

## דלמא זיופא זיין – Perhaps he indeed forged the signatures

### OVERVIEW

taught that a שטר may be מקויים from two שטרות provided that these שטרות were not in the possession of the current holder of the שטר to be מקויים. However if those שטרות were in his possession, then there can be no קיום from those שטרות. There is a concern that since those שטרות were in his possession, he forged the signatures on the שטר to be מקויים, by copying them carefully from the שטרות in his possession. תוספות will qualify this limitation.

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אומר רבינו תם דדוקא היכא שאין אנו מכירין החתימה -

**The ר"ת says that this concern of forgery is specifically only in a case where we do not recognize the signatures** directly; the authenticators are not familiar with these signatures –

אלא על ידי דמיון החתימה להחתימה -

**But rather** they were מקיים the שטר by **comparing** the **signature** (on the שטר to be מקויים) **to the other signature** (from the two fields, etc.). In these cases since the מקיימים are not intimately familiar with these signatures therefore we are concerned for the possibility of forgery –

אבל היכא דמכירין חתימת העדים בטביעת עין<sup>1</sup> -

**However in a situation where the מקיימים recognize the signatures of the witnesses by the 'impression on the eye';** the authenticators are (intimately) familiar with the signatures. They have no need to compare them to other signed documents, then –

אף על פי שיש לו חתימה אחרת תחת ידו ליכא למיחש דלמא זיין -

**Even if** the possessor of this שטר **has (an)other signature(s)** of these עדים, **in his possession;** he is in possession of other שטרות upon which these עדים signed, nevertheless, **there is no concern that perhaps** the possessor of the other שטר **forged** the signature of these עדים on the current שטר which requires קיום – דכיון דמכירים החתימה אם זיין היה נכר היטב:<sup>2</sup>

**For since** the מקיימים **recognize the signature** innately, **if he forged** the signatures **it would be well noticeable,** to the מקיימים that this is a forged signature, and not the authentic one. However if שטר from other מקיים is ב"ד

<sup>1</sup> The term 'טביעת עין' (usually) refers to the act of recognizing something by sight, without being able to express explicitly how the item is recognized. For instance one may recognize his (worn out) hat among many other similar hats. However he could not transmit to someone else the identifying features of his hat.

<sup>2</sup> See 'Thinking it over' # 3.

without knowing the actual signatures of the עדים, a small deviation will not be noticed.

### **SUMMARY**

The rule prohibiting השטר from שטרות which are in the possession of the בעל השטר is only if the קיום is done by comparison; but not if it is accomplished through טביעת עין.

### **THINKING IT OVER**

1. If the בעל השטר is in possession of שטרות in which the same עדים (as are on his שטר to be מקויים) signed, can we, nevertheless be מקיים the שטר from other שטרות which are not in his possession?
2. In the case of טביעת עין, is it necessary at all to compare the העדים to (two) other שטרות; or is the טביעת עין itself sufficient?
3. Why indeed can a forgery be detected (only) by טביעת עין and not by comparison?<sup>3</sup>

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<sup>3</sup> See (footnote # 2 and) ב"ב דף קסז,א וצ"ב.