

Here he says; 'in my presence'

הכא<sup>1</sup> בפני -

### OVERVIEW

קיום עדי הגט maintains that if the reason for saying בפ"נ is on account of הגט, then there is no need to say נכתב בפני. He rejects s'רבא argument that בפני is required in order לאיחלופי רבה, דלא אתי לאיחלופי רבה maintains that קיום הגט and קיום שטרות are totally different. בפני שליח requires the שליח to say בפני, while קיום even ידעתי is sufficient. Therefore, רבה maintains there will be no איחלופי. In order for this refutation to be valid, we must assume that (רבה is of the opinion that) רבא will also agree to s'רבה argument that ידעתי will not be valid by a גט, and only בפני is acceptable. Otherwise how is רבה refuting רבא? The question here is how do we know that רבא agrees with this assumption, and why does he agree. In fact, later the גמרא will state, that רבא maintains, אטו הכא כי אמרי ידעינן מי לא מהימני, which indicates that ידענו is valid. In the following three<sup>2</sup> תוספות, it will become relatively clear how תוספות approaches these issues.

To testify that the גט was executed לשמה, one need be at the (writing and) signing of the גט and testify בפ"נ ובפ"נ. Otherwise it is hearsay and not an admissible testimony. To testify that he recognizes the signatures, one need not be present at the signing.

-----  
אבל ידעתי<sup>3</sup> אין מועיל -

**However**, if the שליח will say **I know** (that it was written לשמה and I recognize) the signatures, **it will not validate** the גט.

**וטעמא דכשאמר בפני נכתב ונחתם דייק טפי -**

**and as to the reason<sup>4</sup> why it is necessary for the שליח to say בפני, and ידעתי is not sufficient, continues תוספות, for when he testifies that it was written**

<sup>1</sup> This תוספות ד"ה אטו is better understood after previously learning the following תוספות.

<sup>2</sup> ד"ה הכא, אטו, מאן.

<sup>3</sup> The גירסא here as well. See footnote # 8. It is not clear according to this תוספות what explanation is, either according to רבה or רבא. Seemingly תוס' reasoning is not necessary according to רבה, since it is hearsay if they say ידענו, so they will surely not be believed. See following footnote. רבא on the other hand maintains that ידענו is accepted, ועי' בתפא"י, וצ"ע.

<sup>4</sup> According to רבה that בפ"נ is the testimony that the גט was executed לשמה, it is obvious that ידעתי is not valid. One cannot testify that the גט was executed לשמה, unless he was present at the writing and signing of the גט. Otherwise it is hearsay. רבה, however, claims that everyone, including רבא will agree that ידעתי is not valid. תוספות is explaining that even if the reason for saying בפ"נ is on account of קיום, nevertheless the שליח will not be believed if he merely says 'I recognize the signatures'.

**and signed in my presence he is more meticulous** to be assured that it was indeed executed properly -

**דמרע אנפשיה טובא כשאמר בפני נעשה הכל והוא לא ראה מכשאמר ידעתי -**

**For he will incriminate himself greatly when he says 'everything was done properly in my presence' when in fact he did not see it actually happen. This incrimination is greater than in a case where he merely said 'I know the signatures'.<sup>5</sup>**

counters that even though ידעתי is not נאמן by one שליח, nevertheless if two people say ידענו they will be believed. Therefore, there will be the חשש of איחלופי if the שליח will not say בפני נכתב; as follows: By קיום הגט, if two people will testify ידענו (instead of the שליח) they will be believed, just as by קיום שטרות.<sup>6</sup> This makes קיום הגט similar to קיום שטרות. In both instances ידענו is believed. People will then (mistakenly) say, just as by קיום הגט one שליח is believed for קיום by saying נחתם בפני, the same should be true by קיום שטרות. Therefore according to רבא the שליח is required to say בפני נכתב, to prevent איחלופי.

