

הטוען אחר מעשה בית דין לא אמר כלום –

One who claims against an act of *Bais Din*, he has said nothing

Overview

מעשה בי"ד in the name of ר' יוחנן ר' חייא בר אבא ruled that if someone contests a מעשה, he is not believed. Our תוספות will first explain what he is contesting, and what is a מעשה. Then תוספות will limit somewhat the scope of this ruling. בי"ד.

אינו נאמן לומר פרעתי¹ -

He is not believed to claim I paid off a debt of בי"ד מעשה, unless he has proof.

מעשה בית דין קרי כל דבר שחייב לה אפילו לא כתב -

A מעשה בי"ד is anything which a husband is liable to pay his wife, even if it is not written (there is no document to substantiate the claim) -

כגון מנה ומאתים² ומזון האשה והבנות³ לאחר מותו -

For instance the hundred and two hundred of the כתובה and supporting the wife and daughters after his death.

תוספות asks:

ואם תאמר למה כותבין כתובה כיון דבלאו כתובה נמי אין נאמן לומר פרעתי -

And if you will say; so why do we write a כתובה at all, since that even without the woman being in possession of a כתובה, the husband (or his heirs) is also not believed to claim, 'I paid'?!?

תוספות answers:

ויש לומר משום תוספת⁴ אבל מנה ומאתים גבייה בלא כתובה -

And one can say; we write a כתובה on account of the additional commitments the

¹ Generally when there is an undocumented claim against a debtor he is believed to claim פרעתי (with a היסות), however he cannot claim פרעתי against a מעשה בי"ד even if it is undocumented.

² A man who marries a בתולה is obligated (among other things) to pay her two hundred זוז (one hundred if she was married previously), if he divorces her, or if he dies (she collects this amount from his estate). If the husband (in the case of a divorce) or his heirs (in case of his death) claim they already paid the כתובה they are not believed unless they present proof.

³ When the husband/father dies, his minor unwed daughters are to be supported from his estate, as well as his widow, as long as she remains in his house and does not request her כתובה payment of מנה מאתיים. If the heirs claim they paid this support they are not believed without proof. See footnote # 10.

⁴ In some (many) cases the husband obligates himself voluntarily to pay the woman more than the מאתיים (which he is legally obligated to pay her); this extra commitment is called תוספת כתובה. This she cannot collect without a כתובה, for we do not know whether and how much he committed and whether he paid her or not. However as long as she has the כתובה she can collect and there can be no claim of פרעתי as with any other שטר. See 'Thinking it over' # 1.

husband makes, **however** regarding the מנה ומאיתיים, the wife **collects it even without a כתובה**.

ותוספת נראה דאפילו אית לה סהדי דהתנה לה נאמן לומר פרעתי -

And it appears to תוספות that regarding this **additional** commitment, that **even if she has witnesses that he stipulated to her** to give her a definitive amount of תוספות כתובה, nevertheless the husband (or the heirs) **are believed to claim פרעתי**, if she has no כתובה.

תוספות (however) rejects attempts to prove his contention:

ואין ראיה מכלתיה דרבי⁵ שבתאי דהוה מהימן לומר פרעתי אי לאו דהוחזק כפרן -

However there is no proof from the episode regarding the daughter-in-law of (ר') שבתאי, where he would have been believed to claim פרעתי, had he not become a confirmed liar regarding the איצטלא; this however is no proof to our case -

דר' שבתאי ערב היה⁶ אבל בעל שמא לא היה נאמן -

For (ר') was merely a guarantor therefore he is believed, **however, perhaps the husband would not be believed**. תוספות here is discussing whether the husband would be believed to claim פרעתי.

תוספות rejects another attempt to prove his ruling:

ואין ראיה נמי מדתני לעיל (דף ז,ב) מצא כתובה לא יחזיר -

And there is also no proof from the ברייתא cited previously, 'if one found a כתובה, he should not return it to the woman (if the husband claims he paid it up already) -

ומשמע דלא יחזיר משום תוספת⁷ שהיה נאמן לומר פרעתי -

⁵ The עמוד amends this to read מכלתיה דשבתאי (instead of שבתאי דרבי שבתאי). See previously on this that (ר') שבתאי wrote into the כתובה of his daughter-in-law that she will be given an איצטלא דמילתא (a certain type of cloak), and he (שבתאי) guaranteed it. The daughter-in-law lost her כתובה, and when she claimed her מילתא, he denied that he promised it to her in the כתובה. However עדים testified that it was written in the כתובה, so שבתאי then responded, 'I gave it to her already'. ר' חייא ruled that he is a confirmed liar regarding this איצטלא and cannot be believed to claim פרעתי. It is apparent from that גמרא that if he would have initially claimed פרעתי (not להד"ם [where he became a הוחזק]), he would have been believed, even though there are עדים who testify that it was written in the כתובה. This would support תוספות contention that regarding כתובה he is believed to claim פרעתי (if she is not in possession of the כתובה), even if there are witnesses that he obligated himself to give it to her.

⁶ See (ר') שבתאי (ערב, but not the giver (or the husband)). Seemingly if he was not the ערב, but merely the giver there would be no reason why he is not believed since it is not a מעשה ב"ד, however since he was an ערב for the תוספות כתובה, one might think that it should be considered a מעשה ב"ד and the ערב should not be believed. Therefore תוספות replies that the rule of לא אמר הטוען אחר מעשה ב"ד is only concerning those directly obligated by the מעשה ב"ד, namely the husband (and the heirs), however others including the ערב are not included in this rule.

