

**דינא הוא דאזיל ראובן וקא משתעי [דינא בהדיה] –**

**The law is that ראובן can go and intervene in a [lawsuit against him]**

## **OVERVIEW**

אבי taught that if ראובן (the לווה) sold a field to שמעון with a guarantee, and the creditor of ראובן came and confiscated s'שמעון field (for his debt), the ruling is that ראובן is considered a litigant in this case<sup>1</sup> and can intervene (against his creditor) on behalf of שמעון. Our תוספות will discuss what help ראובן can offer שמעון that שמעון does not have yet.

תוספות asks:

**ואם תאמר מאי נפקא מינה הא כל מה שיכול ראובן לטעון טענין ליה לשמעון -**

**And if you will say; what practical difference will emerge from this ruling, that ראובן can intervene on behalf of שמעון; for anything that ראובן is capable of claiming, the בי"ד will claim on behalf of שמעון, for the rule is -**

**דטענין ליה ללוקח וכן ליתומים בין פרוע בין מזויף וצריכי עידי קיום<sup>2</sup> -**

**That בי"ד argues on behalf of the buyers and similarly בי"ד argues on behalf of the orphans;<sup>3</sup> whether בי"ד argues that perhaps the loan was paid, or whether בי"ד argues that perhaps the claimants document is forged, and in any of these arguments (whether פרוע or מזויף) the claimant is required to provide authenticating witnesses that his documents are in order; otherwise he cannot collect his debt.<sup>4</sup> The לקוחות and the יתומים are therefore fully protected by בי"ד. There is no need for ראובן to be involved.**

<sup>5</sup>מזויף or פרוע; טענין to prove that תוספות pauses:

<sup>1</sup> See the various commentaries, why it is necessary for the גמרא to tell us that ראובן is a בעל דבר on account of אי!! לווה, for ראובן is the לווה, obviously ראובן is a בעל דבר; מפקת מיניה עלי הדר

<sup>2</sup> The marginal note inserts here: ואין לומר דנפקא מינה לענין מזויף שאין שמעון יכול לטעון מספק דפשטא דהבא ליפרע מנכסי יתומים; Translation: 'And we cannot say that the נפק"מ is concerning מזויף; that שמעון cannot claim מספק; for certainly one who comes to collect from the estate of יתומים or משועבדים requires עידי קיום, for if not so, etc.'

<sup>3</sup> When a claim is made against a purchaser of a field, because the seller owes money and has no assets (and this field is indentured to the creditor), or a claim is made against the orphans' estate because their father died in debt, בי"ד gets involved and demands that the claimant prove his claim. The reason that בי"ד is involved is because the purchaser and the orphans are not sufficiently aware of the facts to (validate or) challenge the claim being presented against their property.

<sup>4</sup> Seemingly the most ראובן can claim is either the debt was paid up or the note is a forgery. In either case בי"ד will require the מלוה to be מקיים the שטר. Once the שטר is מקיים then the מלוה will collect regardless of what he claims. תוספות is saying that without ראובן claiming anything, the בי"ד will make the appropriate claim and have the מלוה be מקיים the שטר (as if ראובן himself made the claim). There is no need for any intervention on the part of ראובן.

<sup>5</sup> מילתא דלא שכיחא. בי"ד can claim מזויף, even though it is a שכיחא.

### דאי לאו הכי לא שבקת חיים לכל בריה -

**For if it were not that way** (if בי"ד was not authorized to claim פרוע or מזוייף), then **'you will not allow anyone to live'**. Unscrupulous people will present forged documents that will claim that either the seller of the property or the deceased parents of an individual owe them money. The purchasers and the orphans will have no choice but to pay. They cannot claim that the document is forged, for their claim is only a טענת שמא (maybe it is forged). A טענת שמא is not sufficient to have the מלוה be מקיים the שטר. He will be able to collect without קיום. This will cause complete havoc in the society. Therefore we must say that when it comes to לקוחות and לקוחות then יתומים either פרוע or מזוייף, and בי"ד forces the בע"ה to be מקיים the שטר.

