

So we may conclude on the basis of the spirit of tradition that neither the fact that Halloween has a vague Christian association, nor the masking or costuming or the faking of food, etc., give any ground for prohibiting Jewish children from participating in the Halloween costuming, disguising, or "trick or treating."

25

LAYMEN CONDUCTING A CONVERSION

An Indian Gentile girl in Bombay desires to convert to Judaism. She has presented herself as a candidate for conversion to our Reform congregation in Bombay (a congregation of the *Bene Israel*). The congregation has no rabbi at present and they have asked whether laymen are eligible to perform the ceremony of conversion.

THE *Shulchcin Aruch* in *Yore Deah* 268:3 says that a conversion must be conducted by a court of three "eligible to judge." The question which concerns us is what is meant by this phrase. Of course, "eligible to judge" can mean simply that the judges are not relatives. See *Perisha* to the *Tur* who quotes the *Mordecai* as the source of this explanation. However, there is a much more fundamental question involved as to the nature of the court.

In Mishnaic and Talmudic times there were two classes of courts, those that dealt with religious and criminal matters and those that dealt with adjudicating civil disputes. The courts that dealt with religious and criminal matters were generally the fixed courts and were composed of men

who were formally ordained (*musmachim*). Since ordination in the old classic sense could take place only in Palestine, then those who conducted such courts in Babylon had a somewhat different status, but one which amounted to the same thing. They were called "*mumchim*," literally "skilled men." It meant, actually, official appointees of the Exilarch. "*Musmachim*" in Palestine and "*mumchim*" in Babylon could also judge civil matters; but civil matters could legally be judged by amateurs if the two parties in dispute selected them and were content with each other's selection.

In post-Talmudic times official ordination (or in Babylon, official appointment) has ceased. Our present "*semicha*" is merely the use of an old name; it is actually only a license to teach, although it uses the formula "he may judge." Modern rabbis considered that their right to judge in certain cases, which in the past required official judges, inheres in the fact that they are agents of the judges of the past. Now our question really amounts to this: Is conversion one of those religious functions which in the past would require official judges and therefore now require "ordained" rabbis who are deemed to be their direct agents, or is it rather akin in status to such civil matters which even in the past could be adjudicated by laymen?

The fullest discussion of the question of conversion is found in the Talmud in *Yevamos* 46 and 47. The Talmud concludes at the bottom of 46b that the incident described on that page proves that a court of three is required for conversion. Then it raises but rejects the supposition that the court must be composed of *mumchim*, learned officials. However, although *mumchim* were not required for conversion in those days, it nevertheless may be that nowadays scholars (*talmiday chachomim*) may nevertheless be re-

quired and that ordinary laymen are ineligible. There are certain functions which for various reasons came to be restricted to scholars (therefore generally rabbis), for example, matters of marriage or divorce, or matters of releasing vows, etc. Is conversion to be considered such a matter which today must be left to scholars (i.e., rabbis)?

The Talmud in *Kiddushin* 62a and 62b gives a discussion which begins with the question of heave offering, starting with the statement that a man may not give heave offering from fruit that is still unharvested for fruit that is already harvested. It then moves to a discussion of whether a man may say to a woman, "I hereby marry you, the marriage to take effect after I have become (or after you have become) a proselyte." Then the discussion continues as follows: "But surely to become a proselyte is within his power to achieve" (and therefore the marriage proposal would be valid) and the Talmud answers, "No; it is not necessarily within his power to achieve because a proselyte needs three people because the word '*mishpot*' is used with regard to it, as with civil cases which require three." Then the Talmud says, "How does he know that he will be able to find three who will assemble to convert him?" Rashi simply explains this as saying he may not find three Israelites to gather to go through with the process.

It is clear from this discussion and Rashi's commentary that any three Israelites are authorized to perform the conversion, and the *Tosfos* to the place addresses itself exactly to this question and comes to the same conclusion, and quotes Rabbi Nathaniel to the same effect, that conversion does not require trained and official personnel.

Benjamin Zeev (sixteenth century) in his Responsa I, 72, quotes the responsum of Isaac the son of Samuel to the

effect that conversion is valid even if conducted by three *hedyotos* (i.e., three ordinary unlearned laymen). Benjamin Zeev concludes with the general statement that in matters of conversion, we ought to follow the line of leniency and therefore should, if necessary, allow three ordinary men to conduct the conversion, lest we "lock the doors in the face of converts." The phrase is from *Tosfos, Yebamos* 47a. However, Zvi Hirsch Chayes of Zolkiev, who lived about a hundred years ago, says that it is preferable that the three men be scholars. See his Notes to the Talmud to *Sabbath* 46b (the Notes are to be found at the back of the large Vilna edition.)

Benjamin Zeev's general principle that in matters of conversion we should be lenient rather than too strict is revealed in the summary of the law as found in the *Shulchan Aruch, Yore Deah* 268. There we are told that while a court of three is required, nevertheless if a person is converted before two, the conversion is valid as a *fait accompli* (*B'di-aved*), although not as a preferred procedure. So, too, while the whole conversion process must be consciously directed with full understanding of the implications, nevertheless a formal bathing for some other purpose than conversion can be considered valid for conversion as a *fait accompli*. All these opinions are based upon earlier legal decisions. Besides the clear evidence of the preference for leniency in this matter, the *Shulchan Aruch* also reveals the uncertainty as to the types of judges required. Whereas in 268:3 it merely says "three men who are eligible to judge," i.e., not relatives, nevertheless when the words of admonition are repeated after the ritual bath (in 268:1) Isserles adds to the statement that it must be scholars who give him the final instruction. However, the *Shulchan Aruch* in

268:12 sums it up by saying that if he were circumcised and bathed in the presence of three *hedyotos* (i.e., three average men) he is fully a *ger*.

Ben Zion Uziel, the late Chief Sephardic Rabbi, in his very last book of Responsa *Mishpote Uziel, Even Hoezer* 13, p. 54, Jerusalem, 1964 says: "It is the Halacha, as we learn from the words of the Rambam, that the reception of proselytes does not require a *Bes Din* of skilled men, but even with three ordinary men (*hedyotos*) it is quite sufficient."

In brief, the general mood of leniency has led the majority of the authorities cited and the *Shulchan Aruch* itself to conclude that any three laymen can legally conduct the conversion. However, since the people are of the Bene Israel, this woman and her husband (after she has been converted and married) may move to Israel, and since the Orthodox rabbinate in Israel generally refuses to accept conversion by a Reform rabbi on the ground that the requisite bathing has not been performed, it would be advisable to have three men send in a woman with her to the *mikveh* to have her fulfill this ritual requirement.

26

*CIRCUMCISION OF CHILD OF UNMARRIED
MOTHER*

What has tradition said about the circumcision of the child born out of wedlock, where no father can be present and there is no relative of the father's family available?
(From Judge J.W.P., New York City.)