## קנין[1] בפני ב' ואין צריך כולי –

## A קנין is done in the presence of two and does not require, etc.

### Overview

רבא אמר ר"נ stated that קנין is performed in the presence of two; (seemingly) indicating, that if there are not two עדים present to observe the קנין it is not effective. תוספות disabuses us of this notion.

---

**אומר רבינו תם דלא אתא למעוטי שלא יהא חשוב קנין כשנעשה שלא בפני שנים[2] –**

**The ר"ת says that** the statement קנין בפני ב' **does not come to exclude that it will not be considered a קנין if it is not performed in the presence of two** עדים -

**דהא אמרינן בקדושין (דף סה,ב) דלא איברו סהדי אלא לשקרי[3] –**

**For** רב אשי **stated in** מסכת **קדושין, 'that witnesses were created only for liars' –**

תוספות offers an additional proof the קנין is valid without עדים.

**ואמרינן בפרק הזהב (בבא מציעא דף מו,א) גבי היה עומד בגורן כולי[4] –**

**And** the גמרא **states in פרק הזהב, regarding** the case where **he was standing on the threshing** floor, etc. –

---

[1] A קנין (which usually refers to קנין סודר) is an act which finalizes an agreement between two parties; for instance the transfer of assets. The קונה (or the עדים that act on his behalf) give a כלי to the מקנה, and by the מקנה accepting the כלי, the transaction is complete and final and neither can retract.

[2] The reason ר"נ says קנין בפני ב' is only to teach us that even if it was done בפני ב' (and not בפני ג'), nevertheless אצ"ל (see כתובו ד"ה צריכא ו,א סנהדרין תוס' on the top of the עמוד ב').

[3] The גמרא there relates that מר זוטרא and רב אדא סבא (the sons of רב מרי בר איסר) divided the estate of their father (without witnesses). They asked רב אשי whether the division is valid since they were no עדים to effectuate the division. רב אשי responded that witnesses are made for the sole purpose that no one should deny that a transaction was made. However the transaction (in this case the division) is effective even without witnesses. Similarly here the קנין is valid regardless if there are witnesses or not. [One of the exceptions to this rule is by גיטין וקדושין that if there were no witnesses that the גט or קידושין were given, it will not be considered גיטין וקדושין, even if both parties agreed that the גיטין וקדושין took place. The reason is because by the act of גיטין וקדושין we are חב לאחריני (others cannot marry these people). Therefore the עדי גיטין וקדושין are sometimes referred to as עדי קיום as opposed to other עדים who are (merely) עדי בירור.]

[4] The גמרא there (on ב,מה) cites a ברייתא, 'a man (who wanted to exempt himself from paying the חומש when redeeming his מעשר שני) who had no money with him says to his friend, 'these פירות of מע"ש are given to you as a present' and then he says to him, 'those פירות מע"ש that you now own, I am redeeming them with the monies which I have in my house'. The advantage for him is that since he was not פודה his מע"ש but his friend's he is not required to add the חומש. The גמרא inferred that if he would have money it would be better to transfer the money to his friend (than the מע"ש) and have his friend redeem the מע"ש. In this way it would be less of a הערמה (for we all know that he is not [really] granting the מע"ש to his friend). The גמרא then asked why should he transfer the פירות to his friend and then he should redeem the מע"ש of his friend, when it would be more appropriate that he transfer the money (which he has in his house) to his friend through קנין חליפין and his friend will redeem his מע"ש (also without paying the חומש).

**ואי אמרינן מטבע נקנה בחליפין ניקנינהו ניהליה אגב סודר –**

**'And if we maintain that coins can be acquired through חליפין** קנין**, let** the owner of the מע"ש **transfer to his** friend the money in his house **through סודר** קנין**,** and his friend will redeem the מע"ש (without paying the חומש) -

**ומפרק דלית ליה סודר[5] –**

**And** the גמרא **replies that he has no kerchief;** the גמרא asks **-**

**ולקנינהו אגב קרקע[6] דלית ליה –**

**And let him transfer** the money to his friend through **אגב קרקע** קנין**,** and the גמרא responds **he has no** קרקע. The גמרא asks how can you say he has no קרקע –

**והא עומד בגורן קתני כשאינו שלו –**

**But the ברייתא states he was standing on the threshing floor,** the גמרא responds the גורן **did not belong to him;** the גמרא finally asks -

**איכפל תנא לאשמועינן[7] בגברא ערטילאי דלית ליה כלום –**

**Did the תנא trouble** himself **to let us know** this rule in the most unusual case **of a naked man who owns nothing -**

**אלא שמע מינה דאין מטבע נקנה בחליפין[8] –**

**But rather we can derive from this ברייתא that coins cannot be acquired through חליפין** קנין**.** This concludes the citation from the גמרא in ב"מ. Now תוספות concludes with his proof that no עדים are required for חליפין -

**ואי לא חשיב קנין בלא עדים לישנינן דליכא עדים[9] –**

**And if** by קנין סודר **it is not considered a קנין without עדים** the גמרא **should have answered that there was no עדים.** This proves that קנין סודר is effective even without עדים.

תוספות offers one final proof:

**ועוד דבפרק קמא דסנהדרין (דף ו,א.) אמרו רבנן פשרה[10] ביחיד –**

**And furthermore the רבנן maintain in the first פרק of סנהדרין** מסכת **that a**

---

[5] This means he had no article (or כלי) with which to perform קנין חליפין. However he was able to transfer the פירות, which were there in the גורן, through קנין משיכה. See 'Thinking it over'.

[6] The owner of the פירות מע"ש should grant his friend a small piece of the גורן through קנין חזקה and be מקנה to him the money in his house through קנין אגב (by which one acquires the מטלטלין אגב קרקע).

[7] The תנא stated the case that he transfers the פירות instead of the מעות (which would be more appropriate) because we are discussing a case of a גברא ערטילאי דלית ליה כלום! The תנא should teach us by a regular case where he has a קרקע or סודר etc.

[8] Therefore his only option is to be מקנה him the פירות מע"ש, since the monies (which are not here) cannot be transferred through חליפין.

[9] The גמרא should have responded that perhaps מטבע נקנית בחליפין, however here there were no עדים to validate the קנין.

[10] A פשרה is where the two litigants agree to compromise as the דיין will see fit (even if it is not in complete accordance with the strict interpretation of the law).

**compromise** can be done **with** only **one** דיין, we do not require a בי"ד of three -

**אף על גב דפשרה בעיא קנין[11] כדמסיק התם[12]:**

**Even though that a פשרה requires a קנין as** the גמרא **concludes there.** If קנין requires two עדים, how can only one person rule on the פשרה? This proves (again) that קנין does not require עדים.

## Summary

A קנין סודר is valid without anyone being present to witness it.

## Thinking it over

If we were to maintain that (סודר) קנין requires two (not like the ר"ת), what would be the ruling regarding other קנינים, such as חזקה ,משיכה, etc.[13] would they also require שנים?[14]

[11] The litigants must make a קנין סודר in which they commit their assets to pay the other litigant whatever the result of the compromise demands.

[12] תוספות in סנהדרין ד"ה צריכה rejects this proof, writing: ואין ראיה מכאן כלל דיכול להקנות בפני שנים לקיים הפשרה שעשה ביחיד.

[13] See footnote # 5.

[14] See נח"מ.