

אין צריך לפרעו בעדים –

He is not required to pay him in the presence of עדים

OVERVIEW

The גמרא stated that the משנה could not have taught us the דין that if a לווה admitted to receiving a loan, however if he claims פרעתי he is נאמן; because he would be נאמן to say פרעתי not only if he admitted to the loan but even if there are עדים that he borrowed. The reason he is believed is because we follow the ruling that צ"ל לפרעו בעדים א"צ. There is however another מ"ד who maintains that צ"ל לפרעו בעדים א"צ. Our תוספות will discuss how this מ"ד will explain our משנה.

תוספות asks:

ואם תאמר למאן דאמר צריך לפרעו בעדים¹ -

And if you will ask; according to the one who maintains that he is required to pay him in the presence of עדים -

תקשי ליה מתניתין דהכא דליתני מנה לך ביד² -

Our משנה here contradicts his view; for according to him, the משנה should have stated the case of 'I owed you a מנה'; that he is believed to claim פרעתי. However if there were עדים that he borrowed a מנה he is not believed to claim פרעתי. According to this מ"ד this is indeed the ruling; as opposed to the מ"ד of א"צ לפרעו בעדים, where he will be believed to claim פרעתי even if there were עדים for the loan. The fact that the משנה did not state this דין would seem to prove that א"צ לפרעו בעדים.

תוספות answers:

ויש לומר דפלוגתא דתנאי היא בפרק שבועות הדיינין³ (שבועות דף מא, ב) -

And one can answer that it is not only a dispute among אמוראים, but rather it is (also) a dispute even among the תנאים in תנאים. Therefore we cannot ask a question on the אמורא who claims צריך לפרעו בעדים, from our משנה, because he can answer that even though our משנה implies that א"צ לפרעו בעדים, nevertheless there are other תנאים who maintain that צריך לפרעו בעדים. This אמורא will follow those תנאים.

תוספות offers a different answer:

¹ There is a dispute among the אמוראים whether צריך לפרעו בעדים or not.

² The שטמ"ק omits the words 'דליתני מנה לך ביד'.

³ רבנן and ריב"ב seem to be referring to the מחלוקת there between them.

אי נמי דלא חשיב לה פירכא -

Or you may also say that the מ"ד **who maintains** does not **consider this a refutation**; the fact that the משנה did not state the case of בידי מנה does not prove that א"צ לפרעו בעדים. It is possible that צריך לפרעו בעדים, and therefore the משנה could have indeed stated the case of בידי מנה. However the משנה chose not to state the case of בידי מנה, but rather the case of היה של אביך -

משום דניחא ליה לאשמועינן דאין מחזיקין בנכסי קטן -

Because the משנה **would rather let us know the ruling that one cannot make a חזקה in the properties of a minor.** The תנא of the משנה felt (according to the אין מחזיקין בנכסי (מ"ד צריך לפרעו בעדים) that it was more important to teach us the דין of דינא, than to teach us the דין that חבירו לפרעו בעדים. Therefore the משנה states ⁴ **אין מחזיקין בנכסי קטן** which teaches us the דין of דינא **שדה זו של אביך כו'** However indeed it could have taught us the דין of בידי מנה.

הגמרא has an additional question (even) on the מ"ד א"צ לפרעו בעדים. The גמרא stated that the משנה could not state the case of בידי מנה, because we could not conclude the סיפא that if יש עדים he is not נאמן. However תוספות will ask that it is possible to conclude נאמן יש עדים אינו נאמן.

ואם תאמר מאי משני -

And if you will ask; what did the גמרא **answer**, that it is not possible to state ואם **אכתי ליתני ואם יש עדים ואמר לו אל תפרעני אלא בפני פלוני ופלוני אינו נאמן** -

The משנה can still teach us the case of בידי מנה **and conclude**; **'and if there are עדים** for the loan who will testify that the לווה borrowed **and (that⁵) the לווה said to the לווה do not pay me in private, but pay me only in the presence of those two people who will be the witnesses to the payment, the לווה will not be believed** to claim פרעתי. The question is that the משנה could have (and should have) stated the case of בידי נאמן with a שאסר ⁶; however if the לווה stated אל תפרעני אלא בפני פלוני ופלוני, then the לווה is not believed to claim פרעתי without (those) עדים.

תוספות answers:

ויש לומר דלא היה רוצה להאריך בלשונו -

And one can answer that the תנא **of the משנה did not want to be excessive in his language.** The תנא likes to limit the verbiage in the משנה, when he has the

⁴ See previous (and גמרא יז,ב). (תוד"ה ורב הונא).

⁵ See footnote # 10 (whether there were עדים that the לווה said עדים בפני פלוני ופלוני).

⁶ See מהרש"א וכו'.

choice. Therefore he chose a case where he could be brief rather than choosing a case where it would require a rather lengthy statement.

תוספות offers an alternate answer to this last question:

או' שמא מילתא דפשיטא הוא:

Or perhaps (the reason the תנא did not use this case is because) the תנא of the משנה felt that **this is too obvious**. There is no point in teaching us that if the מלוה told him to pay in the presence of עדים, the לווה would not be believed to claim פרעתי. That is so obvious that the משנה need not teach it to us.

SUMMARY

We can maintain that our משנה is of the opinion that המלוה את חבירו בעדים א"צ, לפרעו בעדים, and the מ"ד who maintains צריך לפרעו בעדים will follow the opinion of other תנאים who also maintain that צריך לפרעו. Another option is that our משנה can also maintain that צריך לפרעו but did not state the case of מנה לך because it would rather teach us אין מחזיקין בנכסי קטן because it would rather teach us.

The משנה did not want to teach the דין of מנה לך בידי in a case where there the מלוה required that תפרעני אלא בפני עדים, for either it would require a lengthy statement or that this ruling is too obvious.

THINKING IT OVER

1. Is there any connection (or contradiction!) between the first קשיא ותירוצים (and תירוצים) קשיא of תוספות with the second קשיא ותירוצים?⁸

2. ⁹Why is it a שמא; it is שמא מילתא דפשיטא הוא. ¹⁰Why is it a שמא; it is certainly a מילתא דפשיטא! We should have no need for the first תירוצים of תוספות (on the second תירוצים)! Or at least this should have been the first תירוצים!¹⁰

⁷ See 'Thinking it over' # 2.

⁸ See משכנות הרועים אות צ"ה.

⁹ See footnote # 6.

¹⁰ See (also) ח"ב מ"ת אות רי"ח.