

מודה בשטר שכתבו אין צריך לקיימו - If he admitted to writing the שטר, it is not necessary to authenticate it

OVERVIEW

maintains that if the לוח admits that the שטר was written with his consent, he is not believed to make any claims against the שטר. The question is why not. Seemingly the לוח has a מגו of מזויף. Our תוספות proposes three explanations.

asks: תוספות

ואם תאמר מאי טעמא לא מהימן במגו דאי בעי אמר מזויף -

And if you will say; what is the reason that he is not believed that he paid the loan, since he has a מגו that he could have claimed that the שטר was forged. If the לוח would have claimed מזויף he would not have to pay, unless the מלוה is שטר מקיים. The same ruling should apply when he claims פרעתי (or other claims); he should not be required to pay unless the מלוה is שטר מקיים.

answers: תוספות

ויש לומר דשמא ירא לוח לומר מזויף פן יכחישוהו וליכא מיגו¹ -

And one can say; that perhaps the לוח is fearful to claim מזויף, lest they will contradict him, and therefore there is no מגו. If the לוח claims פרעתי, no one can contradict him.² However, if he claims that the שטר is מזויף, it is possible³ that the מלוה will be able to be שטר מקיים, thus proving the לוח to be a liar. The לוח therefore prefers the lie of פרעתי over the lie of מזויף. The idea of a מגו is that if he were a liar he could have said the better lie. In this case the 'better' lie is פרוע (where he cannot be contradicted) as opposed to מזויף (where he can be contradicted). He does not want to claim מזויף, therefore there is no מיגו.

offers another explanation why לקיימו תוספות

ופירש הקונטרס במקום אחר⁴ דטעמא משום דדבר תורה אין צריך קיום -

And the קונטרס explained elsewhere that the reason why מודה בשטר שכתבו by a קיום is because according to תורה law there is no need for קיום - The reason for this is –

דעדים החתומים על השטר נעשה כמי שנחקרה עדותן בבית דין⁵ -

¹ See 'Thinking it over' # 1.

² He will choose a time when he was alone with the מלוה, and claim that he paid him then.

³ It should be borne in mind that the שטר is not a מזויף, for the לוח is admitting that the שטר was written with his consent. There is a strong likelihood that the מלוה will be able to be שטר מקיים.

⁴ This may be referring to the עיי"ש in רשב"ם לקיימו, א"צ לקיימו, ד"ה א"צ לקיימו, frequently refers to the ב"ב in תוספות) ב"ב קט, א ד"ה א"צ לקיימו, עיי"ש in רשב"ם [see TIE אמר ד"ה א"צ לקיימו as ב"ב in פי' הרשב"ם footnote # 1].

That witnesses who are signed on a שטר, it is considered as if their testimony was already cross-examined and accepted in בי"ד –

ורבנן הוא דאצרכוהו קיום כי טעין מזוייף הוא -

And it is (merely) a Rabbinic law that requires the מלוה to authenticate the signatures (but only) in a case where the לווה claims that it is forged –

אבל בשאר טענות כגון פרוע הוא לא הצריכוהו קיום וכן נראה לרבינו יצחק -

However concerning all other claims of the לווה for instance, 'it is paid up' they did not require of the מלוה any קיום; and the ר"י agrees with this as well.

⁶ When the לווה is considered מקויים in regards to all claims of the לווה (except for מזוייף).⁶ The claim of פרעתי is ineffective against a שטר מקויים. The שטר is considered פרעתי.

anticipates another possible solution, but rejects it:

אבל אין לפרש דלא מהימן במגו לומר פרוע הוא -

However, we cannot explain that the reason why he is not believed to claim פרוע with a מגו of מזוייף is –

משום דאי פרעיה שטרא בידיה מאי בעי⁷ -

Because, for if the לווה indeed paid him, then what is the שטר doing in the hands of the מלוה. The מלוה is in the possession of the שטר, which supports the claim of the מלוה that the loan was not paid. The מגו is not sufficiently strong (according to this proposed answer) to support the claim of פרעתי, which is contradicted by the proof of מאי בעי.

rejects this proposed explanation:

