

And ר"נ said: – ורב נחמן אמר בפני שנים דלתרי נמי בית דין קרי להו –
‘in the presence of two, for two are also called a בי"ד’.

OVERVIEW

Our משנה stated that originally (before ר"ג הזקן (תקנת ר"ג) one would be able to be גט מבטל the גט in the presence of a בית דין. It was not necessary to be גט מבטל the גט either בפני השליה or בפני האשה. The גמרא quotes a מחלוקת between רב נחמן and רב whether this בי"ד must consist of three people, or that two people are also sufficient. It would seem that since the משנה states clearly that it was performed בפני בי"ד and a בי"ד consists of three people, that there should be no dispute. All should agree that it must be בפני שלשה. Why does ר"נ maintain that it may be בפני שנים contrary to what the משנה says?

anticipates a possible solution (to the question stated in the ‘overview’):

אין לומר דרב נחמן לטעמיה דאמר בפרק קמא דסנהדרין (דף ה,ב) משמיה דשמואל -

We cannot say that ר"נ follows his own opinion, where he stated in the first פרק of סנהדרין, in the name of שמואל, that –

שנים שדנו דיניהם דין -

Two people who judged a case, their verdict is a valid judgment. That is why ר"נ maintains here that two are considered a בי"ד, since בדיעבד two people who tried a case and issued a verdict, we accept their verdict as if it was issued by a regular בי"ד of three. The משנה, when it states בי"ד may be referring to a בי"ד of two.

rejects this reasoning:

דהא רבא לית ליה התם (דף ג,א) דשמואל -

For רבא disagrees there with שמואל that שנים שדנו דיניהם דין, but rather רבא maintains that שנים שדנו it is not a valid judgment. Three דיינים are required for a בי"ד.

ועל כרחך רבא אית ליה הכא כרב נחמן דאמר בפני שנים -

And perforce you must say that רבא agrees here with ר"נ who says you may be גט מבטל the גט in the presence of only two people.

– ר"נ will now explain why רבא must agree with ר"נ –

דהא פליגי רבי יוחנן וריש לקיש בסמוך בפלוגתא דרב נחמן ורב ששת -

For shortly in the גמרא there is a dispute between ר"י and ר"ל¹ which is

¹ They are arguing why ר"ג stopped the ביטול בפני בי"ד. ר"י who maintains that it is because תקנת ר"ג follows the opinion of ר"נ that בטלו בפני שנים; while ר"ל who maintains that עגונות follows the opinion of ר"ש בגמרא, ביטול בפני שלשה that ר"ש maintains that עגונות follows the opinion of ר"ש.

the same dispute that is between ר"נ and ר"ש, namely whether ביטול can be בפני שנים or it must be בפני שלשה

ורבא פסיק בריש החולץ (יבמות דף לו,א) בכולי ש"ס כרב יוחנן לגבי דריש לקיש -

And רבא ruled in the beginning of פרק החולץ, that in the entire ש"ס we follow the opinion of ר"י when he opposes ר"ל

לבר מתלת -

Except in three disputes where we follow the opinion of ר"ל² -

ורבי יוחנן קאי כרב נחמן -

And ר"י follows the opinion of ר"נ that two are sufficient for הגט. ביטול must therefore also agree that two are sufficient (since רבא always follows the opinion of ר"י). However רבא maintains that שנים שדנו אין דיניהם דין. Therefore we cannot say that the reason that מבטלו בפני שנים is because we maintain that שנים שדנו דיניהם דין.

with מבטלו בפני שנים of דין we cannot connect the דין of תוספות will bring a more direct proof that שנים שדנו דיניהם דין of דין.

ועוד אמר בירושלמי דסנהדרין רבי יוחנן וריש לקיש דאמרי תרווייהו -

And furthermore in the מסכת סנהדרין on תלמוד ירושלמי it says that both ר"ל and ר"י maintain that -

שנים שדנו אין דיניהם דין -

Two people who judged, their verdict is not valid. We see from this ירושלמי that ר"י himself maintains שנים שדנו אין דיניהם דין. Nevertheless he maintains that ביטול בפני שנים like ר"נ.

