

השבתנו על המעוברת –

You have responded to us concerning the pregnant woman.

OVERVIEW

The גמרא cites a ברייתא which quotes a (rather lengthy) dialogue between the ת"ק (ר"ג ור"א) and ר"י. The גמרא explains the ברייתא; that at one point the ת"ק seems to concede to ר"י. The ת"ק states that; 'you have effectively responded to us concerning a pregnant woman'. It seems inconceivable that the ת"ק actually agrees with ר"י concerning a מעוברת, for in the משנה there is a dispute between ר"ג and ר"י (even) concerning a מעוברת.

The גמרא also states that ר"י maintained that מדברת היינו שבויה. This seemingly indicates that just as a שבויה¹ is not believed to say לא נבעלתי, the same applies by a מדברת. This conflicts with other statements made by תוספות (and the גמרא). Our תוספות addresses these two issues.

פירוש² לדין נחא דאשה מזנה בודקת ומזנה ולא דמיא לשבויה -

The explanation of the phrase 'השבתנו וכו', is not that the תנא actually agreed to the response of ר"י, but rather what they meant to say is that although we still disagree with you even by a מעוברת, for **according to us it is understandable** that a מעוברת is believed to claim נבעלתי (not as you (ר"י) maintain), **for a promiscuous woman verifies** that her consort is כשר **and then she is promiscuous**; she has a choice with whom to consort, therefore she is כשרה ³ and the מעוברת **is not comparable to a captive**; who has no choice, but must yield to her captors, therefore it is presumed that she was נבעלה to her captors, which disqualifies her for כהונה –

אלא לדין דלית לך הך סברא תינח מעוברת -

However according to you (ר"י) that you disagree with this logic of אשה מזנה, מעוברת and שבויה; בודקת ומזנה; ר"י maintains that there is no difference between a שבויה and a מעוברת, and both are presumed to have been נבעלה לפסול, and therefore לכהונה; so, **granted by a מעוברת**, that she will not be believed נבעלתי, according to your logic, since she was נבעלה. It is the same as שבויה. We appreciate (although we disagree with) your view –

¹ A שבויה is a woman who was held captive by non-Jews. It is assumed that she was נבעלה by them. She is subsequently אסורה לכהן (even if she is a פנויה). If her husband was a כהן she is לבעלה.

² The term פירוש (or כלומר), generally indicates that the meaning is different than what a cursory reading would indicate.

³ See 'Thinking it over' #1.

אבל מדברת⁴ אפילו לפי דבריך יש הפרש דלזו יש עדים ולזו אין עדים ואיכא מיגו -
however in the case of מדברת even according to your opinion there is a
difference between a שבויה and a מדברת, for by this one (שבויה) there are
witnesses the she was נשבה, which presumes ביאה, since she is a שבויה, however by
this one (מדברת) there are no עדי ביאה; therefore she should be believed when she
claims לא נבעלתי. In essence the ת"ק says to ר"י we can see your point concerning a מעוברת (even though we disagree with you),
however how can you argue with us concerning a מדברת?!

גמרא continues quoting and explaining the תוספות

אמר להם מדברת היינו שבויה וכמו ששבויה אינה נאמנת לומר לא נבעלתי -
He (ר"י) said to them that even מדברת is the same as a שבויה; they are both
equally presumed to have had ביאה and just as a שבויה is not believed to claim I
was not נבעלה; we assume that she was נבעלה and is אסורה לכהן -

הכי נמי מדברת לפי שאין אפטרופוס לעריות -
The same applies also for a מדברת, that we assume that she was נבעלה; even if she
claims לא נבעלתי, for there is no supervisor concerning illicit relationships. There
is no one preventing them from having ביאה. The assumption is (as by שבויה), that if there was
ביאה there was יחוד.

anticipates a difficulty. According to this explanation; ר"י maintains that in a case of
נסתרה, if she claims לא נבעלתי she is not believed.

ומיהו פירוש זה לא יתכן למאי דפרישית לעיל⁵ דלרבי יהושע נאמנת לומר לא נבעלתי -
However this explanation cannot coincide with what I have previously
explained that according to ר"י she is believed to claim לא נבעלתי.

responds: תוספות

ופירש רבינו יצחק בדוחק מדברת היינו שבויה -
And the ר"י reluctantly explained that the phrase מדברת היינו שבויה, does not mean
that just as a שבויה is not believed to claim לא נבעלתי, similarly a מדברת is not believed to claim
לא נבעלתי; this is not true. If there were only יחוד, she is believed to claim לא נבעלתי and remains
לא נבעלתי. Rather the phrase מדברת היינו שבויה means -
דכמו ששבויה בחזקת בעולה כך מדברת בחזקת בעולה -

⁴ There is a מחלוקת between זעירי and רב אסי concerning the meaning of מדברת. זעירי maintained that it means נסתרה while רב אסי maintains that it means נבעלה. This ברייתא is cited to refute רב אסי and prove that מדברת means נסתרה; there were no עדי ביאה.

⁵ גמרא from the ר"י brought a conclusive proof that לא נבעלתי is נאמנת according to ר"י. דף יג,א תוד"ה (רב, וד"ה) ואין
in the beginning of (טז,א) where it says 'דאי בעי אמר לא נבעלתי מהימנא'. See footnote #8 in (יג,א).

That just as a שבויה is presumed to be a בעולה, so too is a מדברת presumed to be a בעולה (before she makes any claim, we presume her to be a בעולה), this presumption is relevant –

לענין שאם אמרה לכשר נבעלתי שאינה נאמנת במגו -

regarding that if she claims לכשר נבעלתי that she is not believed even though there is a מגו that she could have said נבעלתי (and had she said נבעלתי, she would have been believed [as opposed to a שבויה]). The reason the מגו is not effective, is –

לפי שיראה לומר לא נבעלתי ולהכי אהני דאין אפוטרופוס לעריות דלא חשבינן ליה מיגו:-
because she is 'afraid' to claim נבעלתי;⁶ she senses that the claim of נבעלתי is a mockery, no one will believe her, **and this is what** the ruling of **אין אפוטרופוס** **accomplishes that we do not consider** the claim of נבעלתי as a מגו. The fact is that she was נבעלה, as she herself admits that נבעלתי (לכשר). She cannot imagine that people will believe her if she claims נבעלתי, since אין אפוטרופוס לעריות. This is considered that she has no מגו, and therefore she is not believed.⁷

SUMMARY

The phrase **המעוברת על השבתנו** means that you have defended your position concerning מעוברת even though we disagree with you. The phrase **היינו שבויה** means that there is a presumption of ביאה in either case.

THINKING IT OVER

1. The ת"ק claims that (even) by a מעוברת she is believed that לכשר נבעלתי, since ⁸ By a מעוברת, however, there is a possibility that she was אשה מזנה בודקת ומזנה. ⁹ Why is she believed?⁹

2. תוספות seems to be saying two reasons why there is no מגו. One: because she is ¹⁰ Are two reasons required!?

⁶ See 'Thinking it over' # 2.

⁷ The ת"ק maintains that even a מעוברת is believed to claim נבעלתי (although she has no מגו [of נבעלתי] since ⁸ By a מעוברת, however, there is a possibility that she was אשה מזנה בודקת ומזנה. However ר"י maintains that even by נסתרה, where there (seemingly) is a מגו, she is not believed to claim נבעלתי, for she will not willingly claim (falsely) נבעלתי, since אין אפוטרופוס לעריות.

⁸ See footnote # 3.

⁹ See סוכ"ד אות נב.

¹⁰ See footnote # 6.