ורבנן הוא דאצרוך - And it is only the רבנן who require

Overview

The גמרא concluded that there is no real חשש that the גט was written שלא לשמה, since רוב בקיאין and סתם ספרי דדייני גמירי; the reason why we say בפ"נ on account of לשמה is because ורבנן הוא דאצרוך. The גמרא however does not explain why the רבנן required that the שליח say בפ"נ. תוספות will quote רש"י's explanation, refute it, and then state his own explanation.

Concerning a גט (as well as other שטרות), there is an argument between רבי מאיר and רבי אלעזר, what validates the גט; is it the עדי חתימה, the witnesses that sign on the גט, or is it the עדי מסירה, the witnesses that observe the handing over of the גט from the husband to the wife[1]. ר"מ is of the opinion that עדי חתימה כרתי, and it is necessary to have witnesses sign the גט. Therefore since the validity of the גט is based on their signature, we accept only the testimony as is apparent from the document which they signed. If the document which they signed is ambiguous, it is not a valid document. ר"א who maintains that עדי מסירה כרתי, does not require that witnesses sign the document, it is sufficient that they observe the transfer of the document. He is of the opinion that as long as the עדים can testify and clear up any ambiguity in the גט, then that is sufficient to render it a valid גט.

פירש בקונטרס משום דאיכא דאשכח כתוב ועומד –

רש"י explained; why indeed did the רבנן require saying בפ"נ, **because there is** a possibility that this person who is not בקי לשמה **found a written גט**, that he thinks he can use -

כגון שנכתב לשם אחד מבני עירו ששמו כשמו ונמלך מלגרש –

For instance; the גט **was written for** another **one who lived in the same city, whose name** and wife's name **are the same** as the finder's name and the finder's wife's name **and he** (the original מגרש, for whom the גט was written) **decided not to divorce** his wife. Therefore he discarded the גט, and this other person (who is not בקי לשמה) happened to find it and sent it with the שליח to his wife. The רבנן were concerned[2] perhaps this is what happened to this גט that is coming to

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[1] The גמרא will discuss this later on דף ג,ב and elsewhere.

[2] There would be no concern מן התורה even according to ר"מ, because this is a very rare possibility; it is only because of the severity of איסור אשת איש, that the רבנן were concerned about this possibility.

us from מדה"י, therefore they instituted that the שליח say בפ"נ, to remove even this remote possibility.

תוספות questions this interpretation:

וקשה –

And it is difficult to understand this interpretation, for if בי"ד is not aware of two people (and their wives) with identical names (in the city where the גט was written), then we are not concerned that perhaps there are two people with identical names[3], and there is no reason to say בפ"נ. If בי"ד is aware of two such people with identical names then בפ"נ will not accomplish anything –

דבהוחזק שני יוסף בן שמעון אפילו נכתב לשמו פסול לגרש בו לרבי מאיר –

For when it is established that there are two people named **יוסף בן שמעון** (i.e. two married couples who have identical names) in one city, **even if it was written לשמו, it is פסול for גירושין according to ר''מ -**

כדאמרינן בריש כל הגט (לקמן כד,ב) כתב לגרש בו את הגדולה לא יגרש בו את הקטנה -

As we say in a משנה in **the beginning of כל הגט** פרק in a case where a person had two wives with identical names, **if he wrote** a גט with the intent of **divorcing the older** wife, and subsequently changed his mind before giving her the גט, **he should not divorce the younger** wife with this גט, because it was not written לשמה for the younger wife.

