mishnah (circa 200 C.E.) and both the Palestinian (circa 450 C.E.) and Babylonian (circa 600 C.E.) Talmuds consider situations in which women clearly resisted levirate marriage. The Mishnah imagines a woman taking a vow to derive no benefit from her brother-in-law; if the vow was made in her husband's lifetime, the Mishnah recommends encouraging the brother-in-law to submit to *halitzah*.[14] Clearly the woman in question made the vow hoping to avoid levirate marriage; in encouraging *halitzah,* the Mishnah indicates that it has no particular desire to force women into unwanted marriages. Another rule discusses a woman who approaches the court claiming that her brother-in-law has not consummated their levirate union; in such a case, the Mishnah again suggests the man be encouraged to release his former sister-in-law.[15] Both Talmuds go further, describing situations in which sages tricked men into submitting to *halitzah* when the men preferred levirate marriage; in each case, the ruse was undertaken when the woman indicated to the sage her aversion to the marriage.[16]

Despite evidence of rabbinic reluctance to force women into unwanted levirate unions, early rabbinic literature offers no *a priori* legal solution for a woman who wants to avoid one. Moreover, the relative powerlessness of women in such situations had the potential to put levirate widows in marital limbo. The Mishnah forbids a man and his sister-in-law to enter into a levirate marriage or perform *halitzah* until three months after the death of the woman's husband; this waiting period is intended to determine whether the widow is pregnant and therefore not subject to the law.[17] Once this waiting period has

Image of shtar halitzah document
(Courtesy Judith and Hersbel Shanks)

For translation, please see page 51.

ended, the Mishnah recommends that levirate marriage or *halitzah* take place as soon as possible. The task of choosing a course of action is assigned to the oldest surviving brother, although a declaration of marriage or performance of *halitzah* by any brother resolves the woman's status. In the event that no brother wishes to act, the court turns back to the oldest brother and informs him that the responsibility is his.[18]

Although the Mishnah presents a neat timetable for making the levirate widow a married woman or a *halutzah* (a woman who has undergone *halitzah*; such a woman's status is similar to that of a divorcee), the reality may be far less cut-and-dry. A man must choose to be part of a *halitzah* ceremony, just as he must choose to initiate a marriage; should her brother(s)-in-law be unwilling, the levirate widow has no power to initiate *halitzah* or perform it on an unwilling man. Moreover, there is no remedy if the brother-in-law makes himself unavailable. Like a woman whose husband refuses or is not present to give her a bill of divorce, the levirate widow may find herself abandoned by her brother-in-law, unable to remarry or to collect her marriage settlement from her dead husband's estate. Though classical rabbinic texts sometimes speak of "compelling" a man to agree to *halitzah*, nowhere do they discuss how such compulsion is to be achieved.[19] Post-talmudic sources do discuss compulsion at length, revealing dissent as to when compulsion is permitted and when it is forbidden. These sources also indicate that compulsion could take the form of physical force or intimidation, shunning, or excommunication, with a preference for milder forms (e.g. shunning) over more drastic measures.[20]

Levirate Marriage and *Halitzah* in the Middle Ages

Post-talmudic literature offers no new solutions to a woman reluctant to marry her brother-in-law. In the *Mishneh Torah*, Moses Maimonides essentially reiterates the talmudic position on *halitzah*. Echoing the Babylonian and Palestinian Talmuds' discomfort with forcing an unwilling woman into a levirate union, Maimonides states that

> If [the brother-in-law] does not want to enter a levirate marriage, or [the widow] does not want [the marriage], he should release her.... It is a biblically ordained positive commandment to perform *halitzah* if he does not want to enter into a levirate marriage ... although the commandment of levirate takes precedence over the commandment of *halitzah*.[21]

While Maimonides seems to be offering women some say in the matter, this choice is not without cost. In the next chapter, he writes

> If the widow is eligible for levirate marriage, but she does not want to marry, she is treated like one who rebels against her husband [that is, a married woman who refuses to engage in sexual relations]. We compel the brother-in-law to release her and she goes forth without her marriage settlement. If his brother

left many wives, whichever one the brother-in-law claims for levirate, if she refuses, she is a rebellious woman.[22]

According to this formulation, a woman who rejects her brother-in-law, even if the deceased left another wife willing to enter a levirate union, forfeits her marriage settlement, leaving her with no financial resources. The marriage settlement would revert to the estate of her deceased husband, to be divided among his brothers. This might encourage a man who knew his sister-in-law was disinclined to marry him to propose a levirate union even if he preferred *halitzah*, since his sister-in-law's refusal would enrich the estate he stands to inherit.[23] Maimonides allows a widow some choice among her remaining brothers-in-law if the eldest rejects her but gives her minimal leeway if she simply refuses to respond to the levirate obligation; even if a woman declares her willingness to experience perpetual widowhood with no rights to a marriage settlement or maintenance, she cannot refuse levirate marriage or *halitzah*, lest it impair her brother-in-law's standing in the marriage market.[24]

