וליסלקו בי תרי מינייהו ולידיינו –

So let two of them remove themselves from them and they will judge

Overview

The גמרא taught that if a person with a vested interest in an asset, relinquishes his interest so he has no longer an interest in the asset, he may testify regarding this asset, since now he no longer has a vested interest. The גמרא cited a ברייתא which stated that if a ספר תורה was stolen from a city, the inhabitants of that city cannot testify nor can they be judges in this matter, since they have a vested interest in this ס"ת. The גמרא asked why two of the inhabitants cannot relinquish their interest in the ס"ת, so they will be able to testify. תוספות explains how relinquishing their interest makes them qualified witnesses.

תוספות asks:

ואם תאמר והא בעינן תחילתו וסופו בכשרות -

And if you will say, how can the סילוק help, **for we require** from witnesses **that** by **the beginning and the end,** the witnesses **must be qualified** to testify[1]

והכא הוי תחילה בפסול[2] והוי כמו קרוב ונתרחק[3] -

But here at **the beginning** they were **disqualified, so it is like a relative who became distant,** where his testimony is not accepted; the same should apply here –

תוספות answers:

ואומר רבינו יצחק דלא שייך תחילתו בפסלות הכא כיון שאין פסלות תלוי בגוף אלא[4] בממון:

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[1] See later קכח,א. The 'beginning' means when they saw the testimony, and the 'end' means when they are testifying. The must be עדים כשרים both when they see and when they deliver their testimony. However here they were not כשרים at the beginning when they observed the thief stealing the ס"ת, for they first relinquished their interest only later when the thief was found and is being tried in בי"ד.

[2] At the time when they saw, they did not as yet relinquish their interest in the ס"ת, so they are not qualified to testify, for they have a vested interest.

[3] One who was related by marriage at the time of the incident, cannot testify regarding his relative, and even later when his wife died so he is no longer related, nevertheless he still cannot testify regarding this incident, since he was related at the time of the incident. We require תחילתו וסופו בכשרות regarding a קרוב, the same rule should apply regarding נוגע בעדות.

[4] It is possible to explain תוספות answer that a פסול קרוב is an intrinsic פסול, not necessarily because we are concerned he will lie (as the example always given that משה ואהרן are פסול to testify together since they are related; there is no concern that they are lying) therefore if they were פסול בתחלה that means that there was no עד at the scene. However the פסול of נוגע בעדות is not that he is פסול בעצם, but rather we are afraid that he may lie, because of his vested interest; once that issue is resolved that he no longer has a vested interest, we can accept his testimony. The concern by a נוגע בעדות is (only) at the time of the testimony, not at the time of the incident, but by a קרוב the problem is (also) at the time of the incident. See נחלת משה for alternate explanations.

And the ר"י says that the rule of **תחילתו בפסלות** (which disqualifies a קרוב) **is not applicable here** regarding נוגע בעדות, **since this פסלות is not dependent on the body** of the עד (as it is by a קרוב), **but rather** this פסלות is only **regarding a monetary** interest, and as soon as this interest no longer exists, the עד is כשר.

Summary

The requirement of תחילתו וסופו בכשרות is only regarding a פסול הגוף (like קרוב), but not regarding פסול נוגע בעדות (which is a פסול ממון).

Thinking it over

תוספות asks his question that we require תחילתו בכשרות on the ברייתא of the ת"ס. Why did תוספות not ask the same question on שמואל who ruled that השותפין מעידין זה לזה, and we established it in a case where he relinquished his interest in the partnership; but it is not תחילתו בכשרות?![5]

[5] See חתם סופר and נחלת משה.