

And they elevated him

ואסקיניה –

OVERVIEW

The details of the case where ר"א ורשב"ג argue. There was a חזקה that the father was a כהן, and this was followed by a קול that the son is בן גרושה (so he was denied the rights of כהונה), after which an ע"א testified that the son is כשר, whereupon he was (re)elevated to the status of כהונה. This was followed by two עדים claiming that he was a בן גרושה and another עד saying that he is a כשר. According to one opinion the מחלוקת whether we are מעלה the son to כהונה or not in this situation depends on whether we are concerned for דינא or not.¹ תוספות discusses the ramifications if we maintain דב"ד לזילותא.

תוספות asks:

ואם תאמר ולמאן דחייש לזילותא² דבי דינא היכי אסקוהו³ כיון דאחתיניה מחמת הקול⁴ -
And if you will say; according to the one who is concerned for דינא, זילותא דבי דינא, how could they elevate him (based on the testimony of the ע"א) since they already lowered him on account of the rumor; elevating him to כהונה after lowering him is a דב"ד!

תוספות rejects a proposed solution:

ולכא למימר⁵ דליכא זילותא דבי דינא אלא היכא שהורידוהו שתי פעמים⁶ -
And one cannot say that there is no זילותא דב"ד unless he was lowered twice; therefore at this point (where only one עד came) he was lowered only once and there is no זילותא. תוספות rejects this notion for there is זילותא even if there is a one-time reversal
כדמוכח בחזקת הבתים⁷ (בבא בתרא דף לב,א) -

¹ If we are concerned for דינא דבי דינא then even though there are תרי ותרי and the son has a כשרות, nevertheless we will not elevate him to כהונה, since we already lowered him; this will be a דב"ד.

² זילותא דב"ד means the cheapening of ב"ד. If ב"ד reverses its ruling, they will not be respected; their honor will be tarnished.

³ See footnote # 1.

⁴ question may (also) be if the מחלוקת is regarding the דב"ד it is not necessary that any other עדים came; this point where the (first) ע"א was מכשיר is sufficient to establish their מחלוקת whether we are concerned for זילותא דב"ד.

⁵ שהורידוהו שני פעמים וכו' who writes; רש"י ד"ה דחיישינן.

⁶ One might argue that only a dual reversing of its ruling will cause a זילותא דב"ד, but not a one-time reversal.

⁷ The case there is by חזקת קרקע (where initially one brought עדות that the field belonged to his father, and also that he was there שני חזקה; the other party just brought עדות that he was there שני חזקה. Initially the field was awarded to the one who had עדות אבהתא ועדות חזקה. Later the losing party bought אבהתא as well. There is a discussion there whether we are concerned for זילותא דב"ד. In that case there was only a single reversal and nevertheless it was considered a זילותא דב"ד (according to that מ"ד) as רבא there compares that case with our case.

As is evident in פרק חזקת הבתים

answers: תוספות

ויש לומר דליכא זילותא דבי דינא אלא היכא שהורידוהו על ידי עדות -

And one can say; that there is a זילותא דב"ד only when he is lowered on account of testimony by עדים -

אבל בהורדה שעל ידי הקול ליכא זילותא דבי דינא⁸ -

However the lowering caused by a קול does not cause זילותא דב"ד if that ruling is reversed. Therefore at this point since they lowered him only because of the קול, all will agree that it is not a זילותא if they elevate him on the testimony of the ע"א.

anticipates a difficulty: תוספות

ואף על גב דאמרין (גיטין דף פא, א) גבי גרושה לכהן⁹ דלא מבטלים קלא -

And even though we learnt regarding a divorcee and a כהן, that we do not nullify a rumor, so why is it that here we are מבטל the קול that he is a גרושה בן with the testimony of the עד?

replies; the reason we are not מבטל קלא by the גרושה לכהן - תוספות

היינו משום דאית ליה תקנתא אבל הכא דאי לא מסקינן ליה לעולם פסול מבטלין -

That is because there is a remedy to that situation (the כהן and the woman can marry others¹⁰), however here (by the קול of גרושה בן), since if we will not elevate him to לכהונה, based on the testimony of the עד, he will always be לכהונה, therefore we are מבטל the קול.

offers another distinction between here (where we are מבטל the קול) and in גיטין¹¹: תוספות

אי נמי בתרומה דרבנן¹² הקילו:

Or you may also say; regarding תרומה דרבנן they were lenient and allowed this suspected גרושה בן to eat תרומה on the basis of the ע"א even though there is a הפוסל. However

⁸ Perhaps תוספות is alluding to what he writes in ד"ה ונפק that ב"ב לב, א ד"ה ונפק he demoted himself (to avoid any controversy). See תו"י here (אות א') who writes; **אי נמי אחתיניה לא דוקא אלא שירד מעצמו**.

⁹ The case there is where there was rumor regarding a כהן that he wrote a גט to his wife, and they were still living together. The גמרא there says that שמואל maintains that we are not מבטל this קול (see ד"ה ובנהרדעא תוס' there) (means we are not מבטל even with עדים), and we force the כהן and his wife to separate from each other (since a (אסור בגרושה כהן).

¹⁰ See סופר.

¹¹ תוספות is not however (answering the first question by) saying that there is no זילותא by a דרבנן, for if this were so how can we compare our case which is דרבנן to the גמרא in ב"ב where it is a question of דאורייתא. Rather תוספות is distinguishing when we are מבטל a קול and when not (when there is no זילותא דב"ד).

¹² See 'Thinking it over'.

איסור מדאורייתא there is an גרושה לכהן by the

SUMMARY

There is זילותא דב"ד (only) when the original ruling was based on עדות (but not if it is based on a קול). We are מבטל a קול if there is no remedy or if it is only a דרבנן.

THINKING IT OVER

What type of ע"א¹³ through an מבטל קלא we are תרומה דרבנן by answers that תוספות are we discussing here; if it is תרומה חו"ל or תרומת פירות, how does the גמרא previously (כד,ב) say that the רבנן and ר"י of our משנה (on כג,ב) argue whether תרומת (כה,ב ד"ה נאמן) previously stated (מכלין מתרומה ליוחסין) that from תרומת חו"ל or תרומת פירות everyone agrees that we are not מעלה even דאורייתא and certainly not ליוחסין? On the other hand if we are discussing דגן וכו' (which is תרומת דגן וכו'), regarding which תוספות stated (there) that all agree that we are מעלה to (מדרבנן בזה"ז), how are we מקיל to be מבטל the קול because it is a דרבנן, since we are תרומה דאורייתא so there is a דאורייתא to מעלה מתרומה דרבנן?!¹⁴

¹³ See footnote # 12.

¹⁴ See שלמה