While a woman who refused her brother-in-law might find herself penniless, a woman whose brother-in-law refused to take any action toward resolving her status was in even greater straits. Discussions of such a situation in the medieval codes acknowledge this problem. Maimonides paraphrases the Mishnah and the Babylonian Talmud in his discussion of the brothers' obligation to resolve their sister-in-law's status in a timely fashion. He writes that the responsibility falls first on the oldest surviving brother; if that brother is reluctant, the remaining brothers are to be queried, returning to the eldest if the others refuse. Maimonides then states, "We do not compel him to marry, but we do compel him to release her."[25]

In the medieval and early modern periods, difficulties in ensuring the release of levirate widows center around the refusal of brothers-in-law to release their sisters-in-law by submitting to *halitzah*. There are essentially two types of rabbinic response: the imposition of financial penalties on a recalcitrant brother-in-law, and the creation of financial incentives that benefit a man when he submits to *halitzah*. Different communities employ these methods at different times.

Community decrees (*taqqanot*) in medieval Ashkenaz took the approach of offering financial incentives. The adoption of the decree associated with R. Gershom of Mayence, which prohibited plural marriage, led the Jewish communities of France and later Germany to forbid levirate marriage.[26] This left *halitzah* as the only viable response to the death of a childless man who was survived by a widow and brother(s). Although *halitzah* was seen as a socially acceptable—in fact, commendable—response to a biblical precept, there were men who refused to perform it, thus consigning their sisters-in-law to a perpetual liminal state, unable to marry or even to collect a marriage settlement or maintenance from their husbands' estates. However, "according to some of

the Rabbis, the Court had no power to compel a brother of the deceased to have the *Halizah* performed, and even those of the Rabbis who felt authorized to use force, preferred not to resort to it."[27]

One result of the situation was that men used extortion against their sisters-in-law, demanding money in exchange for *halitzah*. Louis Finkelstein writes that this type of extortion

> was not frowned upon as it might have been, since in Rabbinic law, a wife does not inherit her husband's property, but has only a dower right. There would always be difficulty in determining the exact amount due the widow, and so the brother-in-law ... would escape the general condemnation that he so richly deserved.[28]

Taqqanot from Ashkenaz indicate efforts to rein in such extortion. One *taqqanah*, associated with a pre-1220 synod, states that a man should not refuse to perform *halitzah*.[29] Later *taqqanot* indicate that this type of remonstration was inadequate. A rabbinic synod held in Mayence in 1381 ruled that all of a married couple's property, whether given to them by the family of the husband or of the wife, should, in the event that the husband died leaving no children, be divided equally between the widow and her husband's brother.[30] This division was mandated to remove the possibility of extortion or negotiations between the widow and her brothers-in-law and to ease the path toward *halitzah*.

Arrangements like the one enacted in 1381 continued throughout the Middle Ages and were eventually codified in Moses Isserles's commentary on the *Shulhan Arukh* of Joseph Caro. Caro's description of the estate distribution of a childless man tallies with that of the Mishnah. If a man enters into a levirate union with his sister-in-law, he inherits the entire estate of his deceased brother. The decision to perform *halitzah* results in a different division.

> One who releases his sister-in-law is treated equally with his brothers in the matter of inheritance. If the father is alive, he inherits the whole [estate of the deceased]; if he is dead, the brothers divide it among themselves.[31]

Commenting on this section, Isserles writes, "all of this is the law, but there has already been a decree that one who releases [his sister-in-law through *halitzah*] receives half of the property." Later, in response to Caro's assertion that "Any widow who must be released rather than taken in levirate marriage receives her marriage settlement," Isserles writes

> This is the law according to the one who says that *halitzah* takes precedence [over levirate marriage]; even though we do not compel him to release her, he needs to give her the marriage settlement immediately, for she is like one who has been released. All this is the law, but the communities have decreed that if the levir and the widow both desire release, they divide all of the property that [the deceased] left, even if one half does not cover the marriage settlement.[32]

Isserles's report makes it clear that the widow may, as a result of this decree, receive less than the amount specified in her marriage settlement. In a sense, the widow is forced to forfeit her legal rights, as set forth in the Mishnah and Talmud and agreed upon by the two families at the time of marriage, to ensure that her brother-in-law agrees to *halitzah*.[33] This shows a move from extortion by individuals to what is essentially communally-endorsed extortion.[34] In both cases, the widow is the victim, made powerless by her brother-in-law's ability to prevent her from remarrying.

