

על כתב ידן הן מעידין – They testify concerning their signature

OVERVIEW

The משנה cites a dispute between רבי and רבנן concerning קיום השטר through the עדים themselves. רבי maintains that each חתימה requires two עדים for themselves; while the חכמים maintain that each חתימה can be his own מקיים himself. The גמרא explains their מחלוקת as follows. רבי maintains that the עדים merely say that this is their signature (they are not testifying concerning the content of the שטר). Therefore two עדים are required for each חתימה (it can be the two עדים themselves). This is similar to a case where other עדים are the חתימות; two עדים (they may be the same two עדים) are required to be each מקיים חתימה. The חכמים, however, maintain that the עדים, who are being מקיים the שטר are (really) confirming what is written in the שטר.¹ When two עדים testify that the content of the שטר is true, that is a valid קיום. It is not clear, however, why רבי and רבנן assume their respective positions. Is it because they judged and found the intent of the עדים to be so; or is it something more basic in the application of the קיום through חתימה עדי? Our תוספות prefers the latter view.

נראה דלרבי אפילו אומרים בפירוש דמעידין על מנה שבשטר –

It seems to תוספות that according to רבי who maintains that על כתב ידן הן מעידין, then even if the עדים explicitly state that they are testifying (not [merely²] on כתב ידן, but rather [also]) on the loan of the מנה which is written in the שטר, nevertheless -

חשיב כאילו מעידין על כתב ידן –

It is considered as if they are testifying (only) about their signatures (and two עדים are required for each חתימה).³

וכן לרבנן אפילו אומרים בהדיא דעל כתב ידן הן מעידין⁴ –

And similarly, according to the רבנן who maintain that על מנה שבשטר הן

¹ When they say כת"י הוא זה, it is implicit in their statement that everything written in the שטר is true.

² It seems that they are testifying כת"י הוא זה, and are adding that they remember the loan.

³ The explanation given is that even if they testify that the loan took place, nevertheless there is no קיום if there are no two עדים that are each מקיים חתימה. At best it would only be a פ"פ מלוה. See פנ"י וכו'. See 'Thinking it over' # 1.

⁴ It would seem that they are saying we are testifying only to the veracity of our signatures. However it (seemingly) cannot mean that they are saying that they do not recall (at all) what the שטר states. See תוספות כא, (בסופו) ד"ה ור"י previous.

even if the **עדים openly declare that they are merely testifying about their signatures**, nevertheless it is considered that they are testifying על מנה ⁶ (חתימה⁵ his own מקיים עד and each שבשטר

proves his assertion that stating a change of intent is irrelevant:

דאמרינן בסמוך ואי ליכא תרי אלא חד היכי נעביד –

For the גמרא **shortly discusses: ‘what should be done if there are no two outside עדים who recognize the signature of one of the signers; rather there is only one עד who recognizes his signature’.**⁷ The fact that this is problematic –

משמע דלא יועיל לרבנן אם יעידו בהדיא על כתב ידן –

indicates that even if the עדים will explicitly testify concerning their signatures only, it will be of no avail to change the thrust of their testimony from עד מנה שבשטר to כתב ידן. Otherwise (the גמרא should have answered) let the surviving עד explicitly state that he is testifying only על כתב ידו; which will therefore require two עדים to authenticate each signature. The surviving עד together with an outsider will be able to authenticate both signatures. The fact that this solution is not offered proves that it makes no difference what the עדים state; their testimony is directed in the appropriate manner, regardless of their intent. תוספות proved his assertion according to the רבנן, and presumes that the same applies according to רבי.⁸

SUMMARY

על כת"י or על מנה שבשטר retain their respective position whether רבי ורבנן, regardless of what the עדים proclaim.

THINKING IT OVER

1. על מנה שבשטר even if they say רבי maintains that according to רבי, nevertheless two עדים are required for each חתימה; because in order for it to

⁵ See footnote # 3. Nevertheless, the נתיב"מ explains that (according to the רבנן) this is מקולי קיום. Once we know that the loan took place (and each עד verifies his signature) it is considered a שטר מקיים.

⁶ The dispute between רבי ורבנן, whether מנה שבשטר הן מעידין or על מנה שבשטר הן מעידין, is not dependent on the intention of the עדים; but rather it is intrinsically bound with the basic nature of חתימה עדי חתימה; it is either a קיום of the signatures (רבי), or a קיום of the loan (רבנן).

⁷ The גמרא asks (according to the opinion that (עמשבשה"ם) what is to be done in a case where one of the עדי חתימה died before he authenticated his signature. In this situation two עדים are required to be מקיים his חתימה. However if there is only one (outside) עד to be מקיים the חתימה of the deceased עד, there is a difficulty, for we cannot have the surviving עד join him in being מקיים the חתימה (as the גמרא explains). [This difficulty does not exist if we maintain עכתי"ם (see ונפקא ד"ה ונפקא)] The גמרא offers a solution to this problem.

⁸ See ‘Thinking it over’ # 3.

be a מקוים must be חתימות the מלוה בשטר.⁹ Why then does תוספות conclude and say 'חשיב כאילו מעידין על כת"י'; this is seemingly irrelevant?! תוספות should have said מ"מ צריך שני עדים על כל חתימה or something similar!

2. לחידודא. When תוספות is discussing רבי, he writes 'בפירוש'; while by the רבנן he writes 'להדיא'?! תוספות concludes by רבי that 'חשיב וכו'; however by the רבנן there is no (such) conclusion?

3. How does the proof for the רבנן, (certainly) apply for רבי?!¹⁰

⁹ See footnote # 3.

¹⁰ See footnote # 8.