תוספות offers an additional proof that ר"י maintains that a בי"ד consists of three:

ובהחולץ (שם דף מו,ב) נמי אמר רבי יוחנן גר צריך שלשה משפט כתיב ביה -

And in פרק החולץ, ר"י said that conversion requires three people to officiate, that the גירות be valid. The reason is because the word משפט is written by conversion. Just as a usual משפט or court case requires three, so too does conversion require three. We can infer from this that by every משפט that requires a בי"ד, three are required. The question remains why does ר"י (and especially ר"נ) maintain that for the בי"ד, two are sufficient, when the משנה states clearly 'בי"ד'!

תוספות answers:

ועל כרחך צריך לומר אף על גב דתרי אין דיניהם דין -

And perforce one must say that even though the judgment of two is not valid, nevertheless -

² Needless to say this is not one of those three הלכות.

כיון דפרוזבול סגי בתרי קרי להו בית דין -

Since to enact a פרוזבול two are sufficient they can be called a ב"ד³. When the משנה said ב"ד בפני it may mean two as well.

asks a question:

ואם תאמר בפרק זה בורר (סנהדרין לא) דפריך גבי אודיתא -

And if you will say; that in פרק זה בורר where the גמרא asks concerning a writ of admission. [Only] two people signed on the note wherein it was stated that one party made a specific admission to his litigant⁴. If the term בית דין is mentioned in the writ, we assume that it was enacted by three people and one was not able to sign. The גמרא challenges this. The fact that it said 'ב"ד' in the אודיתא is not sufficient to prove that it was prepared by three people, for –

דילמא בית דין חצוף כדשמואל דאמר שנים שדנו כולי -

Perhaps it was a brazen ב"ד as שמואל maintains for שמואל said that two who judged, etc. their verdict is valid. Perhaps here too, even though it said 'ב"ד' in the אודיתא there were really only two people, nevertheless they wrote 'ב"ד' since they may agree with שמואל that two are also a ב"ד. However in reality there were no three people. The אודיתא should not be valid. This concludes the quote from the גמרא in סנהדרין.

now proceeds with his question:

בלא שמואל נמי איכא למיפרך -

Without agreeing with שמואל that שנים שדנו דיניהם דין, we can also question the assumption that since it said 'ב"ד' in the אודיתא that proves that there were three דיינים present -

דהא רבי יוחנן ורבא לית להו דשמואל וקא סברי דלתרי בית דין קרי להו -

For שנים שדנו אין דיניהם; שמואל disagree with רבא and ר"י as **they maintain that two may also be called a ב"ד;** as is the case concerning ב"ד בגט where both רבא and ר"י agree that two are sufficient, because they are (somewhat) considered a ב"ד. The גמרא in סנהדרין could have asked that how can we rely on the words 'ב"ד' that is written in the אודיתא, we see that ר"י and רבא agree that sometimes two are called a ב"ד.⁵

³ This is (seemingly) the explanation the גמרא gives. See 'Thinking it over' # 1.

⁴ When one admits something in the presence of two witnesses it does not give them the right to put it in writing. However when someone admits in the presence of three it is considered as if he made them a ב"ד and they may put it in writing and sign it. When a ב"ד issues any writ it is signed by the three דיינים. If for whatever reason one of the דיינים cannot sign, ב"ד writes that we were three דיינים sitting in judgment and one is missing. This is considered a valid writ. In the case being discussed this phrase did not appear.

⁵ See 'Thinking it over' # 2.

