A New Ben Asher Manuscript

By: MOSHE HABERMAN

In 2005 Ḥakirah (vol. 2) published a book review "Jerusalem Crown" by Malky Mendel, which dealt with the latest scholarship on the Aleppo Codex. The article below serves as an update to that essay with the announcement of a newly discovered manuscript by Aaron Ben Asher that apparently predates the Aleppo Codex. It is an abbreviated translation of an article that appeared in the Hebrew language Torah journal Chitzei Giborim, which publishes articles by leading Rabbonim, and early manuscripts that have not been previously known. Ed.

Aaron Ben Asher has the distinct honor of being the only authority that Rambam cites by name in the *Mishneh Torah* as a source for a halacha.

ולפי שראיתי שיבוש גדול בכל הספרים שראיתי בדברים אלו. וכן בעלי המסורת שכותבין ומחברין להודיע הפתוחות והסתומות נחלקים בדברים אלו במחלוקת הספרים שסומכין עליהם. ראיתי לכתוב הנה כל פרשיות התורה הסתומות והפתוחות וצורת השירות כדי לתקן עליהם כל הספרים ולהגיה מהם. וספר שסמכנו עליו בדברים אלו הוא הספר הידוע במצרים שהוא כולל ארבעה ועשרים ספרים שהיה בירושלים מכמה שנים להגיה ממנו הספרים ועליו היו הכל סומכין לפי שהגיהו **בן אשר** ודקדק בו שנים הרבה והגיהו פעמים רבות כמו שהעתיקו ועליו סמכתי בספר התורה שכתבתי כהלכתו:

And since I saw that there are many mistakes in all the *sefarim* with regards to these matters. Also the Ba'aley Mesorah who write to publicize the *parshiyos* that are open and those that are closed, have differences due to the difference in the source documents that they rely on, I found it fitting to write here all the *parshiyos* in the Torah that are closed and open, as well as the forms of the Songs (of *HaYam* and *Ha'azinu*) in order to fix all the *sefarim* and to correct them. The *sefer* that I rely on in these matters is the *sefer* well known in Egypt that encompasses all 24 books (of the canon), that was previously in Jerusalem for some period of time, to correct the other *sefarim*, because all rely on its accuracy as **Ben Asher** corrected and annotated it, and was very exact with it and spent many years correcting it, as it

---

Moshe Haberman, a businessman, lives in Los Angeles. He studied at yeshivot in Brisk and Lakewood, and is the founder and publisher of the Torah journal *Chitzei Giborim*.

has been copied, and I relied upon it to write my own *Sefer Torah* according to the law.

Background

The Ben Asher family was a family that lived in Tiberius, and became famous in the 9th and 10th centuries as Masoretics, they researched Mesorah and clarified the correct text, plene and defective readings,[1] open *parshiyos* and closed *parshiyos*,[2] whether a word should be written as one word or two, cantillation and correct methods of writing a *Sefer Torah,* i.e., how many lines the שירות should have.

The Tiberius Mesorah was an amalgamation of the two Mesorahs that existed until that point, which developed towards the end of the Second Temple period. There was a Mesorah known as the Babylonian Mesorah and another known as the Eretz Yisroel Mesorah. This Tiberius Mesorah was worked on for generations, most notably by the Ben Naphtali and Ben Asher families, and Rambam points out this was no mere concordance of the different authoritative texts, it was a carefully researched and painstaking process of obtaining the correct *textus receptus*. Rambam states that his own *Sefer Torah* was written according to this tradition.

The Aleppo Codex

The Aleppo Codex has been positively identified as the model Codex that Rambam was referring to in his Halacha.

In the colophon of the Aleppo codex it states, "this codex was written by the scribe Shlomo Ben Boya'a and vocalized and transmitted by Aaron Ben Asher in the year 929 CE." The Codex was purchased by Yisrael Ben Simcha of Basra, and then donated to the Karaite Synagogue in Jerusalem in approximately 1064 CE. The Codex was apparently captured by the Crusaders, and then ransomed by the Cairo community in 1099, when it came to Cairo. This chronology matches exactly with Rambam.

Rambam, הלכות ספר תורה פרק ח הלכה ג', states that mistakes in open and closed *parshiyos* make the *Sefer Torah passul.* The difference between open and closed *parshiyos* are that an open *parsha* has a space at the end of the previous line and begins with a new line, while a closed *parshiya* always starts in the middle of a line with a space before it. This was not obvious

---

[1]   מלא וחסר.

