

## Because of the loss to the buyers

## משום פסידא דלקוחות -

### Overview

One reason given by רבא, why נפסל ע"ז מכאן ולהבא הוא נפסל is because if he would be נפסל as עדים, this would casue a loss to the buyers of property who used these as witnesses on their שטרות after their testimony and before their הזמה. Others qualify this ruling, but תוספות rejects their view.

יש מפרשים דהא דחיישינן לפסידא דלקוחות -

There are those who explain that this concern of פסידא דלקוחות (and we validate this - (שטר

היינו דוקא היכא דאיכא עדי מסירה<sup>1</sup> דידעי שהשטר אמת<sup>2</sup> -

Is only where there are witnesses to the transfer of the שטר (from the seller to the buyer), so we know that the שטר is true (that there was a sale) –

disagrees: תוספות

ואין נראה דאם כן איכא בינייהו טובא<sup>3</sup> היכא דאין עדים אלא החתומים על השטר:

And this does not appear to be correct, for if it is indeed so (that if there are no ע"מ, we are not concerned for פסידא דלקוחות) there is a great difference between the two reasons of רבא; in cases where there are no עדי מסירה, but just the ע"ז who are signed on the שטר.

### Summary

We cannot say that if there are only the signatures of the ע"ז, we are not concerned for פסידא דלקוחות, for the גמרא should have utilized that case as an איכא בינייהו.

### Thinking it over

<sup>1</sup> However, the ע"מ alone cannot validate the שטר if the ע"ה are פסולים, for that is considered מזויף מתוכו. However, we do know (through the ע"מ) that there was sale, and פסידא דלקוחות we validate the ע"ה (even though they are ע"ז), and therefore the שטר is a valid proof for the sale.

<sup>2</sup> However, if there were no עדי מסירה and we only have these ע"ז, as the signers on this שטר, we will invalidate the שטר, for who says that there was a sale at all, it can be that this was a ruse concocted between the עדים and the supposed 'buyer'.

<sup>3</sup> According to the reason of חידוש, the שטר will be כשר, however according to the reason of פסידא דלקוחות, the שטר will be פסול, for since there are no ע"מ, we do not know if the sale ever took place. However, the גמרא does not offer this difference, proving that it is not correct, but rather even according to the reason of פסידא the שטרות are not נפסל even if there are no ע"מ, and only the ע"ז are the ע"ה on the שטר, for we are not concerned that the שטר is a fake. See 'Thinking it over'.

Previously תוספות stated (on מכאן ד"ה עב,ב) that if the שטר was not seen until after the הזמה, we suspect that it was written after the הזמה and predated. Why are we not concerned here (if there are no עדי מסירה to validate the שטר) that there was no sale (or loan),<sup>4</sup> just as we were concerned previously?!

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<sup>4</sup> See footnote # 3.