

או דלמא תנאי מילתא אחריתי הוא –

Or perhaps a stipulation is a separate issue.

OVERVIEW

לא אתי ע"פ ומרע לשטרא (ר"נ¹ previously explained that (according to the שטר through their testimony (as in the cases of (אמנה\מודעא they are not believed. רבא followed this up with a query to ר"נ; what is the ruling if the עדים stated (כת"י הוא זה, however) there was an oral stipulation concerning this transaction (which was not yet fulfilled). On one hand it seems that they are מרע לשטרא since according to their testimony the שטר (as is), is not valid (unless the stipulation is fulfilled). On the other hand perhaps they are not מרע לשטרא since the תנאי is a מילתא אחריתי. There are two ways how to interpret this concept of תנאי מילתא אחריתי. תוספות will explain that only one is acceptable.

פירוש² לדבר אחר הן באין ולא לעקירת השטר אלא תוספת בעלמא -

The explanation of תנאי מילתא אחריתי הוא and that therefore it is not discrediting the שטר, is that **the עדים are testifying** for a **different purpose** and the עדים **do not intend to uproot the שטר** entirely but rather the עדים intend to **merely add** details –

שמפרשים עדותן היאך ועד השתא קיים השטר ואינו נעקר אם יתקיים התנאי -

They are defining in what manner **their testimony** in the שטר is effective, and until now the שטר is valid and the שטר will not be voided if the stipulation is fulfilled –

הלכך אין כאן הורעת השטר³ -

Therefore there is no discrediting of the שטר; that we should say לא אתי ע"פ ומרע לשטרא.

¹ תוספות ד"ה אמר ר"נ.

² The term פירוש in תוספות (usually) indicates that תוספות is rejecting a more obvious understanding of the text. תוספות will shortly cite the rejected interpretation.

³ It is different than אמנה\מודעא. In the cases of מודעא\אמנה it is the intent of the עדים to testify that (even though we signed the שטר and it was properly delivered, nevertheless) the שטר is (presently) meaningless, since it is a מודעא\אמנה. However by תנאי they are testifying that the שטר is valid, provided that the stipulation is met. They are merely modifying their השטר. They are not מרע לשטרא. Therefore they are believed (as ר"נ concludes). It would seem that if the time has already expired to be מקיים the תנאי, it would be considered הורעת השטר (see הפלאה). See (however) תנאי ד"ה תנאי.

will now mention the rejected explanation:

אבל אין לפרש מילתא אחריתי היא לגמרי ולא שייך לעדותן ראשונה -

However, we cannot interpret the phrase מילתא אחריתי to mean that the תנאי is a completely separate issue and it has no connection to their first testimony of כת"י הוא זה. Rather we should view their testimony of דברינו

כמו שאם היו מעידין שהוא פרוע שהן נאמנים⁴ -

As if they were testifying that the שטר was paid up where they would obviously be believed. We should (perhaps) view תנאי the same as פרוע, and believe them. תוספות rejects this interpretation.

will now explain why this last interpretation is incorrect:

דאם כן מאי פריך בסמוך⁵ אי הכי⁶ אפילו תרי נמי⁷ -

For if it were so; that תנאי is similar to פרוע; it is totally irrelevant to their original testimony of כת"י הוא זה, then we have the following difficulty; **what** does the גמרא **shortly ask, 'if this is so, then it should also** be the same by **two** עדים who say דברינו'. The עדי התנאי should not be believed. This concludes the quote from the גמרא.

will now explain the difficulty with the אין לפרש; namely, that the s' question (that the עדי התנאי should not be believed) is not understood:

דכיון דתנאי מילתא אחריתי היא לגמרי -

For since the אין לפרש maintains **that** the testimony concerning a תנאי is a

⁴ According to the first interpretation, the parts of their (somewhat conflicting) testimony, כת"י הוא זה and תנאי, are part of one (seemingly conflicting) testimony. However we can reconcile them by assuming that תנאי is merely a modification of כת"י הוא זה. The עדים had no intent of discrediting the שטר. According to the אין לפרש, however, we view the עדים as offering two separate and unrelated testimonies. One, that the שטר was prepared and delivered properly and for all intents and purposes is a valid שטר in all respects. Two, that the שטר does not really bind the parties, since an oral stipulation was made, which limits the power of the שטר. [It is as if they would say כת"י הוא זה, but the שטר was פרוע a week after he borrowed the money.] If we assume the second interpretation (the אין לפרש); the idea that תנאי מילתא allows their testimony to be accepted, is more readily understood (since there is no conflict between the two separate testimonies), than if we assume the first interpretation. Nevertheless תוספות rejects the אין לפרש because of the ensuing difficulty.

