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The Facts:

On 26 Tishri 5776 (10 October 2016), the said man married the plaintiff. When the ring was given to the woman, the following people stood under the *huppah*: the rabbi who was the *mesadeir kiddushin*, the groom and the bride, members of the family, and three of the groom's friends.

Three years later, in September 2019, the wife demanded that her husband leave the house. In April 2020, the wife filed for a civil divorce in the civil court. As of the time of issuing this decision, the court proceedings are still ongoing. Although the wife has requested a *get* from her husband, the husband demands that all the financial claims be decided as a precondition for giving the *get*.

We summoned the husband to our Beit Din, but he refused to appear. On 1 Kislev 5781 (17 November 2020) we conducted a hearing with the wife on the matter of the *get*. On 4 Kislev, we ordered the husband to give his wife a *get* unconditionally. To date, a year after the decision, the husband refuses to give his wife a *get*.

After deliberation, we are of the opinion that the wife should be released through nullification of the *kiddushin*, as follows:

Deliberations:

We questioned the man's friends who had been designated as witnesses and who stood under the *huppah*, and found that they were all secular, that they publicly desecrated Shabbat and drove on Shabbat. They do not observe the dietary laws. Two of the friends admitted to the Beit Din that they were secular, and one told us that the third friend too was secular.

The *Shulhan Arukh (Hoshen Mishpat 34:25)* rules that "A person is not disqualified due to a transgression on his own admittance, but on the basis of witnesses who testify against him, for a person does not make of himself a sinner"; however, R. Ovadiah Yosef (*Resp. Yabia Omer 9, Even ha-Ezer 21(5)*) ruled that public desecrators of Shabbat are classified as "despicable", and they

are ineligible as witnesses, even if there has been no testimony disqualifying them (see his sources *ad loc.*)¹

Secondly, the wife was adamant in her assertion that the three friends are secular. According to R. Unterman, she is believed as to the identity of those present under the *huppah* at the time of the *kiddushin*. He writes as follows (*Resp. Shevet mi-Yehuda 2, Even ha-Ezer 25*):

I heard what the above wife said, that she had a detailed list of all the people who were present at the wedding ceremony, and the esteemed Rabbi went over this list (because he is acquainted with the type of people in his city) and found that only one of those present was considered eligible to be a witness. Indeed two people who signed the document were indeed ineligible (she could not specify whether they signed the *ketubah* or another document to certify the marriage). All this became known only through what the wife herself said, for the esteemed Rabbi did not mention this matter at all. And if this is so, the *kiddushin* were without eligible witnesses.

Now, even if the witnesses that were designated are not eligible as witnesses, the *Aharonim* cite the approach of the *Hatam Sofer*, whereby in relation to testimony to *kiddushin*, it is possible to rely on people who are eligible to testify who were amongst the guests, and the testimony is valid as comporting with the rule of *anan sahdi* – “We are all witnesses.”² In the present marriage, amongst the guests there were indeed those who were halakhically observant and who were not relatives.

However, many authorities rejected this view, and proved that rendering an act of *kiddushin* valid based on the *anan sahdi* rule is indeed a great innovation; they bring many sources to the effect that it cannot be said that the leading decisors held this approach.³ The *Tzitz Eliezer*, after proving at length that a *huppah* in which the designated witnesses were ineligible cannot be rendered valid on the basis of witnesses amongst the guests, summarizes thus:

¹ It must be mentioned that *batei din* usually invalidate the *kiddushin* testimony of Shabbat desecrators, even though there has been no testimony about their desecration of Shabbat, for various reasons. See e.g. PDR 7 p. 175, the opinions of Rabbis Yosef Shalom Eliashiv, Bezalel Zolti and Eliezer Goldschmidt:

“According to the way of the world at present and the life-style of people in this period, if a person comes before a *beit din* and says that he desecrates the Shabbat, the *beit din* has no reason not to believe him on this matter; and even though according to the rules of evidence, the *beit din* should not accept what he says, in their hearts the judges have no doubt about this. Therefore, when the witnesses to the *kiddushin* say about themselves that they are ineligible to testify, even though there are no witnesses to this, the *beit din* cannot validate the *kiddushin* that took place before these witnesses, because who can a *beit din* approve the existence of *kiddushin*, in any way, when it knows that the *kiddushin* were conducted without eligible witnesses: they are not valid in any way and it is as if they never took place.”

² *Resp. Hatam Sofer 3, Even ha-Ezer 1:100*. This was preceded by *Resp. Havot Yair 19*. And similarly in *Iggrot Moshe, Even ha-Ezer 1:76-77* (although it is possible that *Iggrot Moshe* only wanted to say that even if we rule in accordance with the *Hatam Sofer*, we cannot rely on *anan sahdi* when the *mesadeir huppah* is from the Reform stream.

³ Including: *Resp. Tzitz Eliezer 8:37*; *Resp. Sha'arei Tzion 2, Even ha-Ezer 11*; *Resp. Shemesh u-Magen 4, Even ha-Ezer 14* (where it says in relation to the *Hatam Sofer* that “the authorities disagreed with him”) etc. And they specify at length those authorities who disagree with this view of the *Hatam Sofer*.

After all this, who can find fault with a rabbi who relies on these great pillars of Torah learning, and sitting in the Beit Din invalidates such flawed *kiddusin* in order to rescue a woman from her *igun*.

And that is precisely the case at hand.

Our conclusion from all the above is that we rely on the accepted ruling that if the designated witnesses are desecraters of the Sabbath in public, the *kiddushin* are null and void.

On this basis, the woman is permitted to marry any Jewish man, even a Kohen.

We have hereby signed our names, this 18th day of Adar 5781 (2 March 2021).