

## כיון דאיכא עולי רגלים מישכח שכיחי –

Since there are Holiday Pilgrims who ascend to ירושלים, witnesses will be frequently found.

### OVERVIEW

An occupant of a property – מחזיק – is required to retain his deed – שטר – for a period of (at least) three years from the time of his ownership. Otherwise, the previous owner may challenge the occupant's ownership. [After three years he is considered a מוחזק and no one can challenge his ownership, even if he has no שטר.] If during these three years the previous owner issued a protest – מחאה – challenging the occupant's ownership, the מחזיק must retain his שטר for an additional three years from the date of the last מחאה. This מחאה need not be made in the presence of the מחזיק; it may be issued in his absence. This is called a מחאה שלא בפניו. There are circumstances in which this מחאה שלא בפניו is not valid, as תוספות will shortly discuss. In those instances when the מחאה is not valid, the מחזיק needs to retain his שטר until the original owner is in a situation where he can make a legitimate מחאה. Our גמרא states that in all of א"י, even ממדינה למדינה, there are עדים מצויין since there are עולי רגלים.

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תוספות anticipates the following question:

ואף על גב דלענין מחאה שלא בפניו אמרינן בחזקת הבתים (בבא בתרא דף לח, ב) –

And even though that concerning 'a protest not in the presence of the occupier of the property' the גמרא states in פרק חזקת הבתים that -

סתם יהודה וגליל כשעת חירום דמי ולא הוי מחאה -

Generally, the states of יהודה and גליל are comparable to a time of crisis in which people do not travel from state to state and therefore it is not considered to be a מחאה, since the protest was issued in יהודה and the מחזיק lived in גליל or vice versa, we assume that the מחזיק did not hear of the מחאה. The חזקה is therefore not a good חזקה. Since the מחזיק knows that the מערער cannot make a מחאה which will reach the מחזיק, he must be careful to retain the deed. We derive from that גמרא that generally there is no traffic between יהודה and גליל. How is it that the גמרא states here that everywhere in א"י there are עדים מצויין לקיימו even between יהודה and גליל, on account of the עולי רגלים?

גיטין answers and distinguishes between חזקה and תוספות:

**היינו משום שאין המחזיק דרכו לחזור אם עשו מחאה -**

**This is because it is not customary for the מחזיק to inquire if a מחאה was made<sup>1</sup> -**

**אבל הכא שמחזרת אחר עדים המכירים חתימת העדים מצויין לקיימו -**

**However, in this case** of the woman who received a גט from her husband, who is coming to contest the גט;<sup>2</sup> then **she inquires about witnesses<sup>3</sup> who recognize the signatures of the witnesses** that signed the גט. She is diligently pursuing finding these witnesses. We can rest assured that this minimal traffic is sufficient. Witnesses **will be found to authenticate** the signatures, even between יהודה וגליל, since there are עולי רגלים.

Tosfos asks:

**ואם תאמר דלקמן (דף ו, א) משמע איפכא -**

**And if you will say;** later in the גמרא it appears to be just **the opposite**, of what we stated here. From our גמרא it appears, based on Tosfos' previous explanation, that it is more likely to find עדים for קיום than for a מחזיק to hear a מחאה. We may surmise that whenever עדים for קיום are not שכיחי (which requires to be said בפ"נ), then certainly (in the same situation) a מחאה will not be valid. This is in contrast to the גמרא there, in which there is a discussion –

**גבי בני מחוזא דניידי ומצרכי בפני נכתב משכונה לשכונה -**

**Concerning the citizens of מחוזא who travel constantly, and the גמרא requires that בפ"נ needs to be said even when a גט is sent from one neighborhood to another neighborhood** in מחוזא. This leads us to conclude that in מחוזא, there are no עדים מצויין לקיימו -

**אטו במחוזא מי לא הוה מחאה -**

**Can we then assume that in מחוזא a מחאה שלא בפניו will not be considered as a valid מחאה?<sup>4</sup>**

Tosfos answers:

<sup>1</sup> The מחזיק is secure in the knowledge that he owns this property rightfully. He does not at all suspect that anything fraudulent occurred. He therefore makes no effort to inquire whether anyone is making a מחאה. Therefore, the minimal traffic between יהודה וגליל is not sufficient to alert him to the מחאה.

<sup>2</sup> There is no חיוב to say בפ"נ in א"י. If the husband will be מערער then the גט needs to be מקויים. In א"י there are עולי רגלים (ובתי דינין דקביעי) since there are עדים מצויין לקיימו.

<sup>3</sup> She needs to be מקיים the גט against the בעל to retain her status as a מגורשת, etc.

<sup>4</sup> On one hand based on what Tosfos said previously we will assume that if the woman cannot find עדים in מחוזא itself, then certainly the מחזיק will not hear of the מחאה. However, it is somewhat incredulous to assume that in the same city a מחאה שלא בפניו is not a מחאה.

**ויש לומר דהתם אפילו ימחה בפני בני אדם שהולכים להם -**

**And one can say; there in מחוזה even if he makes the מחאה in the presence of people that are leaving מחוזה, leaving one to think that it should not be a מחאה since they are leaving מחוזה and will not inform the מחזיק about the מחאה. This is not so. Even though they are leaving and not informing the מחזיק -**

**מכל מקום דרך הליכתם יאמרו לאחרים וחברא חברא אית ליה כדאמרינן התם -**

**Nevertheless, in their travels they will tell others concerning this מחאה, and that friend has another friend etc., as the גמרא states there in ב"ב<sup>5</sup>. Therefore, it is a valid מחאה for it will eventually get back to the מחזיק -**

**אבל לענין קיום כיון דניידי לא ימצא קיום כשיצטריך להם:**

**However, concerning קיום, since they are traveling, they will not be available for קיום when they will be needed; for they are traveling.<sup>6</sup>**

### **SUMMARY**

The traffic between יהודה וגליל is not sufficient for a מחזיק to hear a מחאה, since he is not expecting one. It is sufficient however for the woman to find קיום since she is aggressively searching for them to maintain her new marital status. Concerning מחוזה, the מחזיק will hear of a מחאה issued in מחוזה for those traveling will tell their fellow travelers about the מחאה and word will get back to the מחזיק (in מחוזה). The woman however needs the witnesses in person to authenticate the חתימה. However, they may be out of town and unavailable to be מקיים the גט when the woman needs them. Therefore, in such cities בפ"נ must be said even משכונה לשכונה.

### **THINKING IT OVER**

Why is it that concerning יהודה וגליל even though it is כשעת חירום דמי, that people do not travel frequently, nevertheless we maintain that בפ"נ is not necessary since the woman will seek out the witnesses who recognize the חתימות; however, concerning מחוזה she will not be able to seek out these witnesses? Similarly, why is it that concerning יהודה וגליל the מחזיק will not hear the מחאה, however in מחוזה he will hear the מחאה?<sup>7</sup>

<sup>5</sup> Eventually the word will get back to the מחזיק. People travel to מחוזה often; especially the people of מחוזה themselves.

<sup>6</sup> Word of mouth is of no avail for קיום; only for מחאה. Those people that recognize the signatures will be out of town (for an extended period of time). The woman will not be able to either remarry or to remain with her new husband on account of the ערעור הבעל and lack of קיום.

<sup>7</sup> See הים זיו.