

If you will say, that he said to him 'I paid you on time', then it is obvious!

Overview

The גמרא challenges this view maintains that אין אדם פורע תוך זמנו from our משנה of כותל חצר שנפל, where the 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 בזמני פרעתיך, unless the תובע can prove otherwise. 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 צריך לפורעו בעדים or not, it would not seem so obvious that the נתבע is believed without עדים.

asks: תוספות

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 due¹, 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 built the wall². Therefore, since בי"ד knows for sure that the נתבע owed the money³ –

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 witnesses⁴. 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

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 אב"י ור"ב will agree that in the case of כותל, even תוספות ד"ה כי

² See previous מארבע (ה,א) ד"ה מארבע 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 a כותל) אאפת"ז; 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 מהר"ם א, מהר"ש.

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

provides adequate proof. That is what our משנה is teaching us; that nevertheless the נתבע is believed if he claims that he paid בזמנו. 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?!

answers: תוספות

one can say that even according to the one who maintains –

concerning one who lends money in the presence of לווה, that the

is required to repay him in the presence of עדים; otherwise the לווה cannot claim פרעתי. That is only –

there in the case where he lent him the money in the presence of witnesses –

that the לווה did not originally trust the לווה. The reason the לווה 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 money⁵. It is in this situation only that there is a dispute whether the לווה צריך לפרוע בעדים or not.

however here in the case of the fallen wall, **there is no proof at all that** the נתבע **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 הלכה of מ"ד that the לווה צריך לפרוע בעדים.

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 פרעתי בזמני even without עדים. The צריך לפרוע בעדים of דין is only when the loan was made in the presence of עדים; where the לווה indicates his distrust of the לווה. In our משנה there is no indication of such mistrust.

Thinking it over

1. Seemingly this תוספות is redundant. Can we differentiate between our צריך לפרוע בעדים if concerning תוספות ד"ה ובא (ה,א וב') and תוספות?

2. In תוספות question; would our משנה contradict the view of the מ"ד that the לווה צריך לפרוע בעדים?

⁵ See previous (ה,א) ובא on this תוס' ד"ה. The לווה by lending the money in the presence of עדים is in a sense notifying the לווה that he is not to be trusted. The לווה can rid himself from this debt only if witnesses will testify that it was paid.

⁶ The תוספות question was that there is a חידוש even according to the מ"ד that צריך לפרוע בעדים א"צ לפרוע בעדים (see footnote # 4); תוספות concludes that it is פשיטא that צריך לפרוע בעדים even according to the מ"ד that the לווה צריך לפרוע בעדים.

⁷ See footnote # 4 (&6).