

דאי סלקא דעתך אדיבורא דידה סמיך כי מטי גיטא לידה מיהא תתגרש -

For if it enters you mind that he trusts her words, she should at least be divorced when the *Get* comes into her hand

Overview

The גמרא queried in a case where the בעה"ב said 'four', and the שליה said 'three'; and the workers said 'כמו שאמר בעה"ב'; do we say that אדיבורא דידה סמיך (of the שליה) and they get three, or do we say דעתיהו אעילויה דבעה"ב and they get four. The ר"נ אמר רבה בר אבון אמר רב attempted to resolve this query from the ruling of רב in a case where a woman told a שליה, 'bring me my גט' (a להבאה), and the שליה told the husband, your wife told me, 'accept my גט' (a לקבלה), and the husband said, 'take it as she said'; the ruling is that she is not divorced even when she receives the גט. This proves (concludes the גמרא) that אדיבורא דידה קא סמיך, for if אדיבורא דידה קא סמיך, why is she not מגרושת when she receives the גט. Our תוספות explains the comparison between the two cases (the workers and the גט).¹

דאי אמרין דגבי פועלים דעתיה אעילויה דבעל הבית -

For if we say that by the workers their intent is for the advantage which the בעה"ב gives them, so -

הכא נמי הוי ליה למימר דדעתיה דבעל אעילויה דידה דאמרה הבא לי גיטא² -

Here too by the גט, we should have said that the intent of the בעל is for the advantage that she gives him, for she said לי גיטי -

anticipates a difficulty:

אף על גב דהאי דקאמר שליח התקבל לי גיטי הוי עילויה טפי לבעל -

Even though that this which the שליה says, 'התקבל לי גיטי', is (seemingly) more beneficial to the בעל -

שמתגרשת יותר במהרה אם היתה האשה אומרת כן³ -

For she will be divorced quicker if indeed the wife would have said התקבל -

¹ Seemingly they are different; for by the workers (when they say כמו שאמר בעה"ב) they want the best for themselves and therefore we can say דעתיהו אעילויה דבעה"ב; however here by the גט what difference is there to the husband whether to follow what the שליה said or what the אשה might have said.

² The husband wants to divorce his wife; that is his benefit. If we say אדיבורא דידה סמיך, then she will not be divorced (because the husband thinks he is a שליה לקבלה [which he is not], and the husband does not make him a להולכה), however if we say אדיבורא דידה סמיך, she will be divorced לידה משהגיע גט, as תוס' continues to explain.

³ The question is that seemingly in the case of the גט; accepting what the שליה says is עילויה דבעל, as opposed to where not listening to the שליה is their עילויה (for the employer promised more), so how can we compare the cases?!

responds: תוספות

מכל מקום השתא שאמרה האשה הבא הוי טפי זכות הבעל -

Nevertheless, now that the woman said הבא (but not (התקבל)), it is more beneficial to the בעל -

אי סמיך אמאי דקאמר⁴ שתתגרש מיהא כשיגיע גט לידה -

If he trusts that what she says, for then she will at least be מגורשת when the גט reaches her hand, as opposed to trusting what the שליה said, where she will not be מגורשת at all -

וכיון דלא מיגרשא אלמא לאו דעתיה דבעל אעילויה דידה -

But since the ruling is that she is not divorced, it is evident that דעתיה דבעל is not אעילויה דידה, but rather he trusts the שליה more than the משלה (the wife), so -

הכא נמי גבי פועלין לית לן למימר דדעתיה אעילויה דבעל הבית -

Here too regarding the workers, we should not say that דעתיה אעילויה דבעה"ב, but rather he is סמיך אדיבורא דידה (of the שליה).

offers (and rejects) an alternate explanation:⁵ תוספות

אבל אין לפרש דעילויה דבעל הוי מה שאינה מתגרשת במהרה -

However, one cannot explain (on the contrary) that the benefit to the בעל, is that she is not quickly divorced -

דהא עדיף ליה ממתגרשת לאלתר

For that is preferable to him than her being divorced immediately -

כי עכשיו יהיה בידו עדיין אם לקיים אם לגרש⁶ והשתא פשיט ליה בפשיטות⁷ -

Since now (when she is not divorced immediately), he still has the option, whether to keep her as his wife, or to divorce her. So now the query is simply resolved.

however rejects this explanation (that postponing the גט is beneficial to the בעל): תוספות

⁴ This should perhaps be amended to read; דקאמרה (instead of דקאמר).

