

## They are not believed

## אין נאמנים -

### OVERVIEW

If a שטר is מקוים and the השטר עדי testify that they were פסולי עדות when they signed the שטר, they are not believed.<sup>1</sup>

anticipates a difficulty: תוספות

הכא<sup>2</sup> ליכא לאקשווי דלהימנו במגו דאי בעי אמרי פרוע הוא<sup>3</sup> -

**We cannot ask here that we should believe their claim that they were פסול; since they have a מיגו, for if they wanted they could have said it is paid up.** If these עדים would have testified that this is indeed our signatures however, the loan was already paid by the לזה; they would be believed and the לזה would not have to pay. Therefore we should believe them as well that פסולי עדות היו, and the לזה should be exempt from paying.

answers that the מגו is not effective: תוספות

דכיון דמקויים הוא הוי מגו במקום עדים כדפירשנו<sup>4</sup> -

**for since the שטר is authenticated;** as it states in the משנה that כתב ידם יוצא ממקום, **as we explained** in the previous אחר, therefore **it is a מגו that contradicts עדים**, as we explained in the previous תוספות. When a שטר is מקויים, it creates an אגן סהדי that it was signed by the כשרים. The claim of these עדים is that they were פסולים. Their claim contradicts the אגן סהדי. A מגו is not effective when the claim contradicts עדים.

offers another explanation why they are not believed: תוספות

ועוד<sup>5</sup> דחוזרים ומגידים הם וכיון שהגיד שוב אינו חוזר ומגיד כדאמרין בגמרא -

**And furthermore,** this claim that they were פסולים (which is offered after the שטר

<sup>1</sup> There is a dispute whether they are not believed at all and it is a שטר כשר, or they are not believed to nullify the שטר; the status of the שטר remains suspended (see previous הרי footnote # 1).

<sup>2</sup> תוספות uses the word הכא to indicate that the ensuing answers are applicable only 'הכא', according to the מסקנא that עמוד תוספות ד"ה מחמת # 2 in 'Thinking it over' # 2. However according to the רב"ה of הו"א, these answers are not applicable. See [TIE]

<sup>3</sup> They are believed to claim פרוע, since that is not contradicting anything that was implied in the שטר

<sup>4</sup> ד"ה הרי. A מגו במקום עדים means that the claim (not the מגו) contradicts עדים.

<sup>5</sup> The necessity for an additional explanation may possibly be understood if the following is assumed: אין נאמנים means that they are not believed at all, and the מלוה can collect with this שטר. תוספות question, that they should be believed with the מגו of פרוע, is that the שטר should be destroyed, for if they would claim פרוע the שטר would be void. תוספות first answer that it is a מגו במקום עדים is sufficient to explain why the שטר cannot be destroyed since there is no מגו. However, we still may not collect with this שטר, since it is תרי ותרי; the שטר מקוים versus their testimony that they were פסולי עדות. The second answer is that כיון שהגיד שוב אינו חוזר ומגיד removes the תרי ותרי; their second testimony is discarded. There is only the שטר מקוים, and the מלוה can collect with this שטר. The answer of חוזר ומגיד alone is also insufficient, for even though they cannot be believed as עדים, nevertheless they should be believed on account of the מגו; to have the שטר suspended. Therefore each answer complements the other. וצע"ג. See 'Thinking it over' # 2.

is (מקוים), is considered **that they are retracting and testifying** anew. This they cannot do, for there is a rule **that once he testified, he cannot retract** his previous testimony, **and testify** differently, **as it is stated in the גמרא** (immediately following the משנה). The שטר is already מקוים. The שטר states in the name of the עדים that the לווה owes money. These עדים are now claiming that they were פסולי עדות and the שטר is פסול. This in effect means the לווה owes no money. This is a contradiction to their previous testimony. Therefore the claim of פסולים היינו, which disqualifies the שטר, contradicts their original testimony that the לווה owes the money.

מגו offers a final explanation why they are not believed with a:

**ועוד<sup>6</sup> דבשני עדים לא אמרינן מגו<sup>7</sup> -**

**And furthermore** there is a rule **that by two witnesses the rule of מגו does not apply**. A מגו is effective only when there is one person making a claim and he has a מגו. However by two people who are making a claim even though they have a מגו, they are not believed.

תוספות responds to an anticipated a question:

**וברישא נאמנים משום דאי בעי שתקי<sup>8</sup>:**

**However, in the רישא** of the משנה the עדים **are believed** on account of a מגו, to claim פסולי עדות היינו. In the רישא we do not say לא אמרינן! **Because if they chose** they could have been **silent** and not testify at all. The מגו of the רישא is that the עדים did not have to testify that זה הוא, then there would be no שטר. This type of a מגו that אי בעי שתקי is effective even by two עדים.<sup>9</sup>

## SUMMARY

The עדי השטר are not believed to claim פסולים היינו (if the שטר was מקוים) with a מגו of פרוע because: a) it is a במקום עדים, b) they are חוזר ומגיד, and c) מגו בי תרי לא except for a שתקי a מגו דאי בעי שתקי.

<sup>6</sup> Perhaps this answer applies even if we were to assume that this is not considered a מגו במקום עדים. The fact that a שטר is מקוים does not necessarily create an actual סהדי אכן that they are עדים כשרים, especially if the עדי השטר themselves claim that they were פסולי עדות, and in addition they also have a מגו.

<sup>7</sup> The popular explanation is that the idea of a מגו is that if he was lying he could have said a more effective lie. This proves he is telling the truth. If however there are two claimants, we suspect that perhaps they are lying and the reason they are not claiming the more effective lie is that each one thinks that the other may have not thought of the more effective lie. See תוספות יט,ב ד"ה ואם.

<sup>8</sup> It would seem from this answer that when the משנה states in the רישא, that נאמנים אלו, it means they are believed (only) to suspend the שטר, but not to destroy it. Their מגו is that אי בעי שתקי, in which case the שטר would not be destroyed, but merely suspended.

<sup>9</sup> One explanation is that there is no concern what the other עד will say (see previous footnote # 7); as long as one עד will not testify, the שטר will not be מקוים. Another explanation is that a מגו דאי בעי שתקי is so evident that no one doubts whether the other עד is aware of this option.

## **THINKING IT OVER**

1. What is the claim of the לוח; is it פרוע or מזויף or something else?<sup>10</sup>

2. <sup>11</sup>Seemingly תוספות question was that they answers that it is a חוזר ומגיד. By מיגו there is no should be believed because of a הגדת עדות; not because of a רישא.<sup>12</sup> as evidenced in the חוזר ומגיד, problem with

---

<sup>10</sup> See [footnote # 8]. תוספות יט,א ד"ה טעמא

<sup>11</sup> See footnote # 5.

<sup>12</sup> משכנות הרועים אות רג ורד. קושיית הגרע"א