[2]   פתוחות וסתומות.

to many, as scholars such as W. Wickes[3] and S. Baer[4] declared the Aleppo Codex not an original Ben Asher MS and dated it much later. Their reasoning was that the letters *Samach* and *Peh* were not present to designate closed and open פרשיות, another example of academics quick to judge without real knowledge of ancient Jewish manuscripts. As described earlier the designation of open and closed was made not with a sign, but with a space and a beginning of a new line. In the 19th century the consensus among scholars was that the Aleppo codex was not a Ben Asher. Kahle[5] was a lone voice that it was.

In the defense of these scholars, no one actually had in their possession the Codex or access to photographs of it The Aleppo community guarded it jealously and no one was allowed to photograph it. For centuries the codex was complete, but after the State of Israel was declared in 1947, protesters ransacked the Shul where it was kept and the Codex went missing.

The president of Israel, Ben Zvi, authenticated a recovered MS as the Aleppo Codex, primarily on the basis of a photograph that MD Cassuto, a scholar that did have access to the Codex in the 1940s, took of one page of the Codex. However the formerly complete canon of 24 books was missing large parts, including 96% of the חמישה חומש תורה.[6]

While the Ben Asher characteristics are easy to see, the more difficult question is whether this was the actual MS that Rambam used to write his own *Sefer Torah* as described in Halacha ד'. It should be easy, just by looking at the various rulings of Rambam and comparing them to what is on the Codex; however, as mentioned, the extant material has only 4% of the Torah, and Rambam did not rule on any of the *Nevi'im* or *Kesuvim*.

Cassuto, one of only a few scholars to actually study the Codex in depth when it was still complete, was of the opinion that for "technical reasons"[7] he did not believe that the Codex was the one Rambam used.

---

3   W. Wickes, "A Treatise on the Accentuation of the Twenty-One So-Called Prose Books of the Old Testament," Oxford, 1887 pp. vii f.

4   Baer, Seligmann, "Introduction to Dikdukei HaTamim" p. Xiii.

5   Kahle, Paul, "The Hebrew Ben Asher Bible Manuscripts," Vetus Testimentum Vol. 1 FASC. 3 (July 1951) pp. 161–167.

6   Ben Zvi, Izhak, "The Codex of Ben Asher," *Sinai* 43 (1957-58) pp. 5–13.

7   "ואולם מרשה אני לעצמי להטיל בזה ספק, מפני טעמים טכניים שאין כאן (2.1.48) Ha'aretz המקום".

While it is very difficult to believe that Cassuto's proof came from the 4% of the material that is still available,[8] a number of scholars have proffered theories. Moshe Goshen-Gottstein[9] suggests that the ruling of the רמב"ם, and ruled on by the *Shulchan Aruch*, is that *Shiras Ha'azinu* should have 70 lines. The Aleppo codex has only 67. This would appear to be a solid proof to the contrary of the Aleppo legend. However as Gottstein demonstrates convincingly, the MSS of the Mishneh Torah from North Africa and Spain actually state *67 lines*. The manuscript of the Mishneh Torah that is considered to be most authentic, the MS Ox. Hunt,[10] as it actually has the signature of Rambam himself, also has it at 67 lines. This MS was also in Aleppo, so it would lend credence to the theory that the community was able to match them up and be in a position to validate the facts that would attest to the Codex being the source for Rambam. All of the extant MSS that originated in Spain and Yemen have the 67-line formula.[11] The MS that the printers in Constantinople had originated in Ashkenaz and the *Shulchan Aruch* relied on that edition for his rulings.

Furthermore the idiosyncratic nature of the 67-line formula actually is extremely important in validating the position that the רמב"ם did use this Codex as his basis, as the accepted number of lines in most MS of the era was in fact 70 lines. To this question, R' Menachem Meiri[12] actually queried R' Todros Halevi about the 67-line ruling in Rambam as it goes against a Mishna in מסכת סופרים that says 70 lines, and he replied that he spoke with Ibn Tibbon, the translator of the Arabic MS that was language the רמב"ם actually wrote in, and he confirmed the 67-line ruling was not a mistake. This is a strong confirmation that the Codex **was** the source material of Rambam.

More recently Cassuto's notes[13] became available and we have more clarity into exactly what Cassuto found. He does mention the 67 lines as speculated earlier and he also brings a number of differences between what was found in the Codex and what is listed in Rambam.

