

**He found a receipt, etc.; - ליתן בניסן כולי -  
But let us be concerned perhaps he wrote to give it in *Neesohn*, etc.**

### **Overview**

The גמרא cites a ברייתא that when a שובר of a כתובה (a document stating that the כתובה was paid up) was found. it depends;

if the woman admits that she wrote it (her כתובה was paid up), it should be returned to the husband (as proof that he paid the כתובה). The גמרא asks let us be concerned that perhaps the שובר was written in ניסן, but he first paid her in the following תשרי (and that is when she actually gave him the שובר. The woman sold the (land which was designated as her) כתובה (between ניסן and תשרי [at a discount]), so now the husband will present the שובר and will take away the כתובה from the כדן שלא כדן. Our תוספות discusses why this question is not asked on a משנה.

תוספות asks:

**ואם תאמר לפרוך על מתניתין דגט פשוט (בבא בתרא דף קסז,א) דכותבין שובר לאשה<sup>1</sup> -**

**And if you will say; let the גמרא ask the same question on the משנה in גט פשוט**, which states **that we write a שובר for a woman** even if the husband is not there, and the witnesses did not see any payment of the כתובה. The גמרא should ask how can we write it for her, there is the concern of וכו' כתיבה בניסן וכו', as the גמרא asks here.

תוספות anticipates a possible answer:

**וכי תימא לא חיישינן אלא היכא שנפל ואתרע<sup>2</sup> -**

**And if you will say that generally we are not concerned** (that 'וכי' כתיבה בניסן וכו'), **only where it was lost and became flawed**, only then are we concerned –

תוספות rejects this answer

**הא פריך לעיל (יב,ב) גבי כותבין שטר ללוה אף על גב דליכא ריעותא<sup>3</sup> -**

**But previously regarding the same משנה that 'we write a שטר for the לווה**, without the מלוה', the גמרא **does ask**, we should be concerned 'וכי' כתיבה ללוות בניסן וכו', **even though there (by the loan) there is no flaw**; it was not lost.

<sup>1</sup> See 'Thinking it over' # 1.

<sup>2</sup> Therefore in the משנה where we are writing the שובר, there is no concern for וכו' כתיבה בניסן וכו'; however in the ברייתא where the שובר was lost, the גמרא does ask כתיבה בניסן וכו'. However, תוספות rejects this answer.

<sup>3</sup> Just as the גמרא asks regarding a שטר הלוואה, the גמרא should also ask regarding a שובר, since in both cases it was not lost. See TIE footnote # 12; granted that by a 'regular' שטר we are not חושש for כתב שמא, since there is no ריעותא of נפילה, but nevertheless the גמרא asks why כותבין שטר ללוה where there is this potential concern. Why not avoid it completely לכתחילה.

answers: תוספות

**ויש לומר דמצי לדחויי בשטרי הקנאה<sup>4</sup> -**

**And one can say the reason we do not ask regarding the משנה of שובר, because the could have deflected the question by saying that the משנה of שובר is discussing שטרי הקנאה<sup>5</sup>.**

**אבל הכא אי בשטרי הקנאה מיירי כי אין האשה מודה נמי יחזיר לבעל -**

**However here (in the ברייתא of שובר), if we are discussing שטרי הקנאה, therefore, even if the woman does not admit that she was paid, nevertheless, the אין האשה מודה, however the ברייתא states, שובר should also be returned to the husband, Now explains why it should be יחזיר even if מודה -**

**דאין אשה מודה משמע אפילו אינה אומרת שהוא מזויף<sup>6</sup> -**

**For the statement of 'אין האשה מודה' indicates even if she does not say that the is forged (which can be one meaning of מודה) -**

**אלא אומרת שכתבה ליתן ולא נתנה ואומרת עתה אל תתנו לפי שנמלכה<sup>7</sup> -**

**But rather 'אין האשה מודה' means (also) that she says that she wrote the שובר with the intent to give it, but she did not give it, and she says now, 'do not give the שובר to my husband', because she reconsidered (perhaps because he did not pay), but if it is a שטר הקנאה it must be returned in any case. Therefore we cannot establish this ברייתא by שטר הקנאה.**

