

For גליל and יהודה - דסתם יהודה וגליל כשעת חירום דמי -
are generally considered to be in a wartime state

OVERVIEW

The גמרא concluded that generally a מחאה שלא בפניו is a valid מחאה (and therefore a חזקה שלא בפניו היא חזקה). However during a state of conflict between two regions a מחאה שלא בפניו is not a מחאה (and neither is the חזקה valid). יהודה and גליל are considered to be in a state of perpetual conflict. Therefore there is no מחאה (and no חזקה) between יהודה וגליל.

asks a question: תוספות

תימה דבריש גיטין (דף ד,ב ושם) תנן¹ דבארץ ישראל אין צריך לומר -

This is astounding! For we learnt in a משנה in the beginning of גיטין
that in א"י there is no requirement to say that the גט was -

בפני נכתב ובפני נחתם² אפילו מיהודה לגליל -

written in my presence and signed in my presence, even if the גט is
brought from יהודה to גליל; which are considered here to be on a wartime status. We are not concerned about finding עדי קיום -

משום דאיכא עולי רגלים ובתי דינים ועדים מצויין לקיימו -

Because there are those who ascend to ירושלים for the holidays and there
are courts of law throughout א"י, so therefore there are witnesses available
to be מקיים the גט. The people, who are עולה רגל, or are going to ב"ד, from יהודה, will be able to be מקיים the גט in גליל (and vice versa). It is evident from this גמרא in גיטין that sufficient people travel from יהודה to גליל to be מקיים a גט. These people who are traveling should also be able to relate the מחאה. Why is there a difference between a מחאה and קיום?!

answers: תוספות

ויש לומר דהתם האשה מחזרת אחרי עדי קיום -

And one can say that there is indeed a difference between מחאה and חזקה,
for there by a גט the woman is searching for עדי קיום; she needs them to authenticate the גט (in order to remarry, etc.) Therefore -

¹ דף ב,א.

² When a שליח brings a גט from לארץ א"י, he must proclaim בפ"נ ובפ"נ. This is considered an authentication of the גט, and prevents the husband from claiming that he never sent it. It is necessary that the שליח be מקיים the גט by saying בפ"נ ובפ"נ, for since it is from חו"ל we may not be able to authenticate it otherwise. The גמרא explains that in א"י itself however there is no such requirement

אף על פי דיהודה וגליל כשעת חירום דמי תמצא עדי קיום כיון דאיכא עולי רגלים -
Even though that יהודה and גליל are considered to be on a wartime basis,
nevertheless **she will find the עדי קיום since there are עולי רגלים** who travel
between יהודה and גליל. She is searching for them; therefore she will surely find them.

אבל המחזיק אין רגיל לחזור אחרי עדי מחאה -
However it is not usual for the new possessor of the property to search for
עדי מחאה. Therefore even if there are a few people who travel between יהודה וגליל, the
מחזיק will not hear anything from them, since he is not investigating if a מחאה was lodged
against him.³

Tosfos has an additional question:

ואם תאמר התם [שם דף ז.א.] דאמר שאני בני מחוזא דניידי -
And if you will say; that the גמרא states there that inhabitants of מחוזא
are different⁴ for they travel continually -

וצריך לומר אפילו באותה שכונה בפני נכתב [ובפני נחתם]⁵ דאין עדים מצויין לקיימו -
And therefore the שליח הגט is required to say [ובפ"נ] even if he brings
a גט in the same neighborhood, for witnesses are not available to
authenticate the גט, even if it was brought from one house to another in the same
neighborhood. The people of מחוזא are always traveling on business and they may not be
available to be מקיים the גט and/or they may not recognize the signatures of their
associates even in the same שכונה. It would therefore seem that since even for a גט, where
the woman is searching specifically for עדי קיום, nevertheless מחוזא is considered a place
where there are no עדים מצויין לקיימו -

אטו במחוזא לא תועיל מחאה שלא בפניו -
Does it therefore follow that in מחוזא an absentee מחאה will not be
effective?! In the previous answer, Tosfos concluded that it is more likely that a woman
will find the עדי קיום from a war zone, than the מחזיק will hear the מחאה שלא בפניו from that
same place. Therefore in a case where the woman will not find עדי קיום (such as in מחוזא),
it would seem that the מחזיק will certainly not hear the מחאה שלא בפניו. It seems therefore
that in מחוזא a מחאה שלא בפניו will not be effective.⁶ Tosfos finds this to be highly unlikely!

