ON MATRIMONIAL PROPERTY IN JEWISH AND GERMANIC LAWS

by

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Community of Goods

In Jewish as well as in Germanic law the groom used to give to the bride a certain amount during the marriage ceremony. This gift, included in the matrimonial contract, became a symbol of the wife's lawful status and if omitted, the wife was considered a mere concubine 1). The Jewish nuptials had changed already during the second commonwealth from a cash-transaction to an insurance against widowhood and divorce. After the payment being put off till the end of the marriage, the amount became easily standardized. Besides this obligation the matrimonial contract included the undertaking to restore the dowry. Sometimes another sum was voluntarily promised by the bridegroom as an increase to the standard marriage portion, and all these obligations were guaranteed by a general charge on the husband's property 2).

The Germanic dower, too, was originally a gift of the husband to the wife at the nuptials. While sums of money or movables were mentioned in the earlier sources, this gift later on consisted quite often of Realty. In the course of time a mere promise was given instead of the actual delivery of the dower. According to Lombard law this portion generally amounted to a quarter of all the husband's possessions, Frankish-Salic law provided for a third and in a Visigothic deed even half of the property, both present and future, was settled on the bride 3).

Correspondingly various rabbinical sources beginning with the ninth century inform us of gifts made by bridegrooms to their brides. Up to the tenth century these gifts were included in the marriage contract but later they were written in deeds of "special gift". Besides the obligation to pay in cases of divorce and widowhood, the husband thus undertook to set aside for the immediate use of his wife a sum of money, movables or Realty. This separate property over which the husband had no right of usufruct could be disposed of by the wife both inter vivos and by will. She could, moreover, keep it at the end of the marriage without bringing an action or rendering accounts, as required with regard to marriage portions and dowries 4).

Instead of special goods, endowments of a later stage consisted of a certain share of the husband's possessions. Rabbi Solomon ben Isaac (Raši) of Troyes, the spiritual head of eleventh century's Jewry, describes the following settlements:

A, being owner of movables and realty, married B and gave her in the marriage contract half of his realty, keeping the rest for himself ... 5). A and B gave C, their son, and D, his wife, jointly as a nuptial gift a vineyard belonging to the former in town and the rent due to them from a village ... 6).

Jewish couples, thus, fixed their property relations quite similar to those of their Christian neighbours. It is, therefore, worthwhile to compare the development in the law of husband and wife of both communities respectively.

The Germanic dower gave the wife a saying in the husband's property, preventing him from any disposition without her consent. According to Lombard law this consent had to be established in the presence of two relatives or of the local magistrate 7). French law made similar arrangements to verify the free will of the wife 8) and the same intention gave rise to the English "right of dower" 9).

Hence the Frankish practice of dispositions "communi manu" arose, showing the husband acting with assistance of his wife. This form was used not only with transfers of realty but also in cases of acquisition. German sources of the eleventh and twelfth centuries from Cologne and Franconia usually name both spouses as purchasers of immovables. In the land registry of Cologne not only acquisitions were registered jointly but even the property brought into marriage by either spouse and estates being inherited by them during marriage 10).

Similar ideas were known in Jewish legal practice. Since the first century B.C.E. a clause had been inserted in the marriage contract making all the husband's property a security for the payment of the amount mentioned therein. This lien was effective against any immovable in his possession, both at the time of the nuptials and during the future, giving the woman the right to trace the property