וכי האי גוונא פריך גבי קיום שטרות בפרק ב' דכתובות (דף כב, א) -

And the גמרא asks in a similar fashion concerning the authentication of notes in the second פרק of כתובות **מסכת**. **requires three קיום שטרות**. If only two signed on a קיום without indicating that there were actually three דיינים involved, it is a proper קיום provided that it states that it was performed in a בי"ד. The גמרא in כתובות asks the same question as the גמרא in סנהדרין; perhaps it was a בי"ד חצוף in accordance with שמואל's view. תוספות is asking that the גמרא did not need to ask the question only according to שמואל; the same question can be asked according to ר"י ורבא as mentioned previously.

answers: תוספות

ויש לומר דהתם כיון דבעינן שלשה באודיתא ובקיום שטרות -

And one can say; that over there (by שטרות וקיום אודיתא), since there is a requirement to have a בי"ד of three דיינים both by the אודיתא and by קיום **קיום**; there is no doubt about it, all agree that there must be a בי"ד of three. Therefore – **אין שייך לגבי ההוא מילתא לקרות לתרי בית דין -**

It is not relevant concerning these matters (שטרות וקיום אודיתא) to consider only two as a בי"ד; if we maintain that אין דיניהם דין שנים שדנו אין דיניהם דין. It is known that require a בי"ד of three. The fact that we consider two a בי"ד by שטרות or פרוזבול will not lead anyone to think that by שטרות or אודיתא two are sufficient. By פרוזבול and הגט there is no clear precedent that requires specifically that there be three. It is not a משפט or דין. Therefore we may maintain that in these two cases, two are sufficient. However, שטרות וקיום אודיתא require a regular בי"ד, which consists (according to ר"י ורבא) of three -

משום הכי קאמר דלמא לא בעי התם ג' כדשמואל -

Therefore the גמרא there says perhaps the two who signed the שטרות thought that three are not required even for אודיתא because of שמואל, who maintains that two is a valid בי"ד in all instances. Therefore these two thought that even though שטרות וקיום אודיתא require a בי"ד, nevertheless the two are a בי"ד. Therefore we cannot depend on the fact that the term 'בי"ד' is inserted; because perhaps the people who inserted the term 'בי"ד' agree with שמואל. However in truth one cannot validate such a דיינים, since there were no three שטר or שטר אודיתא.

poses a different question: תוספות

ואם תאמר ומאי נפקא מינה השתא בפלוגתא דרב נחמן ורב ששת בפני כמה מבטלו -

And if you will say; of what import is it now concerning the dispute between ר"נ and ר"ש in the presence of how many can he nullify the גט. It is seemingly irrelevant (even) in the days of ר"נ ור"ש –

הא תיקן רבן גמליאל שלא יהו עושין כן -

For ר"ג had already **instituted** prior to ר"נ ור"ש **that people should not do so**; to be מבטל בפני בי"ד. What is the relevance of the dispute between ר"נ ור"ש?

responds: תוספות

ואומר רבינו יצחק דנפקא מינה לרבי דאמר לקמן אם ביטלו מבוטל -

And the ר"י says there is a difference whether we follow the opinion of ר"נ or ר"ש, **according to רבי who maintains later** in our גמרא⁶ **that if one was a מבטל** the גט is **nullified**⁷. Despite that he transgressed the תקנה of ר"ג הזקן.

ופסק לקמן רב נחמן כוותיה -

And ר"נ ruled further in our גמרא⁸ **in accordance** with רבי **that** ביטלו מבוטל. Therefore it is very relevant to know, in front of how many people the ביטול must take place, in order that it be a valid (בדיעבד) ביטול.

It seems that there were three stages in ביטול הגט. There is the דין מדאורייתא where seemingly one may be מבטל a גט even שלא בפני בי"ד and השליה⁹. This was the first stage.

Afterwards came the stage concerning which the משנה states that בראשונה היה עושה בי"ד בפני האשה והשליה or בי"ד. במקום אחר ומבטלו'. This was a תקנת חכמים (prior to the תקנה of ר"ג הזקן). They were concerned that if the ביטול would be שלא בפני בי"ד, the woman might not be aware and remarry. Her children from the new husband would then be ממזרים. It is concerning this stage (also) that there is the מחלוקת between ר"נ ור"ש whether this בי"ד consists of two or three people.

