

מלוה גופיה מידק דייק –

The lender himself is particularly meticulous.

OVERVIEW

אין כתי"י יוצא even if פסולי עדים היינו claimed עדים maintains that if the רבי מאיר ממקום אחר, they are not believed. The reason is because there is a חזקה that a מלוה is careful to have only עדים כשרים sign on the שטר. It seems implicit from this reasoning that it is presumed that there was a loan, and therefore, we must conclude (according to ר"מ) that the loan was signed by עדים כשרים.¹ The question arises, what do the רבנן presume; do they agree with ר"מ that there was a loan, however the חזקה of מידק דייק cannot overpower the פה. Or do the רבנן maintain that there is no assumption of a loan, and therefore no חזקה of מידק דייק.

ולרבנן אפילו מלוה על פה לא הוי² -

And according to the רבנן, who argue on ר"מ and maintain that they are believed to say that פסולי עדות היינו, the דין is that **it is not even considered as an undocumented loan**. The לוי owes no money at all.

anticipates a difficulty:

The עדים are presently testifying that there was a loan; however they were unqualified then to sign as witnesses. Now however they are not פסולי עדות. Seemingly we should believe them now that there was a loan. Granted that there is no documented loan, for when they signed on the שטר they were פסולים. Nevertheless now they are not פסולים and are testifying that there was a loan. It should be considered as a מלוה על פה. If the לוי claims there was no such loan he should be obligated to pay.³ תוספות explains why it is not considered even as a מלוה ע"פ -

דבעינן שיהא תחלתו וסופו בכשרות כדאמרין ביש נוחלין (בבא בתרא קכח,א ושם):

For, concerning testimony, it is required that the עדים be כשר both in the beginning when they observe the testimony and in the end, when they

¹ If there was no loan then the assumption of מלוה גופיה מידק דייק is meaningless. A מלוה is מדייק only when he actually lent money. If the entire story is bogus, then there is no מידק דייק. See (where it [also] appears that he disagrees with תוס' and maintains that according to the רבנן it is a מלוה ע"פ)

² There is also therefore no מידק דייק, since there is no established loan. See (however) חזקה יט,א ד"ה חזקה [TIE footnote # 1].

³ If the לוי claims that he paid it then he would be פטור, since it is only a מלוה ע"פ. However if he claims להדי"ם, he is tacitly admitting that he certainly did not pay. Therefore he will have to pay since the עדים testify that he borrowed money

testify, as the גמרא states in פרק יש נוחלין. In our situation there is no תחלתו בכשרות, for at the time of the loan, these עדים were פסולים. Therefore, even though they are כשרים now, we cannot accept their testimony.

SUMMARY

The חכמים maintain that if the עדים claim היינו פסולי עדות, there is no loan at all, not even a מלוה ע"פ, since it was not תחלתו בכשרות.

THINKING IT OVER

Why indeed are the עדים not believed that there was a loan with the מגו that they could have not said that they are פסולים?⁴

⁴ רש"י שם.