The other approach to the problem was to impose financial penalties on men who did not perform *halitzah* in a timely manner. In his discussion of the maintenance due to widows in general, Maimonides mentions in passing that

> A widow who has been cast before a levir—for the first three months after her husband's death, she is supported from [the estate of] the husband.... After three months, she is not supported from [the estate of] the husband or the brother-in-law; rather, she should demand that her brother-in-law marry her or release her. If she demands that her brother-in-law marry her or release her, and he appears in court and then flees, or becomes ill, or if he is overseas, she is supported from [the property of] the brother-in-law.[35]

Since a widow cannot remarry until three months after her husband's death,[36] neither levirate marriage nor *halitzah* may take place during this time; therefore, the brother-in-law has no obligations to his sister-in-law. After the three-month waiting period, Maimonides is willing to make the brother-in-law responsible for supporting his sister-in-law, providing she has appealed to the court for a resolution to her status and he has delayed in implementing it. This ruling can be seen as a financial penalty imposed on a man who leaves his sister-in-law's status unresolved; the sooner he releases her, the sooner he frees himself from monetary obligations to her. This is made explicit centuries later by Yehiel Michael Epstein, who writes

> We would agree with Maimonides that he is liable for her sustenance if he flees or gets sick after three months and after he has been to court, for if that was not the case, it would be in his power to abandon her (that is, to do nothing to resolve her status) forever and since the essence of this obligation [to provide food] is a fine, if we said it did not apply in our place, the penalty would be negated and she would remain chained forever.[37]

Overall, the evidence from the Middle Ages indicates that women whose husbands died without children were often at the mercy of their brothers-in-law. Some rabbis argued that a woman who refused to marry her brother-in-law should be treated as a rebellious woman and forfeit her marriage settlement.[38] Even those who disagreed with this stance were reluctant to compel men to perform *halitzah* by threat of excommunication; this was true even if the brother-in-law was already married or was unsuited to his sister-in-law by reason

of age. There seems to have been general acknowledgement that the most likely way for a woman to ensure that her brother-in-law performed *halitzah* was to offer him money. Various sources indicate that men were willing to perform *halitzah* for financial inducements and women (or their families of origin) were willing to pay to avoid remaining in a state of limbo, unable to marry or collect their marriage settlement. Communities essentially endorsed the use of financial incentives by enacting *taqqanot* that stipulated the ways a widow and her brother-in-law should divide the estate of the deceased.[39]

The *Shtar Halitzah* as a Means of Compelling *Halitzah*

The genesis, then, of the *shtar halitzah*, the document that Rebecca Phillips Moses received on the day following her wedding, should be viewed against the backdrop of earlier efforts to resolve the status of the levirate widow and to protect her from "remaining chained forever." The introduction of a contract between a woman and her brother-in-law in which he promises that he will perform *halitzah* and, according to later versions of the document, that he will do so without financial inducements, reflects the unwillingness (or inability) of Jewish communities and communal leaders to compel men to perform *halitzah*.[40] The *shtar halitzah* represents a departure from previous attempts in that it is enacted on a case-by-case basis rather than relying on a communal decree, which would govern the behavior of all members of the community.[41] The *shtar halitzah* is also innovative in that it is a preventative measure; the contract is executed before the wedding (or, as in our case, just after it) as a kind of insurance.

The origins of the document are unknown, but we have one extant *shtar halitzah* from the fifteenth century, written in Aragon in 1482. We also find mention of a *shtar halitzah* and its language in several responsa from the period.[42] By the sixteenth century, use of a *shtar halitzah* to protect a bride is well known and widespread.[43] A text for the *shtar halitzah* appears in Samuel ben David Moses HaLevi's *Nahalat Shivah*, a compendium of legal documents with extensive comments first published in Amsterdam in 1667, indicating that the document had an established text and was used regularly.[44]

A *shtar halitzah* is a legal document, executed in the presence of two witnesses who sign the document. Like most Jewish contracts, it opens with the Hebrew date on which the contract was executed and the city in which the agreement was made. The document attests that the man named in the document (or men—a *shtar halitzah* may be written on behalf of several brothers) agrees that should his brother die without offspring, leaving his wife subject to *halitzah*, he will release her in a timely manner; in many versions of the document, including ours, the brother-in-law states that he will accept no remuneration for agreeing to *halitzah*. The commitment to release the woman is made absolutely, with powerful oaths and under the penalty of excommunication. The man declares that he is entering into the agreement of his own free will

and without doubts. There are monetary penalties for failing to live up to the contract; the brother-in-law declares that if he does not perform *halitzah,* the widow is entitled to ongoing maintenance from her late husband's estate and will "have control over [the estate's assets]." While previous communal decrees promised the brother-in-law a significant portion of the deceased's assets if he would agree to *halitzah*, a *shtar halitzah* denies him any access to the estate until he performs *halitzah.*