The final stage was the תקנה of ר"ג הזקן that there be no בי"ד, only בפני האשה. There are two opinions as to the reason for this תקנה, depending whether we follow the view of ר"נ or ר"ש. If we maintain that the ביטול בפני בי"ד was שנים (like ר"נ), the concern was that there will not be sufficient publicity and the woman may remarry and her children will be ממזרים (identical to the reason for the original תקנת חכמים). If, however we follow the opinion of ר"ש that ביטול בפני בי"ד requires three people, then there is no חשש ממזרות for by three there is a sufficient קול. The reason for תקנת ר"ג, is because of תקנת עגונות. We want to make it difficult for the husband to be מבטל the גט. He cannot be מבטל by just gathering three people and make a בי"ד. He must pursue either the שליח or the אשה and be מבטל it בפניהם.

⁶ דף לג, א.

⁷ See 'Thinking it over # 3.

⁸ דף לג, ב בסופו.

⁹ It is questionable if he may be מבטל the גט by himself or others have to hear him. In any event it need not be a בי"ד according to תורה וכו'. See מהרש"א הארוך וכו'.

It is concerning this last stage that רבי maintains that regardless of הזקן ר"ג תקנת not to be גט בפני בי"ד a מבטל nevertheless if one was גט בפני בי"ד a מבטל then the גט is בדיעבד. מבטל.

continues to explain that even though רבי does not take into consideration תוספות the תקנת חכמים of ר"ג הזקן and maintains מבטל, nevertheless concerning the first תקנת חכמים that ביטול must take place בפני בי"ד, that תקנה invalidates the ביטול even שלא בפני בי"ד:

ומודה רבי דאם ביטלו בפני ב' לרב ששת או בפני אחד אפילו לרב נחמן דאינו מבטל -
And will admit that if he was in the presence of two people according to ר"ש or in the presence of one person even¹⁰ according to ר"נ; either way רבי will admit that the גט is not מבטל. Even though we do not take the תקנה of ר"ג into consideration בדיעבד if there was a ביטול, but rather we maintain that ביטול מבטל. Nevertheless רבי admits there is no ביטול if there was no בי"ד, for this uproots the original חכמים תקנת. The reason why it is not מבטל in these instances, is –

דאפילו קודם תקנת רבן גמליאל לא היה מבטל -

For even before the תקנה of ר"ג; when a ביטול בפני בי"ד was permitted, even though it was not בפני האשה or בפני השליח, nevertheless the גט would not be מבטל (if there were less than two or three people according to ר"ש and ר"נ respectively), even according to רבי, who disregards the תקנה of בדיעבד ר"ג, and says ביטול מבטל. However in these cases the consequences are too dire and even בדיעבד there is no ביטול; as תוספות goes on to explain.

דדוקא בפני ג' לרב ששת מבטל דליכא חשש ממזרות¹¹ -

For only in the presence of three will רבי maintain according to ר"ש that the גט is מבטל for there is no concern of ממזרות -

אבל בפני שנים דאיכא למיחש לממזרות לא -

However if the ביטול took place in the presence of only two (which is not a בי"ד), where there is not sufficient publicity, so there is a concern of ממזרות (which is the reason for the original חכמים תקנת that a ביטול שלא בפני

¹⁰ The insertion of the word 'אפילו' – 'even', by ר"נ will become clear further in this תוספות. See footnote # 12.

¹¹ When we are מבטל the גט בפני השליח and האשה, nevertheless we are assured that the woman will find out about the ביטול and she will not remarry (which would have resulted that the new children are ממזרים). There is sufficient publicity in a ביטול בפני השליח, that there is no concern of ממזרות. There is only the תקנת עגונות. It is the opinion of רבי that the תקנת עגונות is not sufficient reason to annul the ביטול בדיעבד. Since התורה it is a valid ביטול.

take place בי"ד (בפני רבי), then agrees that the ביטול will **not** be valid according to ר"ש. The concern here is sufficient to warrant that we do not validate the ביטול. The original תק"ה holds up even בדיעבד.