In order for רבה to justify his dispute with רבא, he (רבה) must maintain that (even if we were to assume to טעם of קיום, nevertheless) לא אחי לאיחלופי. The reason why (רבה maintains that) לא אחי לאיחלופי must be<sup>7</sup> because רבה maintains that even if two people testify ידענו, it is not valid by גיטין. The following question (on רבה) is; why should two עדים not be believed when they say ידענו (if we are to assume, as רבה must [in order to refute רבא], that the reason for saying בפ"נ is on account of קיום)?

asks: תוספות

**ואם תאמר אמאי לא מהני ידעתי<sup>8</sup> לרבה כמו לרבא -**

**And if you will say; why indeed is ידענו not valid according to רבה as opposed to רבא** who maintains that it is valid -

**על כרחך משום דלרבה הוי טעמא משום לשמה -**

**Perforce you will have to say, that ידענו אינו מועיל because according to רבה the reason for saying בפ"נ is on account of לשמה.** Therefore it follows that even if two people claim that they know that it was written לשמה (but they themselves did not see it being written לשמה), it is not an acceptable testimony. It is merely hearsay. If,

<sup>5</sup> In the latter case, if he is disproved, he can always claim that he made a legitimate mistake. In the former case, however, if he is disproved, there is no way he can justify his lie. That is why we require the שליח to testify בפני, for this will assure us that he will be very meticulous in his preparation and subsequent testimony. We have now established that ידעתי will not be valid neither according to רבה or רבא. Therefore רבה maintains that there is no איחלופי.

<sup>6</sup> See תוס' ד"ה אטו in the following משולם פ' ר' משולם.

<sup>7</sup> See 'Thinking it over'.

<sup>8</sup> Most commentaries agree that the words ידעתי in this תוספות (from this point on) should be read or understood as ידענו. We are discussing two עדים who claim they recognize the חתימות. The גורס מהרש"א is ידענו in this entire תוספות. See footnote # 3. See 'Appendix'.

however, the reason for saying בפ"נ is on account of קיום, then if ידענו say עדים (we recognize the חתימות), it would be a proper קיום, so -

**ואכתי תקשי רבה מאי טעמא לא אמר רבא דמפרש טעמא משום קיום -**

**The original question remains; why does רבה not agree with רבא who explains that the reason for saying בפ"נ is on account of קיום** therefore it would subsequently follow, that if the reason for בפ"נ is קיום, then -

**ויועיל ידעתי וצריך בפני נכתב דלא אתי לאיחלופי -**

**and ידענו would be a valid testimony**, for two עדים are being מקיים the גט **and the reason why it is necessary for the שליה to state בפני נכתב, is that we should not confuse** קיום שטרות which require two עדים with קיום הגט, where one שליה is believed (if he says בפ"נ ובפ"נ).

In summation: רבה disagrees with רבא, because according to רבא the שליה should not be required to say בפני נכתב. It has nothing to do with קיום. However, רבא, while he agrees that בפני נכתב is not necessary for קיום, nevertheless he maintains that בפני נכתב needs to be said to avoid איחלופי. The question whether there is a concern of איחלופי or not, hinges on whether ידענו is believed. If ידענו is נאמן then there is איחלופי, and if ידענו is not נאמן, then there is no חשש of איחלופי. The question whether ידענו is believed depends on the reason for saying בפ"נ. If it is because of לשמה, then ידענו cannot be believed since it is hearsay. If we say בפ"נ on account of קיום, then ידענו is a proper קיום. Therefore רבה cannot claim that רבא is wrong in maintaining that there is a חשש of איחלופי since ידענו is not valid, because according to רבא who holds of קיום, then ידענו is נאמן. רבה should agree that according to רבא, saying ידענו is acceptable. The question remains why רבה disagrees with רבא. If רבה were to accept the reason of קיום, then ידענו would be נאמן, which, in turn, will explain the need to say בפני נכתב in order to prevent איחלופי, and everything works out!

answers: תוספות

**ואומר רבינו יצחק דמכח מתניתין דבריש בפרק ב' (לקמן דף טו,א) -**

**The פרק ר"י says that based on a משנה in the beginning of the second פרק, is where רבה derives the ruling that ידענו is unacceptable by גיטין.** He does not base his ruling (only) on a סברא -

**דקתני אחד אומר בפני נכתב ושנים אומרים בפנינו נחתם כשר -**

**for the משנה states there: 'If one person testifies בפני נכתב and two people testify בפנינו נחתם, the גט is כשר'.** From the fact that the משנה states that the גט is כשר when the two testify that it was signed in our presence, and the משנה did not state that it would be כשר if the two testified that we recognize the חתימות -

**משמע ליה לרבה ידיענו לא מהני -**

**רבה infers from this משנה that ידענו is not acceptable<sup>9</sup>.** This is a ruling based on the משנה, and not merely on logic. One may argue the reason of this ruling; however the ruling is clear that ידענו לא מהני. Therefore there is no אחיחלופי. Therefore if the טעם of בפ"נ is on account of קיום, there is no need for נכתב. That is why רבה does not agree with רבא.

