

1791, 9 Abril, Londres. Resposta da Beth Din da congregação de Londres a uma questão colocada por Gershom Mendes Seixas.

(in "*Items relating to Congregation Shearith Israel, New York*", Publications of the American Jewish Historical Society, 27, 1920, pp. 46-50.)

To the Rev^d. M^r Gershom Mendes Seixas, Hazan and Neeman of the K K Shearith Israel New York

Sir

Since the time that it pleased Almighty God to deprive us of our much respected and learned Minister M^r Moses Cohen D'Azevedo, a loss that we shall regret so long as we exist, the post of Haham of this Congregation has been vacant and we are appointed Betdin to supply the place, consequently we received, with particular pleasure, your kind letter of the 26 January last addressed to our Ab Bet din which was delivered to us by our worthy & respected Friend M^r Hananel Mendes da Costa, in first place we acknowledge ourselves much flattered by the Compliment your congregation pays us in referring to us for the decision of the matter in question, and having maturely deliberated on the same we proceed to give you our unanimous determination.

Your question is that the *cemetery* of your city being situated on a Hill, and the proprietors of the circum-adjacent ground continuing to improve their lots, by levelling them as much as possible with the Street, you are apprehensive that your neighbours may compel you to reduce the height of said Hill even with the public Street thro' which the corpse and bones in said *cemetery* would in a most disrespectful manner be scattered, and exposed, if to obviate such an accident you are permitted to remove the corpse and bones in said *cemetery* and reduce it to a levell and reinter them in a more secure place (as you have in some degree done with such corpse as appeared in sight at the time that you levelled that part of the *cemetery* which had not as yet been in use) and which you seem to doubt, on account of this circumstance not being mentioned among the three treated on in *Yoreh Deah* chapt. 364. You likewise doubt whether you must wait until you are compelled to make ye removal or if you may take your steps in time. We are to pay a proper veneration and respect to the Bones of our Ancestors, and this we show by considering them as if living, and as much as we suppose would be gratifying to them in their existence, is to be done for them after their demise, for which reason when it happens that corpse are buried in places distant from where their

relations lay we are permitted to remove them from their first Sepulchre however Honorable the place may be and inter them near their relations altho' the situation be not so respectable as appears in the Talmud Jerusalmi and repeated in *Yoreh Deah 364 § 1* where the said reason is stated in the following words viz¹ “*that it has been pledged to a man that he be laid next to his fathers*” by which it appears that it is not only on account of the three cases mentioned in *Yoreh Deah* that it is permitted to remove the corpse from one place to another, those being only stated as general cases lain down by way example as a guide for many others that might occur, be it to prevent disrespect to the corpse, be it to comply with the deceased's desire of lying near his relations, or to convey him to the Holy Land to be buried as appears in *Yoreh Deah 361* or for public convenience to not interrupt the Highway as appears by our *Sanhedrin 4, 47* and repeated in *Yoreh Deah 361 §2* under the denomination of *a grave that injures the public*. If therefore for the aforesaid and other reasons we are permitted to remove the corpse, Shall it not be done under the apprehension of the inconvenience you seem to dread? If we are to remove them for to place them near relations, is not the case you relate the very safety of the corpse being at stake a much greater for so doing? We do not only are *unanimous* in our opinion of declaring the *licitation* but we *strongly recommend* the removal as early as possible saying *that zeal must anticipate the command*, and if you observe the words of *the notes of Asheri to Talmud Moed Katan* repeated *Yoreh Deah 364* you will be convinced that we need not wait till the mischief happens for it says “*if there be suspicion*” meaning that if there is reason to dread that an inconveniency may arise it is to be considered as it had really taken place.

Whenever it may be the case of levelling the said *cemetery* you must be careful that at the time of removing the corpse or bones all such relations as were to take *mourning* at the time of the burial, do again take mourning, but only the day on which the corpse or bones are taken out of the graves, and that they make rending of the garment according to the degree of relationship with the deceased, that is to say Children for Parents all the Cloaths, any other relationship, only one Garment, and that they observe every circumstance which persons in *mourning* must keep – the day being over the *mourning* ceases the ensuing evening; notwithstanding the corpse may not be buried, they may then sew up the rend in the Cloaths, but it is to be observed that Children who take *mourning* for their Parents must do it in an imperfect manner. We recommend particular care that the respective bones of the deceased be kept separate, and not intermixed one with the other, and that every corpse be buried in a separate grave. The

Tomb Stones, Monuments, coffins, and every kind of building inside as well as outside of the Sepulchres, may only be made use of to replace them over such corpse from which they were removed and to no other purpose whatever being *prohibited from being used* the Earth which covers the Sepulchre or the Corpse notwithstanding that in *Yoreh Deah 385* we find some opinion that it is not to be made use of being *prohibited from being used* as separated from the Terra Firme, but the major part of *the later authorities* teach us that we are to consider it as a part of the Terra firma which is never prohibited.

Having to the best of our abilities stated to you why we not only permit the immediate removal of the corpse but also strongly recommend it we conclude by assuring you that whenever your congregation may think our limited Talents serviceable we shall be happy in receiving their references. We offer our Prayers to Heaven that he may pour down his blessing on your Kehila and every individual thereto belonging, that the ardent wish of your hearts may be fulfilled to the utmost extent, may you as well as all our Brethren the House of Israel enjoy the approaching *Passover* very happy, and may the Almighty through his infinite mercies approximate our restoration and the time in which the words of Ezekiel the prophet may be said to the dead of the House Israel *Behold I will open your graves etc.*, and also *And I shall set my spirit in you and you shall live etc.*

We are very respectfully

Sir

Your most obed & Humble Servants

Aaron Saa

David Henriques Juliao

Hasday Almosnino

Betdin of the Kaal Kados Saar a Samayim London

London 2 Nisan 5551

6 April, 1791