**או דלמא תנאי מילתא אחריתי הוא –**

**Or perhaps a stipulation is a separate issue.**

Overview

תוספות previously[[1]](#footnote-1) explained that (according to ר"נ) לא אתי ע"פ ומרע לשטרא. If the עדי השטר discredit the שטר through their testimony (as in the cases of אמנה\מודעא) they are not believed. רבא followed this up with a query to ר"נ; what is the ruling if the עדים stated (כת"י הוא זה, however) there was an oral stipulation concerning this transaction (which was not yet fulfilled). On one hand it seems that they are מרע לשטרא since according to their testimony the שטר (as is), is not valid (unless the stipulation is fulfilled). On the other hand perhaps they are not מרע לשטרא since the תנאי is a מילתא אחריתי. There are two ways how to interpret this concept of תנאי מילתא אחריתי. תוספות will explain that only one is acceptable.

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**פירוש[[2]](#footnote-2) לדבר אחר הן באין ולא לעקירת השטר אלא תוספת בעלמא -**

**The explanation** of תנאי מילתא אחריתי הוא and that therefore it is not discrediting the שטר, is that **the** עדים **are testifying** תנאי היו דברינו **for a different** purpose **and** the עדים **do not** intend **to uproot the שטר** entirely **but rather** the עדים intend to **merely add** details –

**שמפרשים עדותן היאך ועד השתא קיים השטר ואינו נעקר אם יתקיים התנאי -**

**They are defining** in **what** manner **their testimony** in the שטר is effective, **and until now the שטר is valid and** the שטר **will not be voided if the stipulation is fulfilled –**

**הלכך אין כאן הורעת השטר[[3]](#footnote-3) -**

**Therefore there is no discrediting of the שטר**; that we should say לא אתי ע"פ ומרע לשטרא.

תוספות will now mention the rejected explanation:

**אבל אין לפרש מילתא אחריתי היא לגמרי ולא שייך לעדותן ראשונה -**

**However, we cannot interpret** the phrase מילתא אחריתי to mean that the תנאי **is a completely separate issue and it has no connection to their first testimony** of כת"י הוא זה. Rather we should view their testimony of תנאי היו דברינו –

**כמו שאם היו מעידין שהוא פרוע שהן נאמנים[[4]](#footnote-4) -**

**As if they were testifying that** the שטר **was paid up where they would** obviously **be believed.** We should (perhaps) view תנאי the same as פרוע, and believe them. תוספות rejects this interpretation.

תוספות will now explain why this last interpretation is incorrect:

**דאם כן מאי פריך בסמוך[[5]](#footnote-5) אי הכי[[6]](#footnote-6) אפילו תרי נמי[[7]](#footnote-7) -**

**For if it were so;** that תנאי is similar to פרוע; it is totally irrelevant to their original testimony of כת"י הוא זה, then we have the following difficulty; **what** does the גמרא **shortly ask, ‘if this is so, then it should also** be the same by **two** עדים who say תנאי היו דברינו’. The עדי התנאי should not be believed. This concludes the quote from the גמרא.

תוספות will now explain the difficulty with the אין לפרש; namely, that the sגמרא' question (that the עדי התנאי should not be believed) is not understood:

**דכיון דתנאי מילתא אחריתי היא לגמרי -**

**For since** the אין לפרש maintains **that** the testimony concerning a **תנאי is a totally different issue**, then -

**תרי נאמנים אפילו בכתב ידם יוצא ממקום אחר -**

**Two** עדים **are believed** to testify on a separate issue **even if their signatures are available from elsewhere;** the שטר can be מקויים without them, nevertheless the עדים will be believed to testify on a מילתא אחריתי, such as פרוע. [[8]](#footnote-8) Therefore they should also be believed to claim תנאי היו דברינו, since according to the אין לפרש the claim of תנאי is similar to the claim of פרוע. The sגמרא' question is not understood. How can the גמרא compare two עדים to one עד?! If two עדים claim תנאי, they are believed just as they would be believed if they claim פרוע (since they are not in conflict at all with the שטר). It is a regular testimony of two עדים. There is no cause not to believe them –

**אבל חד לעולם אימא לך דלא מהימן כי היכי דלא מהימן לומר פרוע הוא[[9]](#footnote-9) -**

**However** when **one** עד claims תנאי, **I will certainly say that he is not believed just as** one עד **is not believed to claim** the שטר **is paid up** if the מלוה is in possession of a שטר מקויים**.**

**לכך נראה כדפירשנו:[[10]](#footnote-10)**

**therefore it appears** that מילתא אחריתי means **as we explained it;** that it is merely a modification of the שטר, but not that it is totally unrelated to the שטר as the אין לפרש maintained.

Summary

עדים who maintain תנאי היו דברינו are believed, since תנאי מילתא אחריתי. The תנאי is not discrediting the שטר, but rather it is merely a modification of the שטר. [[11]](#footnote-11) (However the תנאי is not considered to be something irrelevant to the שטר as, for instance, the claim of פרוע).