Many responsa from the sixteenth century onward attest to use of a *shtar halitzah.*[45] It was most common among Ashkenazi Jews; Sephardi Jews were more likely to include language about *halitzah* in the marriage contract itself.[46] Questions arose, such as whether a delay in *halitzah* caused by a man's illness rendered him in violation of the contract. Some responsa indicate that families were reluctant to agree to a daughter's marriage with a man whose brothers were unwilling or unable to execute a *shtar halitzah*; this suggests that the document was seen as an effective vehicle for protecting women. In some communities, the use of a *shtar halitzah* was considered a condition for marriage. The language of the document was also scrutinized; without language explicitly banning financial inducements, some rabbis still enforced communal decrees requiring the widow to divide her husband's estate with his brother.[47] From the seventeenth century onward, the standard *shtar halitzah* included language by which the brothers-in-law agreed to *halitzah* without remuneration.[48]

Use of the *shtar halitzah* ended with the destruction of European Jewry in the Holocaust. As mentioned before, the chief rabbinate of the State of Israel mandated *halitzah* in all levirate situations, possibly believing that this was enough to guarantee that men would agree to *halitzah.*[49]

Rebecca Phillips's *Shtar Halitzah*

The *shtar halitzah* prepared for Rebecca Phillips corresponds to the standard *shtar halitzah* found in the *Nahalat Shivah* and in other printed and handwritten documents.[50] The handwritten document has a Hebrew date, the eleventh day of Marheshvan in 5568, corresponding to 12 November 1807, and is situated "in the city of Charleston in the American states (*medinot Amerika*) in South Carolina." There was, at that time, no standard Hebrew term for the United States, nor, apparently, any fixed Hebrew spelling for "Carolina."[51] Still, Charleston was the largest Jewish community in the United States in the first decades of the nineteenth century, with a Jewish population estimated at six hundred to seven hundred, and according to one source, "the religious rites, customs, and festivals of the Jews" in the city were "all strictly observed."[52] However exaggerated that claim, it likely explains the concern for a traditional *shtar halitzah.*

The subject here is Yehuda the son of Moses; no family names are given in the document, probably because the family name, Moses, was based upon this patronymic. It is probable that Yehuda was the Hebrew name of Isaiah's brother

in Charleston, whose English name was Levy. Whatever the case, Yehuda states that he is entering into the agreement under the penalty of excommunication, with no reservations and no possibility of retraction unless he obtains the consent of "the wife of my brother, Miss Rebecca the daughter of Yaakov," meaning Rebecca, the daughter of Jacob Phillips who is the wife of Yehuda's brother Yeshaya (Isaiah Moses). The document is to be given to Rebecca as proof of the agreement.

Yehuda agrees that if his brother dies without offspring, leaving Rebecca in need of *halitzah*, that he will perform *halitzah* properly three months after his brother's death. He will not demand money from Rebecca or any person representing her in return for the *halitzah*. Yehuda agrees that if he fails to perform *halitzah*, Rebecca is entitled to maintenance from his brother's (her husband's) estate and shall control the estate.

The text of the *shtar halitzah* is followed by the word "witnesses," reflecting the requirement for two witnesses to a legal document. The name of one witness is legible; he is Nathan the son of Daniel Katz. No Jew by that name, however, is known to have lived either in Charleston or any of the other American Jewish communities of that time, so his English name was presumably different.[53] Above Nathan's signature are several letters that also look like a signature. There is another name on the right side of the document under the last line of the text; the writing suggests it might be the name of the scribe.

Did Rebecca Phillips Need a *Shtar Halitzah?*

It is not easy to understand why Rebecca Phillips needed a *shtar halitzah*. Rebecca's new husband, Isaiah Moses (1772–1857), was a widower. He had four young children—Phineas, Morris, Solomon, and Simeon—from a previous marriage.[54] Had Isaiah died, they would have assumed the burden, under Jewish law, to carry forward their father's name, and his widow would have been free to marry without needing the ceremony of *halitzah*. The only reason she would have needed *halitzah* to remarry would have been if Isaiah and all four of his children died before Rebecca had children of her own, but that possibility was so remote that it would have been unlikely for a *shtar halitzah* to have been issued.

In the absence of a rabbi in Charleston, however, it may well be that the complex laws of *halitzah* were not well understood. Isaiah Moses, born in Bederkese near Bremerhaven in Hanover, Germany, was a determinedly traditional Jew (as well as being, for many years, a slaveholder and Southern planter.) He was a longtime trustee of Congregation Beth Elohim, a consistent opponent of religious reforms, and in later years a founder and active member of Shearith Israel in Charleston, the breakaway Orthodox synagogue formed by those opposed to Beth Elohim's organ.[55] In Germany, he knew, the *shtar halitzah* was commonly signed at the time of marriage. He was apparently determined to have the same

document signed in Charleston. His insistence upon upholding tradition, one suspects, was more powerful than his understanding of that tradition.