גמרא proved that we are טענינן מזוייף from a סברא (of שבקת); (לא שבקת) will now prove it from a גמרא: **ובפרק גט פשוט** (בבא בתרא דף קעד,ב) **נמי מוכח כן -**

**And this is also evident in פרק גט פשוט** that בי"ד is טוען פרוע or מזוייף - **דקאמר שכיב מרע<sup>6</sup> שאמר מנה לפלוני בידי אמר תנו נותנין לו לא אמר תנו אין נותנין -**

**Where** the גמרא states that a **מנה**, the rule is, if the שכיב מרע added and said **'give him that מנה'**, then **we give him** that מנה from the שכיב מרע's estate. However if the שכיב מרע **did not** add and say **'give him the מנה'**, then even though he previously said I owe him a מנה, nevertheless since he did not say give him the מנה, **we do not give** that person the מנה. The גמרא there questions the reason for this ruling -

**ומוקי לה בדנקט שטרא אמר תנו קיימיה לשטריה לא אמר תנו לא קיימיה לשטריה -** **And** the גמרא establishes that we are discussing a case **where** the מלוה is in **possession of a שטר**. If the שכיב מרע said **give** the money to the מלוה; that is considered as if the שכיב מרע **authenticated the שטר**, and the יורשים will be required to pay. If the שכיב מרע **did not say give** the money to the מלוה, then the שטר **was not** מקיים the שטר. The יורשים will not have to pay.<sup>7</sup> However why should the יורשים not be required to pay?! Seemingly the מלוה has a שטר and the יורשים cannot claim פרוע or מזוייף, for they do not know. Their claim is only a טענת שמא!

**משמע דטענינן להו ליתמי מזוייף ובפרק קמא דבבא מציעא (דף יד,א ד"ה דינא) הארכתני -** **This indicates that** בי"ד **argues on behalf of the יתומים** that the שטר is מזוייף. Therefore the יתומים (יורשים) will not have to pay the מלוה unless he is מקיים the שטר. **And I have expounded on this manner in the first פרק of מ"מ**.

<sup>6</sup> A שכיב מרע is a deathly ill person. The חכמים instituted (in order that he not be mentally disturbed) that his bequests are considered as if they were written and given over to the intended recipient.

<sup>7</sup> They do not have to pay, even though the שכיב מרע said 'I owe him money'. The reason is because it is possible that he said it only 'שלא להשביע את בניו'; he did not want people to think that his children are wealthy. However if he said תנו, then he was מקיים the שטר and the יתומים must pay.

anticipates various possible נפק"מ and rejects them:

**וכן אין לומר דנפקא מינה שעדין של בעל חוב<sup>8</sup> קרובים לראובן ורחוקים לשמעון -**

**And similarly we cannot say that the נפק"מ whether ראובן can testify, is in a case where the witnesses of the בע"ה are relatives to ראובן and strangers to שמעון.** If only שמעון will be at the דין תורה, then the עדים of the בע"ה will testify and cause שמעון to lose. However, if ראובן intervenes in the די"ת, then these עדים cannot testify, and the בע"ה will not be able to collect from שמעון.

rejects this suggestion:

**דהא לשמעון נמי אין יכולין להעיד כיון דאי טריף ליה משמעון אזל בתר ראובן -**

**For these עדים that are קרובים לראובן cannot testify on behalf of the בע"ה even against שמעון (even if ראובן is not present), because if the בע"ה will collect from שמעון then שמעון will go after ראובן to compensate him for his loss.<sup>9</sup>** Therefore since the testimony may affect ראובן who is related to these עדים, their testimony is voided.

**וכן אם יהיה לשמעון עדים שמעידין זכותו<sup>10</sup> והם קרובים פסולין להעיד אפילו לראובן -**

**And similarly if שמעון has עדים who wish to testify on his behalf and they are his relatives (so they are פסול to testify on שמעון's behalf), you may think that if ראובן will intervene they will be able to testify; this is not so, for they are voided from testifying even for ראובן -**

**כיון דיש ריוח לשמעון שמעמיד הקרקע בידו -**

**שמעון's profits from their testimony; for it places the field in שמעון's possession.** When the relatives of שמעון testify of behalf of ראובן (that he does not owe the money) then שמעון benefits; he gets to keep the field that he purchased from ראובן. Relatives of שמעון cannot testify, if, as result of their testimony, שמעון will benefit.