Tosfos answers:

ויש לומר דהתם דרך הליכתן מן העיר כששמעו מחאה -

³ See previous footnote # 3. ד"ה מחאה תוספות יז,ב

⁴ In other cities in the same country, even in חו"ל is required (according to רבא) since in the same
country there are עדים מצויין לקיימו. However מחוזא, which was in חו"ל, is different.

⁵ See הגהות הב"ה.

⁶ See 'Thinking it over # 1.

And one can say that there in מחוזה, on their way when they leave the city of מחוזה for their travels, if these travelers heard a מהצה (from someone in מחוזה) –

רגילות הוא לומר פלוני מיחה ושומעין אחרים עד שנשמע הקול למחזיק -

It is customary for the traveler **to remark** to others, that **so and so protested** the occupation of his field **and others hear** about this **מחאה** and in turn relate it to others **until the מחזיק hears of this protest**. It is not necessary for the party that heard the initial protest to remain in the city, in order for the מחזיק to be aware of the protest. Even if the initial hearing party (or any subsequent hearing parties) leave the city, the word will still get around to others who are remaining in the city, until it will ultimately reach the מחזיק.

אבל גבי גט אין רגיל שיאמרו בהליכתן אנו חתמנו על הגט -

However by a **גז** it is not usual that the signers of the **גז** will say while leaving **מחרוזת**, that **we signed on a גז**,⁷ and it is equally unusual for them to say –

[או⁸ מכירין אנו חתימת עדים החתומים]:

[(or that) we recognize the signatures of the signing witnesses (which is also a valid קיום)].⁹ People usually do not say these kinds of things (as opposed to saying that פלוני מיהח [which is a standard topic of conversation]). Therefore the woman will not be able to find the עדים who would be מקיים her גט.

SUMMARY

A woman is more concerned with finding עדי קיום for her גט than a person is concerned whether anyone made a מחאה on his חזקה. Therefore a woman will more easily find עדי קיום from a שעת חירום situation that the מחזיק will hear a מחאה in this same situation.

Conversely people are more likely to mention about hearing a מחאה than mentioning that they signed a גט. Therefore in a city of frequent travelers (like מחוזא) it is more likely that the מחזיק will hear a מחאה שלא בפניו than she will find her עדי קיום.

THINKING IT OVER

1. תוספות second question was that in מחוץ a בלתי should not be

⁷ While people may be interested if anyone divorced, they are not particularly concerned who signed the *ṣā*.

⁸ According to the marginal note, the bracketed statement is from a manuscript (attributed to 'תוס').

⁹ It seems from תוספות that if they said הגט אנהנו חתמנו על הגט or מכירים אנו התימת העדים and this would be reported to גיטין ד,ב ד"ה כיון תוספות # 2. See: ‘Thinking it over’ קיום. See: ‘Thinking it over’ # 2. תוספות answers simply that she will not find the עדי קיום; implying that the עדים themselves must testify in ב"ד. See however ח"ב מ"ח אות ריד.

valid.¹⁰ Did תוספות mean that the מחאה should not be valid unless it is בפניו, otherwise the חזקה is valid; or that since a מחאה שלא בפניו is not valid (in מחוזא), the חזקה should not be valid?

2. תוספות implies that if the עדים would say that אנו התמנו על הגט, etc. and it would be reported to בי"ד it would be a valid קיום.¹¹ This seems to contradict the rule that an עד מפי עד is invalid!¹²

¹⁰ See footnote # 6.

¹¹ See footnote # 9.

¹² See משכנות הרועים אות צ and סוכ"ד.