

ואם כתב ידם יוצא ממקום אחר אין נאמנים – And if their handwriting is verifiable from elsewhere, they are not believed.

OVERVIEW

The ברייתא stated that if (current) עדים testify on a שטר מקוים that the עדי השטר are פסולין, etc. they are not believed. תוספות will discuss whether this means that they are testifying that the עדי השטר are still פסולים now, or that they were פסולים when they signed the שטר, but now they are כשרים.

ופסולי עדות דקתני לא שאומרים שעדיין פסולים דאם כן אמאי אין נאמנים -

And concerning the testimony regarding unqualified witnesses which the ברייתא mentions; it stated that עדים currently claim that the עדי השטר [were] (are) פסולין, **it does not mean that the current עדים are testifying that the עדי השטר are still פסול** (they are relatives or רשעים); even after the שטר was signed until (immediately preceding their death¹) now, **for if that were the case;** that they are testifying that the עדי השטר are still פסולים **why are the current עדים not believed**, If the עדי השטר were present and the current עדים would testify that they are פסולים לעדות, they would be believed² and the שטר would be nullified. The signatures on the שטר cannot be stronger than the עדי השטר themselves.³

אלא פסולי עדות הוּא אַז ועתה מודים שהם כשרים -

But rather the current עדים are testifying that the עדי השטר were פסול then when they signed the שטר **but as of now**, the current עדים **admit that** the עדי השטר are כשרים (the relationship was severed; they did תשובה, etc.). Therefore they are not believed.⁴

תוספות asks:

ואם תאמר ומכל מקום אמאי אין נאמנים להימנו במגו -

¹ See 'Thinking it over' # 1.

² If the current עדים testify that the עדי השטר are currently פסולים, the עדי השטר cannot defend themselves (by claiming they are כשרים) since the testimony is concerning the עדי השטר themselves; they are the defendants (בעלי דבר). A בעל דבר cannot testify as a witness.

³ See תוספות הרא"ש.

⁴ The testimony of the current עדים is not directed towards the עדי השטר per se; for the עדי השטר are currently כשרים in all respects. Rather the intent of the current עדים is to be פוסל the שטר through their testimony. They are not believed, since there is also a contradictory testimony from the עדי השטר who claim (by virtue of their signatures on the שטר) that it is a כשר שטר. In this case the עדי השטר are not viewed as בעלי דבר since the testimony of the current עדים is not directed towards them.

And if you will say; that notwithstanding the fact that they are testifying that the **עדי השטר** were **פסול** (only) initially (and not that they are **פסול** now), **why are they not believed** that the **שטר** is **פסול**, **let us believe** the current **עדים** **with a מגו** –

דאי בעו אומרים עדיין הם פסולים -

For the current עדים could have said that the **עדי השטר** **are still** currently **פסול**. If the current עדים would testify that the **עדי השטר** are currently **פסולים** they would be believed, as **תוספות** stated previously, and the **שטר** would be **פסול**. Let us believe them with this **מגו** that they were **עדים פסולים** when they signed, and the **שטר** should be **פסול**.

תוספות asks an additional question in the same vein:

[וכן בכל] שתי כתי עדים המכחישות⁵ זו את זו⁶ -

[And similarly by all cases] of two groups of עדים that contradict each other -

אמאי לא מהימני בתראי במגו דאי בעי פסלי לקמאי בגזלנותא -

Why is the last group to testify, not believed with a מגו that they could have disqualified the first group of עדים by accusing them of (currently) being **robbers!?** If the latter group would testify that the former group are **גזלנים** (instead of contradicting their testimony)⁷ they would be believed, and the testimony of the former group would be discarded. Therefore their actual current testimony should be believed on account of this **מגו**, and the testimony of the former group should be discarded.

תוספות answers:

ואומר רבינו יצחק דבשני עדים לא שייך מגו דאין אחד יודע מה בלב חבירו:

And the ר"י says that (the concept of) **מגו is not applicable by two עדים because neither of the group knows what is in the other's heart.** The idea of a **מגו** is that we should believe the current claim since he had the option of presenting a superior claim (where he would have surely been believed). In the case of two **עדים** however we cannot say that we should believe each **עד** because he could have claimed the

⁵ They contradict each other concerning the object of their testimony (one group said he borrowed money and the other denies it). This is different than **הזמה** where the latter group merely claims that the former group could not have seen their purported testimony for they were with the latter group at that very same time in a different place.

⁶ The rule by **זה את זה** is that neither **כת** is believed, so the matter remains unresolved (or we follow the **חזקה**). This is in contrast to **עדי הזמה**, where the last **כת** is believed.

⁷ In a sense the second group of **עדים** is already testifying that the first group is **גזלנים**; they claim that the first group is causing someone to lose money unjustly.

superior claim. It is possible that each עד individually is reluctant to claim the superior claim, for he is not sure that the other עד will claim it as well. Perhaps they colluded with each other only concerning the actual claim that they are presenting. Each עד wants to be certain that he and his partner (in crime) are offering the same (false) testimony.⁸

SUMMARY

If עדים claim that the שטר (of a מקוים) are currently פסולים, they are believed. However if they claim they were פסולים, they are not believed, even though there is a מגו of גזלנותא; because a מגו is not effective by two עדים.

THINKING IT OVER

1. עדיו השטר פוסל the עדים intend to be פוסל now, or at the time of the signing.⁹ Seemingly it cannot mean that they wish to be פוסל them now, for the ברייתא clearly states 'ומתו'!¹⁰

2. If a מגו is not effective by two עדים, then why are they believed in the רישא (of the משנה and the ברייתא)?¹¹

⁸ See footnote # 7]. The גליון (in the margin) offers two additional answers why there is no מגו of גזלנותא. One that it is a מגו במקום עדים (their claim that the שטר is פסול contradicts the עדיו השטר). And two, that the idea that the latter עדים are believed [to be פוסל the former] is a חידוש, for why should you believe the [latter more than the former]; therefore (since it is a חידוש) it is only believed when the claim of גזלנותא is actually made, but as a מגו it is ineffective. עיי"ש ועי' עוד תוס' ב"ב לא,ב ד"ה וזו.

⁹ See footnote # 1.

¹⁰ See אות רע"ט.

¹¹ See ד"ה אין and the גליון here in the margin.