

*This is how the text reads*

הכי גרסינן<sup>1</sup> –

**כגון דקאמר בפנינו הודה –**

**For instance; that he said, he admitted in my presence**

## **OVERVIEW**

The גמרא explained that the distinction between a אריס (who have a חזקה), and a גזלן (who does not have a חזקה) is in a case where the son said that the claimant admitted in our presence that he sold it to our father. תוספות defends this גירסא and negates the other גירסא.

**פירוש<sup>2</sup> בן אריס בן אומן בן גזלן -**

**The explanation** of who is the one who states הודה בפנינו, it is (either) **the son of the אריס, the son of the אומן or the son of the גזלן -**

**ומשום הכי אומן אין לו חזקה -**

**And therefore** we understand the distinction that **an אומן has no חזקה** even if he claims that the claimant (מערער) admitted to me the he sold it to me<sup>3</sup> -

**אבל בן יש לו חזקה כשטוען קמי ידי הודית לאבי שמכרת לו -**

**However the son** of an אומן or an אריס **has a חזקה when he claims**, ‘you (the מערער) **have admitted to my father (the אומן) in my presence that you sold it to him**’, in which case -

**נאמן במיגו דאי בעי אמר מינך זבנתה<sup>4</sup> -**

**He is believed with this claim, for he has a מיגו, for the בן could have said, ‘I bought it from you’.** This ruling applies (only) to a בן אומן ובן אריס -

**אבל בן גזלן אין לו חזקה דהודאה שהודה לגזלן לאו הודאה היא -**

**However, the son of a גזלן has no חזקה** even if he claims; ‘you admitted to my

<sup>1</sup> In our text the text reads בפנינו הודה גמרות. See later in this תוספות.

<sup>2</sup> The term פירוש here is to explain a certain difficulty with גירסא. If the גירסא would be בפנינו הודה, דקאמרי עדים בפנינו הודה. תוספות גירסא would be understood, since he admitted in the phrase בפנינו הודה (he admitted in our presence) in the plural, would be understood, since he admitted in the presence of two עדים. However according to תוספות which is גירסת תוספות (that **he** said, ‘he admitted in **our** presence’) is contradictory; since it is only the son who is making the claim, how can he say בפנינו (in **our** presence). תוספות therefore explains that the word בפנינו is referring to all three sons, בן אריס בן אומן בן גזלן, Each one of (all) the three say the same thing, ‘he admitted in our (collective) presence’.

<sup>3</sup> We have no reason to believe this claim, even though the אומן is holding the article, for we assume that he received this article as an אומן (to repair it, etc.), and therefore his holding is no indication that it belongs to him.

<sup>4</sup> If the son would have claimed מינך זבנתה (while in possession of the item) he would be believed, since he is not an אומן, therefore he has a חזקה and we believe the claim of מינך זבנתה (like any other person who is believed that whatever he is holding belongs to him). Therefore even if he claims, ‘I received it from my father (who has no חזקה), however I know for a fact that you admitted that you sold it to him’, we believe that he is claiming the truth, with the מינך זבנתה of מיגו.

father that you sold it to him', **for the admission that the מערער admitted to his father the גזלן, is not an admission;** it was coerced<sup>5</sup> -

**דאי לאו דאודי ליה שמכרה לו הוה ממטי ליה ולחמריה לשחזור<sup>6</sup> -**

**For if the מערער would not have admitted to the גזלן that he sold it to the גזלן, the גזלן would have dragged him and his donkey to the law officers –**

גירסא rejects the other תוספות:

**אבל לא גרסינן<sup>7</sup> כגון דקאמרי עדים -**

**However the text does not read; 'for instance the witnesses say 'the מערער admitted that he sold it to him in our presence''. This is incorrect -**

**דהא אי איכא עדים דאודי ליה דמיניה זבנה אם כן אומן ואריס גופייהו יהו נאמנים -**

**For if there are עדים that the מערער admitted to the אריס ואומן that they bought from the מערער, then the אריס ואומן themselves would be believed, not only the בן אומן ובן אריס -**

**ועוד כיון דאיכא עדים בן אריס בן אומן למה צריכים להחזיק -**

**And additionally since there are עדים (according to this גירסא) that the מערער sold it to their fathers, why is it necessary for the בן אריס and the בן אומן to be in possession of the contested item -**

**בלא חזקה נמי מוקמינן לה בידייהו כיון דאיכא סהדי. רבינו תם:**

**Even if there is no חזקה (the בן אומן ואריס are not in possession of the item) nevertheless we would establish it in their possession since there are עדים that the מערער admitted that it was sold. The above is in the name of the ר"ת.**

## **SUMMARY**

The distinction between בן אומן and בן גזלן is when the son claims that the מערער was מודה to my father (but not that there are עדים that he was מודה).

## **THINKING IT OVER**

negates the גירסא of דקאמרי עדים in two ways. Firstly that the אומן should also have a חזקה (not just the אומן), and secondly why does the בן אומן need to be in possession of the item. Why was it necessary to bring both challenges?

<sup>5</sup> This means that even if we believe the בן גזלן that the מערער admitted to the גזלן (we believe him since he has a מיגו of מניח זבנתה), nevertheless the בן גזלן has no חזקה, despite the fact that there was an admission, since the admission is not sincere; it is a meaningless admission.

<sup>6</sup> The גזלן would have fabricated that they violated the law somehow.

<sup>7</sup> See footnote # 1. This is also the גירסא of the רשב"ם.

בס"ד. ב"ב מז, א תוס' ד"ה כגון