

**דאי רבן גמליאל הא אמר איהי מהימנא –**

**For if it is according to ר"ג, he maintains that she is believed.**

### **OVERVIEW**

The משנה states: if there are עדי הינומא, then the woman is believed that בתולה. Our גמרא infers from this that if there are no עדים, the husband is believed that אלמנה נשאתיך. The גמרא asserts that (seemingly) our משנה is not in accordance with ר"ג, who favors the woman,<sup>1</sup> even if there are no witnesses to support her claim. It seems unlikely that our משנה would not cite the opinion of ר"ג, since he was cited in the previous משניות.

-----

תוספות wishes to qualify the question; that it is limited to a specific opinion:

**נראה דלמאן דאמר הטוען אחר מעשה בית דין<sup>2</sup> לא אמר כלום פריך<sup>3</sup> –**

**It seems that this challenge** that our משנה is not in accordance with ר"ג is only according to **the one who maintains that ‘one who counterclaims an act of בי"ד, he has no claim’**; if one claims that he already paid what בי"ד required of him we do not accept this claim of פרעתי, and he is still obligated to pay, unless he can prove that he paid his obligation. It is only according to מ"ד that the גמרא challenges that the husband should not be believed (according to ר"ג) that אלמנה נשאתיך (even if there were no עדי הינומא), because he has nothing with which to support his claim.<sup>4</sup>

**דלמאן דאמר דמצי טעין פרעתי -**

**However, according to the מ"ד that one can claim ‘I paid’** (even by a מעשה בי"ד; such as a כתובה), then -

**הכא נאמן הבעל אפילו לרבן גמליאל אלמנה נשאתיך במגו דאי בעי אמר פרעתי:**

**Here in our משנה** if there were no עדים שיצתה בהינומא, **the husband is believed to claim אלמנה נשאתיך, even according to ר"ג**, who usually favors the woman; nevertheless here the husband is believed to claim that **I married you as a widow, for he has a מגו that he could have claimed ‘I**

<sup>1</sup> See the various משניות in ב וכו' פרק ראשון דפ"ב יב, וכו'.

<sup>2</sup> A מעשה בי"ד is an obligation on a person that he is required to discharge even if there is no שטר or עדים. A prime example of a מעשה בי"ד, is the כתובה itself. The obligation to pay the כתובה is not dependent on the writing of the כתובה. Any woman who marries is entitled to a כתובה regardless if a כתובה was written or not. There is a dispute whether one may claim פרעתי on a מעשה בי"ד, even if he has no proof that he actually paid. This dispute is in a case where the claimant has no document (a כתובה) to prove that (s)he is still owed the monies. In cases other than מעשה בי"ד the debtor is (usually) believed to claim פרעתי, if the claimant has no שטר.

<sup>3</sup> See ‘Thinking it over’ # 1.

<sup>4</sup> This Tosfos is discussing the הו"א of the גמרא, before we distinguished between ברי וברי and ברי ושמא.

already **paid** you the כתובה. According to this מ"ד, one is believed to claim פרעתי, even by a מעשה בי"ד; therefore if there were no הינומא, the בעל is believed to claim אלמנה, since he has the מגו of פרעתי.

### **SUMMARY**

According to the מ"ד that נאמן (פרעתי) אחר מעשה בי"ד נאמן, it is understood (even in the הו"א) that ר"ג agrees that the בעל is נאמן (if there are no עדי), since he has a מיגו of פרעתי.

### **THINKING IT OVER**

1. claims that the question of כר"ג דלא וכו' לימא is only according to the מ"ד that מ"ד לא אמר כלום; since he has no מיגו of פרעתי.<sup>5</sup> Seemingly however, he has the מגו of אשת; you are not my wife and I owe you nothing.<sup>6</sup>
2. If the woman demanded her כתובה immediately after the גירושין, would the husband still have the מיגו of פרעתי?
3. Would רש"י, who states in ד"ה הבעל that חזקה וכו' that העמד אותה על חזקה וכו', disagree with this תוספות?<sup>7</sup>

---

<sup>5</sup> See footnote # 3.

<sup>6</sup> See מהרש"א, מהר"ם שי"ף.

<sup>7</sup> See שטמ"ק.