**כדמוכח סוף פרק קמא דמכות (דף ז,א) גבי אילעא וטוביה קרובים דערב הוו -**

**As is evident from the גמרא in the end of the first פרק of מסכת מכות, concerning אילעא and טוביה who were relatives of the guarantor; the ruling was that these עדים -**

**פסיל להו אפילו לגבי לוח ומלוה משום דכי לית ליה ללוה אזל מלוה בתר ערבא -**

**Are unfit to testify even concerning the לוח or the מלוה, since if the לוח will not have with what to pay, the מלוה will pursue the ערב, therefore they are פסול.** If the testimony of עדים can even remotely affect their relatives they are פסולים להעיד.

concludes:

**אם כן מאי נפקא מיניה -**

**If this is so, that there is no advantage in ראובן's testimony, then what is the difference**

<sup>8</sup> For instance the עדי קיום are relatives to ראובן.

<sup>9</sup> We are discussing a case where ראובן sold שמעון a field באחריות.

<sup>10</sup> They claim, for instance, that the loan was paid.

whether ראובן is permitted to testify or not?!

תוספות responds:

ויש לומר דנפקא מיניה לראיה אחרונה כגון שאמר שמעון אין לי עדים ואין לי ראיה -

**And one can say; that there is a נפק"מ concerning the 'last proof'; for instance if שמעון stated at some point in the די"ת 'I have no (more) עדים, or I have no (more) proof to offer, and he 'rests his case' -**

**ולאחר זמן מצא ראיה או עדים דשמעון אין יכול להביאם<sup>11</sup> -**

**And after some time he found additional proof or witnesses; where שמעון can not bring them** to בי"ד, because he already 'rested his case' and stated he is offering no more evidence -

**וראובן שלא אמר אין לי עדים יכול להביאם -**

**However, ראובן who never stated I have no עדים, he can bring this new evidence and have it admitted in court.**

נפק"מ offers an alternate תוספות:

**אי נמי כגון שטוען<sup>12</sup> לבית דין גדול קאזלינא ושמעון לא מצי למטרח כמו ראובן:**

**Or you may also say; for instance where he claims I wish to go and settle this dispute at the high court (in ירושלים e.g.) and שמעון cannot trouble himself to go to the הגדול as בי"ד הגדול can. ראובן can then have שמעון go and represent him at the הגדול.**

[ועיין בתוספות ב"מ יד. ד"ה דינא ובכתובות צב: ד"ה דינא]:

## SUMMARY

מלוה from the קיום and require יתומים ולקוחות on behalf of מזויף or פרוע claims בי"ד. Witnesses cannot testify, if as a result of their testimony it will (even remotely) affect their relatives. When a לוקח מן הלוה admits that לי ראיה אין לי עדים ואין לי ראיה; nevertheless the מוכר (לוה) can bring the new עדים וראיה. Similarly the מוכר can go on behalf of the לוקח to the הגדול and litigate (if the לוקח cannot go).

## THINKING IT OVER

שמעון and בי"ד הגדול is when he claims he wants to go to the נפק"מ second תוספות בי"ד cannot be bothered, etc. Seemingly this means that the בע"ה wants to go to the הגדול. However, there is a difficulty with this interpretation; for even if ראובן will not be considered a בע"ה, nevertheless שמעון can authorize ראובן to go as his שליח or <sup>13</sup>?! בעל דבר be considered a ראובן; why is it necessary that ראובן be considered a מורשה

<sup>11</sup> The commentaries explain that once he stated that he has no more proof, it is considered a בע"ה, and any subsequent עדים or proof are contradicted by this בע"ה.

<sup>12</sup> See 'Thinking it over'; as to who wants to go to the הגדול.

<sup>13</sup> See נה"מ וסוכ"ד.