

לאו משום דחזקתו בדוק - Is it not because it is presumed searched

OVERVIEW

The גמרא posed a query; what is the ruling if a tenant rented a house on the fourteenth of ניסן (by day); is the house presumed to be בדוק [by the משכיר the night before] (and the שוכר need not be בודק), or not (and the שוכר must be בודק). רב נחמן attempted to resolve the query by citing a ברייתא which states that (even) נשים are believed concerning חמץ. The גמרא presently assumes that they are believed to testify that the owner was חמץ. The question arises, how can we accept the testimony of נשים וכו', since they are לעדות. The explanation would seem to be that since a house is presumed to be בדוק (on the fourteenth); therefore we can believe their testimony. This seemingly resolves the query.¹ תוספות has a difficulty with the resolution at this stage.



תוספות asks:

תימה מאי סלקא דעתיה דאי בחזקתו² בדוק אם כן מה צריך לאמירה דהני כלל³ –

It is astounding! What initially entered the mind of רנב"י to resolve the query from this ברייתא? **For if** a house is indeed בחזקת בדוק (as רנב"י infers) **then why is the testimony** of the נשים וכו' **necessary at all?! If** we are to assume that a house is presumed to be בדוק on the fourteenth, then it is not necessary for the household members to be בודק the house (again) on the fourteenth; regardless whether the נשים testify or not. How can we reconcile that a house is considered בדוק בחזקת בדוק, and that the testimony of the נשים is required to relieve us from being בודק (again)?⁴

תוספות answers:

ואומר רבינו יצחק דמיירי כגון שבעל הבית בעיר –

And the ר"י explains that the ברייתא is discussing a case where for instance the homeowner is in the city and he can be contacted to find out whether or not he was בודק the house the previous night. In this situation -

אף על גב דחזקתו בדוק כיון דאיתיה בעיר צריך לישאל הימנו –

Even though the house is בחזקתו בדוק, nevertheless **since the owner is in the city it**

¹ The גמרא continues on to challenge (and refute) this resolution.

² Others amend this to read חזקתו.

³ This question seems similar to the גמרא's question later, 'אלא מאי דחזקתו בדוק האי הכל נאמנים וכו'. See however later in this תוספות the difference between these two questions.

⁴ The fact that we need (and rely on) their testimony indicates the opposite; that it is not בדוק, therefore the testimony of the נשים וכו' is necessary to relieve us from the חזקת בדוק.

is necessary to ask him⁵ if he was בודק or not -

ולהכי מהני אמירה דהני דלא שאלין⁶ -

And in this regard, the testimony of the נשים וכו' is effective that we need not ask the owner; but rather we depend on the testimony of the נשים וכו'. This answers תוספות question, it is indeed בחזקת בדוק; nevertheless we are still required to ask the owner; however if the בעיר testifies that the owner was בודק it is not necessary to ask the owner even if he is בעיר.

anticipates a difficulty with his contention that if the owner is available, he must be asked (even if we assume that חזקתו בדוק):

אף על גב דגבי טבל סמכינן אחזקת חבר⁷ ואין צריך אפילו לישאל⁸ -

Even though that concerning the prohibition of טבל⁹ we depend on the presumption that a חבר¹⁰ performs all the necessary tithing to remove the טבל איסור טבל and it is not necessary even to ask him if it is טבל or not, even if the חבר is in the same city. Why is it that by בדיקת חמץ it is necessary to ask the owner (since it is בחזקתו בדוק)?

replies, the reason that by טבל it is not necessary to ask:

היינו משום דכיון ששולח לו לאכול מסתמא תיקנה שלא יבא לידי מכשול -

That is because since the חבר sent him (this food) to eat, it is presumed that he prepared it properly in order that the recipient should not be caused to stumble.

If the food is טבל then whoever eats it transgresses a sin which is punishable by שמים בידי שמים. Therefore we are certain without a doubt that it is not טבל (and the חבר need not be asked) for the חבר would never allow this to happen -

אבל גבי בדיקה אפילו לא יהיה בדוק לא יהיה כל כך מכשול -

However concerning searching for חמץ where even if the house will not be בדוק, there will not be such a great hazard¹¹, therefore there is a concern that the owner may not be so meticulous to be בדוק, for in his mind it will not be a great calamity if he is not בדוק. This weakens somewhat the חזקתו בדוק -

לכך צריך לישאל אם הוא בעיר -

Therefore it is necessary that the owner be asked, if he is in the city.¹²

⁵ The reason for this is because regardless of the חזקה, nevertheless תוספות maintains that מבררין לברורי דאיכא; therefore it is necessary whenever possible to have complete verification.

⁶ However if it would be חזקתו בדוק, אין חזקתו בדוק, then obviously the testimony of the נשים would not be accepted.

⁷ The case (in עירובין לב, א) is if a חבר offers someone his produce, the person may eat it without verifying by the חבר whether it is טבל, for there is a חזקה by a חבר that he is not מתוקן מדבר שאינו מתוקן.

⁸ See 'Thinking it over # 1.

