

## הן הן הדברים הנקנים באמירה –

### Those are the very things which are acquired by speaking

#### OVERVIEW

Generally when a person makes a verbal pledge without an accompanying קנין, he may renege on his pledge. רב גידל אמר רב teaches us that when the parents of the prospective groom and bride (mutually) pledge what they will give to the newlyweds, in this case even though it was merely a verbal commitment, nevertheless their pledge is effective and they cannot retract it. תוספות qualifies this rule.

asks: תוספות

תימה דבפרק שני דייני גזירות (כתובות קט,א.) תנן –

**It is astounding! For in the משנה we learnt in a פרק שני דייני גזירות that if - הפוסק מעות לחתנו<sup>1</sup> ופשט לו את הרגל<sup>2</sup> תשב עד שתלבין ראשה<sup>3</sup> –**

**One pledged money for his son-in-law, and reneged on his commitment, the ruling is (according to the ת"ק) that he can make her sit until her head becomes white.** The son-in-law is not required to either consummate the marriage or to divorce her. He has the option of having the woman remain betrothed but not married. This concludes the citation from כתובות.

concludes the question: תוספות

ולמה תשב ישאנה<sup>4</sup> ויקרא חמיו לדין כיון דהן הן דברים הנקנים באמירה –

**But why should she sit and wait; he should marry her and call his father-in-law to a דין תורה since these are the very things which are acquired by merely saying.** He will be able to force his father-in-law to pay.

<sup>1</sup> The son-in-law was מקדש this woman (there was no נישואין yet) and the father-in-law had previously pledged a sum of money when he will marry his daughter. The father-in-law informed the son-in-law (after the אירוסין) that he has no intention of keeping his promise. The daughter is now an אשה איש (she is an ארוסה, but not a נשואה); the husband can keep her in this status (even if she becomes an old woman) until her father pays. Normally the נישואין must take place within twelve months of the אירוסין; in this case however (since her father reneged on his pledge) the husband may extend the אירוסין indefinitely.

<sup>2</sup> The literal translation is, 'and he stretched out his foot to him'. See רש"י there for his explanations. The term פשט את הרגל is used (today) to refer to a case of bankruptcy.

<sup>3</sup> Her hair on her head will turn white from old age.

<sup>4</sup> The son-in-law cannot claim the monies promised until after the נישואין. The husband is reluctant to perform נישואין for he feels he has no other way to coerce the father-in-law to pay unless he delays the נישואין. The fact is however that according to our גמרא these pledges are enforceable in a ביה"ד since they are נקנים באמירה.

answers: תוספות

– ויש לומר שהחתן אינו רוצה לטרוח בבית דין ולמיקם בדינא<sup>5</sup> –

**And one can say; that the חתן does not want to bother and be involved in litigation in a ב"ד.**

offers an alternate solution: תוספות

ורבינו שמואל בן מאיר פירש דדוקא כשמתוך התנאים עמדו וקדשו אז נקנים באמירה.

**And the רשב"ם explained that only when the קידושין took place in conjunction with these pledges;<sup>6</sup> only then are they acquired with (merely) speaking. -**

– ומדקדק מדקתני עמדו<sup>7</sup> –

**And the רשב"ם infers this since רב גידל אמר רב stated 'and they arose and made קידושין, they acquired the exchange of pledges.'**

– והוא דשני דייני גזירות מיירי בשלא קדשו מתוך הדברים –

**However that שני דייני גזירות of משנה is discussing a case where there was no immediate קידושין as a result of their discussing their pledges, therefore there is no קנין. The husband cannot take the father-in-law to ב"ד since there is no קנין.**

resolves the following question. If there is no קנין and the father-in-law is not obligated to pay, why can the חתן extend the אירוסין indefinitely? We should coerce him to have נישואין at the end of the twelve month period.<sup>8</sup>

– ומכל מקום מאחר שהסכימו על כך תשב עד שתלבין ראשה –

**But nevertheless since they agreed to this sum therefore the aggrieved husband can make her sit until her head turns white.**

rejects the proof of the רשב"ם: תוספות

– ומיהו אין ראיה מלשון עמדו דאורחיה דגמרא בהכי –

**However there is no proof from the expression עמדו וקדשו to mean that the קידושין took place immediately following their discussions for it is the manner of the גמרא to use this term even when it is not in the context of an immediate act. תוספות offers an example:**

– כמו קטנה שלא מיאנה (והגדילה) ועמדה ונשאת ביבמות פרק בית שמאי (דף קח,א) –

<sup>5</sup> He therefore threatens his father-in-law that his daughter will not be able to marry anyone until the חתן receives the monies promised.

<sup>6</sup> The קידושין took place immediately after both parties pledged their respective amounts.

<sup>7</sup> The גמרא states ככה אתה נותן וכו' כך וכך עמדו וקדשו קנו וכו'. This indicates that immediately after they made their respective pledges, the קידושין took place.

<sup>8</sup> See footnote # 1.

As we find in **בית שמאי פרק יבמות** where the **בריייתא** teaches, ‘**a minor girl who was not ממאן and arose<sup>9</sup> and married**, etc’. There the word **עמדה** there does not mean as a result of any previous action.

כתובות in גמרא and our גמרא offers an alternate difference between:

**ורבינו תם פירש דהא דאמר נקנים באמירה בנישואין ראשונים דוקא –**

**And the ר"ת explained; that which is said that the pledges are effectively acquired through speech alone, it is specifically by the first marriage -**

**שהאב משיא את בתו ויש לו קירוב דעת גדול אצל חתנו –**

**Where the father is marrying off his daughter for the first time and the father has a strong affection towards his son-in-law, therefore his oral commitment is sufficient to create a קנין -**

**אבל התם מיירי בשניים –**

**However there in כתובות we are discussing a second marriage, and therefore a verbal commitment does not create a קנין.**

In a similar vein:

**וכן היה אומר רבינו תם אין נקנין באמירה אלא כשהאב פוסק אבל אחיה ואמה<sup>10</sup> לא:**

**And similarly, the ר"ת used to say that these commitments are נקנין only when the father of the כלה pledged; however not what the brothers or mother of the כלה pledge. Their verbal commitment is not binding.**

## **SUMMARY**

The רשב"ם maintains that the pledges are נקנין באמירה if the קידושין took place immediately afterwards. The ר"ת maintains that they are נקנין באמירה only by the first marriage (and only the father's pledge; not the brothers' or mother's).

## **THINKING IT OVER**

1. Tosfos offers three explanations why in כתובות the חתן can extend the איירוסין indefinitely. What are the relative advantages of each explanation?

2. According to the ר"ת, must it be a first marriage for all parties, or just for one of the parties?

<sup>9</sup> A קטנה who has no father may be married by her brothers or mother. She retains the right to annul this marriage until she becomes a גדולה (this is called מיאון). If she left this husband and married someone else her marriage is considered her מיאון. The term עמדה there is not associated with any previous act.

<sup>10</sup> This is referring to a case where the כלה is an orphan and her brothers or mother are marrying her off.