

בשטרי חלטאתא¹ ואדרכתא² דלאו בני פרעון נינהו –

By שטרי חלטאתא ואדרכתא which are not payable

OVERVIEW

The משנה states that if one finds מעשה בי"ד it is to be returned to the maker. שטר מקויים and it initially assumed that מעשה בי"ד refers to a שטר מלוה because we are not concerned that the מלוה paid the loan. חושש לפרעון; however זירא refuted this proof; it is possible we are שטרות which are not שטרי חלטאתא ואדרכתא (only) refers to מעשה בי"ד that are used to collect money from the מלוה but rather they give the מלוה rights to collect the properties of the מלוה. Therefore there is no concern of payment. שטרי אדרכתא חשש פרעון by תוספות explains why there is no

asks: תוספות

תנימה שטרי אדרכתא אמאי לאו בני פרעון נינהו –

It is astounding! Why are שטר אדרכתא considered notes that are not payable? They should be considered payable -

כיון דעדיין לא זכה בקרקע עד שכתבו לו שטרי חלטאתא³ –

Since the מלוה did not acquire any property yet, until בי"ד writes for him שטרי חלטאתא. At this point the מלוה can pay the debt (and claim that he paid the debt). If we are חושש לפרעון (as זירא maintains) why do we return the שטרי אדרכתא to the מלוה; perhaps the מלוה paid the debt and he lost the שטרי אדרכתא!

continues to ask: תוספות

וכן בסמוך⁴ דקאמר איהו דאפסיד אנפשיה דבעי ליה למקרעיה –

¹ See רש"י ד"ה בשטרי. A שטר חלטאתא states that בי"ד assigned a specific field (which belonged to the מלוה) to the מלוה as a collection for his debt.

² See רש"י ד"ה אדרכתא. A שטר אדרכתא, written by בי"ד, gives the מלוה the right to search for properties that belong to the מלוה in order for the מלוה to collect his debt from them.

³ Regarding שטרי חלטאתא it is understood (at this point before רבא's question) why there is no concern of פרעון, since the פרעון was already made. This is what the שטר חלטאתא means; the מלוה own this field as payment for his debt

⁴ Shortly זירא refutes רבא and maintains that (even) שטרי חלטאתא are בני פרעון since נהרדעא ruled that שומא can always be rescinded if the מלוה pays. רבא answered (in agreement with זירא) that by שטרי חלטאתא שטר חלטאתא the מלוה should have never paid the מלוה until he received the שטר חלטאתא back (or have the מלוה write him a new מכירה), since the מלוה is in possession of the field. It is ludicrous for the מלוה to pay the debt while the מלוה is in possession of his field! However by a שטר מלוה it is not always feasible or comfortable for the מלוה to insist that he receive the שטר מלוה (since the מלוה is not holding on to the מלוה's possessions (as by שטרי חלטאתא). See מהרש"ל (וה"מ) ד"ה בגמ' אימור. See footnote # 6 and סוכ"ד אות מו.

And there is a **similar difficulty shortly when** the גמרא says the reason why we return the שטרי חלטאתא ואדרכתא to the מלוה is because **it is the לוח that caused the loss to himself, for he should have torn** the שטר אדרכתא when he paid the loan -

או אבעי ליה למכתב שטר מכירה -

Or the לוח **should have seen to it that** the מלוה write a bill of sale that he is selling this field back to the לוח [if the מלוה claims he lost the שטר אדרכתא], this concludes the גמרא asks, however -

בשטרי אדרכתא שעדיין הקרקע היא בידו -

By שטרי אדרכתא where the property is still in the possession of the לוח -

במה אפסיד אנפשיה הלא יכול לטעון פרעתי⁵ -

How did the לוח cause a loss for himself, can he still not claim פרעתי?!

answers: תוספות

ויש לומר דשטרי אדרכתא נקט אליבא דרבה -

And one can say; that ר' זירא (and רבא) mention שטרי אדרכתא according to רבה -

דאית ליה בפרק המפקיד (לקמן דף לה, ב ושם) דאכיל פירי מכי מטא אדרכתא לידיה -

who maintains in פרק המפקיד that the מלוה receives the פירות (of the field which he forecloses) from the time when he was in possession of the אדרכתא -

אם כן לא יוכל לומר עוד פרעתי כיון שכבר זכה בקרקע⁶ -

Therefore the לוח cannot claim פרעתי any more since the מלוה already acquired the property.