anticipates a difficulty:

ולרב נחמן אף על גב דבפני שנים איכא למיחש לממזרות כדאמרינן בסמוך -

And according to ר"נ even though that when the ביטול takes place in the **presence of two there is a concern of ממזרות, as the גמרא will shortly state**¹² (for there is not sufficient publicity to assure us that the woman will be aware of the ביטול before she remarries), nevertheless ר"נ maintains that even though there is a חשש by a שנים, ביטול בפני שנים, it will still be a valid ביטול, according to רבי. Why therefore should not a ביטול בפחות משנים also suffice? רבי maintains (according to רב נחמן) that a ביטול בדיעבד is a good ביטול בפני בי"ד של שנים. We do not take into consideration חשש ממזרות. It follows that even if the ביטול was בפחות משנים which the first תקנה did not permit, nevertheless בדיעבד it should be a valid ביטול. What concern is there by a ביטול בפחות משנים more than a שנים? Why should the first תקנה חכמים be any stronger than the תקנה of ר"ג הזקן? In both instances the תקנה was (according to ר"נ) because of חשש ממזרות¹³.

responds:

מכל מקום בפחות משנים דאיכא למיחש טפי אינו מבוטל -

Nevertheless when the ביטול takes place in the presence of **less than two people that there is an even greater concern** for ממזרות than a ביטול בפני שנים, which definitely has more publicity than a ביטול בפחות משנים; then **there is no valid ביטול**. There is a much greater probability that the woman will not hear of the ביטול if it was בפחות משנים than if it was בפני שנים.

ובהא אפילו רבי מודה דאמרינן מה כח בית דין יפה:

And it this case even רבי admits that we say we cannot override the תקנה of ר"נ; for if we will override the תקנה of the בי"ד then – **of what value is the power of בי"ד**, if they cannot execute their תקנות. In a case where overriding the תקנה of בי"ד will probably bring to dire consequences רבי admits that we do not override the תקנה even בדיעבד.

SUMMARY

The reason ר"נ maintains ביטול בפני בי"ד of two is sufficient is not because he

¹² The reason why ר"ג was מבטל the ביטול בפני בי"ד according to ר"נ, is because it was done in the presence of two. That is insufficient publicity to prevent the woman from remarrying.

¹³ This question clarifies why תוספות previously said 'אפילו לר"נ'. See footnote # 10.

maintains ר"נ both agree with ר' יוחנן. שנים שדנו דיניהם דין. For שנים שדנו דיניהם דין. The reason ר"נ maintains שנים ביטול בפני בי"ד של שנים is sufficient is because by a פרוזבול two are also considered a בי"ד.

Even if we maintain that by a פרוזבול and הגט ביטול two are considered a בי"ד, this would not lead us to conclude mistakenly that by אודיתא וקיום שטרות two are sufficient. However if we maintain שנים שדנו דיניהם דין, then we may mistakenly conclude that by אודיתא וקיום שטרות two are sufficient.

רבי will maintain בטל מבוטל only if it was in a בי"ד of two (according to ר"נ) or in a בי"ד of three (according to ר"ש). Less than that, it will not be a ביטול even בדיעבד. The תקנה that a בי"ד was necessary was based on very serious concern of ממזרות. Such a תקנה is not to be trifled with.

THINKING IT OVER

1. ביטול בפני שנים ר"נ maintains is searching for an explanation why תוספות is a ביטול בפני בי"ד. The answer that תוספות ultimately gives is (seemingly) the same answer the גמרא gives (namely פרוזבול)¹⁴. Why was not תוספות satisfied with this answer originally?

2. Can we connect תוספות question¹⁵ with what תוספות taught us previously in this תוספות?

3. Did not תוספות realize in the question¹⁶ that רבי maintains מבוטל, so there will be a נפק"מ between ר"נ ור"ש according to רבי?

¹⁴ See Footnote # 3.

¹⁵ See Footnote # 5.

¹⁶ See footnote # 7.