

ושמע מינה דיינין המכירין חתימת עדים אין צריך להעיד בפניהם – And we derive from this that judges who recognize the signature of the witnesses, it is not necessary to testify before them.

OVERVIEW

The גמרא states that we can derive from the ruling of עד שלא כתבו מעידין בפניו on the שטר that שטר מקיים the שטר on that basis alone. They are not required to hear testimony from other עדים who recognize the חתימות on the שטר. This ruling seems to be so obvious, to the point that it is seemingly unnecessary for the גמרא to teach it to us. תוספות will explain why the גמרא felt justified in teaching this ruling.

תוספות explains that it is necessary for the גמרא to teach us this ruling -

דקא סלקא דעתין דצריך להעיד בפניהם -

for it would have entered our minds, that it is necessary for עדים who recognize the חתימות **to testify before** the דיינים, even if the דיינים do recognize the חתימות העדים.

תוספות anticipates the difficulty with this:

אף על גב דלא תהא שמיעה גדולה מראייה¹ –

Even though that hearing (from witnesses) **should not be greater than** (the דיינים) **seeing** the signatures and recognizing them; therefore why should we even think that it is necessary for the עדים to testify?

תוספות explains -

לפי שהיו נראין יותר בית דין –

Because they appear more like a בי"ד, when עדים testify in their presence -

דכשארין מעידין בפניהם אין נראה אלא כעד מפי עד –

However when there is no testimony in their presence it merely appears as hearsay; and not as a בי"ד. When the עדים testify before בי"ד, then בי"ד writes in the הנפק that the בי"ד received testimony that the signatures are authentic. It will be obvious that it is a בי"ד that is acting on the basis of testimony. However if the בי"ד will not hear testimony, they will merely write in the הנפק that we know these signatures to be authentic. It will appear later, when the שטר is acted upon based on the קיום, as if we are

¹ The גמרא in בב, כה, uses this argument of שמיעה גדולה מראייה to prove that if בי"ד saw the new moon (by day), they can be מקדש the חודש based on their ראייה, without קבלת עדות from others. The same should apply here.

merely supporting the שטר on the basis of the עד הימנף via the עד השטר.² This is similar to hearsay or עד מפי עד.³

ומטעם זה הצריכו ג' בקיום שטרות דהוה סגי בב' –

And it is also for this reason that three דיינים are required for שטרות;
for in truth two דיינים would have been sufficient for קיום שטרות -

אלא משום דבעינן שיהא בית דין כדפרישית -

But three are required in order that it should be a בי"ד as I just explained.

For if there were only two it would also appear as if it is עד מפי עד.

תוספות offers an additional explanation why we may have thought that it is required that ביי"ד testify before the עדים:

ועוד אומר רבינו יצחק דסלקא דעתין דצריך להעיד בפניהם –

And furthermore says the ר"י that we would have thought that it is necessary to testify before ביי"ד -

משום דפעמים אין מכירין אלא על ידי שראו בלילה –

Because occasionally the דיינים recognize the signatures only because they saw the signatures and recognized them at night -

דליכא למימר לא תהא שמיעה גדולה מראייה –

For now we cannot say that hearing cannot be greater than seeing. תוספות original question was that wherever שמיעה is effective, then ראייה should certainly be effective; however here the ראייה was at night, and at night שמיעה from עדים is not effective -

דשמיעה אינה יכולה להיות בלילה –

For hearing testimony cannot be done at night -

כדאמר בר"ה (דף כה: ושם) דחקירת עדים כתחלת דין דמי –

As the גמרא states in ר"ה that examining the witnesses is considered as the beginning of a case -

ותחלת דין אינו אלא ביום כדאמרין בסנהדרין (דף לב:).

And תחלת דין can only be done by day as the גמרא states in סנהדרין.

Therefore since שמיעה is not effective at night, we cannot argue that the ראייה of the night time should be effective. In such a situation additional testimony would be required by day.⁴ We would therefore have thought that there is this concern that perhaps the דיינים saw it at night and we should always require hearing the testimony by day. The גמרא teaches us that there is no such concern; and unless we know that the דיינים [initially] recognized the חתימה by night, there is no need for them to hear the testimony by day.

² See פני יהושע. This is merely a concern how it may appear to people; however, it is not a real פסול of עד מפי עד (since the ביי"ד writes that we recognize [on our own] the עדים).

³ However by קידוש החדש it is not עד מפי עד and therefore it can be done.

⁴ See 'Thinking it over' # 1 (& 2).

SUMMARY

We may have thought that דיינים המכירים חתימת העדים are required to hear testimony either because otherwise it seems like עד מפי עד or because of a concern that the דיינים recognized the חתימות at night.

THINKING IT OVER

1. תוספות explains (in the second תירוץ) that if they saw at night it is not valid.⁵ However what does it matter that they saw it at night; they are seeing it now again by day when they are מקיים the שטר, why would we require testimony from עדים?⁶

2. What would the ruling be if indeed the בי"ד recognized the signatures at night (only); is הגדת עדות required or not?⁷

⁵ See footnote # 4.

⁶ See משכנות הרועים אות תקיא and מהרש"א הארוך.

⁷ See אילת אהבים.