ולרבא⁷ דאית ליה מכי שלמו יומי דאכרזתא⁸ לדבריו יעמיד מתניתין בחלטאתא גרידא-

⁵ We are now assuming [according to רבא and ר' זירא] that חיישינן לפרעון. Therefore why should we return the שטר אדרכתא to the מלוה, perhaps the לוח paid (as he claims) and he took back the שטר אדרכתא and lost it. Granted by שטר חלטאתא where the מלוה is in possession of the field (and the לוח wants to regain possession), the לוח is at a disadvantage for if you paid the loan you should have torn the שטר חלטאתא (or have a new שטר מכר [with the לוח as the buyer] written up, since the property is in the מלוה's possession. However here where the field is ברשות הלוח, there is no reason why not to be חושש לפרעון.

⁶ Those who maintain לפרעון חיישינן, it is only when the מלוה is not holding anything that belongs to the לוח, therefore it is possible that the לוח paid (which he is required to do) but he could not retrieve the שטר חוב, and he would rather wait to receive the שט"ח than receiving a receipt which he would have to watch. However whenever the מלוה is in possession of something that belongs to the לוח (in this case, the פירות of the field from which he will collect) then the לוח will never pay unless this ownership of the מלוה it revoked by either the לוח receiving (and destroying) the שטר אדרכתא or having the מלוה write a שטר מכר, for in any case he must hold on to some document to protect his rights. Otherwise it is איהו דאפסיד אנפשיה.

⁷ שטרי חלטאתא is the one giving the answer of איהו דאפסיד אנפשיה (so according to רבא the משנה is only by שטרי חלטאתא (not like ר' זירא); however רבא agrees that according to רבה the משנה can be discussing שטרי אדרכתא as well.

⁸ When the מלוה identifies a field which belongs to the לוח, the ב"ד makes a public announcement to foreclose [or sell] this property. It is sold to the high bidder (possibly the מלוה, who then takes possession of

And according to רבא he maintains that the מלוה receives the פירות of the foreclosed field (not מכי מטא אדרכתא לידיה but rather later) **when the days of announcing have concluded, so indeed רבא will establish the משנה only by שטרי חלטאתא** but not by שטרי אדרכתא⁹ since the לווה is still in possession of the property by שטרי אדרכתא.

concludes: תוספות

ויש ספרים דלא גרסי אדרכתא:

And there are texts that do not mention אדרכתא שטרי; only שטרי חלטאתא.

SUMMARY

The מלוה is not believed to claim פרעתי (on a found שטר) if the מלוה has ownership in the שטר לווה property; this includes a שטר אדרכתא if we maintain that the מלוה receives the פירות from the date of this שטר. Otherwise it refers to a שטר חלטאתא only.

THINKING IT OVER

שטרי חלטאתא refers to מעשה בי"ד of משנה רבא according to תוספות says that according to רבא only.¹⁰ However when ר' זירא challenged רבא he said [in the plural] והני לאו זירא ר' זירא challenged רבא. בני פרעון נינהו, indicating that מעשה בי"ד is referring to at last two (types of) שטרי חלטאתא?!¹¹ how can תוספות say that it only refers to שטרי חלטאתא?

the field or someone else buys it) and the amount of the loan is paid to the מלוה (the rest [if any] goes to the לווה).

⁹ See 'Thinking it over'.

¹⁰ See footnote # 9.

¹¹ See אבני קודש.