---

8   As Rambam did not rule on נביאים וכתובים it is not possible to match them.

9   Moshe Goshen-Gottstein, "The Authenticity of the Aleppo Codex," *Sinai* 43 (1957-58) pp. 18–58.

10   Cat. Neubauer 577.

11   Goshen-Gottstein, Ibid.

12   R' Menachem Meiri "קרית ספר" II 2 ed. Hirschler, Jerusalem 1946 p. 46 f.,cf. n. 106,109.

13   Yosef Ofer, "כתר ארם צובה לאור רשימותיו של מ ד קאסוטו", ספונות ספר ד י"ט מכון בן צבי תשמ'ט, p. 279.

Another independent proof that agrees with the above and therefore has some serious implications[14] is that of R' Shalom Shachne Yellin (1790–1874), a *talmid chochom* appointed by the Rabbonim of Jerusalem, including R' Shmuel Salant, to study the Codex. His son-in-law, R' Yehoshua Kimchi, actually went and took detailed notes from the Codex. This annotated Bible was discovered in 1987, after having been lost for over 100 years. In this *sefer* is the same testimony that the רמב"ם apparently has differences with regard to פתוחות and סתומות in 3 places, where he disagrees with the Codex. One can be explained by the space left open in the codex, which was smaller than it was supposed to be, so it could simply be a copyist mistake, however the other 2 appear to be a mistake on Rambam's part. They are in *Parshas* [15] כי תבוא, "ארור שכב עם אשת אביו" Rambam does not mention a *stumah* before it, yet the Codex has a *stumah* before it,[16] and also where it says "פסל לך"[17] רמב"ם says it is open, and the Codex has it as a closed *parsha.*

The reason we say the Codex is correct is the following. Firstly based on all the evidence the Codex **is** the basis for the rulings of the רמב"ם. Not only due to the testimony of the Colophon, which matches the history that is provided in the ruling of Rambam exactly, but also due to the 67-line *Shiras Ha'azinu*, as well as the almost perfect match of the Codex to the רמב"ם's rulings. No other known MS comes even close.

Furthermore, while we have discussed the Codex as being the most authoritative source, we must not forget that we do have hundreds of fragments and copies of other texts that are in the Ben Asher tradition that match the Codex closely. In no case does the Codex not have many "Ben Asher style" manuscripts that support its rulings. In other words, while copyist errors may have crept into a particular manuscript, we know for certain that it is a mistake, as the many other "Ben Asher style" manuscripts would all agree with each other and not with that particular mistake.

When applied to the rulings of Rambam, these two situations mentioned are supported by many other "Ben Asher style" manuscripts and therefore would lead to the conclusion that Rambam missed the Ben Asher ruling on these particular cases.

In addition, especially in the case of "ארור האיש", every other of the curses HAS a *parsha stumah* in front of it. Why would this one be different?

---

[14]   D. Yitshaqi and Y. Y. Tshingel, "Ben Asher and the Bible of Rabbi Shalom Shakhna Yellin (2)," *Tsefunot* 10 (Tevet 1991), pp. 68–73 (Hebrew).

[15]   דברים פרק כ"ז פסוק כ.

[16]   See Fig. 1 "Bible of R' Shalom Shachne Yellin."

[17]   שמות כ"ב פסוק טו.

In the Codex it is not different and it does have a *parsha stumah* in front of it. In addition, every other time in the Torah that the words "וידבר ד' אל משה לאמר" appear, there is a *parsha psucha* before it.

This has the troubling implication that the רמב"ם's *Sefer Torah* was *passul*! And possibly the Aleppo codex as well, based on the open Parsha that appears closed in the Codex. While the Codex is not a kosher *Sefer Torah* as it is in a Codex form, and not a scroll, this has the potential implication that a *Sefer Torah* written exactly as the Codex may be *passul*.

R' Dovid Yitzchaki suggests that Rambam did not actually have the Codex in front of him as he wrote Mishneh Torah, and he relied on a list that was copied from the Codex that had 2 flaws. This is the meaning of the words of the רמב"ם that appear extra in his Halacha, "as it was copied." Those words refer to the list that was copied from the Codex, and it was this list that Rambam ruled from.