Had Isaiah Moses not been a widower, it is easy to understand why a *shtar halitzah* might have been especially important to Rebecca Phillips. She knew about the fragility of life from personal experience. Her mother, Hannah (Isaacks) Phillips, had died in 1798 when Rebecca was only six. Several of her other relatives died that same year and her grandmother and aunt just a few years later.[56]

Rebecca's father, Jacob Phillips, had trouble making a living and married all four of his daughters off at a young age to far older men. "These were not marriages of love," the family's historian concludes, "but business arrangements." Rebecca was married when she was but fifteen years old to a man twenty years her senior. Five years before, her older sister, Rachel, was married at the age of sixteen to a man twenty-three years her senior. Two other sisters, Frances and Esther, were given husbands, respectively, sixteen and twenty-four years older than themselves.[57]

Under these circumstances, the danger that a husband might suddenly die childless, leaving a young wife unable to remarry until a brother-in-law performed the unpleasant ceremony of *halitzah,* must have weighed heavily upon blushing brides. The *shtar halitzah* relieved them from the fear that, if their husbands died without issue, they might be forced into another "business arrangement"; it ensured that they would be able to go through the *halitzah* ceremony and get on with their lives.

The *Shtar Halitzah* in Early America

Nevertheless, neither the *shtar halitzah* nor the practice of the *halitzah* ceremony seems to have been common in early America. Jacob Rader Marcus makes but one mention of the practice in his extensive writings on the era.[58] *Halitzah* is not mentioned at all in the published early records of Shearith Israel or in David de Sola Pool's detailed history of that congregation. Indeed, the 1807 document published here is the earliest American *shtar halitzah* that has come to light. In an earlier case, in 1792, involving Elkaleh (Nelly) Bush and Dr. Moses Sheftall, the *halitzah* ceremony itself was symbolically performed, complete with the removal of a ceremonial shoe from the foot of Sheftall Sheftall, Moses's brother, just prior to the latter's wedding. This ceremony did not have the legal effect of the *shtar halitzah,* but it was accompanied by an oral promise that Sheftall would grant *halitzah* in the prescribed way should his brother die before Nelly bore him children.[59]

The one real case of *halitzah* known from the colonial era illustrates the neglect into which the practice had fallen. In 1793, Israel DeLieben applied to marry a childless widow named "Mrs. Hart [Hannah Levy Hart]." Her brother-in-law, living in Charleston, needed to give her *halitzah* for her to be permitted to

remarry under Jewish law, but—like too many men in such circumstances—he refused to do so, "although," according to the records of Savannah's Mickve Israel congregation, "it was required of him." The synagogue's leaders (*adjunta)* ruled compassionately, albeit in violation of Jewish law, that since the brother failed to do what he should have done, "Mr. DeLi[e]ben and his intended bride [were] Intitled to the usual honors on such occasions." The marriage apparently took place without *halitzah* having been performed.[60]

More scrupulous attention to the laws of *halitzah* came into American Jewish religious life with the arrival of ordained rabbis in the 1840s. Rabbi Max Lilienthal, who arrived in New York in 1845 and was appointed chief rabbi of the city's three leading German Orthodox synagogues, was the first to focus upon it. He requested on 18 September 1846 that the "United German-Jewish Community" over which he presided have a ritual *halitzah* shoe made so that the ceremony could be appropriately carried out. That same year he instituted a regulation requiring the brothers of every groom under his jurisdiction to sign a *shtar halitzah.*[61] Although the "United German-Jewish Community" soon collapsed and Lilienthal himself drifted into the Reform camp, an English-language *shtar halitzah* from 1851 survives, attesting to the fruits of his effort. It was signed by Edward and Henry Morison on the wedding day of their brother, Lewis M. Morison, and contains their solemn promise that "in the event of the demise of our brother Lewis ... without leaving issue, to perform and assist in the performance of the ceremonies of *Halitzah* as prescribed by the ordinances of our wise men of happy memory and in accordance with the Mosaical code ... without claim of any compensation whatsoever, and without delay."[62]

Halitzah soon proved sufficiently timely to attract the attention of early Reform rabbis as well. The Philadelphia Rabbinic Conference, 3–6 November 1869, minced no words, unanimously declaring in its ninth article that "the rule to enter into Levirate Marriage, and, if occasion should arise, Chalitzah, has lost all sense, significance and binding force for us." Reform rabbis in Germany echoed this ruling two years later at the Augsburg Synod (1871): "The rule of the Torah in regard to Halitza has lost its significance, since the circumstances which brought about levirate marriages and Halitza no longer exist and since the basic thought underlying this precept has become foreign to our religious and social consciousness. The omission of Halitza is no impediment to a widow's remarriage."[63]

Rebecca Phillips was still alive when these rulings were promulgated, but they were entirely irrelevant to her situation. In addition to the four children whom she had raised as a stepmother, she had by then given birth to twelve children of her own. By the time of her death, in 1872, she could boast of more than 120 descendants.[64]

