

ומה התם דאיכא דררא דממונא¹. ואיכא למימר כולה דמר –

And if there; where there is a דממונא; and we can assume it entirely belongs to one

OVERVIEW

Initially the גמרא explained the reason that there is no שבועה by סומכוס is because it is a דממונא², as opposed to our משנה where there is no דררא, therefore a שבועה is required. The גמרא challenges this; on the contrary, there is a greater need of a שבועה by סומכוס since the division cannot be valid (therefore we should impose an oath so that the liar will withdraw), as opposed to our משנה where there is the possibility that the division is valid (therefore there should be no need for a שבועה). Our תוספות qualifies the logic of this question.

גמרא explains that the תוספות –

לא פריך אלא אי סומכוס סבירא ליה כרבנן³ דבן ננס דלא חיישי לשבועת שוא⁴ –

Does not ask this question (that there is more reason for a שבועה by סומכוס than in our משנה), **unless** we assume **that סומכוס agrees with the רבנן** who argue **with ננס בן, and are not concerned of administrating a false oath**. If סומכוס follows the view of the ננס דבן, then it is understood why they should swear.

דלבן ננס⁵ אדרבה היכא דאיכא למימר כולה דמר פלגי בלא שבועה –

For if סומכוס would rule **according to ננס בן** that we do not administer an oath when we know that it will be false, **then on the contrary; where we can assume that it is entirely one person's** (as it is in the case of סומכוס)

¹ See the מהר"ם (and others) that according to תוספות the question of ומה התם וכו' is not based on דממונא for on the contrary because of דממונא, there should be no שבועה by סומכוס and a שבועה in our משנה, as pointed out previously בד"ה היכא. Rather the גמרא is asking that even though (as the מתוך initially answered) that by סומכוס there is a דממונא (and in our משנה there is no דממונא), nevertheless the concept of יכולה להיות אמת (or החלוקה יכולה להיות אמת) should take priority in deciding whether or not there should be a שבועה (as explained in the 'Overview'). See also following (הב') תוספות ד"ה ומה (הב'). In addition according to תוספות גירסא is not איכא דררא דממונא למר ואיכא דררא וכו', but rather איכא דררא דממונא ואיכא. [See תוס' on נח"מ]. למימר כולה למר.

² See previous תוספות ד"ה היכא that since there is an inherent doubt as to what occurred (דררא דממונא), therefore it is logical that each should receive half without a שבועה.

³ The רבנן argue with ננס בן in the case of the פנקסר על חנוני and maintain that both the חנוני and the worker swear to uphold their respective conflicting claims, even though one will definitely swear falsely.

⁴ Therefore in the case of סומכוס as well, both litigants should swear to uphold their conflicting claims (otherwise they will not be compensated), since it is יכולה להיות אמת. אין החלוקה יכולה להיות אמת.

⁵ ננס בן maintains that we do not administer an oath at all (since one will surely swear falsely), but rather the חנוני and the worker collect their claim from the employer בלא שבועה.

they should **divide, without** both the litigants **taking an oath** ⁶ -

משום דאיכא בודאי שבועת שוא:⁷

Because in the case of סומכוס **there is certainly a שוא! שבועת שוא**. Therefore there is no justification to make them swear, for one will swear falsely.⁸

SUMMARY

ננס maintains that we do not cause a שוא even if the outcome will be an unjustified פסק (as in the case of פנקסו and the cases of סומכוס).

THINKING IT OVER

1. תוספות explains that the current question of the גמרא of וכו' is only if סומכוס agrees with the רבנן and not with ננס. Why did not תוספות mention this point initially when the גמרא said כסומכוס דלא?⁹

2. Seemingly according to סומכוס the one that would have to swear (according the גמרא's question) would be the מוציא (the בעל הפרה [in the case of שור שנגח], or the בעל החמור [in the case of 'וכו' (המחליף וכו')]), but not the מוחזק; why therefore does תוספות consider it a שוא שבועת שוא?¹⁰

⁶ ננס allows both the חנוני and the worker to collect from the בעה"ב without a שבועה, even though they are causing an undue loss to the בעה"ב (he is paying twice)! [In fact in the case of ננס בן ננס we are knowingly causing a loss to the בעה"ב; as opposed to the case of סומכוס where we are unsure as to who is suffering the loss.] Here too, even though it is אמת יכולה להיות אמת (and someone will suffer an undue loss), nevertheless we cannot make them swear.

⁷ ננס maintains that preventing a שבועת שוא takes priority even if the outcome will be unjustified.

⁸ See 'Thinking it over' # 2.

⁹ See מהר"ם שי"ף.

¹⁰ See בל"י אות לט.