

He said nothing

לא אמר כלום -

Overview

מעשה בי"ד ruled that if someone contests a ר' יוחנן in the name of ר' חייא בר אבא, he is not believed. תוספות explains the ramifications of this ruling

ולא מבעיא במקום שאין כותבין כתובה¹ או במקום שכותבין ויש עדים שנשרפה כתובה² -
And it is not necessary to give this ruling that לא אמר כלום in a place where they do not write a כתובה or in a place where they write a כתובה, but there are עדים that her כתובה burnt; in these cases it is obvious -

דאינו נאמן לומר פרעתי אם יש לה עדי גירושין -
That he is not believed to claim, 'I paid her the כתובה', if she has witnesses that she was divorced. This is certain and it was not even necessary for ר' יוחנן to offer his ruling in such cases -

אלא אפילו במקום שכותבין כתובה ואינה מוציאה הכתובה אינו נאמן לומר פרעתי -
But even in a place where they write a כתובה, but she does not show the כתובה, nevertheless, the husband is not believed to claim פרעתי; this is true -

אפילו אם היא מודה שהכתובה היא בידה³ וגם הגט בידה נפרעת בעדי הגט גרידא⁴ -
Even if she admits that the כתובה is in her possession, and also the גט is in her possession, but she does not want to release them, she can collect her כתובה, solely with the witnesses of the גט, who testify that she is divorced. In order for the husband to be believed with a claim of פרעתי he must show a שובר, or witnesses.

ואף על גב דבמה שנשאר שטר כתובה בידה הוא מפסיד - anticipates a difficulty with this ruling:

ואף על גב דבמה שנשאר שטר כתובה בידה הוא מפסיד -
And even though the husband loses out if the כתובה remains in her possession, the husband is nevertheless obligated to pay her. תוספות explains how there is a difference to the husband whether she releases her כתובה or whether she retains it⁵ -

¹ There are places where the husband did not write a כתובה to his wife, so she can collect if she was divorced or widowed. The reason is that there is no purpose to have a כתובה as long as we know (with witnesses) that she was married and divorced (or widowed). If the husband claims, 'I paid the כתובה', we tell him to show a receipt. The husband cannot claim if I did not pay her, so let her show the כתובה, for this is a place where a כתובה is not written and it is the responsibility of the husband to retain proof of his payment.

² See footnote # 1. The woman has a valid reason why she does not have the כתובה since it was burnt.

³ There is a dispute whether she may withhold the כתובה only if the כתובה is in a distant place (בית אהרן), or even if it is here by her (פני יהושע). See 'Thinking it over' # 3.

⁴ The husband can ask for a receipt (שובר) that he paid the כתובה, and he will be able to show it as proof that he paid in case his wife claims her כתובה another time.

⁵ Seemingly (since לא אמר כלום בי"ד מעשה אחר מעשה בי"ד לא אמר כלום), there is no difference whether she returns her כתובה or he receives

שם תחזור⁶ ותתבע הכתובה הוא יכתוב שובר שלא תגבה פעם שניה⁷ -

For if she releases her כתובה when her husband pays her, then the husband will write a receipt (which she will sign), so she cannot collect her כתובה a second time - ואפילו אם יפסיד שוברו יכול לומר פרעתי מנה מגו דאלמנה נשאתיך אם אין לה עדי הינומא⁸ - So even if the husband loses his receipt (nevertheless there is still a difference whether she releases the כתובה or not), for (if she releases the כתובה now) he can claim (the next time she demands her כתובה [again]), 'I paid you a מנה (so I only owe you a מנה), and he will be believed because he has a מגו, since he could have claimed that I married you as an אלמנה (so I only owe you a מנה); the claim and מגו will be effective if she does not have עדי הינומא to prove that she was a בתולה.

כתובה offers another scenario where the husband stands to lose if she does not release the כתובה:

או פרעתי הכל במגו דאין את אשתי אם אין לה עידי קדושין⁹ -

Or if she does not have עדי קידושין (to prove that they were married once), he can claim, 'I paid you everything', and he will be believed with a מגו that he could have claimed that 'you are not my wife'. The husband has these options (even if he loses the שובר) as long as we require the woman to release her כתובה when he pays her -

אבל עכשיו שהכתובה היא בידה תגבה שנית מאתים אם יפסיד שוברו -

But now that the כתובה is in her possession, she will be able to collect מאתיים if he loses his שובר -

