– כותבין שטר ללוה אף על פי שאין מלוה עמו

We write a שטר for the לוה even though the מלוה is not with him

OVERVIEW

Our משנה cites a משנה which states that it is permitted (for a סופר) to write (and for the עדים to sign on) a שטר for a לוה stating that he borrowed money from a מלוה even though we do not see an actual loan taking place. Our תוספות explains the legitimacy of such an action.

תוספות responds to an anticipated question:

וליכא למיחש למחזי לשקרא¹ –

And we need not be concerned 'that it appears as a lie' -

כמו באשרתא דדייני² דאם כתבו קודם דנחזי חתימת ידי סהדי פסולה – Just as by the authentication of the judges; that if they wrote it before they saw the signatures of the witnesses the אשרתא is invalid for it seems like the זיינים are lying, here too this שטר seems to be a lie –

responds:

דהכא כיון שהוא כותב חובתו לא שייך מחזי כשקרא:3

That here since the שטר is writing a שטר for his detriment, the concept of is not applicable.

SUMMARY

There is no כותבין שטר ללוה by כותבין שטר, since it is to the detriment of the לוה.

THINKING IT OVER

The rule is that תוספות לא היישינן. 4 Can we still maintain that תוספות has a question why are we 'כתובין שטר ללוה since it is מחזי כשקרא 5

¹ The עדים are signing a document which they do not know is true; they did not see any loan taking place.

² An שטר is an authentication by the בי"ד that the accompanying שטר is valid; the signature of the on the שטר is correct. If the text of this אשרתא is written before the דיינים verify the signatures of the עדים (even if the יינים sign the אשרתא after the verification, nevertheless) it is פסול, for it is מחזי כשקרא. How can they write the אשרתא when they do not know whether the signatures of the עדים are authentic?! (See (כתובות כא.ב

 $^{^3}$ In the case of the אשרתא it is the מלוה who wishes to authenticate the שטר; therefore if the דיינים write the אשרתא before verifying the signatures it seems that they are favoring the מלוה.

אוספות כתובות כא.ב ד"ה האמר See תוספות.

⁵ See יד דוד.