**[מנין[[1]](#footnote-1)** **לאב שנאמן לאסור וכולי -**

**From where do we derive that a father is believed to prohibit, etc.**

Overview

The גמרא states that we derive from the פסוק of את בתי נתתי לאיש וגו', that a father is believed to establish his daughter as being married, and effectively preventing her from marrying anyone else.

The קדושין of a נערה or a קטנה can be carried out (מדאורייתא) only by the father. The קדושין of a בוגרת is effected by the woman, not by the father.

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תוספות asks:

**תימה מה צריך קרא תיפוק ליה דנאמן הואיל ובידו לקדשה[[2]](#footnote-2) -**

**It is astounding! Why is a פסוק necessary** to teach us that a father may place a prohibition on his daughter and declare her married? **It can be derived that** the father **is believed** to prohibit her **since it is in his power to betroth her.** This girl is presently a נערה or a קטנה, therefore the father can betroth her now to whomever he wishes; it follows that if he claims that he betrothed her already, that he should be believed since it is בידו, in his power, to do so now.

תוספות will prove that when it is בידו, then he is believed:

**כדאמר ביש נוחלין (ב"ב קלד,ב) בעל שאמר גרשתי את אשתי נאמן הואיל ובידו לגרשה[[3]](#footnote-3) -**

**As** the גמרא **states in** פרק **יש נוחלין; a husband who claims, ‘I divorced my wife’, he is believed, since it is in his power to divorce her.** Here too the father should be believed since it is בידו; no פסוק is needed!

תוספות answers:

**ויש לומר דהכא אין בידו כל כך דשמא לא ימצא אדם שיקדשנה (כדאיתא קדושין סד,א) -**

**And one can say; that here** in the case of קדושין **it is not בידו that much, for perhaps he will not find a person who** is willing **to be מקדש her.** By גירושין it is totally ביד הבעל to divorce his wife, therefore it is considered בידו and he is believed; here however it is not solely dependent on him, it also depends on the prospective husband -

**להכי איצטריך קרא -**

**Therefore a פסוק is required** to teach us that even though it is not בידו כל כך, nevertheless the תורה accords him this נאמנות.

תוספות follows up with a limitation on the father’s נאמנות;

**ומיהו אם אמר על בתו בוגרת קדשתיה כשהיתה נערה או קטנה נראה דאינו נאמן[[4]](#footnote-4) -**

**However if he claims concerning his daughter who is** currently **a בוגרת, that I was מקדש her** previously **when she was** either **a נערה or a קטנה, it seems** to תוספות **that** the father **will not be believed -**

**דהשתא אין בידו כלל -**

**For now** when she is a בוגרת, **it is not בידו at all** to be מקדש her. The fact that it was once בידו is not sufficient that we should presently believe him.

תוספות anticipates a contradiction to his current assumption:

**דאף על גב דלקמן בפרק נערה שנתפתתה (דף מו.) פריך ואימא הני מילי קטנה -**

**For even though that later in פרק נערה שנתפתתה,** the גמרא **asks; ‘and let us say when is this so** (that the כסף קדושין belongs to the father), when the מקודשת **is a קטנה** (for she has no יד to be מקבל קדושין) -

**אבל נערה איהי תיקדש נפשה[[5]](#footnote-5) -**

**However** when she is a נערה (why should the father receive the כסף קדושין), **she should be מקדש herself’** (accept and keep the קדושין from the בעל), and not the father. This concludes the citation from the גמרא in פרק נערה.

