

כיון שמיחה שנה ראשונה שוב אין צריך למחות –

Since he was מוחה the first year he is not required to be מוחה again

OVERVIEW

It was stated in the name of רב (or חייא בר רב) that once the מערער made a מחאה, he is not required to be מוחה again. A cursory reading may indicate that he never has to make another מחאה (even after three years elapsed since his initial מחאה). תוספות rejects this view and explains the פ' הרשב"ם.

פירש הקונטרס¹ עד סוף² ג' שנים –

The רשב"ם explained that א"צ למחות means that a מחאה is not required until the end of [each] three year cycle; there should not be (more than) three years between מחאות.

תוספות asks:

ואם תאמר מתניתין היא דקתני עד כדי שיחזיק שנה ויודיעוהו שנה ויבא לשנה אחרת וימחה –
And if you will say; what is the חידוש of this ruling; this was already stated in our משנה where it says,³ ‘so that he will make a חזקה for a year and they will inform him for a year and the מערער will come the next (third) year and protest’ -
אלמא דאין צריך למחות רק פעם אחת תוך ג' שנים⁴ –

It is evident from the משנה that he is only required to be מוחה once during the three years; so what is the חידוש that למחות אין צריך למחות שנה ראשונה שוב אין צריך למחות חידוש?!

תוספות answers:

ויש לומר דאי ממתניתין הוה אמינא דאין צריך כי אם מחאה אחת בסוף ג' –
And one can say; that if we would only learn from our משנה, I would have thought that only one מחאה is required at the end of three years (as the case is regarding אסמפיא in our משנה, that he made a מחאה at the end of the third year)⁵
אבל אם מיחה בתחלת ג' ושוב לא מיחה בכל אותן ג' סלקא דעתין דמודה שהיא שלו –
However in a case where the מערער was מוחה in the beginning of the three years (i.e. in the [beginning of the] first year of the חזקה) and he was not מוחה again for the entire following three years, we may have thought that by not being

¹ רשב"ם ד"ה לא See.

² The סוף כל ג' וג' שנים amends this to read, חזקה.

³ מחזיק, this is in regards if the מערער lived (in אסמפיא) a year away from the מחאה.

⁴ See ‘Thinking it over’ # 1.

⁵ The מערער is ‘excused’ for not making the מחאה earlier, since it took that much time for the חזקה to reach him and for him to respond. See ‘Thinking it over’ # 2.

continually מוזה, the מערער is admitting that it belongs to the מחזיק; for otherwise why is he not continually being מוזה, therefore the חידוש is that even if he made a מחאה in the beginning, that מחאה is valid for a period of three years.

שוב א"צ למחות rejects an alternate explanation of למחות:

ואין לפרש דאין צריך למחות עד עולם⁶ –

And we cannot explain that אין צריך למחות means that he is not required to be forever, after he made one מחאה -

דאם כן פליגי אדריש לקיש והוה ליה למימר ריש לקיש אמר:

For if indeed this is רב's intention that there need be no more מחאות, then רב argues with ר"ל (who maintains 'וג' כל ג' (וצריך למחות בסוף כל ג' וג'), so the גמרא should have stated אמר ר"ל (which indicates a disagreement with the previous opinion [namely רב]), and not אמר ר"ל (which indicates a new statement but no argument).

SUMMARY

שוב א"צ למחות means that he need not be מוזה until three years have passed.

THINKING IT OVER

1. משנה⁷ asks that we already know the דין of למחות שוב א"צ from our משנה. However, in our משנה he could not be מוזה more often, but in a case where he could be מוזה more often perhaps he is required to be (בכל שנה)⁸

2. תוספות⁹ states in his answer that in the ה"א we would have thought that if he was מוזה in the beginning and then not מוזה till the end of the three years that it should be a חזקה, since it appears that the מערער is מודה that it belongs to the מחזיק. Would we also have assumed then that if he was not מערער until (before) the end of three years (when he was close enough to be מוזה earlier) that by not being מוזה he is also מודה that it belongs to the מערער? What is the difference between the two cases?¹⁰

⁶ The advantage of this פירוש is that it would remove תוספות question that this חידוש was already stated in the משנה. According to this interpretation it was certainly not mentioned in the משנה. Nonetheless תוספות dismisses this interpretation.

⁷ See footnote # 4

⁸ See "י אות שמה

⁹ See footnote # 5.

¹⁰ See "מ נח.