

ומר סבר לפי שאין עדים מצויין לקיימו – And this master maintains Because witnesses are not available to authenticate it

OVERVIEW

The גמרא explained the מחלוקת between ר"י ורבנן (where ב' אומרים בפנ"כ וא' אומר בפנ"ח in a case where הגט יוצא מתח"י שניהם) is that ר"י maintains that בפנו"נ was instituted on account of קיום. Therefore since there are two שלוחים there is no need for בפנו"נ. The גמרא later ask that ר"י should also argue in the רישא (where א' אומר בפנ"כ). The גמרא mentions that this question can be posed now.

השתא¹ הוה מצי לאקשווי ולפלוג רבי יהודה ברישא:²

The גמרא could have asked now, and let ר"י argue in the רישא as well.³

SUMMARY

The question that ר"י should argue in the רישא could be posed as soon as we assume that ר"י maintains the reason of קיום.

THINKING IT OVER

Why did not the גמרא ask (nor does תוספות mention) according to the לישנא קמא (which maintains ר"י ברישא), that ר"י ברישא (ב' שהביאו גט א"צ שיאמרו בפנו"נ) ולפלוג ר"י ברישא?⁴

¹ Now that we say that ר"י maintains the reason of קיום and therefore by שנים שהביאו גט there is no need for בפנו"נ. See (however) 'Thinking it over'.

² The גמרא asked this question later when we assume that ר"י agrees with רבה but is not concerned שלמדו (שנים שהביאו) by שמא יחזיר דבר לקקולו. The גמרא therefore asks that ר"י should also maintain in the רישא where א' אומר בפנ"ח that it should be כשר since they are both שלוחים and he is not concerned for וכו' שמא יחזור וכו'.

³ Just as later (when the גמרא assumes that ר"י agrees with רבא, but is not שלמדו) the גמרא asks that ר"י should argue in the רישא as well; similarly (or certainly) here when the גמרא assumes that ר"י agrees with רבא (that the reason for בפנו"נ is קיום) the גמרא should (certainly) ask ברישא ר"י! See אמ"ה # 77-8 for possible explanations why the גמרא does not ask now ברישא ר"י.

⁴ See מהרש"א (הארוך).