Nevertheless, and fortunately for historians, she did not discard the *shtar halitzah* presented to her on the day after her marriage. She never needed it and

likely did not understand it. Yet thanks to her and her loving descendants, we now know that there were Jews in Charleston, South Carolina, in 1807 who cared about the problem of *halitzah*, knew how to write a traditional *shtar halitzah,* and insisted upon the signing of this largely forgotten document as a form of legal protection for their wives.[65]

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Translation of Shtar Halitzah

The following is attestation to what occurred before us, the witnesses signed below:

On Wednesday, the eleventh day of the month of Marheshvan in the year five thousand five hundred sixty eight since the creation of the world, according to the account by which we count here in Charleston, in the country of America, in South Carolina, how Mr. Yehuda the son of Moshe came before us and said to us:

Be valid and trustworthy witnesses that I take upon myself with a stringent vow and a biblical oath with full force and the knowledge of the public, with no possibility of retraction or release without the consent of my brother's wife Miss Rebecca daughter of Yaakov the owner of this document. Write it in effective, forceful language and sign and give it to Miss Rebecca the daughter of Yaakov, the wife of my brother, Mr. Isaiah son of Moshe, to be in her possession as proof and testimony and evidence that with good will, without coercion or any compulsion, but wholeheartedly and willingly, with a clear and calm mind, from today and onward, that if, heaven forfend, my brother Mr. Isaiah son of Moshe, the husband of the aforementioned Miss Rebecca, should die without living offspring and his wife Miss Rebecca is subject to *halitzah,* then when she requests of me to release her I am obligated to release her through valid *halitzah* for free. I will not henceforth and ever take from her or her representative even a small amount. Immediately on completion of three months after the death of my brother, her husband, the aforementioned, when she is eligible for *halitzah,* providing she seeks me out. As long as I have not released her through valid *halitzah,* as aforementioned, my sister-in-law shall be supported from the estate of the deceased and shall have control over it.

All of the above, Mr. Yehuda the son of Moshe accepted with a stringent vow and a biblical oath, with annulment of previous declarations and nullification of any witnesses to previous declarations, using the language stated by our sages to annul declarations. This document of release (*shtar halitzah)* may not be invalidated nor may its force be lessened in any manner devised by speech or thought. It shall be judged and interpreted for the benefit of the owner of the document. She shall have the upper hand and anyone who casts aspersions on the document shall have the lower hand. The document shall have the legal standing it would have were it executed in a high court, not as a mere formality or exercise in writing. Mr. Yehuda son of Moshe enacted a symbolic transfer of this document using a valid means of transfer. And all is valid.

Notes

[1]The document has been made available to the authors by Judith Alexander Weil Shanks of Washington, DC, a descendant of Rebecca Moses, ro whom it was recently bequeathed.

[2]G. Robina Quale, *A History of Marriage Systems* (Westport, CT: Greenwood Press, 1988), 60. In rabbinic Judaism, however, the children of a levirate marriage are considered the legal offspring of their mother's current husband, her former brother-in-law. For a discussion of the assignment of paternity to the levir in rabbinic Judaism, see Dvora Weisberg, *Levirate Marriage and the Family in Ancient Judaism* (Hanover, NH: University Press of New England, 2009), 172–176.

[3]Although Deuteronomy uses the word *ben*, which means "son," postbiblical commentaries agree that any surviving child—or even a grandchild—renders levirate marriage unnecessary and, in fact, forbidden.

[4]Deut. 25:5–6.

[5]For arguments for and against reading Boaz and Ruth's marriage as a levirate union, see Weisberg, *Levirate Marriage*, 31.

[6]Moses Maimonides, *Sefer HaMitzvot*, positive commandment #216.

[7]Gen. 38:9; Deut. 25:7–8.

[8]Deut. 25:9.

[9]Weisberg, *Levirate Marriage*, 42.

[10]M. Bekharot 1:7; Michael Satlow, *Jewish Marriage in Antiquity* (Princeton, NJ: Princeton University Press, 2001), 186–189; Weisberg, *Levirate Marriage*, 43; 214, n. 79.

[11]The *taqqana* states that "since in our time it is clear that the majority of levirs are not intent on fulfilling a commandment [by marrying their sisters-in-law] and for the sake of peace and unity ... we decree for the inhabitants of the land of Israel and those who will come and settle here from this time forward, that they completely forbid themselves the practice of levirate marriage, and are obliged to perform halitzah, and that they are obligated to maintain their sisters-in-law as the court orders until they release them through halitzah." See Ayelet Segel, "Prenuptial Agreements in Jewish Law," doctoral dissertation (Hebrew) (Bar Ilan University, 2010), 240–241.

[12]M. Yevamot 6:1.

[13]T. Yevamot 7:2. Maimonides, *Mishneh Torah*, Laws of Levirate and Halitzah, 2:3; *Shulhan Arukh, Even Ha'ezer*, 166:7.

[14]M. Yevamot 13:13.