⁹ אסור מדאורייתא. It is produce from which not all of the תרומות or מעשרות was separated.

¹⁰ A חבר is a תלמיד חכם who accepted upon himself to be meticulous in the observance of תורה ומצוות.

¹¹ According to תוספות the whole חזקתו בדוק is merely a גזירה (which is far fetched). If a house is not בדוק there is no actual איסור (since the owner will be מבטל the חמץ).

¹² However the testimony of נשים וכו' is sufficient and he need not be asked.

גמרא explains the continuation of the תוספות:

ומסיק אי חזקתו בדוק כל הבתים בחזקת בדוקין מיבעי ליה –

And the גמרא concludes (refuting the resolution) **if we are to assume that חזקתו בדוק, why does the ברייתא state נאמנים, it should have stated ‘all the houses are presumed to be בדוק’** this concludes the refutation of the גמרא:

- כל הבתים בחזקת בדוקים ברייתא would state ¹³; for if the תוספות explains this challenge

וממילא ידעינן דאמירה דהני מהני¹⁴ ואין צריך לישאל הימנו אפילו אם הוא בעיר –

Then automatically we would know that the testimony of the נשים is effective and it is not necessary to ask anything of the owner even if he is in the city.¹⁵

offers a different answer to the original question: how can we presume that חזקתו בדוק; for then, why is their testimony required at all:

ועוד פירש רבינו יצחק דסלקא דעתיה דאיירי דאמרי הני לא היה בדוק ואנן בדקנו –

And, in addition, the ברייתא ר"י explained that initially thought that the נשים testified that the house was not בדוק; however we (the נשים) were בודק the house. In this case –

דאי חזקתו בדוק מהימני¹⁶ מגו דאי בעי שתקי –

If a house is considered חזקתו בדוק then the נשים are believed to claim we were בודק, because of a מגו that they could have kept silent and not mention that the owner was not בודק. We would then assume that the house is בדוק on account of the חזקה. They are to be believed that אנן בדקנו because of this מגו –

אבל אי אין חזקתו בדוק אמאי מהימני –

However, if a house is not חזקתו בדוק, why should we believe them when they claimed we were בודק, they have no מגו. Even if they would not testify that the owner was not בודק, the house would still require a בדיקה now, since it is חזקתו בדוק. The fact that they are believed (with a מגו) proves that a house is חזקתו בדוק.

ופריך אי הכי כל הבתים בחזקת בדוקין מיבעי ליה דממילא ידעינן דמהימני במגו:

¹³ According to תוספות this question of ליה מיבעי ליה, is seemingly not clear. The ברייתא (seemingly) could not have stated 'וכי הבתים וכו', for the ברייתא wants to teach us that the נשים are believed and the owner need not be asked, therefore it had to state 'הכל נאמנים וכו'. The answer follows.

¹⁴ The reason the נשים are believed is not (so much) because of their נאמנות; it is rather because the house is בחזקת בדוק. It would be more appropriate for the ברייתא to cite the real reason and cause of the ruling (which is כל הבתים) than merely stating the effect that the נשים are נאמנים (בחזקת בדוקים).

¹⁵ תוספות maintains that since, when the owner is not in the city, the house is considered בדוק, this proves that the requirement to ask the owner when he is in the city (if he was בודק) is more of a formality (that we have direct knowledge of the fact and not merely an assumption). Therefore it will be self understood that the testimony of the נשים fulfill that formality (for we have direct knowledge). See (however, the פנ"י (בא"ד) and ברכת אברהם).

¹⁶ See 'Thinking it over' # 2.

And the גמרא refutes this resolution arguing **if this is so** that a house is בחזקת בדוק, the גמרא **should have stated** כל הבתים בחזקת בדוקין and automatically **I will know that** the נשים are believed to claim אנחנו בדקנו since they have a מגו that they could have remained silent.¹⁷

SUMMARY

The גמרא assumed that if a house is בחזקת בדוק then if the נשים claim that it was בדוק, there is no need to ask the owner even if he is available. Alternately if a house is בחזקת בדוק then if the נשים claim that the owner was not בודק, however we were מגו דבעי שתקי בודק they would be believed with a שתקי.

THINKING IT OVER

1. Why did not תוספות asks why by a חבר there is no need to ask¹⁸. Why did not תוספות asks this question when the גמרא previously asked מ לישיליה נפק"מ; why is there a need to ask; how is this different than the case of חבר?¹⁹
2. If we assume that a בית is בחזקת בדוק;²⁰ what would be the דין if נשים וכו' claim that the owner was not בודק; does the house require בדיקה or not?²¹
3. What are the relative advantages of each of two תוספות explanations?
4. Do the two explanations of תוספות agree with each other?

¹⁷ The נשים have no independent נאמנות, they are believed only on account of the מגו which is set in place by the חזקה. The גמרא should state the חזקה. See previous footnote # 14.

¹⁸ See footnote # 8.

¹⁹ See ח"ב מ"ת אות טז.

²⁰ See footnote # 16.

²¹ See דבר שמואל and ברכת אברהם (בד"ה בא"ד).