

He said to him, — ומסתפינו מיניה דאיניש אלמא הוא —
I have witnesses but they are afraid of him for he is a strong man

OVERVIEW

In the story of מרי and his alleged brother, the brother responded to רב חסדא that he has witnesses that he is a brother, however the witnesses are afraid to testify since מרי is a powerful person. מרי then told מרי that he should bring witnesses that they are not brothers. The גמרא (perhaps מרי or the brother) asked that that this too is of no avail since the witnesses will lie (out of fear of מרי), to which the גמרא responded that nevertheless they will not lie. תוספות qualifies this גמרא.

נראה לרבינו יצחק דמיירי שהביא עדים -

It is the view of the ר"י that we are discussing a case where the brother (of מרי) brought witnesses to support his claim -

ואומרים אותו עדות שאתה שואל לא נאמר¹ לך כלום עליו דרגלים לדבר² שהוא אלים -

However the witnesses said, ‘we refuse to testify (on your behalf) the testimony which you are requesting’ (regarding his status as a brother to מרי); therefore there are grounds to suspect that מרי is a feared person. תוספות continues with the גמרא -

אמר ליה זיל כולי פירוש לך הבא אותם³ עדים עצמם⁴ שיראים להעיד⁵ עליך -

מר רב חסדא said to מרי, ‘go, etc. bring witnesses that he is not your brother’; the explanation of the request was, go and bring these same witnesses who are afraid to testify on behalf of your brother (as previously mentioned) -

שיעידו שאינו אחיך או שיאמרו שאינם יודעים אם הוא אחיך אם לאו⁶ -

That they should testify that he is not you brother, or they should say that they do not know whether he is your brother or not -

¹ The הגהות הב"ה amends this to read; נאמר כלום דרגלים (deleting the words לך and עליו).

² It is not however a conclusive proof that מרי was a גבר אלים (see מהרש"ל), for perhaps the brother was a גבר אלים and the עדים knew that he was not a brother, but were afraid to testify (see also שלמה).

³ Our text in the גמרא reads, זיל אייתינהו (bring them) which supports the view of תוספות that מרי was required to bring the same witnesses to testify (however the ב"ה is גורם 'אייתי' (bring), which is [seemingly] not according to תוס').

⁴ It is not sufficient (see חכמת מנוח) [or necessary] that מרי should bring other witnesses that should testify on his behalf, but rather since ר"ה is aware that these witnesses have testimony to offer, therefore ר"ה required [or allowed] that these witnesses testify.

⁵ The הגהות הב"ה amends this to read; להעיד שיעידו (deleting the word עליך).

⁶ In either of these two cases (even if they said they do not know), מרי will be vindicated, for as the גמרא states later that the עדים will not lie, and since these עדים (who were initially brought by the brother to prove his relationship) testify that they do not know of any relationship, therefore מרי is exonerated.

וקאמר השתא נמי כיון שיראים ממנו ישקרו לומר אינו אחיו או שאינן יודעין אם הוא אחיו -
And the brother [or מרי] asked on the ruling of ר"ה, since the witnesses are afraid of מרי, now when מרי will present them they will still lie and either say he is not his brother, or that they do not know whether he is his brother (and ר"ה answered that even though they are afraid to testify but nevertheless they will not lie.)

- תוספות explains that this ruling of ר"ה was only because the עדים said they will not testify -
אבל אם אין רגלים לדבר אין נראה כלל שיהא נאמן לומר דגברא אלמא הוא -
However if there are no grounds for the accusation that מרי is a גבר אלים, it does not seem that the brother will be believed at all to claim that מרי is a גברא אלמא -

תוספות proves his point:

דאם לא כן כל אדם יאמר על חבירו שהוא גברא אלמא⁷ ויביא הוא עדים ואם לא יביא יפסיד -
For if you will not say so, but rather maintain that the brother merely claimed that מרי was a גבר אלים without any substantiating evidence, then every person will claim regarding his (responding) litigant that the opposing litigant is a גברא אלמא and therefore the opposing litigant should bring witnesses to disprove my claim against him, and if he will not bring appropriate witnesses he loses the case. This would be a ludicrous proposition; therefore this proves that the claim of גבר אלים will not be accepted unless it is substantiated.

תוספות offers (additional) proof that מרי was required to bring the same עדים:
ועוד⁸ דקאמר השתא נמי אתו ומסהדי -

And in addition the brother [or מרי] said, that now also they will testify falsely on behalf of מרי, this proves that they are the same witnesses, for otherwise if מרי was to bring new witnesses how can the brother claim that the new witnesses will lie because they are afraid of מרי -

אטו משום דמסתפו מיניה הני סהדי מסתפו מיניה כולי עלמא:
Just because these witnesses that the brother brought are afraid of מרי, does that imply that everybody is afraid of מרי?! Obviously not, therefore we must say we are discussing the same witnesses.

SUMMARY

One can claim that the opposing litigant is a גבר אלים only if he can substantiate

⁷ גבר אלים may mean to say (that even though we will not believe a spurious claim that someone is a גבר אלים, nevertheless) that one can present a claim against a known גבר אלים and argue that the witnesses are afraid of him, so let the גבר אלים bring witnesses to justify his denial. This too is obviously unjustified. See תוס' ב"מ לט,ב ד"ה זיל.

⁸ See 'Thinking it over'.

this claim; for instance that the עדים declare that they will not testify; in which case the גבר אלים must (can) use these עדים to validate his claim.

THINKING IT OVER

גבר אלים is teaching us two (seemingly) separate rules; one that the claim of גבר אלים is valid only when there is רגלים לדבר, and also that מרי [needed to] (could) use these עדים to prove his point. תוספות however seems to mingle the two rules and considers them as one, because first תוספות brings proof to the first rule and then תוספות writes ועוד and brings a proof (only) to the second rule;⁹ are these two rules intertwined?!¹⁰

⁹ See footnote # 8.

¹⁰ See מלא הרועים, שיטה ישנה (למהר"י קורקוס), חכמת מנוח.