## SUMMARY

Both רבה and רבא agree that if a single שליח says ידעתי concerning the חתימות he will not be believed. The חכמים believe him only if he says בפני, for then he is very much מדייק in order not to be מפשיה.

Concerning ידענו by two עדים for קיום הגט there is an argument between רבה and רבא. רבא maintains אינו נאמן and therefore לא אחיחלופי. רבה maintains נאמן and therefore אחיחלופי. The reason why רבה maintains that ידענו is not נאמן is not merely because he is of the opinion that בפ"נ is said on account of לשמה, thereby automatically invalidating ידענו. If this were the only reason we would remain with the question why does רבה disagree with רבא. Rather רבה infers from a משנה that ידענו לא מהני. The משנה states that if one person said בפני נכתב and two people said נחתם, the גט is כשר. If ידענו would also be כשר, the משנה should have stated instead that if two people said ידענו it is (also) כשר. The fact the משנה did not state that ידענו is כשר, is ample proof according to רבה that ידענו לא מהני.

## THINKING IT OVER

תוספות assumes that רבה must maintain ידענו לא מהני<sup>10</sup>. Otherwise he would agree with רבא that אחיחלופי. Why cannot we say that רבה agrees that according to רבא the rule is that ידענו מהני? Nevertheless he does not agree with רבא that ידענו is a cause for אחיחלופי. If ידעתי would be נאמן, that would be cause for אחיחלופי, but not ידענו. The people will only see that two עדים are believed<sup>11</sup> for קיום הגט.

<sup>9</sup> The commentaries (see מהר"ם) ask; if רבה infers from that משנה that ידענו לא מהני, then he can refute רבא directly from that משנה, as follows: How can רבא say that the reason is on account of קיום, for if that is so, then ידענו should be acceptable since it is a proper קיום. The only explanation why ידענו לא מהני is, that we assume the טעם of לשמה. They answer: from that משנה alone רבא cannot be refuted. רבא will claim that the reason why ידענו לא מהני is because of אחיחלופי. The question will then be, however, since ידענו לא מהני on account of אחיחלופי, why does our משנה require the saying of נכתב, since there will be no אחיחלופי because ידענו לא מהני. See footnote # 14. (See [however] מ"נ.)

<sup>10</sup> See footnote # 7.

<sup>11</sup> See following פירוש ר' משולם in תוס' ד"ה אטו footnote # 12.

## **APPENDIX**

The מהרש"ל is גורס in the entire תוספות as opposed to the other commentaries, whose opinion was cited above. According to the מהרש"ל this תוספות is in disagreement with the following תוספות, and accepts the opinion of רש"י that רבה and רבא argue whether ידעתי is נאמן. Originally תוספות understood that according to רבה, saying ידעתי is not valid since in our משנה it states clearly that the שליח must say בפני. Furthermore, רבה maintains, that even if the reason for בפ"נ would be on account of קיום, as רבא maintains, nevertheless the ruling of the משנה which requires בפני is logical. בפני is a stronger deterrent to lying than ידענו is.

רבא will maintain that ידעתי is נאמן. When the משנה states that the שליח is required to say בפני, that is only the preferable requirement – לכתחילה; if however the שליח did not say בפני, he said ידעתי instead, it will nevertheless be valid – בדיעבד.

נאמן is ידעתי if רבא and רבה between מחלוקת asks that seemingly this תוספות, is dependent on the other מחלוקת between רבא and רבה if בפ"נ is on account of לשמה or an account of קיום; as explained at length previously.

תוספות answers that רבה infers from the משנה that even ידענו is not valid, so certainly ידעתי is not נאמן.

---

<sup>12</sup> סוכ"ד אות נג (בד"ה ואכתי) in (עד"ז) and מהוד"ב, בית יהודה See.