

אי נמי כגון שנמצא אחד מהן קרוב או פסול –
Or you may also say;
For instance on of the them was found to be a relative or invalid

OVERVIEW

The גמרא states that there is a difference whether we maintain עדים משום or כולם משום תנאי in a case where one of the עדים was a פסול או קרוב. If we assume תנאי משום it is כשר and if משום עדים it is פסול. Our תוספות explains why we do not ask the עדים what their intention was.

anticipates a question: תוספות

דאף על גב דאמרין (מכות דף ו,א) דשיילין להו¹ למיחזי אתיתו או לאסהודי אתיתו –

For even though the גמרא states that we ask them, ‘did you come merely to see, or did you come to testify’ –

replies: תוספות

הכא לא שייל דפשיטא דחתמו לדעת הבעלים:²

Here, however, we do not ask them what their intention was, because it is obvious that they signed according to the wishes of the owners (the husband, who is [writing and] giving this גט)

SUMMARY

We do not ask the עדים whether their intention was for עדות or for תנאי.

THINKING IT OVER

What would be (according to either ר"י or ר"ל) if (we asked the עדים and) the קרוב or פסול said I signed it for עדות; or for תנאי?³

¹ The משנה there states that if one of the עדים was a פסול או קרוב the entire עדות is בטל. The גמרא asks so what can we do if קרובים witnessed an act (together with כשרים)? רבא answered that we ask the פסולי עדות what was your intention when you saw this act; did you merely want to see what is happening (in which case they are not עדים, and the עדים can testify), or did you intend to testify (in which case the entire עדות is בטל). Seemingly here too we should ask them was your intention (by signing) to be עדים (and the גט is פסול) or just to fulfill the תנאי (and the גט is כשר).

² They are merely acceding to the wishes of the husband, whether he wants them for עדים or for תנאי. They have no interest of their own so there is no point in asking them.

³ See בל"י אות תלד.