

## **Rav Kahana said, when the borrower admitted – רב כהנא אמר כשחייב מודה**

### **Overview**

רב כהנא ruled that if one found a note of debt, which was notarized, and dated that very same day (in which it was found), we return it to the lender. רב כהנא interpreted this ruling of ר"י in a case where the borrower admitted that he owes the money (therefore we return it to the lender). הנפק explains the need to mention תוספות.

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תוספות asks:

**תימה אם כן למה נקט הנפק<sup>1</sup> במילתא דרבי יוחנן<sup>2</sup> -**

**It is astounding! If indeed it is so that the ליה admits to owing the money, why does ר"י mention in his ruling that it was notarized?!**

תוספות answers:

**ויש לומר דנקטיה משום דיוקא דאי אין כתוב בו ביום אפילו כתוב בו הנפק -**

**And one can say; that he mentions הנפק because of the inference, that if it was not dated on that very same day (that it was found), then even if it contains a הנפק - דודאי ליה לא יחזיר דחיישינן לקנוניא<sup>3</sup> או לפשיטי<sup>4</sup> דספרא<sup>5</sup>**

**So we are certain that he borrowed the money, nevertheless it is not returned to the ליה, for we are concerned either for a swindle or the paltry payment for the scribe.**

### **Summary**

The rule of ר' יוחנן would be valid (according to רב כהנא) even if there was no הנפק, however ר"י mentioned הנפק to teach us that even if there is a הנפק, his ruling is valid

<sup>1</sup> A הנפק (an authentication [of the witnesses] by the בי"ד) assures us that a loan took place. However here since the ליה admits to owing the money there is seemingly no need for a הנפק, in order to return it to the ליה.

<sup>2</sup> The חידוש according to רב כהנא is that we are not concerned that the ליה (really paid this loan, but he) wants to use the שטר again for another loan (for which this שטר is invalid), however why mention הנפק.

<sup>3</sup> We are concerned (since some time has passed from the date on the שטר) that the ליה paid the מלוה, and he is admitting that it was not paid so the שטר will be returned to the מלוה, and the מלוה will illegally collect this note from the לקוחות who bought properties from the ליה after the date on the שטר (and divide the proceeds with the ליה), when in reality the loan was already paid and there is no longer a lien on the properties. See 'Thinking it over'.

<sup>4</sup> פשיטי are small coins (like פרוטות). We are concerned (since some time has passed from the date on the שטר) that the ליה paid the מלוה, but he wants to take another loan from this מלוה and he is loath to pay again a scribe to write another שטר, therefore he is falsely admitting that the שטר was not paid so the מלוה will receive the שטר and lend him the money with the security of the returned שטר, saving the ליה the coins to pay the סופר. See (however) יג,א ד"ה היינו [TIE footnote # 10].

<sup>5</sup> However when it was dated ביום, so it is highly unusual that the ליה already paid the loan. It is too far-fetched to assume both that he paid the loan (on the very same day he borrowed) and additionally that he is lying (when he says he did not pay) because of a קנוניא or דספרא.

only if it was dated בו ביום, otherwise there is a חשש קנוניא or פשיטי דספרא.

### **Thinking it over**

תוספות writes<sup>6</sup> that if the date was not בו ביום, the שטר is not returned to the מלוה out of concern for either קנוניא or פשיטי דספרא. However the גמרא (when explaining the חידוש of כהנא (רב) merely mentions the חשש of דספרא, but not of קנוניא, why does תוספות mention also קנוניא?<sup>7</sup>

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<sup>6</sup> See footnote # 3.

<sup>7</sup> See נחלת משה.