

אם¹ עמד וגדר את הרביעית - If he arose and fenced in the fourth side

OVERVIEW

The משנה is vague concerning the statement of ר' יוסי that אם עמד וגדר וכו'. It does not state who was גודר; whether it was the מקיף or the ניקף that built the fourth wall. In other גמרות the text read explicitly אם עמד ניקף וכו'. Our תוספות rejects this גירסא.²

לא גרסינן³ אם עמד ניקף דהא לכולהו לישיני דגמרא קאי אמקיף⁴ –

The text does not read; 'if the encircled one arose'. For in fact according to (almost) all the interpretations of the משנה that the גמרא states, the word 'עמד' refers to the encircling party; not (only) to the encircled party -

בר מלישנא בתרא דקאמר מקיף וניקף איכא בינייהו⁵ –

Except for the last interpretation in the גמרא, which states; the difference between the ת"ק and ר' יוסף will be whether the מקיף or the ניקף, built the fourth wall. According to this last opinion, the word עמד refers to the ניקף only and not to the מקיף. ר' יוסי maintains that only if the ניקף made the fourth wall then הכל עליו את הכל. However the חכמים maintain that הכל עליו את הכל regardless of who made the fourth wall.

מקיף anticipates a question on this statement that the term 'עמד' refers to the מקיף:

והא דדייק בפרק כיצד הרגל (בבא קמא דף כב, ושם) טעמא דניקף הא מקיף פטור –

And concerning that which the גמרא infers in פרק כיצד הרגל, in the discussion of whether ר' חסדאי is חייב or פטור. The גמרא infers from the statement of ר' יוסי that עמד refers to the ניקף, not the מקיף. As the גמרא there states that according to ר' יוסי the reason we are מגלגלין עליו את הכל is because the ניקף built the fourth wall (he showed that he is willing to spend money); therefore he has to pay for the rest, however if the מקיף built the fourth wall (also), the ניקף would be פטור, even though he is a נהנה. This proves that ר' חסדאי is פטור. This concludes the quote from that גמרא. Obviously that גמרא contradicts תוספות opinion that 'עמד' refers to the מקיף.

- משנה that brought proof from our הגמרא that there is no contradiction. תוספות answers that there is no contradiction. היינו לההוא לישנא:

¹ It would be beneficial to first learn the entire גמרא until the end of ב,ד, before studying this תוספות.

² It should be obvious that if גדר refers to the מקיף (and the ניקף is חייב) then certainly if the ניקף made the fourth wall he is חייב. The question is whether it means only the ניקף or perhaps the מקיף as well.

³ The משנה was vague as to who actually fenced in the fourth side.

⁴ Even if the מקיף made the fourth wall, the ניקף is responsible to contribute.

⁵ עמוד is referring to the לישנא אחרינא מקיף וניקף איכא בינייהו at the end of this תוספות.

It was according to that last לשון in our גמרא, which interprets 'עמד' to refer to the ניקף.⁶ According to the other לשונות, however there would (seemingly) be no proof from our גמרא.⁷

SUMMARY

The גירסא in the משנה is 'ואם עמד וגדר וכו' not 'ואם עמד ניקף וגדר כו'. In fact according to almost all the opinions in the גמרא the rule of the משנה applies even if the מקיף was גודר. The גמרא in ב"ק that attempts to derive from our משנה that זה נהנה וזה לא חסר is פטור, indeed maintains that ואם עמד refers to the ניקף, and is following the גמרא in our גמרא.

THINKING IT OVER

Can there be a סברא that if the ניקף made the fourth wall there will be less reason to be מחייב him than if the מקיף made the fourth wall?

⁶ Perhaps the גמרא there assumed that the expression 'ואם עמד וגדר', indicates that this is being done by a new person; one who is first now 'עמד וגדר', i.e. the ניקף. See תוספות ד"ה ורבי יוסי on this עמוד.

⁷ We cannot infer anything from the fact that if the מקיף made the fourth wall the ניקף is מחייב; because as the גמרא explains in ב"ק the מקיף is a חסר for he can claim יתירא לי הקיפא יתירא. The proof can only be if the ניקף is פטור.