וקאמר בגמרא קטנה הוא דלא מצי מגרש הא גדולה מגרש –

And the גמרא comments and infers from the משנה, which limits the prohibition of using this גט (only) to the younger wife; '**he cannot divorce the younger** wife **with this גט.** The משנה explicitly states: לא יגרש בו את הקטנה, from which we may infer **but he may divorce the older wife with this גט.** The difficulty with using this גט even with the intended older wife, is, that when we read this גט we do not know who is the intended recipient; the older or the younger wife, since they have the same names. In order to resolve this difficulty –

מוקי לה כרבי אלעזר –

We establish that this משנה is following the view of **ר' אלעזר,** who maintains that עדי מסירה כרתי. The witnesses that validate a גט are (not the witnesses that sign on the גט, but rather) those that actually witness the giving of the גט from the husband to the wife. These witnesses definitely know and can testify who is being divorced, for they see the handing over of the גט from the husband to the wife. However that משנה –

ולא כרבי מאיר -

[3] See גמרא כז,א.

cannot follow the ruling of **ר''מ,** who maintains עדי חתימה כרתי, that (only) the witnesses that sign on the גט, they validate the גט. The reason why that משנה cannot follow the ruling of ר"מ, is because since עדי חתימה כרתי, therefore –

דבעינן שיהא מוכיח מתוך עדי חתימה הי מינייהו מגרשה –

It is required that it be apparent from the document which **the עדי חתימה signed which of the** two **he is divorcing**[4]**.** Their signed testimony does not enlighten us in this regard, for we do not know, by looking at the document they signed, which of the two wives they are referring to, since their names are identical.

We derive from this that according to ר"מ it must be apparent from the גט, whom we are divorcing. Therefore if there are two people in a city that they and their wives respectively, have identical names, then neither can divorce their own wife. Therefore we cannot explain our משנה, according to ר"מ. For if it was not הוחזק שני יב"ש, then we are not חושש, and if it was הוחזק שני יב"ש, then saying בפ"נ is meaningless because according to ר"מ, he cannot divorce his wife[5].

Seemingly this question of תוספות can be answered, that this משנה does not follow the opinion of ר"מ, but rather of ר"א, as the גמרא says concerning the abovementioned משנה in כל הגט. תוספות responds and concludes his question on רש"י –

ובסמוך בעי לאוקומי מתניתין כרבי מאיר –

And shortly[6] the גמרא **wants to establish that our משנה** follows the opinion **of ר''מ.**[7] How can the גמרא suggest that the משנה follows the ruling of ר"מ, when according to ר"מ, there is no point in saying בפ"נ, according to רבה. Either it was not הוחזק שני יב"ש, then there is no חשש of שלא לשמה, or if הוחזק שני יב"ש, then indeed they cannot divorce their wives and בפ"נ will certainly not accomplish anything.

תוספות is not yet satisfied with his refutation of רש"י, for we can say that our משנה is following the opinion to ר"א who maintains that עדי מסירה כרתי, and as to the fact that the גמרא wanted to establish our משנה according to ר"מ, in truth the גמרא could have refuted this suggestion, in the manner that תוספות proposed, however the גמרא found a different method of refuting this suggestion which was more pertinent to the issue being discussed there. Therefore תוספות concludes –

ואפילו לרבי אלעזר –

and even if you will establish the משנה **according to ר''א,** who maintains עדי

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[4] It would seem from תוספות that even if the עדי חתימה are present and are testifying that it is this woman who is being divorced; that it would not be valid. For since ר"מ is of the opinion that עדי חתימה כרתי, it is required that the testimony of their חתימה dictate the status of the divorce, and this cannot be accomplished since both wives have identical names.

[5] The only way to divorce in such a situation is to have a unique identification of the parties involved; by writing their grandparents name, for instance or something similar. Then again however there will be no concern of someone else using this גט.

[6] דף ג,ב.

[7] Concerning the same ruling of עדי חתימה כרתי.

מסירה כרתי, as in the case of the other משנה in פרק כל הגט, where he may use the גט to divorce the intended wife; nevertheless in our case it would not be a valid גט, because –

צריך עדי מסירה שידעו שעשאו הבעל שליח וליכא –

We require that there be עדי מסירה who know that the husband made a שליח to deliver the גט, **and there are no** עדי מסירה that can testify that the husband of this wife actually made this individual for a שליח.

