

And this one comes by itself and testifies - וזו באה בפני עצמה ומעידה -

OVERVIEW

When two group of עדים contradict each other we believe neither group. רב הונא and רב תוספות will argue what is the future status of these two groups. רב חסדא (merely) argue that the latter group should be believed over the former group; since the latter had other options to discredit the קמאי.

תוספות asks:

תימה בין לרב הונא בין לרב חסדא נהמנינהו לבתראי -

And it is astounding! For either according to ר"ה or according to ר"ח we should believe the latter group of עדים who contradicted the former group. The דין should be that the former group of עדים becomes פסול ודאי and the latter group of עדים should be כשר ודאי. The reason we should believe the בתראי over the קמאי, is that the בתראי have

במיגו דאי בעי פסלינהו לקמאי בגזלנותא -

a מיגו, they could have disqualified the קמאי by testifying that the קמאי are robbers. If the בתראי, who wish to discredit the testimony of the קמאי, would claim that they know that the קמאי committed robbery, the ruling would be that the קמאי become פסולים עדים and their testimony is automatically discredited. Therefore, on account of this מיגו, the בתראי should be believed when they dispute the testimony of the קמאי.

תוספות anticipates a tangential question. There is seemingly another מיגו that can be employed in order to believe the בתראי. The בתראי could have refuted (been מזים) the קמאי by saying that at the same time that they testified that this occurrence took place in טבריה, they were actually with us in צפורי. If the בתראי would have been מזים the קמאי, the בתראי would be believed and the קמאי would become פסולים עדים. Why is תוספות choosing the מיגו of גזלנותא as opposed to the מיגו of הזמה? תוספות explains:

ומיהו במיגו דאי בעי הוי מזמי להו ליכא להמנינהו -

However, with the מיגו that the בתראי could have been מזים the קמאי; with that מיגו we cannot believe the בתראי. The הזמה of מיגו is not a valid מיגו. תוספות explains why the הזמה is not a valid מיגו -

דיראים להזימן פן יוזמו גם הם -

for the בתראי are reluctant to be מזים the קמאי lest they themselves (the בתראי) will also become מזים through another group of עדים. In order for the מיגו of הזמה to function, the בתראי would be required to say that at the time that the קמאי are testifying that the incident (in טבריה) took place, they were actually with us at a different place (צפורי). However it is possible that the בתראי were actually in the same place (טבריה) where the קמאי were, at the same time. If they would falsely claim that they (and the קמאי) were at another place (צפורי) at that time, there

is the concern that another group of עדים would be מזים the בתראי (by saying we saw you then in טבריה).¹

מיגו will answer the original question: the בתראי should be believed, since they have a גזלנים. They could have disqualified the קמאי by claiming that they are גזלנים.

ונראה לי דמיגו במקום עדים לא אמרינן –

And it seems to me that we do not believe a מיגו where it contradicts עדים. The question was that the מיגו that the בתראי have should completely nullify the testimony of the קמאי. A מיגו does not have the 'strength' to nullify עדים.

(ועוד²) דמיגו לא יוכל לסייעם יותר משני עדים –

(And furthermore) [for³] a מיגו cannot assist them (the בתראי) any more than two (additional) witnesses who will agree to what the בתראי say. A מיגו is certainly no more powerful than two witnesses. If two more עדים will come and testify that the בתראי are saying the truth; that will not change anything. It will still be considered an עדות מוכחשת –

ואפילו היו עמהן ק' עדים אין נאמנין דתרי כמאה –

And even if a hundred עדים would be with the בתראי, they will not be believed any more than the קמאי, who consist of two עדים, for two עדים are like a hundred עדים. Therefore, since even if there were additional עדים supporting the בתראי, they still would not be believed any more than the קמאי, then certainly a מיגו which is not as strong as two עדים, cannot substantiate their testimony.

Tosfos offers an additional answer:

ועוד אומר רבינו יצחק דלא שייך מיגו⁴ -

And furthermore, says the ר"י a מיגו is (not) applicable [only by one person, however by two people, a מיגו is not applicable] –

דאין דעת שניהם שוה ומה שירצה זה לטעון לא יטעון זה:

for the minds of both עדים are not the same and that which this witness may want to claim the other witness may not claim it. A מיגו is not applicable by עדים. Perhaps the בתראי are indeed liars; and are coming to ב"ד to falsely contradict the עדות of the קמאי.

¹ In the מיגו of בגזלנותא, however there is no such concern that the בתראי will be מזומים. The בתראי could testify that the קמאי committed robbery at a time and place that they know for sure that they (the בתראי) were actually there (without – of course – observing any crime at all).

² The א' מהרש"א deletes the 'ועוד', indicating that this is a continuation of the first answer. Others however, disagree, and maintain that it is a different answer (see following footnote #3).

³ A מיגו usually refers to a situation where one of the litigants has a מיגו to support his claim, while the other litigant has עדים to support his claim. In such a situation it is clear that לא אמרינן. In our case however there are two contradictory groups of עדים. The purpose of the מיגו is merely to verify which of these two groups should be believed as עדים. Seemingly here the rule of מיגו במקום עדים should not apply. It is this issue that Tosfos is now clarifying.

⁴ The הגהות הב"ח amends this to read מיגו אין שייך מיגו דאין.

by saying that their testimony is not true.⁵ The reason they are not saying the 'better lie' of גולנותא is because each one of them is concerned that perhaps his partner will not think of saying the lie of גולנותא

SUMMARY

We do not believe the בתראי with a מיגו that they could פסל the קמאי with a claim of גולנותא because; a) מיגו במקום עדים לא אמרינן or b) a מיגו cannot function with two people.

THINKING IT OVER

1. רב חסדא question is on רב חסדא as well. previously cited⁶ that רב חסדא maintains מה לי לשקר במקום עדים אמרינן. How can we explain תוספות answer here, that מיגו במקום עדים לא אמרינן?⁷

2. Why is the ר"י not satisfied with תוספות previous answer(s)?⁸

3. In a case of תרי ותרי, if we were to follow the חזקה, would that contradict תוספות assertion that תרי כמאה?⁹

4. תוספות states that מיגו בי תרי לא אמרינן. How can we reconcile this with a previous תוספות,¹⁰ which claims that the עדים have a מיגו concerning payment of rent?¹¹

5. Why is תוספות asking his question of מיגו here by the מחלוקת between ר"ה ור"ח? This is a general question concerning every תרי ותרי.

⁵ We are not (necessarily) suspecting any group of (serious) collusion. Rather each עד may come alone (due, perhaps, to the insistence of the litigant), to discredit the other group of עדים. The initial reaction to discredit the קמאי is by denying and contradicting their testimony (and not by claiming that they are גולנים). ועדיין צ"ב.

⁶ דף לא,א ד"ה אמר רבה.

⁷ See סוכ"ד (אות קלו).

⁸ See בל"י אות קלו.

⁹ See footnote # 8

¹⁰ דף כט,א ד"ה הני

¹¹ See אות סה בל"י there.