As additional proof to this conjecture is the verse in שירת האזינו "גם גם בתולה".[18] The Codex starts the line from "גם בתולה", leaving "בחור" on the previous line. Rambam, when he mentions which words start the lines of *Shiras Ha'azinu,* says only "גם". If he had the Codex in front of him he would certainly have clarified that the beginning of the line starts with the words "גם בתולה" as anyone would assume when seeing the word "גם" that it was referring to **"גם בחור גם בתולה"** as it is one continuous phrase.[19]

With regard to the question of the kashrus of Rambam's *Sefer Torah,* we can merely conjecture that the *sofrim* relied on proofs that checked against the manuscripts that were available, and not on a particular list. The Halacha is that a *sofer* must copy a *Sefer Torah* with a *Sefer Torah* in front of him, and not by heart, so it would make sense that he would copy an actual *Sefer Torah*, and not from a list, as is printed in משנה תורה.

However Rambam does mention explicitly that the *Sefer Torah* that he wrote was written by him, and not through a *sofer*, thereby making it difficult to sustain this argument.[20]

Current state of the Ben Asher MSS

There are 4 recognized Ben Asher Manuscripts that are the basis for the *textus receptus:* the British Codex, Aleppo Codex, Leningrad Codex known to scholars as "Lammed" and the Cairo Codex.

---

[18] דברים פרק לב' פסוק כה'.
[19] See Fig. 2.
[20] רמב"ם הל' ספר תורה פרק ט' הלכה י' "ספר תורה שכתבתי אני".

The Cairo codex has been identified as written by Moshe Ben Asher, Aaron Ben Asher's father. One can see that the process of refining and having חילופין occurring even in MS is identified as from Aaron Ben Asher from earlier in his career and later in his career and certainly from the MS of his father. Only recently have these subtle differences been noted, and studied. Previously there were many that mistakenly identified the Ben Asher the רמב"ם mentions with the Moshe Ben Asher; see מגדל עוז ad loc.

As the רמב"ם selected Aaron Ben Asher over others in the Tiberius school, such as Ben Naftali, as the *Poseik Acharon* in these matters, it is important to attempt to obtain the pure version of his efforts. This is complicated as apparently there was a process of refinement that the רמב"ם attests to, so even a legitimate Aaron Ben Asher text from his early years is not the one that can be completely relied upon.

R' Mordechai Breuer[21] undertook to clarify and ascertain according to all the newly available resources the most authoritative text. However in some places, 30 in all, he had to make educated guesses as to the correct punctuation, plene or defective, cantillation etc., as the extant MS had text that was missing in those particular places, as there was no direct proof from the extant MSS, or they disagreed with each other in these places.

Introducing Lammed Aleph

In *Chitzei Giborim* 8, R' Yitzchok Wagner[22] introduces a newly identified MS as an authentic Aaron Ben Asher MS. This is an important and exciting discovery, as this MS appears to be the source document for the Aleppo Codex. It also contains many of the parts that are missing in the other extant MSS.

He proposes to call this MS "Lammed Aleph," as it is in the same "Firkovitch collection" in St Petersburg as the Leningrad Codex.

The Aleppo Codex contains only 95% of the comments[23] that are written in the Lammed Aleph MS, which means that it was the document that Ben Asher refined and worked on more so than the Aleppo Codex. It has been conjectured that due to the exhaustive nature of these small changes, these were created by Ben Asher to work from as a master proof.

Furthermore, in a note in the Aleppo codex, Ben Asher mentions that a particular word is written plene three times, but in the actual place of

---

[21] הקרובים תורה נביאים וכתובים: מוגהים על פי הנוסח והמסורה של כתר ארם צובה וכתבי יד לו, ירושלים תשמ"ט.

[22] Yitzchok Wagner, "כתב יד של נביאים וכתובים שהוגה ונמסר על ידי בן אשר" pp. 541–556, חצי גברים חלק ט' ניסן תשע"ו.

[23] Wagner, ibid.

that text it was written defective. In other words, it appears to be a mistake in the Aleppo Codex that was not identified by Ben Asher. The Codex was not actually written by Ben Asher, it was written by another. Ben Asher made notes on the side of the text and corrected the text so if there would be a note that in another location the spelling should be plene, and at that location it is written defective, that means that Ben Asher failed to correct the mistake. However in Lammed Aleph that mistake is not made, which would lead to the conclusion that the Aleppo Codex was copied from Lammed Aleph, as mistakes don't go backwards, only forwards.

Lammed Aleph also appears to be more accurate than the other MSS in the Ben Asher oeuvre, as there is not a single mistake in מלֹאות וחסרות in the entire MS,[24] whereas the other extant MSS have between 40 and 100 mistakes. What is interesting about Lammed Aleph is that the Sofer was not careful in *psuchos* and *stumos*, and Ben Asher's notes of the Mesorah on the side did not correct the *psuchos* and the *stumos*, which means this could not have been what Rambam relied upon, and cannot shed any light on the correctness of the *psuchos* and *stumos*.

