

We lowered him, we will raise him. – אנן אחתינן ליה אנן מסקינן ליה him.

Overview

The case at hand: עדי אכילה had only שמעון; עדי אבהתא and עדי אכילה had ראובן. Afterwards שמעון bought עדי ruled that the property belongs to ראובן. After that, ראובן ruled that we will change the ruling. We removed שמעון from this property; now we will reinstate שמעון to this property. תוספות will be discussing under what circumstances will we actually rule that אנן אחתינן ואנן מסקינן.

And if that one, who did not originally have – ואם היה אותו דלית ליה חזקת אבהתיה – **that the property was in his father's possession;** if he was the –

מוחזק original – מוחזק תחילה; he was in possession of the property when they came to this תורה (where the other litigant [ראובן] had עדי אבהתא ואכילה and he [שמעון], the מוחזק had עדי אכילה only), then the expression of –

‘we brought him down and we pick him up’ is properly understood. נחמן is saying: we originally brought שמעון down, and evicted him from the property, replacing him with ראובן (who had עדי אבהתא ואכילה). However now that שמעון also brought עדי אבהתא we will pick שמעון up and evict ראובן (who had the original אבהתא) from this property, which in effect will cause –

that we will place it in the possession of שמעון the original מוחזק **בידו** – **שנעמידה בידו** –

as it originally was. Since it is תרי ותרי, we place the property in its original חזקה; it was in שמעון's possession. The expression of אחתינן ומסקינן (concerning שמעון) is appropriate; he was displaced and reinstated. If however, the original מוחזק was ראובן and the original פסק of ר"נ is that ראובן retains the property, there is a difficulty. What would the term 'מסקינן' mean¹? Granted that שמעון also brought עדי אבהתא so it is a complete תרי ותרי; each litigant having עדי אבהתא ועדי אכילה, nevertheless the property should still remain in the possession of ראובן, the original מוחזק. There is no reason to evict ראובן if it is תרי ותרי. In a case of תרי ותרי we follow the חזקה, which in this case it should belong to ראובן, the original מוחזק. Therefore it is best that we assume that the original מוחזק was שמעון, the one who did not have עדי אבהתא, and was subsequently evicted. Now that שמעון brought עדי אבהתא, we evict ראובן, the current occupant, and restore שמעון, the original מוחזק, to his property.

אחתינן ומסקינן offers an alternative explanation of תוספות:

and even if there was no מוחזק in this property – **ואפילו לא היה מוחזק** –

¹ If we were to interpret אחתינן ומסקינן to refer to ראובן (as in second explanation) then the term אחתינן would also be difficult. There is no need to 'bring down' ראובן into the property; he is already a מוחזק in this property.

לא לזה ולא לזה – not for this one and not for the other one. Neither of the litigants was מוחזק in this property; it remains unoccupied, for instance –

מצוי לפרש – it is also possible to explain the phrase אחתינן ומסקינן differently;

אחתינא ליה – we bring down ראובן who has אבהתא עדי into the property –

לתתה לזה – to give it to him. מוחזק now becomes ראובן. After שמעון brings עדי אבהתא, then –

ומסקינא ליה – we pick up ראובן from this property, meaning –

שנוציאנה מידו – we will take the property out of ראובן's **possession**², in which case the original status quos will remain; that neither is in possession of this property –

And the ruling in this case will be: 'whoever is more powerful will prevail'³. This is the ruling which is applied when two people argue over property, and neither is in possession. If neither has more proof than the other, כל דאלימ גבר; they fight it out amongst themselves. בי"ד rules that

ר"י. These explanations were said in the name of the רבינו יצחק.

Summary

The phrase אנן אחתינן אנן מסקינן refers to either: a) שמעון, where שמעון is the original מוחזק and ultimately retrieves the property, or b) ראובן, where there is no original מוחזק, and ultimately the ruling is כל דאלימ גבר.

Thinking it over

1. In the second scenario, what are the arguments pro and con⁴ that we should remove it from the present 'מוחזק' in order to rule כל דאלימ גבר?⁵

2. What is the דין if it is תרי ותרי originally and neither was the מוחזק?⁶

² In the first interpretation אחתינן ומסקינן refers to שמעון; where אחתינן has a negative connotation and מסקינן a positive one. In the second interpretation אחתינן ומסקינן refers to ראובן and the opposite is true that אחתינן has a positive connotation and מסקינן the negative one.

³ This is a 'secondary' explanation. Other ראשונים disagree with this ruling to remove (even) a (quasi) 'מוחזק' from a property in order to rule כל דאלימ גבר (see thinking it over # 1).

⁴ See footnote # 3.

⁵ פני שלמה.

⁶ See our דף לה, א; איכא למיקם עלה דמילתא later on גמרא and the תוספות.