

זמנין דמשהי ליה אפשיטי דספרא –

Occasionally he retains it, in lieu of the coins paid to the scribe

OVERVIEW

The גמרא records a dispute whether it is considered an עולה if a מלוה retains a שטר in his possession. One opinion claims that it is not an עולה, since occasionally a מלוה retains a שטר פרוע in order that he (the מלוה) be reimbursed (by the לווה) for advancing the scribe's fee for writing the שטר חוב (which is the obligation of the לווה). This תוספות will explain that this dispute is not in a situation where the שטר was retained for דספרא; but rather in a case where no פשיטי דספרא was owed by the לווה.

פשד"ס for שט"ח מלוה occasionally this explains that since תוספות

ועל ידי אותה שהייה אישתלי ליה שהותא פעם אחרת הלכך לא קרי ליה עולה -

And on account of that retention, where the מלוה legally retained the שטר for the פשד"ס, **he inadvertently retained it another time**, when there was no פשד"ס due¹ **therefore** (even) this second incorrect retention **cannot be called a wrongdoing** (according to this opinion). The מלוה was accustomed, from previous times, to retain the שטר for the פשד"ס; inadvertently he retained it this time (mistakenly thinking perhaps that the פשד"ס were not paid up).

תוספות explains the dissenting opinion:

ומאן דאמר שטר פרוע היה לו ליזהר -

And the one who maintains that retaining a שטר פרוע is considered an עולה, will argue that the מלוה **should have been careful**. The מלוה should take note that the פשד"ס is not due, and return the שטר at the time the loan was paid.

תוספות explains why we cannot interpret this dispute in a case where פשד"ס was due:

אבל אין לפרש דמשום שהייתו אפשיטי דספרא קרי ליה עולה דמה פשע:

However, we cannot interpret that the argument whether retention of a שטר פרוע is considered an עולה, is in a case where פשד"ס was due; **because a retention in lieu of פשד"ס cannot be called an עולה** on the part of the מלוה, **for what was his wrongdoing!** He is retaining the שטר until he is reimbursed for the פשד"ס.

SUMMARY

¹ See תוספות הרא"ש who states that the פעם אחרת is that he retains it even after the פשיטי דספרא are paid up.

All agree that retaining a שטר for פשד"ס is not considered an עולה. The dispute is whether the מלוה can be excused for retaining a שטר when no פשד"ס is due.

THINKING IT OVER

May a מלוה initially retain a שטר, for פשד"ס?