אלא למאן דאמר מודה בקנס ואחר כך באו עדים דחייב מאי איכא למימר –

However what can we say according to the one who maintains that one who admits to a fine and afterwards witnesses came, he is liable.

Overview

The גמרא initially explained that the phrase ע"פ עדים[1] in the משנה is excluding a case where it was not completely ע"פ עדים; but rather it was a case of מודה בקנס ואח"כ באו עדים, he is פטור. The גמרא asks however, there is a מ"ד who maintains מודה בקנס ואח"כ באו עדים חייב; according to him what does the משנה teach us by saying ע"פ עדים. Our תוספות explains why we cannot say that our משנה is teaching us that by a קנס there is a חיוב to pay only if there are עדים; however if there are no עדים, then even if the מזיק admits to the היזק he is פטור.

תוספות anticipates a question and resolves it:

למודה בקנס ולא באו עדים כלל לא אצטריך –

It is not necessary for the משנה to state ע"פ עדים, in order to exclude a case **where he admitted to the fine, and עדים did not come altogether;** that in this case he is פטור since there were no עדים (only a מודה בקנס)[2] –

The reason it is not necessary for our משנה to teach us this rule, is -

דמתניתין היא במרובה (לקמן דף עד,ב) דעל פי עצמו פטור[3] –

For there is a משנה in מרובה פרק which states that concerning קנס **one is פטור if he admits it** (and there are no witnesses). Therefore we cannot say that our משנה is teaching us מודה בקנס פטור.

תוספות anticipates a refutation to this argument and rejects it:

דלא שייך תני והדר מפרש דאין מאריך שם יותר מבכאן:

For it is not feasible to say; 'he taught it and then explained it'[4]; for there in מרובה **he does not elaborate more than here.** Therefore the משנה here cannot be discussing the rule of מודה בקנס פטור.

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[1] It is evident that עדים are required by דיני קנסות. However by דיני ממונות the admission of the מזיק is sufficient. It is also self evident that if there are no עדים, and the מזיק denies culpability, that he is פטור.

[2] If we would assume that this is what the משנה is coming to teach us, it would resolve the entire issue. There would be no difficulty with the מ"ד who maintains מודה בקנס ואח"כ באו עדים חייב; for the משנה is excluding a case where no עדים came at all. Everyone agrees that the מודה בקנס is פטור.

[3] The משנה there states if witnesses attest that someone stole an animal and the thief admits to slaughtering it or selling it; the thief is liable only for כפל (which is על פי עדים), but not for the ד' וה' (for טביחה ומכירה), since we know of the טביחה ומכירה only ע"פ עצמו (there are no עדים for the טביחה ומכירה).

[4] Occasionally a תנא will mention a law briefly in one משנה and then expand on it in a subsequent משנה. Perhaps that is why the משנה discusses the rule of מודה בקנס פטור again in מרובה. However תוספות rejects this idea. See 'Thinking it over' #'s 1&2.

Summary

The משנה cannot be inferring the rule of מודה בקנס פטור for this is stated (in a similar fashion) in פרק מרובה.

Thinking it over

1. Seemingly here the משנה is merely implying the דין of מודה בקנס פטור, while in מרובה it is stating so emphatically; why should that not be considered a תנא והדר מפרש?!

2. Why cannot we say that our משנה teaches us the דין of מודה בקנס פטור; however in מרובה we are taught a greater [5]חידוש; that even if part of the היזק was ע"פ עדים (the גניבה [with the resultant קנס of כפל]), nevertheless for that part which was ע"פ עצמו (the טביחה ומכירה) he is פטור (and we do not say that since he is חייב on part of the קנס he should pay the entire קנס)! This should qualify these two משניות for the תנא והדר מפרש rule!

[5] See footnote # 3.