⁵ We need to understand why it is more beneficial for the husband to trust the wife (who says הבאה), than to trust the שליה who says קבלה. By the workers it is obvious why it is more beneficial for them to trust the בעה"ב (who said four) over the שליה (who says two), but why is it so by גט. Seemingly since the בעל wants to divorce his wife; קבלה is a better choice than הבאה (since she is divorced immediately, which is what he wants). previous explanation תוספות may not be that satisfactory (since the בעל does not know the ultimate result, so superficially קבלה is preferable to the הולכה).

⁶ It is (usually) better for a person to keep his options open, than to be committed to something which he may later regret. Therefore on the contrary הולכה (the wife's choice) is better than קבלה (which the שליה claims).

⁷ Just as by פועלים (where the בעה"ב said four) there is a סברא of אעילויה, similarly by גט (where the אשה said הבאה) there is a benefit to the man to be סומך אדיבורא דידה (for he keeps his options open), so since we see by גט that we do not say אעילויה, but rather it is not a גט, since אדיבורא דידה סמיך (we trust the שליה not the משלה), the same is by פועלים that we say אדיבורא דידה סמיך (of the שליה) and they receive only three.

דבסמוך לא יתיישב דקאמר בשלמא אי איתמר איפכא⁸ כולי -

For this will not fit well with what the גמרא states shortly; 'it would be fine if the opposite was taught, etc.; meaning -

משהגיע גט לידו מגורשת דאדיבורא דידה קא סמיך -

Once the גט came into the שליח's possession, she is divorced, that would prove that אדיבורא דידה קא סמיך because she wanted him to be a לקבלה -

ולפי זה היינו אגריעותא דידה שמתגרשת מהרה⁹ -

However, according to the ואין לפרש (that it is preferable for the husband that the take place later), we are following her for his disadvantage, for she is being divorced quicker; therefore if we say אדיבורא דידה סמיך (of the משלה) even to his detriment -

ופשיט דכל שכן דאעילוויא דבעל הבית יש לסמוך -

So it is resolved that we can certainly depend אעילוויא דבעה"ב, which is for the benefit of the פועלים -

ואם כן סותר פשיטות דלעיל דהוי פשיטא ליה דדעתיה אעילוויא דקאמר שליח -

So therefore this contradicts the previous assumption, in the case where the בעה"ב said three and the שליח said four, where we certainly assumed that דעתיה of the workers was for the benefit which the שליח said (four) -

ולא אגריעותא דבעל הבית והכא סמיך בעל אגריעותא דידה:

But not for the detriment caused by the בעה"ב who said three, and here by גט the בעל trusts her more than the שליח, even to his detriment, for she will be divorced immediately; taking away the benefit of him having his options open. This proves that the benefit for the husband is to have the divorce over with as quickly as possible. Therefore the ואין לפרש is refuted.

Summary

By גט (at least) it is preferable (for the בעל who intends to divorce his wife) to have it done as quickly as possible, rather than to keep his options open.

Thinking it over

1. Seemingly the ואין לפרש is (almost) self-contradictory. What proof is there that (משלה) אדעתיה דעילוויא (שליח), perhaps usually it is אדעתיה דידה סמיך, however here it is self-evident that the בעל does not want to do as the משלה said (to

⁸ The גמרא refutes the proof saying that it is possible that אדיבורא דידה סמיך; however the agent is not willing to be a שליח להולכה, therefore she is not מגורשת. There would be a proof, says the גמרא, if the case and the ruling would be as follows; she said, 'be a לקבלה', and the שליח said 'your wife told me to be a להולכה', and the husband said, 'הילך כמו שאמרה', and the ruling would be, etc. as תוספות continues.

⁹ This would mean that the woman (or the בעה"ב) is always trusted more than the שליח, even if it is אגריעותא.

שליח להולכה (שליח להולכה), for if he so wanted it, he could have made him a שליח להולכה, regardless of what either he or the wife said. Since he did not do so, it is evident here that he wants only a שליח לקבלה, however elsewhere we can say that it is דעתיה דעליון of the משלה!¹⁰

2. רב אשי, when offering the alternate resolution to the query (in a case where she said 'התקבל וכו'), mentions that if the ruling would be מגורשת גט לידה, that would prove that אדיבורא דידיה (of the שליח) סמך. However according to the אין פועלים (that the husband prefers a later גירושין) there is no proof that by פועלים we also say אדיבורא דידיה סמך, for only by גט do we say אדיבורא דידיה סמך, since it is for the benefit of the בעל; she is being divorced later, however by פועלים where if we say אדיבורא דידיה (of three) סמך, it is for their detriment, perhaps we do not say אדיבורא דידיה סמך, but rather דעתיה דעליון דבעה"ב. Why did not תוספות refute the גמרא from our own אין לפרש?¹¹

¹⁰ See # 161. אוצר מפרשי התלמוד.

¹¹ See מהרש"א.