

וכאן¹ אמרו שודא עדיף – And here they said שודא is preferable

OVERVIEW

The **ברייתא**, regarding the case where a gift was sent and the intended receiver passed on, states that **וכאן אמרו** the **שליח** may do as he pleases. Later the **גמרא** explained this ruling, that the **שודא** **וכאן אמרו** כל מה שירצה שליח וכו' maintains. It is not clear what **שודא** means. **תוספות** will offer two interpretations.

מכאן מדקדק רבינו תם דאין לפרש שודא כמו שפירש בקונטרס בפרק הכותב (כתובות פה, ב) –
רש"י **שודא** as **infer** from the **גמרא** **here**, that we do not interpret **שודא** as **interpreted it in פרק הכותב** -

גבי² שניהם קרובים שניהם שכנים שניהם תלמידי חכמים שודא דדייני –
Regarding the case where **both of them were relatives, both of them were neighbors, or both of them were ת"ח** in which case the rule is **שודא דדינא**, and **רש"י** explained there³ -

דהיינו שידקדק הדיין את מי היה אוהב יותר ולמי היה בדעתו ליתן –
That **שודא דדייני** means **that the judge should scrutinize and find out whom did the grantor love more and to whom was the grantor's intent to give it** (and the **דיין** should award it to that party) -

וכאן נמי פירש בקונטרס⁴ כמו התם –
And **רש"י** **here too explained שודא as he did there** in **כתובות**.

The **רש"י** however infers from this **גמרא**, not like **רש"י** -

אלא יתן הדיין למי שירצה כי הכא דקאמר מה שירצה שליח יעשה⁵ וקרי ליה שודא:
But rather that **שודא** means that **the דיין should give it to whomever he wants, just like here where** the **ברייתא** states, '**השליח should do whatever he wants**', and the **גמרא** refers to this option as **שודא**, indicating that **שודא** means that the **דיין** (or in this case the **שליח**), may disburse the funds as they see fit.

SUMMARY

¹ In בבבלי, see **וכאן** **רש"י** ד"ה **וכאן**.

² The case there is where someone granted his estate to a person with a specific name, and there were two people with the same name. We assume that he meant to give it to his relative, or his neighbor, or to a scholar (as opposed to anyone else with the same name). The question arises where both people were equal (they were either the same relative, neighbor or scholar). The **גמרא** rules there, **שודא דדייני**.

³ בד"ה **שודא**.

⁴ See **רש"י** ד"ה **מה** and **שודא**.

⁵ See 'Thinking it over'.

רש"י maintains that שו"א requires a judgment call by the דיין as to who was the intended receiver, while the ר"ת maintains that the דיין has free rein by שו"א.

THINKING IT OVER

תוספות proves from our גמרא that since we refer to the שליח doing what he wishes, as שו"א, this indicates that שו"א has no connection to evaluating the intent of the giver.⁶ However רש"י interprets the phrase שליח יעשה מה שירצה to mean how the שליח assesses the intent of the giver. How can תוספות disprove this interpretation (besides [merely] stating that the obvious explanation of שליח מה שירצה שליח does not lend itself to רש"י's explanation)?⁷

⁶ See footnote # 5.

⁷ See תפא"י.