**לפי זה היה צריך להיות דנאמן לאסור אפילו בשעה שאין בידו לקדשה דקרא בנערה[[6]](#footnote-6) כתיב -**

**According to that** גמרא, the ruling **should be that** the father **is believed to prohibit** her **even when it is not in his power to be מקדש her; for the פסוק** of את בתי נתתי וגו' (from which we derive the נאמנות of the father) **is concerning a נערה** -

**ובעי למימר דאין בידו לקדשה -**

**And** the גמרא in פרק נערה **wanted to say that it is not בידו** of the father **to be מקדש** the נערה, and nevertheless the תורה states that the father is נאמן לאוסרה. Seemingly this is a contradiction; how can the father state בתי נתתי that I was מקדש my daughter who is presently a נערה, when the גמרא now insists that a נערה is מקודשת by herself (not through the father). The answer must be -

**ואת בתי נתתי כשהיתה קטנה וגזרת הכתוב הוא דנאמן אף על פי שאין בידו -**

**That** the פסוק of **את בתי נתתי** will be interpreted to mean that the father was מקדש her **when she was a קטנה** (and now [by the episode of מוציא שם רע] she is a נערה)**, and it is a גזירת הכתוב that** the father **is believed** to be אוסר even בתו נערה, **even though it is not בידו** to be מקדש her now (but since it was בידו to be מקדש her when she was a קטנה (which is what he claims) therefore he is נאמן). The same should apply (according to the מסקנא) by a בוגרת, that if he claims that he was מקדש her before she became a בוגרת (when it was בידו), he should be נאמן, since it was בידו then, when she was not yet a בוגרת!

תוספות replies; that even though there was a הוה אמינא that a father cannot be מקדש a נערה and nevertheless he would be believed to be אוסר her (on account of a גזירת הכתוב), if he claims that he was מקדש her when she was a קטנה -

**אבל לפי המסקנא לא נאמר כן]:**

**However according to the conclusion** of the גמרא (that a father is מקדש the נערה), **we will not maintain this** (that he can be אוסר a בוגרת by claiming he was מקדש her previously). If presently it is not בידו כלל, then he has no נאמנות.

Summary

It is not בידו כ"כ of a father to be מקדש a נערה or a קטנה, nevertheless the פסוק of בתי נתתי teaches us that he is נאמן לאוסרה when she is not a בוגרת yet. However once she is a בוגרת, and it is אין בידו כלל, he is not נאמן לאוסרה.

Thinking it over

1. תוספות states that when it is בידו he is נאמן. [[7]](#footnote-7)However, the נאמנות of the בעל to claim גרשתי את אשתי is only for the future (for that is בידו), but not for the past; here we are deriving from מוצש"ר that he the father is נאמן (even) for the past.[[8]](#footnote-8)

2. Does the פסוק of בתי נתתי וגו' teach us that the father can be מקדש his daughter and therefore we can surmise that since it is בידו, he is נאמן לאוסרה; or does the תורה teach us directly that he is נאמן לאוסרה?!

1. This תוספות is bracketed and in a smaller type in our texts, seemingly indicating that it is an addendum (from תו"י). Nevertheless it is cited (partially) in the תוספות הרא"ש. [↑](#footnote-ref-1)
2. See תוספות הרא"ש who states that we know that it is בידו לקדשה from the פסוק of ויצאה חנם אין כסף (see לקמן מו,ב) [not from את בתי וגו']; why do we need the פסוק of בתי נתתי to teach us that he is נאמן לאוסרה. [↑](#footnote-ref-2)
3. See ‘Thinking it over’ # 1. [↑](#footnote-ref-3)
4. It may seem that if the נאמנות of the father was based only on בידו (not on a פסוק), then by בוגרת (where it is not בידו) the father would not be believed. However now that even by a נערה וקטנה it is not בידו (כ"כ), and nevertheless there is a פסוק that the father is נאמן; we might think that even by a בוגרת (where it is (also) אינו בידו (כלל)), he should also be נאמן. תוספות disabuses us from this notion. We cannot compare אינו בידו כ"כ to אינו בידו כלל. [↑](#footnote-ref-4)
5. The גמרא there ultimately refutes this notion. [↑](#footnote-ref-5)
6. The פסוק is in the פרשה of מוציא שם רע (דברים [תצא] כב,טז) which is applicable only when she is a נערה. [↑](#footnote-ref-6)
7. See footnote # 3. [↑](#footnote-ref-7)
8. See משכנות הרועים אות תקפ. [↑](#footnote-ref-8)