שכתוב בכתובה בתולתא דא -

For it is written in the כתובה, 'בתולה', so he has no מגו of אלמנה נשאתיך (and certainly not the מגו of אין את אשתי [since she will show the כתובה]). The question remains why do we allow her to collect without releasing the כתובה, since there is a potential loss to the husband?!

replies: Tosfos

מכל מקום נפרעת בעדי גירושין לבד בלא חזרת כתובתה וגט -

Nevertheless she collects her כתובה with the עדי גירושין alone, without her being required to return either the כתובה or the גט. The reason is -

דרכי יוחנן אית ליה פרק גט פשוט (בבא בתרא דף קע"א, ב ושם) כותבין¹⁰ שובר :

a שובר. In either case he must retain this document (the שובר or the כתובה), to prevent her from claiming her כתובה again.

⁶ Others amend this to read, שם תחזור ותתבע הכתובה (instead of תחזיר הכתובה).

⁷ If she will come a second time to collect the כתובה (based on the ruling that לא אמר כלום), she will nevertheless not collect, since he has a receipt showing that he already paid the כתובה. However, this is not an answer by itself, because the שובר will be effective even if she still retains the כתובה. Therefore Tosfos continues that the difference is in a case where he will lose the שובר.

⁸ See previous (א, יז) תוס' ד"ה הטוען [TIE footnote # 9]; the עדי הינומא are proof that she was married as a בתולה.

⁹ See 'Thinking it over' # 1.

¹⁰ The issue there is in a case where there was a מלוה בשטר and when the מלוה came to collect the loan, the לווה asked

For ר"י maintains in **פרק גט פשוט** that 'we write a receipt'.

Summary

A husband cannot claim **פרעתי**, even in a situation where the woman admits that she has the **גט** and **כתובה**, but is not prepared to release it to the husband (which may cause a loss to the husband), since ר' יוחנן maintains **כותבין שובר**.

Thinking it over

1. תוספות writes that if there are no **עדי קידושין** then the husband will be believed to claim (the second time) **פרעתי הכל** with a **מגו** of **אין את אשתי** (if she would release the **כתובה** [the first time]).¹¹ Seemingly we are discussing a case where she has **עדי גירושין**, (for if there are no **עדי גירושין**, then even if she presents the **כתובה** he is believed to claim **פרעתי** with a **מגו** of **לא גרשתיך**), so how can he claim **אין את אשתי**, if there are **עדי גירושין**?!¹²

2. תוספות writes¹³ that there is a potential loss to the husband if the **כתובה** is not returned. For if it is returned then he can claim **במגו דאלמנה נשאתיך**, or claim **פרעתי מנה**, or claim **נשאתיך** (however if she retains the **כתובה** he does not have this **מגו**). Why does תוס' say that he could claim **וכו' פרעתי** with a **מגו**; why cannot תוספות say that (if she returns the **כתובה**) he could claim **לכתחילה** **מגו**; either **נשאתיך** or **אין את אשתי**?!

3. The rule of **כותבין שובר** by a **מלוה** is only if the **מלוה** claims he lost the **שטר**. However if he has the **שטר** the **לוה** is not obligated to pay unless the **מלוה** releases the **שטר**. Why here by a **כתובה**, the woman is not obligated to release the **שטר** even if it is **בידה**?!¹⁴

for the **שטר**, and the **מלוה** said that he lost it. The **לוה** claims that he does not want to pay the loan unless the **שטר** is returned to him, out of concern that perhaps the **מלוה** still has the **שטר** and will use it to collect from him a second time. The issue there is if it is sufficient that a receipt be given to the **לוה** after he pays, to prove that he paid, so in case the **מלוה** will later bring the **שטר**, the **לוה** can counter with the **שובר** to prove that he already paid the loan, or is the **לוה** exempt from paying until the **מלוה** produces the **שטר**, because of the **לוה's** concern. ר"י rules that **כותבין שובר**, even though that the **לוה** will need to guard it (as opposed to if he receives the **שטר**, he can merely tear it up, so the **מלוה** cannot use it again), nevertheless since the **לוה** owes the money he needs to pay it and watch the **שובר**. We see that the burden of proof is on the debtor, not on the claimant. Similarly here too the husband must pay the **כתובה** and watch the **שובר** so that his wife cannot claim her **כתובה** again.

¹¹ See footnote # 9.

¹² See **ואילך # 7 אוצר מפרשי התלמוד** and **מהרש"א**.

¹³ See footnotes # 8 & 9.

¹⁴ See **ואילך # 12 אוצר מפרשי התלמוד**.