

הכי¹ גרסינן הכותל והאילן שנפלו לרשות הרבים והזיקו פטור מלשלם –

This is how the text reads: **The wall and the tree, which fell into the רה"ר and caused damage; he is exempt from paying**

OVERVIEW

The משנה states if a wall or a tree fell into the רה"ר and caused damage, the owner is (obligated to pay) [exempt from paying]. If בי"ד gave him time to remove the wall or the tree and they fell within the time, the owner is פטור. However if it fell after the allotted time passed he is חייב. There is a dispute how the text should read concerning a wall or tree that fell, when no warning was given to the owner. תוספות will explain why the correct גירסא is מלשלם and not לשלם.

וכן כתוב בספרים של רש"י וכן בספר רב אלפס וכן עיקר -

And so too is it written in the texts of רש"י and similarly in the text of אלפס; **and this is the correct** reading that he is פטור מלשלם.

אבל אותם דכתוב בהו חייב לשלם לא נהירא -

However those texts where it is written ‘he is obligated to pay’ are incorrect -

דכיון דבשלא הזהירו חייב לא יתכן להקל עליו לפוטרו ממה שמזהירין אותו לקוץ ולסתור:

For since he is obligated to pay even when he was not warned (to remove the wall or the tree), it is inconceivable to be lenient and exempt from payment that person who was warned to chop down the tree and to dismantle the wall.²

SUMMARY

The correct גירסא is מלשלם and פטור מלשלם. One should be more liable for damages if he was warned by בי"ד to remove the (possible) מזיק.

THINKING IT OVER

Perhaps when a wall falls (without the person being warned previously), the owner is always חייב. However when בי"ד allows an allotted time to remove the המזיק, the owner should be exempt from paying for any damages caused during this time, for it is considered as if בי"ד gave him a ‘grace period’, when he will not be liable.

¹ This עמוד ב' on גמרא are referencing the תוספות ד"ה אי וד"ה היינו תוספות as well as well as the two following.

² If a person who was not warned to remove the wall or the tree is חייב whenever it falls, then definitely one who was warned to remove it, should surely be חייב (no matter when it falls). See ‘Thinking it over’.