

הוציא עליו כתב ידו שהוא חייב לו גובה מנכסים בני חורין –

**He presented to him in his own handwriting that he owes him;
he can collect from the unencumbered properties**

OVERVIEW

The גמרא cites a משנה that if the מלוה presents the handwriting of the לוה on a document that the לוה owes monies to the מלוה; the מלוה may collect that sum from the נכסים בני חורין of the לוה. The issue in this תוספות is; what is the לוה claiming? Is he claiming I never borrowed the money; or is he claiming I paid the loan already? Perhaps there is no difference. תוספות states that this is a מחלוקת between the ר"י and the ר"ף.

פסק רב אלפס¹ דווקא כשאומר לא היו דברים מעולם –

The ר"ף² ruled that this ruling applies exclusively only if the לוה claims this never happened; I never borrowed money from you. In such a case the לוה is not believed, since the מלוה has a signed document from the לוה stating that the לוה borrowed money from the מלוה -

אבל נאמן הוא לומר פרעתי ולא מצי אמר ליה שטרך בידי מאי בעי –

However the לוה is believed to claim that I paid this loan; and the מלוה cannot counterclaim; what is your שטר doing in my hand if you already repaid the loan. Seemingly the לוה should not be believed to claim פרעתי, for the מלוה is holding the שטר. If the לוה indeed repaid the loan he would have demanded the שטר back in return. Nevertheless the ר"ף maintains that this claim of מאי בעי שטרך is not effective in the case of a כתב יד of the לוה, but rather this claim is effective -

אלא בשטר שיש בו עדים דגובה בו מנכסים משועבדים –

Only by a שטר which עדים signed on; for with such a שטר the מלוה can collect (even) from encumbered properties (properties which the לוה sold after the loan).³

¹ In the end of מס' ב"ב (in our ר"ף on פגא).

² The ר"ף, is the common abbreviation for ר' יצחק אלפסי; or רב אלפס. The ר"ף lived in the city of פֶּזַס (today the city of Fez in Morocco). Hence the abbreviation ר"ף – פֶּזַס (פֶּזַס); ר' יצחק (פֶּזַס) – ר"ף; the 'פֶּזַס' being an Arabic prefix.

³ The commentaries offer various explanations as to the difference between עדים and כת"י. 1. By כת"י he is not that concerned if the מלוה retains the שטר; because even if the מלוה claims a second time the לוה can sell all his properties, and the מלוה will not be able to collect. 2. By שטר בעדים, the לוה is (mainly) concerned that the מלוה should not retain it, for it will hamper the לוה in selling property, since all his properties are subjected to the lien of the שטר; there is no such concern by כת"י. 3. By כת"י it is more likely that the לוה forgot that the מלוה is in possession of a שטר; as opposed to עדים where he is more likely to remember. 4. Since כת"י is not a 'real' שטר the לוה is not so concerned if it remains by the מלוה. [In addition since the מלוה

ואין נראה לרבינו יצחק כי מנין לו זה החילוק –

And the ר"י does not agree with the ר"ף; for, claims the ר"י, from where does the ר"ף derive this difference between כח"י and עדים תוספות. Explains the ר"י – **כי סבר⁴ דבכל שטר אינו רגיל לפרוע עד שיחזיר לו שטרו** –

Because the ר"י maintains that by every שטר (regardless if it is בעדים or בכת"י) **it is not usual for the לווה to pay until the שטר returns the מלוה to the לווה.** Therefore the claim of שטרך בידי מאי בעי is always valid even by כח"י. According to the ר"י, the לווה is not believed to claim פרעתי, even if the שטר is only בכת"י, without עדים.

SUMMARY

In a case of הוציא עליו כח"י; the ר"ף maintains that the לווה is not believed to claim להד"ם, however he is believed to claim פרעתי. The ר"י argues and maintains that the לווה is not believed to claim either להד"ם or פרעתי.

THINKING IT OVER

1. According to the ר"ף the לווה is believed to claim פרעתי if הוציא עליו כח"י. Why then are we concerned not to tender the signature on a מגילתא? If an alleged false מלוה will present it, the alleged לווה can claim פרעתי, and will not suffer any loss, for he is believed⁵!

2. Similarly according to the ר"י why is not the לווה believed with the טענה of טענה of פרעתי מגו with להד"ם?

3. What would the ר"ף maintain if it was a שטר בעדים; however it stated clearly that the מלוה can only collect מנכסים בני חורין; not from משועבדים; will the לווה be נאמן to claim פרעתי?⁶

can collect from משועבדים, the לווה is concerned that the מלוה will collect from the לקוחות without the לווה being present to protect them. Subsequently the לקוחות will return to the לווה and demand payment for the נכסים which were taken from them. Therefore, he makes every effort to retain the שטר, when he repays the loan. However by כח"י he is not so concerned that the מלוה will have the audacity to claim the loan a second time from the לווה personally after he already paid him.] See 'Thinking it over # 3.

⁴ In other editions this is amended to read סברא (instead of סבר).

⁵ See מהר"ם שי"ף.

⁶ See footnote # 3. See ש"ך חו"מ סי' סט ס"ק יד.