ואסקיניה – And they elevated him

Overview

The גמרא details 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 זילותא דבי דינא or not.[[1]](#footnote-1) תוספות discusses the ramifications if we maintain חיישינן לזילותא דב"ד.

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תוספות asks:

ואם תאמר ולמאן דחייש לזילותא[[2]](#footnote-2) דבי דינא היכי אסקוהו[[3]](#footnote-3) כיון דאחתיניה מחמת הקול[[4]](#footnote-4) -

And if you will say; according to the one who is concerned for 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 זילותא דב"ד!

תוספות rejects a proposed solution:

וליכא למימר[[5]](#footnote-5) דליכא זילותא דבי דינא אלא היכא שהורידוהו שתי פעמים[[6]](#footnote-6) -

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 הבתים[[7]](#footnote-7) (בבא בתרא דף לב,א) -

As is evident in פרק חזקת הבתים.

תוספות answers:

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 דינא[[8]](#footnote-8) -

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.

תוספות anticipates a difficulty:

ואף על גב דאמרינן (גיטין דף פא,א) גבי גרושה לכהן[[9]](#footnote-9) 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 בן גרושה with the testimony of the עד?

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

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 others[[10]](#footnote-10)), however here (by the קול of בן גרושה), since if we will not elevate him to כהונה, based on the testimony of the עד, he will always be פסול לכהונה, therefore we are מבטל the קול.

תוספות offers another distinction between here (where we are מבטל the קול) and in גיטין:[[11]](#footnote-11)

אי נמי בתרומה דרבנן[[12]](#footnote-12) הקילו:

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

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

תוספות answers that by תרומה דרבנן we are מבטל קלא through an ע"א.[[13]](#footnote-13) What type of תרומה דרבנן 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 מעלין מתרומה ליוחסין when תוספות previously stated (כה,ב ד"ה נאמן) that from תרומת חו"ל or תרומה פירות everyone agrees that we are not מעלה even לתרומה דאורייתא and certainly not ליוחסין? On the other hand if we are discussing תרומת דגן וכו' (which is מדרבנן בזה"ז), regarding which תוספות stated (there) that all agree that we are מעלה to תרומה דאורייתא, how are we מקיל to be מבטל the קול because it is a דרבנן, since we are מעלה מתרומה דרבנן to תרומה דאורייתא so there is a חשש דאורייתא?![[14]](#footnote-14)

1. If we are concerned for זילותא דבי דינא then even though there are תרי ותרי and the son has a חזקת כשרות, nevertheless we will not elevate him to כהונה, since we already lowered him; this will be a זילותא דב"ד. [↑](#footnote-ref-1)
2. זילותא דב"ד means the cheapening of בי"ד. If בי"ד reverses its ruling, they will not be respected; their honor will be tarnished. [↑](#footnote-ref-2)
3. See footnote # 1. [↑](#footnote-ref-3)
4. תוספות question may (also) be if the מחלוקת is regarding the זילותא 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. [↑](#footnote-ref-4)
5. See רש"י ד"ה דחיישינן who writes; שהורידוהו שני פעמים וכו'. [↑](#footnote-ref-5)
6. One might argue that only a dual reversing of its ruling will cause a זילותא דב"ד, but not a one-time reversal. [↑](#footnote-ref-6)
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 עדות 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. [↑](#footnote-ref-7)
8. Perhaps תוספות is alluding to what he writes in ב"ב לב,א ד"ה ונפק that לאו דוקא אחתיניה אלא כלומר ממילא ירד; he demoted himself (to avoid any controversy). See תו"י here (אות א') who writes; אי נמי אחתיניה לאו דוקא אלא שירד מעצמו. [↑](#footnote-ref-8)
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 תוס' there ד"ה ובנהרדעא that it means we are not מבטלי קלא even with עדים), and we force the כהן and his wife to separate from each other (since a כהן is אסור בגרושה). [↑](#footnote-ref-9)
10. See כתב סופר. [↑](#footnote-ref-10)
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 גזילה דאורייתא. Rather תוספות is distinguishing when we are מבטל a קול and when not (when there is no זילותא דב"ד). [↑](#footnote-ref-11)
12. See ‘Thinking it over’. [↑](#footnote-ref-12)
13. See footnote # 12. [↑](#footnote-ref-13)
14. See כסא שלמה [↑](#footnote-ref-14)