He went out, investigated, and found: any act of *Bais Din*; this should be returned - נפק דק ואשכח כל מעשה בית דין הרי זה יחזיר

Overview

The גמרא relates this episode where a גט, which was written in שוירי, was found in the בי"ד of רב הונא, and there was a discussion whether we should be concerned about שני שוירי. רבה resolved the issue by citing the משנה of כל מעשה בי"ד הרי"ז יחזיר, proving that we are not concerned לשני שוירי (if it is not הוחזקו). Our תוספות analyzes the proof of רבה.

פירש רש"י[1] דההוא גיטא הוה כתיב ביה הנפק[2] ופשיט שפיר ממתניתין דמעשה בית דין יחזיר - רש"י explained that this גט which was found in the בי"ד of ר"ה, **had a הנפק written in it, so** רבה **properly resolved** the issue **from our משנה of מעשה בי"ד יחזיר,** that since the גט had a הנפק, which makes it a מעשה בי"ד, therefore it needs to be returned, and there is no concern for נמלך (or תרי יוסף בן שמעון).

תוספות has a question:

אך מה שפירש[3] כשנפל מן השליח קשה דאם כן מה מועיל ההנפק -

However this which רש"י explained that (the case of ר"ה was where) **the שליח lost** the גט; **that is difficult, for if** indeed the שליח lost it, **what will the הנפק accomplish –**

כיון שלא בא ליד האשה עדיין דאם[4] יש לחוש לנמלך בלא הנפק הכי נמי יש לחוש להנפק[5] -

Since it never came into the woman's possession, for if there is a concern for נמלך if there is no הנפק, there is the same concern of נמלך **even with a הנפק –**

ותו דבעל לא מקיים גיטא[6] -

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[1] בד"ה כל.

[2] A הנפק is an authentication of the (גט) שטר by the בי"ד, that they verified the signatures, etc. There are two issues here regarding a document that was found; one is whether this document belongs to this person (who is claiming it) or perhaps there are תרי יוסף בן שמעון and it belongs to another person with the same name; two, perhaps the document (the גט or the שטר) was never given to the intended party (to the woman or to the מלוה), for he reconsidered -נמלך. The הנפק addresses the second issue, as רש"י states כל מילתא דאתא לבי"ד לקיים דליכא למיחש לנמלך עליהן שלא ניתנן וכו'.

[3] בד"ה חיישינן.

[4] See תוספות later (footnote # 12) that according to תוספות, there is no concern of נמלך by the שליח.

[5] See footnote # 2. It appears from רש"י that if there was no הנפק we would be concerned for נמלך. However since the woman never received the גט, for the שליח is claiming that he lost it, the concern of נמלך exists whether there is a הנפק or there is no הנפק. Granted, once the woman received the גט, and is claiming she lost it, the הנפק assures us that there was no נמלך, for the בי"ד issued the הנפק to the woman, once she received the גט. However if the שליח lost the גט, the הנפק does not assure us that there was no נמלך.

[6] A document is authenticated by the party who needs the document (the מלוה in the case of a שטר חוב, and the woman in the case of a גט); however the husband is not מקיים the גט; it serves him no purpose. How can רש"י state, on one hand that there was a הנפק (indicating that the woman already had it in her possession, and saw to it to receive a הנפק), and

And furthermore the husband does not authenticate the גט.

תוספות replies:

ויש לומר דאי כתיב ביה הנפק מיירי שנפל מן האשה –

And one can say (not like רש"י)**; that if there was a הנפק written in** this גט (which was found by ר"ה) we must **be discussing** a case **where the woman lost** the גט (for it is the woman who initiates the הנפק process) -

ושואלת אותו האשה ואומרת שהוא שלה וקא פשיט דיחזיר -

And the woman is asking for the גט, **saying that it is hers, and** רבה **resolved** (from the משנה of יחזיר הרי"ז בי"ד מעשה כל) **that it should be returned** to her -

ולא חיישינן שמא משקרת ומאשה אחרת נפל אף על גב דהשיירות מצויות כיון דלא הוחזקו -

And we are not concerned that **perhaps she is lying**[7] (and she did not receive and lose a גט), **but another woman** (with the same name) **lost it;** we are not concerned that she is lying **even though שיירות מצויות, since it is not הוחזקו** (two couples with the same names); we know this from the משנה, for -

כמו במעשה בית דין דיחזיר ואף על גב דאשתכח בבית דין[8] שהשיירות מצויות -

Just as the משנה states **by מעשה בי"ד that it is returned, even if it is found in a בי"ד, where שיירות מצויות -**

ולא חיישינן שמא מאחר נפל כיון דלא הוחזקו -

And we are not concerned that **perhaps someone else lost it, since לא הוחזקו.** Similarly where the גט had a הנפק (so the case of ר"ה must be that the woman claims that she lost the גט), which makes it a מעשה בי"ד (which removes the חשש of נמלך), we are also not concerned that שמא מאחר נפל.[9]

תוספות offers an alternate case:

ואי מיירי שהשליח שואלו לגרש את האשה -

And if we are **discussing** a case **where the שליח is requesting** the גט in order **to divorce the woman** with it; the שליח claims he lost it -

יש לומר דלא כתיב בו הנפק ומוכיח נמי שפיר[10] -

It will be necessary to say that there was no הנפק written in the גט, **but**

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on the other hand write that the שליח lost it (indicating that there is no הנפק)?!

