

You rented it to him without witnesses – אגרת ליה בלא סהדי –

OVERVIEW

The גמרא states that if after בי"ד ruled יחלוקו, both parties left the בי"ד and subsequently the טלית was in the hands of only one of the litigants who claimed the other party admitted that it is mine, and the claimant argues that he rented it to the מוחזק, the rule is that the מוחזק retains the טלית. We tell the claimant, up till now you perceived him as a thief (and liar), do you expect us to believe that you would rent him something of yours without witnesses present. תוספות clarifies the strength of this logic.

תוספות mentions an anticipated question:

ואינו נאמן במיגו דאי בעי אמר תקפה ממני –

And the claimant is not believed (that he rented the garment to his opponent) **with a מיגו that he could have said my opponent grabbed it from me;** in which case he would be believed¹ (and the טלית would be divided again), so now when he claims I rented it to him, he should also be believed. Why does the גמרא negate his claim of, 'I rented it to him'?!

תוספות responds; he is not believed with this מיגו -

דמיגו במקום עדים² הוא:³

because it is a מיגו which is contradicted by עדים. A מיגו is weaker than עדים.

SUMMARY

The מיגו of תקפה ממני is insufficient to have us believe that he rented it, for it is (similar to) a מיגו that is contradicted by עדים.

THINKING IT OVER

What would be if he claimed I rented it to him in the presence of עדים; however they left to go overseas and are not available? Would he be believed (with a מיגו)?⁴

¹ See אמ"ה # 131 and onwards, and בל"י אות קסה who explain why by תקפה ממני he is believed.

² The claim of 'I rented it' (which should perhaps be believed because of the מיגו) is contradicted by עדים.

³ He claims that he rented it; however common sense tells us (the בי"ד) that he never would have rented it to his adversary without witnesses supporting his claim. The strength of this common sense is as if עדים testify that he did not rent it to him. If עדים would testify that he did not rent it to him, the מיגו cannot override the testimony of עדים, therefore in this case even though there are no עדים, nevertheless it is considered as if there are עדים who negate his claim that he rented it to him.

⁴ See אמ"ה # 163. [See there # 158 why this is not considered a מיגו להוציא.]