

However, ר"י said, etc.

והאמר רבי יוחנן כולי –

## OVERVIEW

There is a מחלוקת between ר"א ורשב"ג, as to when we are ע"פ ע"א. The גמרא says that we cannot assume that the מחלוקת is in a case where an ע"א was already מערער on the כהונה status; for רבי יוחנן taught that everyone agrees אין ערער. Therefore if there would be merely an ערער דחד, all would agree that ש"ס. This statement of ר"י is mentioned several times in ש"ס; always in the form of a challenge: 'But ר"י maintains משנים'. It never says explicitly in what context ר"י made this statement.<sup>1</sup> Our תוספות will resolve this issue.

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ונראה לרבינו יצחק דרבי יוחנן עיקר דבריו<sup>2</sup> אהך משנה איתמר –

And the ר"י is of the opinion that the main statement of ר' יוחנן concerning אין מעלין לכהונה of משנה was taught regarding this ערער פחות משנים

והיינו<sup>3</sup> דקאמר דברי הכל היינו רבן שמעון בן גמליאל ורבי אלעזר דאייירו בעוררין<sup>4</sup> –

And that (is) which ר"י said 'all agree', refers to רשב"ג and ר"א for they are discussing 'contesters'; they both maintain (according to ר"י) that אין ערער פחות משנים.

משנה: will substantiate his opinion that ר"י is discussing this תוספות

ולחכי לא קא משני הכא הני מילי היכא דאיכא חזקה דכשרות –

And therefore, since ר"י specifically maintains that רשב"ג and ר"א both agree that גמרא does not answer here that perhaps רשב"ג ור"א are arguing over ערער פחות משנים, and even though ר"י stated משנים these words (of ר' יוחנן) apply only where there is a presumption of כשרות; only in such an instance are two עדים required to revoke the חזקת כשרות –

אבל היכא דליכא חזקה דכשרות לא אמר<sup>5</sup> –

However where there is no כשרות, then ר"י did not say this ruling of ערער. The גמרא seemingly could have given this answer with the understanding that in the משנה of וכו' אין מעלין וכו' there is no חזקת כשרות. Therefore ר"א can maintain חזקת כשרות and not be in

<sup>1</sup> Indeed the רשב"ם here comments that it was never specified in which context ר"י made this statement..

<sup>2</sup> It obviously applies to other situations as well, since גמרא refers to this statement in various situations.

<sup>3</sup> The הגהות הב"ח amends this to read והא instead of והיינו.

<sup>4</sup> It may initially seem difficult to maintain that ר"י is referring to רשב"ג ור"א, since their argument entails either ערער or זילותא דבי דינא; and not concerning ערער. Nevertheless since they are איירי בעוררין, their case consists of עוררין, therefore ר"י states that it must be two עוררין and no less.

<sup>5</sup> There would be no need to say that our משנה is in a situation where הוא מוחזק לן באבוב דכהן הוא. Rather there is no חזקה at all.

conflict with ר"י. This distinction between איכא חזקת כשרות and ליכא חזקת כשרות is a valid distinction concerning משנים - אין ערער פחות משנים

**כדמשני בפרק עשרה יוחסין (קדושין דף עג, ב) גבי נאמנת חיה לומר זה כהן<sup>6</sup> –**

**As the answers in פרק עשרה יוחסין concerning the ruling that a midwife is believed to say 'this infant is a כהן'.** The explanation why the גמרא does not give the same answer here, is because the גמרא knew that ר"י -

**דאמתניתין דהכא קאי<sup>7</sup> –**

דברי הכל אין ערער פחות משנים when he stated that אין מעלין וכו' of משנה, **was referring to this** ר"י is clearly stating that both רשב"ג and ר"א agree that אעפ"מ. Therefore we cannot say that they argue in a case of ערער חד

asks: תוספות

**ואם תאמר כיון דאמתניתין דהכא קאי –**

**And if you say; since ר"י is referring to this משנה of** אין מעלין –

**היכי פריך מיניה התם ובפרק קמא דגיטין<sup>8</sup> (דף ט, א ושם) –**

**How does the גמרא there in קידושין challenge the ruling there from the statement of ר"י, and similarly in the first פרק of גיטין**; מסכת גמרא also challenges the presumption that it was an ערער חד from the statement of ר"י. If ר"י is specifically referring to the משנה of משנה, then the גמרא could not challenge the rulings in גיטין and קידושין; for -