⁵ ruled that if one of the עדים said there was a תנאי and the other said there was no תנאי, the שטר is valid without התנאי. The reason is that since both עדים testify to the validity of the שטר (כת"י הוא זה), and only one עד testifies that there is a תנאי, therefore one עד cannot oppose two עדים.

⁶ That we consider the עד who claims there was a תנאי as agreeing to the קיום השטר, however he qualifies the שטר and opposes the עדי השטר, by saying תנאי (but not that he is considered as if he is not agreeing to the קיום השטר by saying תנאי, and thus invalidating the שטר [for there is only one המקיים]).

⁷ The s' question is; it should be considered as two עדים (who maintain there is a תנאי) against two עדים (who signed the שטר). Why should the עדי התנאי be believed?!

totally different issue, then -

תרי נאמנים אפילו בכתב ידם יוצא ממקום אחר -

Two are believed to testify on a separate issue even if their signatures are available from elsewhere; the שטר can be מקויים without them, nevertheless the עדים will be believed to testify on a מילתא אחריתי, such as פרוע.⁸ Therefore they should also be believed to claim תנאי, since according to the לפרש אין the claim of תנאי is similar to the claim of פרוע. The גמרא's question is not understood. How can the גמרא compare two עדים to one עד?! If two עדים claim תנאי, they are believed just as they would be believed if they claim פרוע (since they are not in conflict at all with the שטר). It is a regular testimony of two עדים. There is no cause not to believe them –

אבל חד לעולם אימא לך דלא מהימן כי היכי דלא מהימן לומר פרוע הוא⁹ -

However when one עד claims תנאי, I will certainly say that he is not believed just as one עד is not believed to claim the שטר is paid up if the מלוה is in possession of a שטר מקויים.

לכך נראה כדפירשנו:¹⁰

therefore it appears that מילתא אחריתי means **as we explained it;** that it is merely a modification of the שטר, but not that it is totally unrelated to the שטר as the לפרש אין maintained.

SUMMARY

The תנאי who maintain דברינו are believed, since מילתא אחריתי תנאי. The תנאי is not discrediting the שטר, but rather it is merely a modification of the שטר.¹¹ (However the תנאי is not considered to be something irrelevant to the שטר as, for instance, the claim of פרוע).

⁸ תוספות הרא"ש by the לפרש אין. If תנאי is similar to תוספות, then תנאי should be believed even if יוצא ממק"א. From the entire גמרא it seems that all the discussions are only if אין כת"י יוצא ממק"א (see previous ר"נ אמר ר"נ). (תוספות ד"ה אמר ר"נ).

⁹ An עד אחד is not believed by ממונות (against a שטר).

¹⁰ According to תוספות, the question נמי תרי נמי, א"ה תרי נמי, is readily understood. If we assume that when one עד claims תנאי he is not believed, it must be because his testimony of תנאי is not עוקר the שטר to repeal his קיום; but rather it is considered as if his original testimony of כת"י remains as a valid קיום, which he wishes to modify. This modification is not acceptable since it opposes the עדי השטר. Similarly when two עדים say תנאי they are also not being עוקר their קיום, but rather they choose to modify it. How can they be believed to modify the שטר since it is a שטר מקויים; it is תרי נמי?! [The גמרא concludes that even by an ע"א who says תנאי, the תנאי must be fulfilled (to validate the שטר), for since he is not לשטרא, his modification is accepted (in regards to his testimony), and therefore there are no two עדים who testify that the שטר is valid as is. (See (רש"י ד"ה אי הכי, ואילך).] See 'Thinking it over' # 1.

¹¹ There are four levels (of מרע לשטרא and מרע לשטרא) according to ר"נ. 1. קטנים ואנוסים are believed since there never was a valid שטר. 2. מודעא ואמנה are not believed since they are מרע לשטרא. 3. תנאי is believed for it is a מרע לשטרא. 4. פרוע (by the לזה) is believed since he is not לשטרא and not מילתא אחריתי.

THINKING IT OVER

1. What is the ruling if one עד claims תנאי;¹² according to תוספות and according to the 'אין לפרש'?
2. תוספות proved from the גמרא that the אין לפרש is incorrect. However, why indeed did the גמרא not accept the view of the אין לפרש?!

¹² See footnote # 10.