⁷ Seemingly there is no reason why not to return the כתובה to the woman, for even if the husband claims פרעתי it makes no difference whether she has the כתובה in her possession or not, for in either case he cannot claim פרעתי, since he is טוען אחר מעשה ב"ד. However regarding the תוספות כתובה there is a difference, for if she has the כתובה, he cannot claim

And it seems from the discussion there **that we do not return it to the woman on account of the תוספות כתובה**, where he would be believed to claim **פרעתי**, if she is not in possession of the כתובה. Seemingly this proves that he is believed to claim **פרעתי** regarding the תוספות. However our תוספות rejects this proof, that really there is no תוספות כתובה written here, but nevertheless -

דלגבי מנה ומאתים נמי מפסיד -

Even regarding **מנה ומאתים** he can also lose if we return the כתובה to the woman -

דהא נאמן לומר פרעתי מנה מגו⁸ דאי בעי אמר אלמנה נשאתיך אם אין לה עדי הינומא⁹ -

For if we do not return the כתובה he will be believed to say, 'I paid a מנה (so I only owe you a מנה)', because he has a מגו for he could have said, 'I married you when you were an אלמנה', if she has no עידי הינומא -

או אם אין לה עדי קדושין נאמן לומר פרעתי הכל במגו דאי בעי אמר אין את אשתי -

Or even more so, if she has no עדי קידושין, he will be believed to claim, 'I paid everything (the entire מאתיים) because he has a מגו, for he could have said, 'you are not my wife, so I owe you nothing'. However there was no תוספות כתובה there.

תוספות asks:

ואם תאמר דבפרק אלמנה ניזונת (כתובות דף צו,א ושם דיבור המתחיל יתומים) בעי רבי יוחנן -

And if you will say; that in פרק אלמנה ניזונת there is a query of ר"י in a case where -
היא אמרה לא נתנו מזונות ויתומים אמרו נתנו על מי להביא ראיה -

She (the widow) said, 'they (the heirs) did not give me food', and the heirs say, 'we gave you food', who is responsible to bring proof; the widow or the heirs -

והא אית ליה הכא דלא אמר כלום -

But the same ר"י maintains here that one who is מעשה בי"ד (as the יתומים are claiming) the rule is **לא אמר כלום**, so obviously the יתומים are not believed and they have to bring the proof; what is s"l query there?!

תוספות answers:

ויש לומר דהתם מיירי במזונות דלשעבר¹⁰ ולא בלהבא:

פרעתי, however if she does not have the כתובה, perhaps he can claim פרעתי, this proves that פרעתי is נאמן when she has no כתובה. We are assuming that in this case we see the כתובה and there is תוספות כתובה written in it and nevertheless we do not return it to her because perhaps he paid it, and by returning it to her we deprive him of his claim of פרעתי. For if there is no תוספות כתובה, why should we not return it, since in any event he cannot claim פרעתי against מאתיים.

⁸ See 'Thinking it over' # 2.

⁹ It was customary then that when a married she would go to the חופה with a הינומא (a certain type of headdress). If witnesses testify that she was wearing this הינומא, we assume that she was a בתולה and כתובתה מאתיים. However if there are no witnesses the husband can claim אלמנה נשאתיך and your כתובה is only a מנה.

¹⁰ The ruling of ר"י here is regarding the future; if the woman comes to ב"ד and claims she needs food now and for the future, if the יתומים claim they paid her in advance, they are not believed. However in כתובות the query was regarding

And one can say; that there (in מס' כתובות) the query was regarding food for the past, but not for the future.

Summary

One cannot claim פרעתי against a כתובה (or מזונות [for the future]). One can claim פרעתי against the claim of תוספות כתובה (if she is not in possession of the כתובה [even if there are witnesses that he committed to give her this תוספות])

Thinking it over

1. It appears from תוספות that we write a כתובה only to prevent him from claiming פרעתי regarding the תוספות כתובה, however there is no need to write a כתובה regarding the מנה ומאתיים (since he cannot claim פרעתי).¹¹ However if there would be no כתובה, the husband would be believed to claim פרעתי with a מגו (of אלמנה נשאתיך or אין את אשתי) as תוספות mentions later!¹²

2. תוספות writes regarding the case of יחזיר לא כתובה מצא, that there is a difference regarding מנה מאתיים, because (if she would not receive the כתובה) he would be believed to claim פרעתי (either partly or fully) because he has a מגו (that אלמנה נשאתיך or אין את אשתי).¹³ However this seems very strange; we are discussing a case where a כתובה was found and we can read what it says in the כתובה, how can we say that if we do not return it he has a מגו, when the כתובה clearly states that he married her as a בתולה?¹⁴

3. Is the distinction which תוספות makes between להבא and לשעבר,¹⁵ limited to מזונות, or does it apply to the כתובה as well?

the past, where the woman claims she did not receive מזונות for the past (day/week/month), in that case it is logical that the woman needs to bring proof, for why was she silent the whole time till now. See 'Thinking it over' # 3.

¹¹ See footnote # 4.

¹² See סוכת דוד (יז,ב) אות לא and מהרש"א.

¹³ See footnote # 8.

¹⁴ See בית לחם יהודה אות תקצב.

¹⁵ See footnote # 10.