[7] See 'Thinking it over' # 1.

[8] See later on this עמוד, where רבה explains that כל מעשה בי"ד יחזיר is even if it was found in בי"ד, which is שיירות מצויות.

[9] According to this interpretation (הנפק and the woman lost it) the comparison to מעשה בי"ד is clear, for in our case it is also a מעשה בי"ד (since it had a הנפק), and the proof from the משנה is that we are not חושש for שני שוירי, etc. if it is לא הוחזקו even if שיירות מצויות.

[10] Seemingly, how can רבה prove anything from that משנה, since that משנה is discussing a מעשה בי"ד, where there is no concern of נמלך, however our case (no הנפק, and the שליח lost it), where it is not a מעשה בי"ד, there should be the concern of נמלך. תוספות addresses this issue.

nevertheless, רבה **also properly proves** that even in this case the rule is יחזיר -

כיון דבמעשה בית דין יחזיר דלא חיישינן לנמלך -

For since that by מעשה בי"ד it is returned for we are not concerned for נמלך -

דכיון שכתוב בו הנפק ודאי נעשה הלואה -

For since a הנפק is written in the שטר חוב, **the loan was certainly given,**

דלוה לא מקיים שטרא[11] כדאמרינן לקמן בפרקין (דף כ,ב) -

for the לוה does not authenticate the שטר as the גמרא **state later in our פרק -**

ולא חיישינן נמי שמא מאחר נפל אף על גב דהשיירות מצויות כיון דלא הוחזקו –

And additionally (by the משנה of מעשה בי"ד), **we are not concerned perhaps someone else** (with the same names) **lost** this שטר, **even if שיירות מצויות, because it is לא הוחזקו,** so just as by מעשה בי"ד we are not concerned for נמלך since there is a הנפק, and obviously we are not concerned for מאחר נפל (for we return it to the מלוה), since it is לא הוחזקו, the same will apply -

בההיא גיטא נמי דאשתכח שהשליח שואל הגט -

Also by that גט which was found by ר"ה, **where the שליח requests the גט,** that we will give it to him -

ולא שייך למימר נמלך כיון שהגט ביד השליח דאין יכול לבטל הגט שלא בפני השליח[12] -

For it is not reasonable to be **concerned for נמלך, since the גט is in the possession of the שליח,** so there can be no נמלך, **for the husband cannot nullify a גט not in the presence of the שליח,** so presumably there is no חשש of נמלך -

ולא ניחוש כמו כן שמא מאחר נפל אף על גב דהשיירות מצויות כיון דלא הוחזקו -

And we will also not be concerned even in a case of **שיירות מצויות that perhaps מאחר נפל, since it is לא הוחזקו.** According to this case we derive from the משנה of כל מעשה מעשה בי"ד that whenever there is a reasonable cause we are not concerned for נמלך (by בי"ד וכו' because there is a הנפק, and by the גט because it is ביד השליח), and we also derive from the משנה that whenever there is no הוחזקו we are not חושש שמא מאחר נפל.

תוספות asks:

ואם תאמר אביי דאמר פרק האשה שהלכה[13] (יבמות דף קטו,ב ושם) -

And if you will say; אביי, who maintains in פרק האשה שהלכה -

דחיישינן לתרי יצחק אפילו לא הוחזקו -

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[11] See footnote # 6. The fact that there is הנפק (which would be initiated only by the מלוה) proves that the לוה gave the שטר to the מלוה because he already received the loan.

[12] See גיטין לב,א. The husband certainly intended to give her the גט when he sent it to her with the שליח. Afterwards he cannot be נמלך, since the חכמים instituted that one may not be מבטל a גט once it is given to a שליח, unless the ביטול is done in the presence of the שליח. [See there that others maintain that even בדיעבד, if he was מבטל שלא בפני השליח nevertheless ביטלו אינו מבוטל.] The שליח here is claiming that he was given the גט and he wants to deliver it to the woman, so obviously there was no ביטול הגט. The שליח has no (apparent) reason to lie. (See נחלת משה [בשם רע"א].)

[13] See יח,א תוד"ה לאלתר [TIE footnote # 1].

