

**ולא אמר להם אתם עדי הכי נמי דלא הוו קידושי - 'you are my witnesses', will it also not be *Kidushin***

### **Overview**

The גמרא asked (rhetorically) is it because <sup>1</sup> אין שליח נעשה עד maintain that דבי רב שילא he was not told, 'be my עד'; if so then if a man was מקדש a woman in the presence of two עדים and he did not tell them, 'אתם עדי' would you also assume that it is not a valid קידושין? Obviously not! תוספות discusses when it is necessary to say 'אתם עדי'.

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**ופשיטא דהוו קידושין משמע דלא מצרכי לומר אתם עדיי כי אם בהודאה--**

**And it is obvious to the גמרא that it will be a valid קידושין even if they did not say 'אתם עדי'. It seems that generally there is no requirement to say 'אתם עדי' to the witnesses, except in a case of admission (as 'תוס' continues to explain) -**

**כדאמר בסנהדרין (דף כט,א) שאם אמר לחבירו אתה חייב לי מנה והודה בפני שנים -**

**As the גמרא states in מסכת סנהדרין that if he said to his friend, 'you owe me a hundred זוז', and the alleged debtor admitted in the presence of two witnesses that he owes him a מנה, nevertheless -**

**אם לא אמר אחד מהם אתם עדיי יכול לומר לו היום או למחר משטה אני בך<sup>2</sup> -**

**If one of them (either the debtor or the creditor) did not say, 'אתם עדי' to the witnesses, the alleged debtor can say to the creditor, either today or the next day, 'I was joking with you' when I admitted that I owe you money, and he is not required to pay based on his admission.<sup>3</sup>**

(qualifies and) makes a distinction between admitting to a claim and admitting voluntary:

**מיהו אי לא טעין לא טענינן ליה<sup>4</sup> -**

**However (in the previous case) if the debtor did not claim בך, משטה אני בך, we the בי"ד do not claim it on his behalf -**

**אבל עשוי אדם שלא להשביע עצמו<sup>5</sup> כגון אם הודה הלוח בפני שנים חייב אני לך -**

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<sup>1</sup> This refers to both a case of קידושין (where the שליח לקידושין is the עד for the קידושין) and also in the case of a loan (where the שליח of the לוח to pay off the loan is an עד that the loan was paid up).

<sup>2</sup> 'I know that I owe you no money so I was sure you were 'kidding' and I went along with the joke'.

<sup>3</sup> However, in other cases, such as witnesses to a transaction or קידושין, the עדים are acceptable even if no one said to them 'אתם עדי'. It is only by an admission (to a loan) that אתם עדי is required.

<sup>4</sup> [The ברייתא there continues and says] when the claim is brought against the לוח, the בי"ד does not prompt him and ask him perhaps you were just joking when you admitted to owing the money. Rather if he does not say בך משטה אני בך (but either denies his admission, or uses another argument), בי"ד will hold him liable based on the testimony of the עדים.

<sup>5</sup> It is the tendency of (some) people to make themselves (in the eyes of others) poorer than they really are (for various reasons). This is called שלא להשביע את עצמו. See רש"י there on the ד"ה אדם that עמוד אני מעות that עשוי לומר לבריות חייב אני מעות. לפלוני להתרחק מעין הרע.

**However, it is normal for a person not to ‘satisfy’ himself, meaning for instance, if a debtor admitted (voluntarily,) in the presence of two witnesses, ‘I owe you money’; the admission was voluntary -**

**בלא תביעת המלוה טענין ליה' אפילו כי לא<sup>7</sup> טען:**

**without a claim being made against him by the creditor; we the בי"ד will claim on his behalf (that perhaps you just said it עצמו את להשביע), even if the ליה did not claim it himself.**

### **Summary**

'משטה' is only required by an admission to owing money. בי"ד will not claim on behalf of a ליה for an admission to a claim, but will claim את להשביע on behalf of a voluntary admission without a claim.

### **Thinking it over**

In the case of עצמו את להשביע where the rule is ליה טענין even if he is not making the claim of להשביע, why does בי"ד claim it on his behalf, if it is true, why is he not saying it himself?!<sup>8</sup>

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<sup>6</sup> When the claim is presented in בי"ד (based on his admission) בי"ד will dismiss the claim and/or prompt the ליה and ask him perhaps you admitted it only עצמו את להשביע. See נחמן ר' there on the ב' עמוד.

<sup>7</sup> The assumption that the admittance was עצמו את להשביע is (stronger) when he made the admission on his own, since it is unusual for a person to voluntarily admit to witnesses that he owes someone money, when no claim is being made against him. Therefore we assume that the only reason he admitted, is so the עדים will ‘spread the word’ that this person is not as rich as it seems, for he owes people money. Therefore even if he does not say that he admitted עצמו את להשביע, nevertheless בי"ד will argue so in his behalf. [See ‘Thinking it over’.] However when there is a claim against him, and he admitted to it, we would rather assume that he is saying the truth, than to assume משטה אני. Therefore if he claims אני בך משטה we accept his claim, but if he does not claim it, the בי"ד does not prompt him to say so, since it is not that usual to joke about these matters when there is a claim against you.

<sup>8</sup> See משה הלל.