The Karaite controversy

It is quite interesting that at every turn in this saga we meet up with Karaites. The Aleppo codex was commissioned by a Karaite. It was originally kept in a Karaite synagogue in Jerusalem, then in another Karaite synagogue in Cairo, where Rambam saw it. Interestingly the collection in St. Petersburg, where Lammed and Lammed Aleph are in the Firkovitch collection, was purchased from the Karaite Scholar and fraud Abraham Firkovitch in 1862. Firkovitch was the first to obtain documents from the Cairo Geniza 25 years before Solomon Schechter's more famous visit. Abraham Harkavy accused Firkovitch of fraud in his falsification and forging of dates on headstones in old Karaite cemeteries in Crimea, which made the Karaite community appear older than it really was. Firkovitch's purpose in doing this was to claim that the Karaites predated the birth of Jesus and therefore Karaites should not be restricted in the same way as Jews. As audacious as this claim was, Firkovitch was actually successful in his endeavors and convinced the Crimean government to lift many restrictions on Karaites that applied to Jews. Extensive research on his MSS

---

24   Wagner, ibid p. 645.

held in two Firkovitch collections in the St. Petersburg library shows that they were not tampered with.[25] [26]

More important, there has been a raging controversy as to the Karaite nature of Ben Asher. This is quite extraordinary as the Karaites, with their complete rejection of the Oral Law, fall under the category of Minim. As the well-known dictum goes, if *Sefer Torah* is written by an apostate, it is a positive commandment to burn it. Not only is the Aleppo Codex *passul*, it should be burned!

On its face it would appear to be farfetched. רמב"ם would not have named a figure as the authoritative source if he was not completely confident of his reliability. However these accusations are not so easy to dismiss.

Some scholars[27] point to the use of the honorific "HaMelamed" that was used by contemporaries of Aaron Ben Asher to describe him, which was in use among the Karaites but not among the Rabbanites, but this can be responded to by explaining that he really was a Melamed of children, where the term was in use when describing that specific activity. However no less an authority than R' Saadya Gaon, the first to expose and fight against the powerful Karaite community in Cairo, as identified by Klar,[28] published a polemic "Elrad Aleeh Ben Asher," translated as "A Polemic On Ben Asher," and in this he responds to the Karaite practices and philosophy.

It is not possible, as some have argued, that Rambam was unaware of this. Firstly, R' Saadya was active in Cairo, and his publications were published in Cairo. Rambam lived in Cairo 200 years after, so it is beyond the realm of possibility that Rambam based so important a ruling on Ben Asher without knowing this information—especially in light of Rambam's well-known opposition to the Karaites and his activity in removing their *minhagim* from the rabbanite community.

Others[29] use a hyper reading of Rambam's words in halacha 4, where he states that he "relied upon the work of Ben Asher in that he annotated the text," by focusing on the annotation aspect and not the writing aspect. It is possible that Rambam was anticipating this line of argument, that Ben Asher did not write anything, so even if he was a Karaite, nothing

---

[25] Лебедев В. В. К источниковедческой оценке некоторых рукописей собрания А. С. Фирковича.// Палестинский сборник.—Л., 1987. Вып. 29 (история и филология).—С. 61.)

[26] Kahle, Ibid.

[27] Ahron Dotan, "האמנם היה בן אשר קראי" *Sinai* 41 pp. 281–352.

[28] Binyomin Klar, תרביץ, כרך ניסן- תמוז תש"ג pp. 156–173, Mandel Institute for Jewish Studies.

[29] Allony, *Sinai* 28 תשי"א p. 146.

needs to be burned, since he merely annotated the text, and therefore Ben Asher is merely providing information and truthful information may be obtained from anyone, even an unbeliever.

This is also extremely hard to credit, as it would be possible if the information is simply factual. However as discussed previously there was a lot of work to compare manuscripts to apply the rules diligently and to account for all the various halachos that are integrated into the work of the Masoretics. Rambam would not issue such an imprimatur on someone that was a heretic.

Furthermore, it is clear that Aaron Ben Asher was extremely careful, more so than others, in integrating Halachic rulings from the Talmud, such as having the end of the lines on the last line of a column, within three letter spaces. It just does not make sense that someone who held such respect for Talmudic rulings would be someone that rejects the entire Talmud!

