

**רב הונא ruled; we seize it**

**רב הונא אמר תפסינן –**

## OVERVIEW

In the case where two people were arguing over the ownership of a boat, and one of them asked בי"ד, to seize the ship until he will bring witnesses that it is his; there is a dispute whether we seize the boat (רב הונא) or not (רב יהודה). There is a subsequent dispute if (for whatever reason<sup>1</sup>) בי"ד seized the boat (and no one brought proof), does בי"ד release the boat and rule כדא"ג (the view of רב פפא) or not (רב יהודה). Our תוספות discusses whether these two disputes are dependent on each other.

פירש הקונטרס<sup>2</sup> משום דמפקינן<sup>3</sup> –

The רשב"ם explained the reason רב הונא maintains תפסינן because he also maintains that בי"ד releases the ארבא after it seized it, if no proof was shown -

ורב יהודה דאמר לא תפסינן משום דאי תפסינן לא מפקינן<sup>4</sup> –

And ר"י who maintains that we do not seize the ארבא, that is because ר"י maintains that once בי"ד seizes the ארבא (at the request of either one or both of the litigants), בי"ד does not release it.<sup>5</sup>

תוספות disagrees with this interpretation:

ואין נראה לרבינו יצחק לתלות זה בזה –

And the ר"י does not agree to have the argument regarding תפסינן depend on the dispute concerning מפקינן -

מדלא פליגי הנהו אמוראי גופייהו במפקינן הנך דפליגי בתפסינן<sup>6</sup> –

Since these אמוראים who argue regarding מפקינן (namely ר"י ור"פ) are not the same אמוראים who argue regarding תפסינן (namely ר"ה ור"ה).

<sup>1</sup> See רשב"ם ד"ה א"ל.

<sup>2</sup> See TIE (previously) אמר ד"ה תוס' כט,א תוס' ד"ה אמר footnote # 1 as to the interpretation of 'פי' הקונטרס'.

<sup>3</sup> See רשב"ם ד"ה רב הונא.

<sup>4</sup> The גמרא states clearly that ר"י maintains (that if תפסינן, then) לא מפקינן.

<sup>5</sup> We can assume that כדא"ג is some resolution to the matter; however it is not as good as the resolution of עדים, therefore if the rule would be מפקינן, then בי"ד would be תפסינן pending the resolution of עדים, if no עדים appeared we can fall back to the lesser resolution of כדא"ג (by מפקינן). [This would be the reasoning of ר"ה.] However if we maintain לא מפקינן (for whatever reason) then we cannot say תפסינן, for then if there will be no עדים, there will be no resolution at all since לא מפקינן (and the ארבא would remain by בי"ד).

<sup>6</sup> If the explanation is according to the רשב"ם, it should have been ר"ה who maintains מפקינן and that would explain (according to the רשב"ם) why he maintains תפסינן.

offers his interpretation:

**לכך נראה דרב הונא דאמר דתפסינן אפילו למאן דאמר לא מפקינן –**  
**Therefore it is the view [of the ר"י] that ר"ה maintains even according to**  
**the one who maintains לא מפקינן (ר' יהודה), nevertheless we say** –

**דמהימנינא ליה שיביא עדים<sup>7</sup> –**

**Because we believe (the person who asks us to seize it for him until he brings**  
**proof) that he will bring witnesses that it belongs to him –**

**ורב יהודה דאמר לא תפסינן אפילו למאן דאמר מפקינן –**

**And ר"י who maintains לא תפסינן that is valid even according to the one who**  
**maintains מפקינן (ר"פ), for the ruling of** –

**היינו היכא דתפסינן כבר אבל לכתחילה לא תפסינן –**

**Is valid only where we were already תפסינן, however initially** –

**דחיישינן דלמא לא מיייתי עדים ולא נדע לברר של מי הוא ולמי להחזיר<sup>8</sup> –**

**Because we are concerned that perhaps he will not bring עדים and we will not**  
**know how to determine to whom the ארבא belongs and to whom it should be**  
**returned –**

**ולכך אין לנו ליכנס בדבר:**

**Therefore בי"ד should not be involved in this matter.**

## **SUMMARY**

The רשב"ם maintains that the disputes of תפסינן and מפקינן are dependent on each other, while תוספות maintains they are independent of each other.

## **THINKING IT OVER**

What would be the ruling if both parties asked בי"ד to be תופס<sup>9</sup>? Or if both parties asked בי"ד to be מפיק?

<sup>7</sup> We are assuming now that לא מפקינן. The one who is asking בי"ד to be תופס because he claims he has עדים, realizes that if he does not bring the עדים, he will lose any chance to acquire the ארבא (since לא מפקינן). If he has no עדים, it would be better for him that בי"ד rule now כדא"ג, so he has at least some chance of acquiring the ארבא. Therefore (since he is asking for תפיסה), we assume that he is confident that he will bring עדים (and he realizes that if the ruling will be כדא"ג he may lose).

<sup>8</sup> Once something is in the possession of בי"ד it may be appropriate (according to ר"פ) for בי"ד to release it and rule כדא"ג (for then there is some possibility that it will go to the rightful owner, as opposed to מפקינן), however to have בי"ד seize an item for which it would then be responsible to return it to its rightful owner, and perhaps not be able to do so, would be violating the integrity of the בי"ד. It is better not to be involved at all. [Perhaps this view would be better understood if we assume that כדא"ג is not an actual ruling of בי"ד, but rather an 'un-involvement' of בי"ד.]

<sup>9</sup> See footnote # 198\* חי' הריטב"א (בלוי).