A protest made not in his presence, etc. - מחאה שלא בפניו כולי

OVERVIEW

The גמרא discusses whether a מחאה is a valid מחאה or not. תוספות argues initially that the proper term for this discussion should be whether a מחאה is a מחאה argue or not; and not if a מחאה שלא בפניו or not.

asks: תוספות

מוספות answers:

- ²יש לומר דעיקר הטעם תלוי במחאה דחזקה ודאי יש לה קול אפילו שלא בפניו² And one can answer, that the main cause whether or not there is a חזקה depends on the status of the מחאה; whether the מחאה can reach the סר מחזיק or not; for a חזקה certainly has publicity even if the חזקה takes place not in the presence of the מרא קמא

ואפילו הכי אי מחאה אין לה קול³ לא הוי חזקה -

And nevertheless if there is no publicity for the מהאה it will not be a מדקה; even though it is assumed that the מ"ק heard about the חוקה, and we know that he did not make a מחאה, nevertheless it will not be a חוקה, since the מחאה can claim I did not make a מחאה because it is useless. The מחאה will claim that he did not hear it.

ולהכי נקט מחאה :

And therefore, since it all depends on whether the מהאה has sufficient

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 $^{^1}$ If we assume that מחאה הוא בפניו הוי מחאה מחאה מחאה will be valid if no מחאה is made; and there will be no מחאה if a מחאה is made. If we assume that הויא מחאה שלא בפניו לא הויא מחאה, it means that there cannot be a מחאה was made; not that the מחאה is ineffective. In most instances the relevance is whether it is a חוקה, not if it is a מחאה.

² The original owner of the field is always inquiring as to the status of his field. If someone is occupying it, he will definitely become aware of it.

³ The new purchaser of a field is not actively listening if someone is making a מהאה. In his mind he bought the field, and it is over and done with. Therefore the chances are he will not be aware of a מהאה שלא בפניו. See following תוספות יה,א ד"ה דסתם.

⁴ The discussion whether שלא בפניו has a קול or not, is not whether a קול has a קול; it certainly does. The question is whether the מחאה שלא בפניו

publicity, he mentions מחאה as opposed to חזקה.

SUMMARY

The expression used in the גמרא בפניו מחאה שלא בפניו; because the validity of the חזקה depends on whether the מחאה has a קול or not; regardless that the הזקה has a קול.

THINKING IT OVER

What changed in תוספות understanding between the תירוץ? and the תירוץ? Alternately; what would be amiss if the expression would be ?