In the case of כתב לגרש בו את הגדולה, where the husband and wife are both before us, and the עדי מסירה see the husband giving the גט to the (older) wife, then we have proper עדי מסירה that know the man and the woman and the מעשה הגירושין. Here when a שליח brings a גט that states that יב"ש is divorcing his wife (if it was הוחזק שני יב"ש), the עדי מסירה do not know which יב"ש it is[8]. Therefore it cannot be a valid גירושין. תוספות therefore rejects רש"י's interpretation why the רבנן required the שליח to say בפ"נ on account of לשמה.

תוספות will now offer his interpretation as to the meaning of ורבנן הוא דאצרוך:

ואומר רבינו יצחק דהא דאצרוך רבנן הכא היינו כדי שלא יערער הבעל –

And the ר"י says; the reason **the רבנן required here** the saying of בפ"נ **it is in order that the husband should not contest**[9] the גט -

ויאמר שכתבו הסופר כדי להתלמד –

saying that the סופר wrote this גט for practice, and he wrote this couple's name on the גט. The husband did not instruct the סופר to write the גט, thereby rendering this גט שלא לשמה. The סופר then discarded this גט and the husband found it -

והוא החתים עליו עדים שהוא לא היה בקי לשמה:

And then the husband found **witnesses to sign** this גט, and it is totally שלא לשמה, **for he** (the husband) **is not בקי** in the requirement of **לשמה**, therefore he did not realize that a (found) גט that was written for practice is invalid[10].

Therefore the רבנן require that the שליח testify בפ"נ ובפ"נ that it was done לשמה and the husband will not be able to claim that he found this גט already written.

SUMMARY

According to רש"י the reason the רבנן require saying בפ"נ, is because we are concerned that an individual who is not בקי לשמה, may find a גט that was

[8] In a regular case when it is not הוחזק שני יב"ש, then the fact that the שליח is bringing a (signed) גט and states that the husband sent him, he is believed, and the עדי מסירה can testify that יב"ש was מגרש his wife through this שליח. However if it is הוחזק שני יב"ש, then the עדי מסירה do not know which יב"ש is being מגרש (עי' מהר"ם שי"ף).

[9] We are not concerned that the following happened (for it is extremely rare), rather we are concerned that the בעל will claim that it happened; as opposed to רש"י's interpretation that we are actually concerned that the חשש may happen. See רש"י ד"ה ורבנן. See 'Thinking it over' # 2

[10] See 'Thinking it over' # 3

written (and signed) for another person who has the same name(s) as the finder and his wife have, and he will use it to divorce his wife.
תוספות rejects this interpretation; for this concern of two יב"ש is only when it is יב"ש הוחזק שני, and in that case, the דין is according to ר"מ that they cannot divorce their (own) wives, since it is not מוכח from the גט who is divorcing whom. Even according to ר"א who maintains that they can divorce their wives, however in our case where the husband is not present, the עדי מסירה cannot testify as to whom the husband is, and therefore it will not be a valid גט. There is no purpose therefore in this תקנה of saying בפ"נ.
תוספות opinion is that we are concerned that the husband will claim that he is not בקי לשמה, and he found a גט that the סופר wrote for practice and 'happened' to write this husband's, etc. name on it[11], and subsequently the husband had witnesses sign this גט. Now he became aware of his 'mistake' and therefore he is contesting this גט. To avoid such incidents, the חכמים instituted that the שליח say בפ"נ, to insure that no one claims 'I happened to find a גט'.

THINKING IT OVER

1. What are the similarities and differences between the scenarios of רש"י and תוספות concerning ורבנן הוא דאצרוך?

2. Why does תוספות say that we are concerned that the בעל will *claim* etc.;[12] why cannot תוספות say that we are concerned that he actually found a גט להתלמד etc.?[13]

3. Why did not תוספות say[14] that we are concerned that the husband will claim that both he and the one who wrote the גט were אין בקיאין לשמה?[15]

[11] There were no two יב"ש
[12] See footnote # 9.
[13] See תפארת יעקב.
[14] See footnote # 10.
[15] See אמ"ה # 199.