## למעוטי שנים אומרים אחד בגבה כולי –

## To exclude, two said, 'one on her back, etc.'

### Overview

The תורה writes[1] על פי שני עדים וגו' יקום דבר; we expound the word דבר to mean that the testimony must be complete, but not a חצי דבר. The רבנן (of ר"ע) apply this to a case where two עדים testified that a girl has one (pubic) hair in one area, and another two עדים testify that she has one hair in another area, so even though between the two sets of עדים we know that she has two hairs, nevertheless she is not considered a גדולה, but rather she is still a קטנה, since each set of עדים testified that she has (only) one hair which does not make her a גדולה. They are each testifying on a חצי דבר. Our תוספות distinguishes between our case and similar cases, where their testimony is accepted.

---

תוספות clarifies:

**ולא דמי לשנה ראשונה בפני שנים כולי דהתם ראו כל מה שהיו יכולין לראות באותה שנה -**

**And** our case (regarding the hairs) **is not similar** to the case where the מחזיק consumed the fruits **of the first year in the presence of two** עדים, **etc.** (and the second year in the presence of two other עדים, and the third year in the presence of a third set of עדים, where it is a valid חזקה, and we do not say that each set of עדים is testifying on a חצי דבר (since a חזקה requires three years), **for there** (by חזקה) the עדים **saw all that was possible to be seen in that year,** however here each set of עדים missed seeing the other hair[2] -

תוספות offers an alternate distinction:

**ורב אלפס פירש משום דהתם מהני סהדותייהו לענין פירות שאכל בשנה ראשונה -**

**And the ריי"ף explained** the difference **because there** (by חזקה) **their testimony is effective regarding the produce** that the מחזיק **consumed in the first** (or second) **year -**

**שחייב לשלם אם לא ימצא יותר עדים[3] -**

**That** the מחזיק **will be liable to pay** (to the original owner) **if the** מחזיק **will not find**

---

[1] דברים (שופטים) יט,טו.

[2] They seemingly should have seen two hairs (if this was indeed so); the fact they each set is testifying that they only saw one hair, is as if each set of עדים is testifying that she still is a קטנה, for she only has one hair. However when the כת testifies that the מחזיק ate one year, it does not diminish at all the possibility that he also ate a second and third year.

[3] The testimony of the first (and second) year is a valid testimony because it can make the מחזיק liable. Once it is a valid testimony, it can be used in favor of the מחזיק if he has more witnesses for the remainder of the three years.

**additional witnesses** that he made a חזקה for three years –

תוספות prefers the first reason:

**וטעם ראשון נראה לרבינו יצחק עיקר דתנן בפרק התקבל (גיטין דף סג,ב) -**

**And the ר"י assumes the first reason as decisive, for the משנה taught in פרק התקבל -**

**האשה שאמרה התקבל לי גיטי[4] צריכה שתי כיתי עדים -**

**A woman who said** to her agent, **'receive my גט on my behalf', two sets of witnesses are required,** for it to be a valid גט -

**שנים שיאמרו בפנינו אמרה ושנים[5] שיאמרו בפנינו קבל וקרע -**

**Two witnesses who will testify that she told** the שליח **in our presence** to receive the גט on her behalf, **and another two witnesses that will testify** that the שליח **received the** גט **in our presence and tore up** the גט. This concludes the citation of that משנה, our תוספות continues with his proof -

**אלמא לא חשיב כי האי גוונא חצי דבר אף על גב דצריכי אלו לאלו[6] -**

**It is evident that in such a case,** the testimony of each כת of עדים **is not considered a חצי דבר, even though that** each כת **requires the other –**

תוספות anticipates a difficulty with his statement that צריכי אלו לאלו:

**דאפילו למאן דאמר שליש נאמן כשגט בידו[7] ולא צריכי עדי אמירה לעדי קבלה[8] -**

**For even according to the one who maintains that the שליש (third party) is believed when the גט is in his possession, and** in that case **the עדי אמירה do not require the עדי קבלה,[9]** if the שליח/שליש had the גט –

תוספות responds:

---

[4] This is a case of a שליח לקבלה, in which case as soon as the שליח receives the גט from the husband, the woman is divorced, and it is not necessary for the שליח to bring the גט to the woman.

[5] Theoretically they can be the same two witnesses, but it is unusual that the witnesses who are here now by the woman should also be there by the husband when he gives the גט to the שליח.

[6] The משנה requires two sets of עדים, meaning that if there is only one set (whether they saw her appoint him for a שליח לקבלה, or whether they saw him receive the גט), the גט is invalid, so it would seem that each set of עדים is testifying to a חצי דבר!

[7] The גמרא there (סד,א) cites a dispute in a case where a third party is holding the גט. The husband claims that he gave the גט to the שליש as a deposit to hold it for him (פקדון), and the שליש claims that I am the שליח לקבלה and the husband gave it to me to divorce his wife. רב הונא maintains the husband is believed (and she is not divorced), while רב חסדא maintains that the שליש is believed and she is divorced.

[8] In this case there are no עדי קבלה (that he received the גט for גירושין), for in that case there would be no dispute, she would certainly be מגורשת, and nevertheless she is divorced based only on the עדי אמירה that indeed he was appointed as a שליח לקבלה.

[9] The גמרא here teaches us that as long as one set of עדים does not require the other set, it is not considered a חצי דבר. Therefore in the case of גט, since the עדים אמירה seemingly do not require the עדי קבלה it is not considered a חצי דבר.

**מכל מקום כיון שצריך שנראה הגט בידו[10] חצי דבר הוא -**

**Nevertheless since it is necessary that the גט is seen in the possession of** the שליש, **it is considered a חצי דבר,** so why is it effective there –

תוספות concludes his proof supporting the first reason (not[11] like the רי"ף):

**אלא על כרחך משום שכל כת רואה כל מה שיכולה [לראות] באותה שעה -**

**Rather perforce it is because each set** of עדים **sees whatever it can possibly see at that point –**

תוספות concludes:

**ואתיא מתניתין [דגיטין] כרבנן[12]:**

**And the משנה in גיטין will follow the רבנן,** who argue with ר"ע.

## Summary

It is not a חצי דבר if the witnesses testify all that is possible for them to know at that moment.

## Thinking it over

1. Should we think of the דרשה of דבר ולא חצי דבר as a גזירת הכתוב, or is it a reasonable law?[13] Can we ascribe the מחלוקת between תוספות and the רי"ף to these two views.

2. Does a שליח לקבלה attain this status when he receives the גט from the husband, or does he receive this status as soon as the wife appoints him. Can we resolve this query so the רי"ף would be understood?

[10] See footnote # 7 that the שליש is only believed if הגט בידו. Therefore the עדי אמירה cannot accomplish anything on their own without either the עדי קבלה or without the גט being found ביד שליש, so it is still a חצי דבר.

[11] According to the רי"ף that by חזקה, the עדות has some validity (regarding paying for אכלת פירות), that does not apply here, for what can the עדי אמירה or the עדי קבלה accomplish on their own, without the other כת.

[12] According to ר"ע just like by חזקה three groups of עדים are invalid, similarly by גיטין it would not be valid by two כתי עדים. However according to the רי"ף, the משנה in גיטין disagrees both with the רבנן and ר"ע.

[13] See נחלת משה.