[15]M. Yevamot 13:12.

[16]B. Yevamot 106a; P. Yevamot 12:6 (13a).

[17]M. Yevamot 4:10.

[18]M. Yevamot 2:8; 4:5.

[19]A man must grant *halitzah* willingly; if he is unwilling, the *halitzah* is invalid. However, if a Jewish court compels him until he says, "I am willing," the *halitzah* is valid. Compulsion by non-Jews renders *halitzah* invalid, unless the non-Jews are explicitly compelling him to "do what the Jewish court told you to do" (b. Yevamot 106a).

[20]A lengthy discussion of compulsion to grant *halitzah* can be found in *Encyclopedia Talmudit*, vol. 15 (Jerusalem: Talmudic Encyclopedia Publishing, 1979), 663–679. The use of excommunication as a form of compulsion is mentioned in Howard Tzvi Adelman, "Jewish Women and Family Life, Inside and Outside the Ghetto" in *The Jews of Early Modern Venice*, ed. Robert C. Davis and Benjamin Ravid (Baltimore: Johns Hopkins University Pres, 2001), 158–161. Adelman discusses an early seventeenth-century case in which a man was pressured with "a mild form of excommunication" to grant his sister-in-law *halitzah*, despite his desire to marry her.

[21]Maimonides, *Mishneh Torah*, Laws of Levirate and Halitzah 1:2.

[22]Ibid., 2:10.

[23]If the brother-in-law chose to submit to *halitzah*, the widow would receive her marriage settlement.

[24]Maimonides, *Mishneh Torah*, Laws of Levirate and Halitzah 2:16.

[25]Ibid., 2:6.

[26]Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (Westport, CT: Greenwood Press, 1975), 27.

[27]Finkelstein, *Self-Government*, 57. The reluctance to use force reflects the law that a man must grant *halitzah*, like divorce, willingly; coercion is therefore problematic if ir leaves the impression that the man is acting against his will. See *Halitzah, b'kefiah* in *Encyclopedia Talmudit*, 15: 663–665.

[28]Finkelstein, *Self-Government*, 57–58.

[29]Finkelsrein, *Self-Government*, 61. There is no indicarion whether or how the *taqqanah* was to be enfotced.

[30]Finkelstein, *Self-Government*, 74–75.

[31]Joseph Caro, *Shulhan Arukh, Even ha-Ezer*, 163:2.

[32]Isserles to *Shulhan Arukh, Even ha-Ezer*, 165:4. *Even ha-Ezer* 165:22 states that the widow never receives mote than her martiage-setrlement; if the estate is more than twice that sum, she receives the settlement and her brother-in-law teceives the remainder.

[33]According to rabbinic law, a widow's marriage settlement is a lien on her husband's estate and, like all creditors, she is entitled to be paid before his heits divide the estate. This being the case, the brother's rights as the deceased's heir should be accorded less consideration than the widow's claim. An equal division of property may upset that rule. Moreover, as noted in the previous footnote, the widow may never claim more than the amount stipulated in the marriage contract, even if the estate is more than twice that amount. The "division" of the property between the widow and her brother-in-law at best gives her precisely what she is owed and at worst forces het to accept less than that sum in return for *halitzah*.

[34]This decree was certainly not created to penalize widows subject to the levirate obligation. It represents a compromise intended to ensure a woman's freedom to temarry after her childless husband's death. It is also an acknowledgement of the limits of rabbinic or communal power over a man who refuses to grant his sister-in-law *halitzah*. It preserved the letter of the law—*halitzah* was performed and the widow freed to remarry—but did so in a way that even some rabbis acknowledged was less than ideal.

[35]Maimonides, *Mishneh Torah*, Laws of Marriage 18:15–16.

[36]M. Yevamot 4:10.

[37]Yehiel Michael Epstein, *Arukh HaShulhan, Even ha-Ezer*, 160:8.

[38]This was the view of some of the geonim and of postgeonic Sephardic and Provencal rabbis, including Alfasi, Nachmanides, Maimonides, and the Rashba. In the case of a rebellious woman (*moredet*), most of these rabbis did not hold that the levir should be compelled to grant *halitzah*. See Segel, "Prenuptial Agreements," 185–188.

[39]Segel offers a thorough review of issues surrounding *halitzah* in the Middle Ages in her dissertation, "Prenuptial Agreements," 186–201.

[40]Ibid., 201–203.

[41]Over time, the *shtar halitzah* became a communal practice, insofar as entire communities adopted it as a precondition of marriage.

[42]Segel, "Prenuptial Agreements," 201.

[43]For a selection of responsa discussing the use of the *shtar halitzah* in this period, see Segel, "Prenuptial Agreements," 201–202, n. 138.