Others want to say that R' Saadya was referring to a different member of the Masoretic Ben Asher family, which Dotan demonstrates persuasively is not correct, as the polemic is targeted to a contemporary of R Saadya, not to someone that lived in a different generation, and Aaron Ben Asher was the contemporary of R Saadya.

Dotan's[30] meticulous scholarship provides the solution to this extremely vexing issue. One thing that is striking in the Polemic by R' Saadya is that Aaron Ben Asher spent his entire life working on the Masores, yet R Saadya barely even mentions this, his polemic primarily targeted at Karaite practices such as the rejection of the lunar calendar, *bris mila* rituals and the like, which would lead to the possible conclusion that he is referring to a completely different Ben Asher, one who is active and important in the Karaite community that was engaging with and responding to R Saadya.

In the words of R' Yakov ben Shmuel,[31] a student of R Saadya, he explains who are the Karaite leaders of the community that R' Saadya was battling, and he mentions five names. One of them is Abu Altaib Algabli. Margolis[32] found a fragment that identifies the leader of the Karaite Community in Cairo as Abu Altaib Algabli, and also identifies him by his Hebrew name…Shmuel Ben Asher.

---

30   Dotan, ibid.

31   ומשם *Texts and Studies* II (1935) ונדפס לראשונה על ידי שטיינשניידר עמ. 25 הע' 46
       Catalogus Codicum Hebraeorum Bibliothecae Academiae Lug- ,העתיקו מאן עמ. 25 הע' 46
       duno-Batavae (1858).

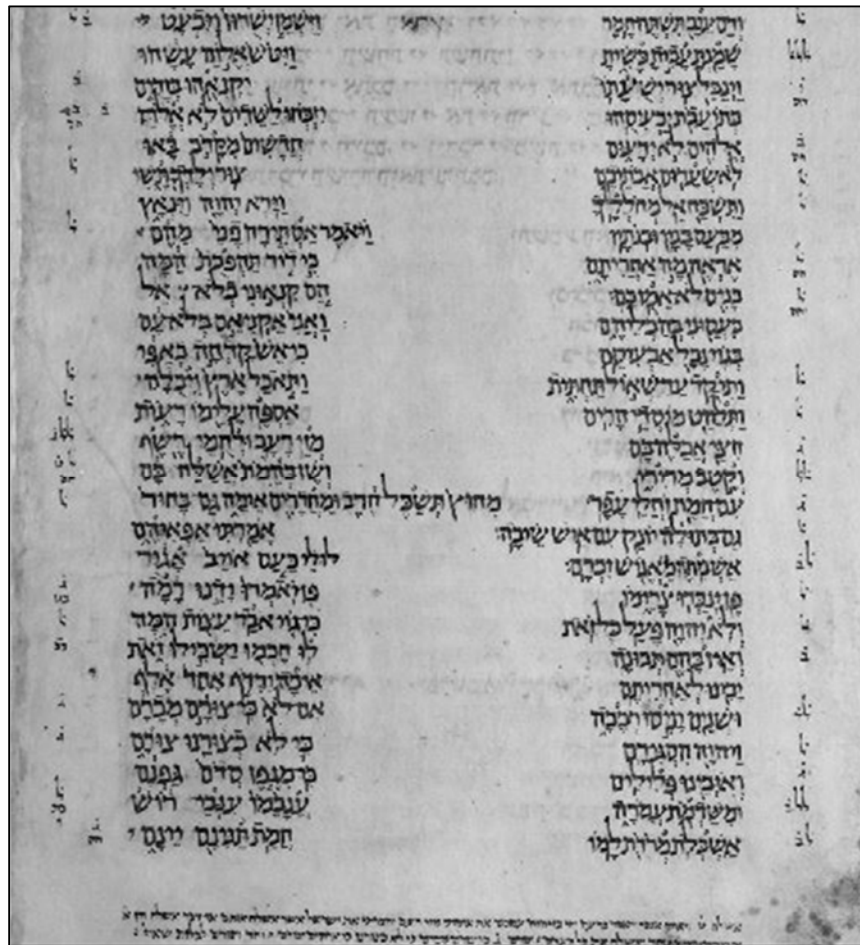32   JQR IX (1897) pp. 429–443.

Fig. 1, Bible and Testimony of R' Shalom Shachne Yellin

Fig. 2, Note the line starts "גם בתולֹה"

ଓ୍ଓ