**דלמא הא דקאמר רבי יוחנן אין ערער פחות משנים היינו משום דאיכא עד אחד דמכשיר<sup>9</sup> –**

**Perhaps that which ר"י said that אין ערער פחות משנים** that is because in the משנה of **עד אחד** מעלה לכהונה, **there is one** who is מכשיר this person to be a כהן. In such an instance ר"י says that if there is an מכשיר, then there can be no ערער on his כשרות unless two עדים are מערער. However in the cases in מסכתות ערער ר"י would agree that even an ערער<sup>10</sup> where there is no מכשיר, then perhaps even ר"י would agree that even an ערער דחד is a valid ערער (even in cases where there is a כשרות).<sup>11</sup>

<sup>6</sup> The גמרא there states that the חיה is not believed if there is an ערער on the status of the child. The גמרא there asks how can an ערער of one contradict the testimony of the חיה; ר"י says משנים. The גמרא answered that there is a difference whether there is a כשרות or not. In the case of נאמנת חיה, the infant never had a כשרות; therefore even an ערער דחד is sufficient.

<sup>7</sup> תוספות will therefore assume that in the משנה of אין מעלין there is a כשרות (as the גמרא shortly concludes). This will avoid any discrepancy with the גמרא in קידושין (see previous footnote # 6).

<sup>8</sup> The משנה there states that if א גט is brought in and there are עוררין then יתקיים בחותמיו. The גמרא asks, it cannot mean ערער דחד for ר"י maintains אעפ"מ, etc.

<sup>9</sup> The מחלוקת between ר"א and רשב"ג is concerning ע"פ ע"א מכשיר; implying that there is an מכשיר עד.

<sup>10</sup> See 'Thinking it over'.

<sup>11</sup> If we would not assume that ר"י is referencing this משנה, then it would be difficult to maintain that ר"י is discussing only a case where there is an מכשיר עד. It is not implied in his statement. However now that תוספות maintains that ר"י is referencing this משנה, and the משנה is discussing a case of מכשיר עד, then it is implicit that ר"י's ruling may apply only if there is an מכשיר עד.

answers: תוספות

**ויש לומר דהגמרא ידע דרבי יוחנן מייירי כדמסיק דיצא עליו קול שהוא בן גרושה –**

**And one can say that the גמרא that asked these questions in וקידושין knew that ר"י is discussing a particular situation as the גמרא concludes that originally it was presumed that that the father of this individual was a bona fide כהן, and it was afterwards that a rumor was spread that the individual is the son of a divorcee; invalidating him from the כהונה –**

**ואחר כך בא עד אחד דמכשיר להסיר הקול ואתו בי תרי כולי –**

**And afterwards an ע"א who was מכשיר came to remove the rumor and then two עדים came, etc.;** to substantiate the rumor (and finally an additional ע"א came to deny the rumor).

**ובכהאי גוונא אמר רבי יוחנן דאין<sup>12</sup> פחות משנים –**

**And it is in these circumstances that ר"י said "מ"אעפ".** It is concerning these (two) who come to substantiate the rumor, that ר"י says that there need to be two to substantiate the rumor; otherwise the ע"א המערער will be believed against the rumor and the ע"א המכשיר.

will now conclude the answer: תוספות

**ואף על גב דעד אחד שהכשיר והקול כליתנהו דמי –**

**And even though that when the two עדים who are מערער come, the situation is that the ע"א who was מכשיר and the rumor that denied him כהונה status; these two, the עד and the קול it is as if they do not exist;** the cancel each other out. When the two עדים are מערער, it is as if there is no ע"א and there is no קול (as תוספות will shortly explain). Therefore since ר"י maintains that two עדים are required to make this ערער, it is tantamount to saying that two עדים are required for an ערער, even if there is no עד המכשיר. The עד here is cancelled out by the קול.