דהא כי טעין נמי אמנה⁸ הוא מסקינן בסמוך אמילתיה דרב דלא מהימן⁹ -

For even if the לווה claims it was a שטר אמנה, the גמרא concludes shortly, concerning s'רב statement that the לווה is not believed; even if the שטר is not מקויים and the לווה therefore has a מגו of מזוייף –

והתם לא שייך האי טעמא:¹⁰

And there, this reason of מאי בעי שטרא בידיה is not applicable; the מלוה has the שטר because the לווה entrusted him with it. It cannot be used to disprove the לווה's claim (as in

⁵ The reason is that (מה"ת) no one is suspected of forging (or signing falsely on) a document.

⁶ See 'Thinking it over' # 2.

⁷ If the loan would have been paid the לווה would have demanded that the שטר be returned to him.

⁸ A שטר אמנה is (as רש"י explains in ד"ה שטר אמנה) a note which a prospective לווה 'entrusted' (hence the term 'אמנה') to the prospective מלוה, that in case the לווה will need to borrow money, the מלוה will already have a שטר in his possession.

⁹ The גמרא there states that the ruling of רב that לווה is not believed to claim that it is a שטר אמנה, is equivalent to (and based on) the opinion of רב הונא that לקיימו א"צ שכתבו ש"ס.

¹⁰ rejection does not necessarily imply that שטרא וכו' is not sufficient to negate a מגו, it merely states that there must be an additional reason why there is no מגו (to explain אמנה). See 'Thinking it over' # 3

the case of *פרעתי*). This proves that the reason why *פרעתי* or other claims of the *לוה* are not valid is not on account of *שטרא בידיה כו'* but rather for the other reasons *תוספות* mentioned.

SUMMARY

We do not believe *במגו דמזוייף* *פרעתי* because either a) he would rather claim *שטרא* (which is non refutable) than *מזוייף* (which is refutable) or b) a *שטרא* is considered *מקויים* in regards to all claims [of the *לוה*] (except *מזוייף*); but not on account of c) that *שטרא בידיה מאי בעי* is stronger than the *מגו* (because that does not explain why *אמנה* is not believed).

THINKING IT OVER

1. *תוספות* states that the *לוה* is not believed *במגו דמזוייף* since he is fearful *פן יכחישוהו*.¹¹ In the previous *טעמא ד"ה תוספות*, it is stated that *מ"מ* maintains that just as the *לוה* is not believed with a *מגו*, so too the *עדים* are not believed with a *מגו*. However according to this explanation that the *לוה* is not believed on account of *פן יכחישוהו*, this reason seemingly does not apply to the *עדים*, for even if other *עדים* contradict them it will still be *תרי ותרי* and the *שטרא* will not be *מקויים*.¹²

2. The *הקונטרס* *פ"י* and the *ר"י* maintain that (except where the *לוה* claims *מזוייף*) no *קיום* is required (even *מדרבנן*).¹³ The previous *טעמא ד"ה תוספות* presumes that we are discussing a case where *אין הל"ה מודה*, which means that he is either not present or is claiming *היו אנוסים*; however he is not claiming *מזוייף*.¹⁴ If he is not claiming *מזוייף*, then the *שטרא* is considered *מקויים*. How can we believe the *עדים* that *אנוסים היינו*; there is no *שאסר וכו'*!?

3. Those that maintain that we do believe *במגו דמזוייף* *פרוע*, nevertheless maintain that *אמנה* is not believed, for a different reason.¹⁵ Why does *תוספות* argue that *שטרא בידיה וכו'* is not the reason by *פרעתי* since it is not applicable by *אמנה*?¹⁶ It is possible that *פרעתי* is not believed because of *שטרא* and *אמנה* is not believed for the different reason¹⁷

¹¹ See footnote # 1.

¹² See *תוס'* on that *בית יעקב*.

¹³ See footnote # 6.

¹⁴ See there footnote # 9.

¹⁵ See *לא אתי על פה ומרע לשטרא* that *תוספות* יט, ב ד"ה *אמר ר"נ*.

¹⁶ See footnote # 10.

¹⁷ See *מהרש"א*. See footnote # 10.