

ולא אמרינן לצעורה קא מיכוין –

And we do not say he intends to torment her.

OVERVIEW

The גמרא states that the הידוש in the case of בשליה is that we do not say לצעורה קא מיכוין. This would indicate that had the משנה not taught us this case, we may have thought that there is no ביטול and the גט is valid, since לצעורה קא מיכוין finds it difficult to accept that there could be such a thought that on account of our suspicion that maybe מכוין קא לצעורה it should be a valid גט and the woman be permitted to remarry.

asks: תוספות

ואם תאמר פשיטא שהוא בטל היאך היה לנו לומר שאינו בטל והוא עומד וצווח –
And if you will say; obviously the גט is בטל how can we possibly have said that it is not בטל, and the woman may remarry another person **when the husband is standing and shouting** that he was מבטל the גט and it was not לצעורה קא מיכוין. This suspicion that it may be מכוין קא לצעורה cannot be so strong to refute his clear statement that he was מבטל the גט sincerely, and be מתיר an איש. How can there even be such a אמינא.

answers: תוספות

ויש לומר דהוה אמינא כיון שאינו מביא עדים על כך אם כן אינו רוצה לבטלו –
And one may say; that I would have thought since the בעל is not bringing witnesses for this matter¹; to support his claim that he was מבטל the גט therefore he really does not want to be מבטל the גט².

offers an alternate answer: תוספות

אי נמי³ הוה חיישינן להחמיר⁴ משום דלמא לצעורה קא מיכוין –
Alternatively when we say that we should be concerned that perhaps there

¹ See מהרש"א (הארור) that תוספות is presently following the view that no עדים are required if the ביטול is בפני השליה. However it would be customary to nevertheless be עדים, since the שליה may deny the ביטול. The fact that the בעל chose to be בעדים (coupled with the fact that הגיע לצעורה קא מיכוין, ממילא), may be sufficient proof that it is not a serious ביטול, but rather מכוין קא לצעורה.

² See 'Thinking it over # 1.

³ The תוספות הרא"ש adds that even if there were עדים for the ביטול.

⁴ We should consider her a גרושה only להורא. If her husband is a כהן he may not continue living with her. Or if he dies she may not marry a כהן.

was no ביטול, it is only in regards to **being strict** in this case. The reason we should be מחמיר is **for perhaps he intends only to be מצער her** and not to be גט מבטל. Therefore there is a possibility that she is indeed מגורשת. We should consider her a לחומרא לחומרא.

קא משמע לן דלא חיישינן –

The משנה **teaches us that there is no concern** at all that the ביטול was not sincere. We accept the ביטול completely and she is not deemed a גרושה at all, even לחומרא.

SUMMARY

There are two explanations as to what the גמרא means when it says that I would have thought that לצעורה קא מיכוין and the ביטול is not valid.

A. The בעל was מבטל without עדים therefore it was not a sincere ביטול and it is a כשר גט.

B. The גמרא intended that we should consider the ביטול void (and the גירושין valid) only לחומרא, but not לקולא that she may remarry.

THINKING IT OVER

1. Why is the 'proof' of not bringing עדים stronger than the 'proof' of הגיע ממילא?
2. Is the 'קמ"ל' at the end of תוספות referring to both תירוצים or only to the last תירוץ?
3. What are the relative advantages of each of the תירוצים of תוספות?