will explain why the ע"א המכשיר is cancelled out by the קול: תוספות

**שהרי העד גרוע מן הקול אם לא החזקה שהרי הקול פוסל והעד אינו פוסל:**

**For the עד is inferior to the rumor** (as תוספות will point out) **if there was no חזקה.** Now there is a חזקה; the father is מוחזק as a כהן, therefore even though there is a קול that the son is a גרושה בן, nevertheless the ע"א המכשיר is believed. However, we believe the ע"א in spite of the קול, only in combination with the original חזקה, which assists the ע"א and conflicts with the rumor. Were we to compare the ע"א against the קול without the aid of a חזקה, then the קול will be stronger than the ע"א. **for a קול, which claims that he is a גרושה בן will invalidate his כהונה, even against a**

<sup>12</sup> The דאין ערער פחות הגהות הב"ח amends this to read.

<sup>13</sup> **however one עד**, who claims that he is a גרושה, **cannot invalidate** the כהונה against a חזקת כשרות.<sup>14</sup> This proves that a קול is stronger than an ע"א. It is only because the ע"א is assisted by the חזקת כשרות of the father in our case, that we validate the כהונה. The status of this כהן (after the קול and the עד המכשיר) is as it was originally, when we only knew of the חזקת כשרות of the father, without a קול and without an עד; for the קול and the עד cancel each other out.<sup>15</sup> It is at this point that ר"י insists that any new ערער must consist of two עדים. This proves that ע"א המכשיר אין ערער פחות משנים is valid even if there is no עד המכשיר.

## SUMMARY

We know that רשב"ג and ר"א are not discussing an ערער חד, since ר"י stated concerning their מחלוקת that אין ערער פחות משנים.

This ruling of אעפ"מ applies (only) if there is a חזקת כשרות, even if there is no עד המכשיר; similar to the case of מעלין לכהונה where the עד המכשיר and the קול cancel out each other.

## THINKING IT OVER

asks that we cannot compare the situation in (וגיטין) מס' קידושין to the case of ר"י, since by ר"י there is an עד המכשיר.<sup>16</sup> Seemingly in מס' קידושין, there is also an מעלין; the חיה who claims זה כהן. Why is it any different than the case of מעלין לכהונה?<sup>17</sup>

<sup>13</sup> This we can see from our גמרא; even though it was מוחזק באביו דכהן הוא, nevertheless when there was a קול of בן גרושה the כהונה was voided.

<sup>14</sup> Seemingly תוספות derives this from ר"י, who states אין ערער פחות משנים. See מהרש"א and מהרש"ל in כו, א. This is what פוסל במקום חזקת כשרות ע"א cannot contest a חזקת כשרות (it seems to be circular reasoning). The מהרש"ל explains that we derive this (that an ע"א cannot contest a חזקת כשרות) from the גמרא's answer in קידושין, that ר"י's rule is only when there is a חזקת כשרות. This teaches us that when there is a חזקת כשרות an ע"א cannot contest it. Our תוספות is (merely) explaining how the גמרא (there) come to the conclusion that ר"י requires ערער תרי, not on account of the contradicting ע"א, but rather on account of the חזקת כשרות. The explanation is that there is no עד המכשיר since he is cancelled by the קול. Alternately the מהרש"א explains that otherwise (if an ע"א can invalidate a חזקת כשרות), the גמרא could have said that an ע"א invalidated the כהונה (without resorting to a קול) and another עד subsequently came and was מכשיר, etc.

<sup>15</sup> Even though the קול is superior to the ע"א alone, nevertheless in combination with the חזקה, the קול (and the ע"א) cease[s] to function. Only the חזקת כשרות remains, which validates the כהונה.

<sup>16</sup> See footnote # 10.

<sup>17</sup> See נח"מ (בד"ה היכי).