

אי דאיכא עדים אחר אמאי יש לו חזקה –

If there are witnesses why does ‘another’ have a *Chazokoh*

OVERVIEW

The גמרא is attempting to ascertain under which circumstances does the rule that an אומן has no חזקה, however a non-אומן, has a חזקה. It cannot be in a case where there were witnesses who saw that the item was transferred to the recipient (with the intention of returning it to the owner), for in that case why does the ‘other’ (non-אומן) have a חזקה. Our תוספות further clarifies this case.

ונראה דבראה¹ מיירי דאי בלא ראה אומן נמי יש לו חזקה -

And it appears to תוספות that this case of איכא עדים which the גמרא rejects (as the case where אומן אין לו חזקה, but אחר יש לו חזקה) **is in a situation of ראה, for if it is in a situation where לא ראה, so an אומן would also have a חזקה** and be believed with a -

מיגו דאי בעי אמר החזרתיו לך דאין צריך להחזיר לו בעדים² אלא ודאי בראה מיירי -

that he could have claimed, ‘I returned it to you’, for it is not necessary to return the item in the presence of עדים, so certainly it is a case of ראה -

אם כן אחר אמאי יש לו חזקה כיון דאיכא עדים דבתורת פקדון בא לידו -

So therefore the גמרא asks (if there are עדים [and ראה]) **why would another (a non-אומן) have a חזקה, since there are עדים that it come into his possession as a פקדון** (so he cannot claim that he bought it from him initially) -

ולא מצי למיטען נמי החזרתיו לך שהרי ראה -

And the אחר also cannot claim, ‘I returned it to you’, since it is ראה. Therefore concludes the גמרא it must be in a case where ליכא עדים וראה where an אומן אין לו חזקה, however אחר יש לו חזקה.

ופירוש רבינו תם³ נראה לרבינו מאד רחוק על כן לא כתבתיו:

And it appears to the ר"י that the ר"ת's explanation is very far-fetched, so therefore תוספות did not write the פר"ת.

SUMMARY

When the גמרא asks אי דאיכא עדים וראה is means אי דאיכא עדים.

THINKING IT OVER

¹ די"ת means that עדים saw the item by the אומן at the time of the ראה.

² The גמרא concluded previously on מהב, that even רבה agrees that בעדים אין צריך להחזיר לו בעדים. Therefore he would be exempt from returning it (or its value) if he would have claimed לך החזרתיו.

³ See מהר"ם.

Did our תוספות add anything to the פ' רשב"ם (in the ד"ה אי דאיכא)?