That we are concerned for two יצחק even if it is not הוחזקו, and we do not let her remarry even though witnesses testified that יצחק died, for we are concerned that they may be referring to another יצחק, so אביי -

תקשי ליה ממתניתין דכל מעשה בית דין הרי זה יחזיר[14] -

Should have a difficulty from our משנה that states **כל מעשה בי"ד הרי"ז יחזיר!**

תוספות answers:

ויש לומר דמוקי לה דאשתכח חוץ לבית דין שאין השיירות מצויות[15] כרבי זירא[16] -

And one can say that אביי **will establish** the משנה **like** ר"ז **that it was found outside בי"ד where it is אין שיירות מצויות** and therefore we are not חושש that שמא מאחר נפל since it is (אין שיירות מצויות and) לא הוחזקו -

אבל לגבי תרי יצחק לא שייך לפלוגי בין מצויות לשאין מצויות -

However regarding the concern **of two יצחק, it is not rational to distinguish whether it is מצויות** שיירות **or אין מצויות** שיירות (for in that case it is always like שיירות מצויות) -

דלעולם יש להסתפק ביצחק מעיר אחרת כמו מעיר זאת[17] -

For there is always the doubt that it may be a **יצחק from another city, just as** it may be a יצחק **from this city.**

תוספות offers an alternate solution:

אי נמי מוקי מתניתין דאשתכח בבית דין ואפילו הכי לא חיישינן לאחר -

Or you may **also** say that אביי will **establish our משנה** (of כל מעשה בי"ד וכו') **that it was found in the בי"ד** (like רבה) where it is שיירות מצויות, **but nevertheless we are not concerned** that it may belong to **another** person with the same name -

כיון שזה האיש שואל גט וידעינן שאבד גט ואין אנו מכירין אחר[18] -

Since that this person is requesting the גט which he lost, **and we know that a גט was lost** (with the names that he gave) **and we know of no other** who is requesting this גט, therefore -

אין לחוש שמאחר נפל ונפל ממנו כמו כן כאן[19] -

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[14] From this משנה it is obvious that we are not חושש for another with the same name (if it is לא הוחזקו). See 'Thinking it over' # 3.

[15] See footnote # 19.

[16] See later on this עמוד (where ר"ז argues with רבה and maintains it was found outside בי"ד).

[17] When the גט was found in a place where אין שיירות מצויות, if the גט was claimed after it was found by someone who claims he lost it here and he identifies it, we assume that it belongs to whoever claims it, since no one else is passing through; why should we assume otherwise. However when we are told that יצחק died (in a certain city) even if it is אין שיירות מצויות (that travel to that city) but we do not know which יצחק died, for we do not know which יצחק came to this city.

[18] There is enough circumstantial evidence to lead us to believe that this גט belongs to this requesting שליח.

[19] It would seem that the 'אי נמי' maintains that this reasoning is sufficient for us to return the גט even if שיירות מצויות. However the first answer of תוספות maintains (see footnote # 15) that this evidence is effective only if אין שיירות מצויות.

There is no concern that someone else (with the same names) **lost it and he also lost it here,** that is too far-fetched especially since it is לא הוחזקו (even if שיירות מצויות) -

אבל התם אין אנו יודעים איזה יצחק מת אם מעיר זאת או מעיר אחרת:

However there, we do not know which יצחק died; is it from this city where this woman is from, **or is it from another city** and it is not her husband.

Summary

There are two possible cases here. Either the woman is claiming the גט with a הנפק and the proof that is necessary from כל מעשה בי"ד וכו' is that we are not חושש שמא מאחר נפל; there is obviously no concern for נמלך since there is a הנפק. Or if the שליח is requesting the גט without a הנפק, then just as by מעשה בי"ד there is no concern for נמלך (or שמא מאחר נפל), similarly once the שליח has the גט there can be no concerns. There is a difference whether someone is claiming that he lost something, which we found (where he is believed), or whether we are told that a person died (where there is a concern, maybe it is someone else).

Thinking it over

1. תוספות writes (in the case where the woman is claiming the גט with a הנפק) that we are not concerned that perhaps the woman is lying, etc.[20] Why did not תוספות write that we are not concerned that the woman is making a mistake when she is identifying this גט; this would seem to be a more realistic concern rather than[21] she is lying?![22]

2. In which case is the proof from כל מעשה בי"ד יחזיר stronger; where there was a הנפק and the woman lost it, or where there was no הנפק and the שליח lost it?

3. תוספות asks a question on אביי who maintains חיישינן לשני יצחק.[23] Is תוספות question according to both cases (where either the שליח or the woman is claiming the גט) or only according to one of the cases?[24]

[20] See footnote # 7.
[21] There will be severe consequences for her if she claims to have received the גט, when in actuality she did not.
[22] See פני יהושע.
[23] See footnote # 14.
[24] See פני יהושע.