(מזוייף not necessarily) נמלכה means that she claims אין האשה מודה supports his contention that תוספות דומיא דמצא שוברין דמתניתין<sup>8</sup> דלא יחזיר שאני אומר כתובים היו ונמלך כולי:

For presumably the case of the ברייתא is similar to the case of מצא שוברין mentioned in our משנה, that you do not return it, for we assume they were written, and he

<sup>4</sup> See previously יג,א and in רש"י there שטרי בשטרי. Basically in a שטר הקנאה the writer of the שטר (by a loan, it is the ליה, and by a כתובה, the wife) obligates himself to transfer the rights to whatever the שטר states, even if the deal (meaning the loan or the כתובה payment) never takes place. So therefore if the wife wrote the שובר in the form of a שטר הקנאה, so she gave the husband the rights to the כתובה (field), whether he paid her the כתובה or not. This right becomes effective with the signing of the שטר הקנאה. So if it was written in ניסן the husband owns her כתובה as of ניסן even if it was given בתשרי. There is therefore no concern.

<sup>5</sup> This is the answer the גמרא gave regarding שטר ללוה; כותבין שטר ללוה (presumably) felt it was not necessary to ask the same question again regarding שובר לאשה וכו'. See 'Thinking it over' # 3.

<sup>6</sup> If אין האשה מודה means that she claims it was מזויף, then even it was a שטר הקנאה it cannot be returned, since she claims it is forged; so there was no שטר (הקנאה) at all!

<sup>7</sup> If אין האשה מודה means שנמלכה; it still should be returned to the husband, for this is the power of a שטר הקנאה, it is effective from the time of the signing, regardless if any action was taken (see footnote # 4).

<sup>8</sup> יח,א. Both the משנה and our ברייתא are discussing שוברים, and in both places it states יחזיר. The משנה gives the reason of נמלך, so presumably the לא יחזיר of the ברייתא (when אין האשה מודה) is also because of נמלך (not [only] מזוייף).

reconsidered, etc.

### **Summary**

The משנה of שטרי הקנאה can be discussing (therefore there is no concern of 'וכו' בניסן וכו'), however our ברייתא cannot be discussing a שטר הקנאה (for if it were, why לא יחזיר [since אין האשה מודה]).

### **Thinking it over**

1. ניחוש שמא כתב בניסן ולא נתן עד asks that the גמרא should ask this question of 'וכו' בניסן וכו' on the משנה in גט פשוט which states 'וכו' בניסן וכו' תשרי. Why did not תוספות ask that the גמרא should ask on our משנה, which states 'וכו' בניסן וכו' תשרי, from which we infer תנו נותנין, the question is how can we return it, let us be 'וכו' בניסן וכו'?!<sup>10</sup>

2. Is a שובר for a כתובה given<sup>11</sup> publicly or privately?<sup>12</sup>

3. The גמרא asks<sup>13</sup> a question on the משנה (in גט פשוט) which states 'וכו' בניסן וכו' תשרי, why are we not concerned 'וכו' בניסן וכו' תשרי, and the גמרא answers that the משנה is discussing שטרי הקנאה. Our תוספות here answered that the reason the גמרא does not ask this question by 'וכו' בניסן וכו' תשרי is because we could (also) answer 'וכו' בניסן וכו' תשרי. Seemingly the גמרא had a choice to ask this question on either ruling; why did it ask on 'וכו' בניסן וכו' תשרי as opposed to 'וכו' בניסן וכו' תשרי (which is written first in that משנה)?!

---

<sup>9</sup> See footnote # 1.

<sup>10</sup> See מהרש"א.

<sup>11</sup> See תוספות יט,ב תוס' ד"ה ליחוש [TIE footnote # 13].

<sup>12</sup> See נחלת משה.

<sup>13</sup> See לעיל יב,ב. See footnote # 3.

<sup>14</sup> See footnote # 5.