**אין נאמנים - They are not believed**

Overview

If a שטר is מקוים and the עדי השטר testify that they were פסולי עדות when they signed the שטר, they are not believed.[[1]](#footnote-1)

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תוספות anticipates a difficulty:

**הכא[[2]](#footnote-2) ליכא לאקשויי דלהימנו במגו דאי בעי אמרי פרוע הוא[[3]](#footnote-3) -**

**We cannot ask here that we should believe** their claim that they were פסול; **since** they have a **מיגו, for if they wanted they** could have **said it is paid up.** If these עדים would have testified that this is indeed our signatures however, the loan was already paid by the לוה; they would be believed and the לוה would not have to pay. Therefore we should believe them as well that פסולי עדות היו, and the לוה should be exempt from paying.

תוספות answers that the מגו is not effective:

**דכיון דמקויים הוא הוי מגו במקום עדים כדפירשנו[[4]](#footnote-4) –**

**for since** the שטר **is authenticated;** as it states in the משנה that כתב ידם יוצא ממקום אחר, therefore **it is a מגו that contradicts עדים, as we explained** in the previous תוספות. When a שטר is מקויים, it creates an אנן סהדי that it was signed by כשרים. The claim of these עדים is that they were פסולים. Their claim contradicts the אנן סהדי. A מגו is not effective when the claim contradicts עדים.

תוספות offers another explanation why they are not believed:

**ועוד[[5]](#footnote-5) דחוזרים ומגידים הם וכיון שהגיד שוב אינו חוזר ומגיד כדאמרינן בגמרא –**

**And furthermore,** this claim that they were פסולים (which is offered after the שטר is מקוים), is considered **that they are** **retracting and testifying** anew**.** This they cannot do, for there is a rule **that once he testified, he cannot retract** his previous testimony, **and testify** differently, **as it is stated in the גמרא** (immediately following the משנה).The שטר is already מקוים. The שטר states in the name of the עדים that the לוה owes money. These עדים are now claiming that they were פסולי עדות and the שטר is פסול. This in effect means the לוה owes no money. This is a contradiction to their previous testimony. Therefore the claim of פסולים היינו, which disqualifies the שטר, contradicts their original testimony that the לוה owes the money.

תוספות offers a final explanation why they are not believed with a מגו:

**ועוד[[6]](#footnote-6) דבשני עדים לא אמרינן מגו[[7]](#footnote-7) -**

**And furthermore** there is a rule **that by two witnesses** the rule **of מגו does not apply**. A מגו is effective only when there is one person making a claim and he has a מגו. However by two people who are making a claim even though they have a מגו, they are not believed.

תוספות responds to an anticipated a question:

**וברישא נאמנים משום דאי בעי שתקי:[[8]](#footnote-8)**

**However, in the רישא** of the משנה the עדים **are believed** on account of a מגו, to claim פסולי עדות היינו. In the רישא we do not say מגו בי תרי לא אמרינן! B**ecause if they chose** they could have been **silent** and not testify at all. The מגו of the רישא is that the עדים did not have to testify that כת"י הוא זה, then there would be no שטר. This type of a מגו that אי בעי שתקי is effective even by two עדים. [[9]](#footnote-9)

Summary

The עדי השטר are not believed to claim פסולים היינו (if the שטר was מקוים) with a מגו of פרוע because: a) it is a מגו במקום עדים, b) they are חוזר ומגיד, and c) מגו בי תרי לא אמרינן except for a מגו דאי בעי שתקי.

Thinking it over

1. What is the claim of the לוה; is it פרוע or מזוייף or something else?[[10]](#footnote-10)

2. תוספות answers that it is a חוזר ומגיד.[[11]](#footnote-11) Seemingly תוספות question was that they should be believed because of a מיגו; not because of הגדת עדות. By מיגו there is no problem with חוזר ומגיד, as evidenced in the רישא.[[12]](#footnote-12)

1. There is a dispute whether they are not believed at all and it is a שטר כשר, or they are not believed to nullify the שטר; the status of the שטר remains suspended (see previous תוספות ד"ה הרי footnote # 1). [↑](#footnote-ref-1)
2. תוספות uses the word הכא to indicate that the ensuing answers are applicable only 'הכא', according to the מסקנא that כיון שהגיד שוב אינו חוזר ומגיד; however according to the הו"א of רב"ח, these answers are not applicable. See [TIE] ‘Thinking it over’ # 2 in תוספות ד"ה מחמת on this עמוד. [↑](#footnote-ref-2)
3. They are believed to claim פרוע, since that is not contradicting anything that was implied in the שטר [↑](#footnote-ref-3)
4. ד"ה הרי. A מגו במקום עדים means that the claim (not the מגו) contradicts עדים. [↑](#footnote-ref-4)
5. The necessity for an additional explanation may possibly be understood if the following is assumed: אין נאמנים means that they are not believed at all, and the מלוה can collect with this שטר. תוספות question, that they should be believed with the מגו of פרוע, is that the שטר should be destroyed, for if they would claim פרוע the שטר would be void. תוספות first answer that it is a מגו במקום עדים is sufficient to explain why the שטר cannot be destroyed since there is no מגו. However, we still may not collect with this שטר, since it is תרי ותרי; the שטר מקוים versus their testimony that they were פסולי עדות. The second answer is that כיון שהגיד שוב אינו חוזר ומגיד removes the תרי ותרי; their second testimony is discarded. There is only the שטר מקוים, and the מלוה can collect with this שטר. The answer of חוזר ומגיד alone is also insufficient, for even though they cannot be believed as עדים, nevertheless they should be believed on account of the מגו; to have the שטר suspended. Therefore each answer complements the other. וצע"ג. See ‘Thinking it over’ # 2. [↑](#footnote-ref-5)
6. Perhaps this answer applies even if we were to assume that this is not considered a מגו במקום עדים. The fact that a שטר is מקוים does not necessarily create an actual אנן סהדי that they are עדים כשרים, especially if the עדי השטר themselves claim that they were פסולי עדות, and in addition they also have a מגו. [↑](#footnote-ref-6)
7. The popular explanation is that the idea of a מגו is that if he was lying he could have said a more effective lie. This proves he is telling the truth. If however there are two claimants, we suspect that perhaps they are lying and the reason they are not claiming the more effective lie is that each one thinks that the other may have not thought of the more effective lie. See תוספות יט,ב ד"ה ואם. [↑](#footnote-ref-7)
8. It would seem from this answer that when the משנה states in the רישא, that הרי אלו נאמנים, it means they are believed (only) to suspend the שטר, but not to destroy it. Their מגו is that אי בעי שתקי, in which case the שטר would not be destroyed, but merely suspended. [↑](#footnote-ref-8)
9. One explanation is that there is no concern what the other עד will say (see previous footnote # 7); as long as one עד will not testify, the שטר will not be מקוים. Another explanation is that a מגו דאי בעי שתקי is so evident that no one doubts whether the other עד is aware of this option. [↑](#footnote-ref-9)
10. See תוספות יט,א ד"ה טעמא [footnote # 8]. [↑](#footnote-ref-10)
11. See footnote # 5. [↑](#footnote-ref-11)
12. קושיית הגרע"א. See משכנות הרועים אות רג ורד. [↑](#footnote-ref-12)