

If you will say; אילימא דאמר ליה פרעתוך בזמני פשיטא - that he said to him 'I paid you on time', then it is obvious!

OVERVIEW

maintains that אין אדם פורע תוך זמנו ריש לקיש. The גמרא challenges this view from our משנה of שנפל חצר נתבע is believed that he paid for his share in the wall. The גמרא analyzes this statement. When does the נתבע claim that he paid the תובע? It certainly cannot mean that he claims that he paid him after the wall was built; for then it is obvious that he is believed. A נתבע is always believed to claim בזמנו פרעתוך תובע, unless the תובע can prove otherwise. תוספות questions this assumption that it is obvious that the נתבע is believed. Our situation seems similar to a case of המלוה את חבירו בעדים. Based on the dispute whether or not, it would not seem so obvious that the נתבע is believed without עדים.

תוספות asks:

ואם תאמר ואמאי פשיטא הא כיון דאין אדם פורע תוך זמנו¹ ואנן סהדי שזה עשה כותל² –
And if you will say; why is it so obvious that the defendant (נתבע) is believed,
when he claims that he paid for the expenses of the wall on time. Perhaps it is not
so obvious for since a person does not pay up his debt before it is due, we can
therefore safely assume that no monies were paid by the נתבע before the wall was
built and we (בי"ד) are witnesses that the plaintiff (תובע) built the wall. Therefore,
 since בי"ד knows for sure that the נתבע owed the תובע money³ –
איצטריך לאשמועינן דאין צריך לפורעו⁴ בעדים⁵ –

¹ The גמרא at this point is challenging the opinion of ר"ל who maintains that אין אדם פת"ז. In addition: the preceding אאפת"ז points out that in the case of כותל, even אב"י ורבא will agree that תוספות ד"ה כי.

² See previous מארבע (ה,א) ד"ה, תוספות, that it is known that the תובע requested from the נתבע to join him in building the wall and the נתבע refused. This creates the סהדי אנן that the תובע built the wall himself.

³ If we were to maintain that אין אדם פת"ז then בי"ד would not be sure that the נתבע owed money to the תובע. It is possible that the נתבע had already paid the תובע before he (completely) built the wall. It is not a situation which can be compared to המלוה את חבירו בעדים. There is no loan; monies were never owed. However since we are maintaining that (by the case of אאפת"ז) (כותל) then obviously the נתבע did not pay before the wall was built. בי"ד therefore knows for sure that the נתבע owed the תובע money. See מהרש"א, מהר"ם.

⁴ question is even according to the מ"ד who maintains that לפורעו בעדים א"צ; nonetheless the המלוה את חבירו בעדים א"צ; nevertheless that itself – that לפורעו בעדים – is a חידוש, for others maintain that צריך לפורעו בעדים. See 'Thinking it over' # 1.

⁵ The נתבע is believed even if there are no witnesses that can testify that he paid. One might have thought that a נתבע is believed to claim פרעתי only if we are not certain that the נתבע owed the תובע money. In our case however since it is known that the נתבע owed money, he should not be believed that he paid, unless he provides adequate proof. That is what our משנה is teaching us; that nevertheless the נתבע is believed if he claims that he paid בזמנו.

It is necessary for the תנא of the משנה to let us know that it is not necessary for the נתבע to pay the תובע in the presence of witnesses.

תוספות answers:

ויש לומר דאפילו מאן דאמר גבי מלוה חבירו בעדים צריך לפרועו בעדים –

And one can say that even according to the one who maintains concerning one who lends money in the presence of עדים, that the לווה is required to repay him in the presence of עדים; otherwise the לווה cannot claim פרעתי. That is only -

התם משום דלא הימניה מעיקרא –

There, in the case where he lent him the money in the presence of witnesses **because** the מלוה **did not originally** trust the לווה.⁶

אבל הכא ליכא שום הוכחה דלא הימניה הילכך פשיטא דאין צריך לפורעו בעדים:

However here in the case of the fallen wall, there is no proof at all that the תובע does not trust the נתבע, therefore it is obvious that the נתבע is not obligated to pay him in the presence of witnesses; even according to the המלוה את חברו בעדים מ"ד of צריך לפורעו בעדים.⁷

SUMMARY

Even if we maintain that the משנה is comparable to a חיוב בעדים, nevertheless it is still פשיטא that the נתבע is believed to claim בזמנו פרעתי even without עדים. The דין of צריך לפורעו בעדים is only when the loan was made in the presence of עדים; which indicates his distrust of the לווה. In our משנה there is no such indication.

THINKING IT OVER

1. Seemingly this תוספות is redundant. Can we differentiate between our תוספות and צריך לפורעו בעדים whether תוס' ד"ה ובא (ה,א [וב']?)⁸

2. In תוספות question; would our משנה contradict the view of the מ"ד that המלוה

Why then does the גמרא assume that it is so obvious that the נתבע is believed, when seemingly there is a חידוש that he is believed even without עדים?!

⁶ See previous (א,ה) ובא ד"ה תוס' on this עמוד. The מלוה by lending the money in the presence of עדים is in a sense notifying the לווה that he is not trusted. The reason the מלוה made sure that there were witnesses present at the time of the loan is because he did not trust that the לווה will admit that he owes him money. It is in this situation only that there is a dispute whether המלוה את חברו בעדים צריך לפורעו בעדים or not.

(see footnote # 4); המלוה את חבירו בעדים א"צ לפורעו בעדים מ"ד even according to the question was that there is a חיודוש even according to the תוספות concludes that it is פשיטא that המלוה את חבירו בעדים א"צ לפורעו בעדים מ"ד even according to the צריך לפורעו בעדים.

⁸ See footnote # 4 (&8). See סוכ"ד אות ע

את חברו בעדים צריך לפורעו בעדים?