[44]A second edition of *Nahalat Shivah* was published in Frankfort in 1681 by the author. It was reissued in Fuerth in 1692 by his son. The number of editions published in central and eastern Europe in the eighteenth and nineteenth centuries indicate the book's wide circulation among Ashkenazi Jews. For the publication history of *Nahalat Shivah*, see *Encyclopedia Judaica*, 17, 2nd ed., ed. Michael Berenbaum and Fred Skolnick (Detroit: Macmillan Reference USA, 2007), 770.

[45]Segel, "Prenuptial Agreements," 206; 209.

[46]Ibid., 206–207.

[47]Ibid., 210–211.

[48]Ibid., 211.

[49]In fact this has not been the case; rabbinic courts are still reluctant to compel *halitzah*, and exrortion has again become a factor in securing *halitzah* for some women. See Segel, "Prenuptial Agreements," 241; Reuben Ahroni, "The Levirate and Human Rights" in *Jewish Law and Current Legal Problems*, ed. Nahum Rakover (Jerusalem: Library of Jewish Law, 1984), 73.

[50]For a somewhat different Dutch text of the *shtar halitzah*, see the article on "halizah" in the *Jewish Encyclopedia* 6, 173.

[51]For a discussion of different Hebrew names for the United States, see http://www.balashon.com/2010/04/artzot-habrit.html (accessed 3 August 2010).

[52]Philip Cohen to Hannah Adams (January 1811) in Hannah Adams, *The History of the Jews from the Destruction of Jerusalem to the Present Time* (London 1840, orig. ed., 1812), 465. On this work, see Gary D. Schmidt, *A Passionate Usefulness: The Life and Literary Labors of Hannah Adams* (Charlottesville, VA: University of Virginia Press, 2004), 235, 237–253; and Dan Judson, "The Mercies of a Benign Judge: A Letter from Gershom Seixas to Hannah Adams, 1810," *American Jewish Archives Journal* 56 (2004): 179–189.

[53]For a list of all known Jews who lived in Charleston to 1861, see James William Hagy, *This Happy Land: The Jews of Colonial and Antebellum Charleston* (Tuscaloosa, AL: University of Alabama Press, 1993), 277–413; see also Joseph R. Rosenbloom, *A Biographical Dictionary of Early American Jews: Colonial Times Through 1800* (Lexington, KY: University of Kentucky Press, 1960).

[54]Theodore Rosengarten and Dale Rosengarten, *A Portion of the People* (Columbia, SC: University of South Carolina Press, 2002), 102, claim that these four were born in England. Judith E. Endelman, "The Ancestors of Adeline Moses Loeb," in *An American Experience: Adeline Moses Loeb (1876–1953) and Her Early American Jewish Ancestors* (New York: The Sons of the Revolution in the State of New York, 2009), 202, 225n.4, argues that they were more likely all American born, but see p.219. All four were early Jewish residenrs of Cincinnati.

[55]See the many references to Moses in Hagy, *This Happy Land*, and Endelman, "The Ancestors," esp. 199–213.

[56]See "Biographical Notes on Rebecca Phillips Moses," http://www.serve.com/rim/biograph.htm (accessed 3 August 2010).

[57]Endelman, "The Ancestors," 193.

[58]Jacob R. Marcus, *United States Jewry, 1776–1985* (Detroit: Wayne State University Press, 1989), 258.

[59]Edwin Wolf II and Maxwell Whiteman, *The History of the Jews of Philadelphia from Colonial Times to the Age of Jackson* (Philadelphia: Jewish Publication Society, 1956), 127; Saul J. Rubin, *Third to None: The Saga of Savannah Jewry* (Savannah, GA: Mickve Israel, 1983), 53.

[60]Leonard H. Devine, "The Religious and Social Life of the Sephardic Jews in the United States, 1654–1840," master's thesis (HUC-JIR, 1948), 99–100; Rubin, *Third to None*, 53; and Hagy, *This Happy Land*, 177, recount different parts of this story with significant disagreements concerning details. DeLieben, p. 18 described as a man knowledgeable in Jewish law, was also a member of the *bet din* (Jewish religious court) in an unusual 1788 divorce case in Charleston; see James W. Hagy, "Her 'Scandalous Behavior': A Jewish Divorce in Charleston, South Carolina, 1788," *American Jewish Archives* 41 (Fall/Winter 1989): 185–198.

[61]Hyman B. Grinstein, *The Rise of the Jewish Community of New York 1654–1860* (Philadelphia: Jewish Publication Society, 1945), 292–293, 513.

[62]*Publications of the American Jewish Historical Society* 27 (1920): 174.

[63]Sefton D. Temkin, *The New World of Reform: Containing the Proceedings of the Conference of Reform Rabbis Held in Philadelphia in November 1869* (London: Leo Baeck College, 1971), 70–71; Gunther Plaut, *The Rise of Reform Judaism* (New York: World Union for Progressive Judaism, 1963), 219–220.

[64]Endelman, "The Ancestors," 220–224.

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