Thinking it over

1. What is the ruling if one עד claims תנאי;[[12]](#footnote-12) according to תוספות and according to the 'אין לפרש'?

2. תוספות proved from the גמרא that the אין לפרש is incorrect. However, why indeed did the גמרא not accept the view of the אין לפרש?!

1. תוספות ד"ה אמר ר"נ. [↑](#footnote-ref-1)
2. The term פירוש in תוספות (usually) indicates that תוספות is rejecting a more obvious understanding of the text. תוספות will shortly cite the rejected interpretation. [↑](#footnote-ref-2)
3. It is different than אמנה\מודעא. In the cases of מודעא\אמנה it is the intent of the עדים to testify that (even though we signed the שטר and it was properly delivered, nevertheless) the שטר is (presently) meaningless, since it is a מודעא\אמנה. However by תנאי they are testifying that the שטר is valid, provided that the stipulation is met. They are merely modifying their קיום השטר. They are not מרע לשטרא. Therefore they are believed (as ר"נ concludes). It would seem that if the time has already expired to be מקיים the תנאי, it would be considered הורעת השטר (see הפלאה). See (however) רש"י ד"ה תנאי. [↑](#footnote-ref-3)
4. According to the first interpretation, the parts of their (somewhat conflicting) testimony, כת"י הוא זה and תנאי היו דברינו, are part of one (seemingly conflicting) testimony. However we can reconcile them by assuming that תנאי היו דברינו is merely a modification of כת"י הוא זה. The עדים had no intent of discrediting the שטר. According to the אין לפרש, however, we view the עדים as offering two separate and unrelated testimonies. One, that the שטר was prepared and delivered properly and for all intents and purposes is a valid שטר in all respects. Two, that the שטר does not really bind the parties, since an oral stipulation was made, which limits the power of the שטר. [It is as if they would say כת"י הוא זה, but the שטר was פרוע a week after he borrowed the money.] If we assume the second interpretation (the אין לפרש); the idea that תנאי מילתא אחריתי allows their testimony to be accepted, is more readily understood (since there is no conflict between the two separate testimonies), than if we assume the first interpretation. Nevertheless תוספות rejects the אין לפרש because of the ensuing difficulty. [↑](#footnote-ref-4)
5. רב פפא ruled that if one of the עדים said there was a תנאי and the other said there was no תנאי, the שטר is valid without קיום התנאי. The reason is that since both עדים testify to the validity of the שטר (כת"י הוא זה), and only one עד testifies that there is a תנאי, therefore one עד cannot oppose two עדים. [↑](#footnote-ref-5)
6. That we consider the עד who claims there was a תנאי as agreeing to the קיום השטר, however he qualifies the שטר and opposes the עדי השטר, by saying תנאי (but not that he is considered as if he is not agreeing to theקיום השטר by saying תנאי, and thus invalidating the שטר [for there is only one עד המקיים]). [↑](#footnote-ref-6)
7. The sגמרא' question is; it should be considered as two עדים (who maintain there is a תנאי) against two עדים (who signed the שטר). Why should the עדי התנאי be believed?! [↑](#footnote-ref-7)
8. תוספות may (also) be alluding to the question posed on the אין לפרש by the תוספות הרא"ש. If תנאי is similar to פרוע, then תנאי should be believed even if כת"י יוצא ממק"א. From the entire גמרא it seems that all the discussions are only if אין כת"י יוצא ממק"א (see previous תוספות ד"ה אמר ר"נ). [↑](#footnote-ref-8)
9. An עד אחד is not believed by דיני ממונות (against a שטר). [↑](#footnote-ref-9)
10. According to תוספות, the question א"ה תרי נמי, is readily understood. If we assume that when one עד claims תנאי he is not believed, it must be because his testimony of תנאי is not עוקר the שטר to repeal his קיום; but rather it is considered as if his original testimony of כת"י remains as a valid קיום, which he wishes to modify. This modification is not acceptable since it opposes the עדי השטר. Similarly when two עדים say תנאי they are also not being עוקר their קיום, but rather they choose to modify it. How can they be believed to modify the שטר since it is a שטר מקוים; it is תרי ותרי?! [The גמרא concludes that even by an ע"א who says תנאי, the תנאי must be fulfilled (to validate the שטר), for since he is not מרע לשטרא, his modification is accepted (in regards to his testimony), and therefore there are no two עדים who testify that the שטר is valid as is. (See רש"י ד"ה אי הכי, ואילך).] See ‘Thinking it over’ # 1. [↑](#footnote-ref-10)
11. There are four levels (of [לא] אתי ע"פ ומרע לשטרא) according to ר"נ. 1. קטנים ואנוסים are believed since there never was a valid שטר. 2. מודעא ואמנה are not believed since they are מרע לשטרא. 3. תנאי is believed for it is a מילתא אחריתי and not עוקר the שטר. 4. פרוע (by the לוה) is believed since he is not מרע לשטרא. [↑](#footnote-ref-11)
12. See footnote # 10. [↑](#footnote-ref-12)