

לימא מתניתין דלא כבן ננס –

Shall we say that our משנה is not according to בן ננס?

OVERVIEW

maintains in the case of a חנוני על פנקסו that we cannot administer the oath to the חנוני (that he paid the worker) and to the worker (that the חנוני did not pay him) for we are causing one of them to swear falsely. This seems to contradict our משנה where each one claims that the entire טלית is exclusively his and nevertheless we administer an oath to both parties, seemingly causing one of them to swear falsely. The גמרא replied that the cases are not similar for by בן ננס there is certainly a שבועת שוא; however in our משנה it is possible that they both picked it up together and therefore their respective oaths of מחציה are true. This answer seems so obvious that Tosfos finds it necessary to explain why initially the גמרא suspected that there may be a contradiction between בן ננס and our משנה.

מצינו למימר¹ דידע שפיר דמתניתין אפשר דתרווייהו בהדי הדדי אגבהו –

It is possible to assume that the גמרא did indeed know that the case of our משנה is different from the case of בן ננס, since in our משנה there is the possibility that both litigants picked up the טלית simultaneously and therefore (in that case) there will be no שבועת שוא (as opposed to the case of בן ננס when there is always a שבועת שוא) –

ומכל מקום פריך שיחלוקו בלא שבועה אחרי שאפשר לבא לידי שבועת שוא² –

And despite knowing of this possibility, the גמרא still challenges that they should divide without a שבועה, since there is also the possibility that it will result in taking a false oath (in [most of] those cases where they did not pick it up together) –

ומשני התם ודאי איכא שבועת שוא³:

¹ See 'Overview'.

² [Perhaps the questioner assumed that בן ננס is reluctant to administer an oath (even) if there is (only) a [distinct] possibility that it may result in a שבועת שוא. The רבנן (who argue on בן ננס) rule that both the חנוני and the worker must swear in order to collect. The purpose of this oath (may be) that the one who is lying will admit to the truth and not swear falsely. Why then does בן ננס disagree with the רבנן, since there is the possibility that there will be no שבועת שוא!? This seemingly proves that according to בן ננס even the possibility of a שבועת שוא is sufficient to prevent administering an oath. Therefore in our משנה also, if there is a possibility of a שבועת שוא they should rather divide without a שבועה.] See 'Thinking it over'. See: א"מ # 214 and כ"ט for alternate explanations.

³ The emphasis of the answer is not on תרווייהו בהדי הדדי אגבהו for we are already aware of that possibility, but rather that by בן ננס there is a שבועת שוא.

שבועת **there is a certainty of a** **בן ננס** **answered that there** **גמרא** **And the** **שוא**⁴ (and therefore **בן ננס** prohibits it), however when there is merely the possibility of a **שבועת שוא**, and there exists [as well] the possibility that it will not be a **שבועת שוא**, then even **בן ננס** will agree that we administer the oath.

SUMMARY

Initially the **גמרא** assumed that even if there is possibility of **שבועת שוא**, then **בן ננס** will oppose it. The **גמרא** concluded that **בן ננס** is against a **שבועת שוא** only, but not a **שבועת שוא** **ספק**.

THINKING IT OVER

According to **תוספות**, the **גמרא** seems to be asking that there should be no **שבועת שוא** administered in our **משנה** (according to **בן ננס**), since there is a possibility of a **שבועת שוא**.⁵ If we are to follow this logic, then how can we ever administer a **שבועת שוא**; there is always the possibility that it is a **שבועת שוא**?⁶

⁴ By **בן ננס** if we follow through with the ruling and administer the oath to both parties, there will certainly be a **שבועת שוא**; however by **טלית** even if they both take the oath there still remains the possibility that it will not be a **שבועת שוא**.

⁵ See footnote # 2.

⁶ See **סוכ"ד אות קז** and **יד דוד**.