

**ותנא תונא אאיך דר' חייא. אנן סהדי דמאי דתפיס האי כולי –**

**And the תנא תונא is referring to the other חייא ר'. We are witnesses that whatever this one holds, etc.**

## **OVERVIEW**

מלוה initially taught (ר"ח קמייתא) that if two עדים partially support the loan concerning his loan, the לוח (who denied everything) is obligated to swear that he does not owe the remainder (that which the עדים do not testify about). The ר"ח קמייתא initially stated that our משנה of אוהזין supports גמרא. Each litigant claims that the other must give him the entire טלית. One claimant (ראובן) possesses half the טלית, which is considered as if עדים testify that he owns half the טלית. The result is that in order for the other litigant (שמעון) not to be obligated to give up the טלית completely, שמעון must swear. This seems (superficially) to parallel the case of רח"ק. The גמרא rejected this proof because in the case of רח"ק only the מלוה has עדים that partially support him, [if the לוח would have עדים to (partially) support him that he does not owe more than fifty, then he would certainly not be required to swear]; while in the משנה both litigants have עדים to support them and nevertheless they are required to swear. It is therefore obvious that the שבועה of the משנה is not connected to רח"ק. The גמרא recanted and said that the משנה supports אידך דר' who maintains that there is a שבועה מוב"מ even by הילך. There is a dispute between רש"י and תוספות how to interpret this proof.

**פירש רש"י<sup>1</sup> כיון דהוי כהעדאת עדים משתבע מדרבי חייא קמייתא<sup>2</sup> –**

**רש"י explained that since the holding of the טלית in the משנה is like עדים are testifying that half belongs to him, therefore each one swears on account of the first ruling of ר"ח, that when עדים support half your claim (as is the case in the משנה) the opposing party is required to swear on the other half.**

פירש"י disagrees with תוספות:

**וקשה כיון דלא מצי לאוכוחי הך ברייתא<sup>3</sup> דהילך אלא מכח קמייתא –**

<sup>1</sup> בד"ה ותנא תונא כו'.

<sup>2</sup> It (superficially) appears that רש"י (at this point) is ignoring the question of וכו' להאי סהדי דאנן. We are concentrating on the הילך aspect of this case. The case of the משנה is a case of הילך [because מאי דתפיס (in our משנה) because of the forgone conclusion of רח"ק [and our משנה is similar to רח"ק because הדידיה הוא]. There is a שבועה (in our משנה) because of the forgone conclusion of רח"ק [and our משנה is similar to רח"ק because הדידיה הוא]. The משנה teaches that הילך does not remove the חיוב שבועה, which is a proof to דר' חייא.

<sup>3</sup> The רש"י amends this to read 'בתרייתא'.

**And it is difficult to accept this explanation. Since we cannot prove this latter ברייתא of הילך, unless we accept the first ברייתא** - גמרא of ר"ה, then the latter **לימא ותנא תנא אקמייתא**<sup>4</sup> -

**should have said ותנא תנא on the first ברייתא** of ר"ה as well.

Tosfos offers his interpretation:

**לכך יש לומר דאנן סהדי לאו דוקא** -

**Therefore one can say, that the expression, that 'we are witnesses that whatever each one is holding is הילך'; is not precise -**

**דמאי דתפיס מחשבינן ליה השתא טפי מהעדאת עדים** -

**For that which he grasps is considered in his favor more than if witnesses merely testified** that it is his, but rather -

**וחשיב כאילו מודה ליה<sup>5</sup> דדידיה הוא**<sup>6</sup> -

**It is considered as if his adversary admits that it belongs to him.**

Tosfos (finally) asks:

**אך קשה דמכל מקום איכא למיפרך** -

**However, there is a difficulty with this explanation as well, for we can ask than in any event -**

**דמתניתין כי היכי דהאי מודה להאי נמי מודה להאי<sup>7</sup> ואפילו הכי קמשתבעי** -

**That in our משנה, just as one admits to the other, the other also admits to him and nevertheless they both swear -**

**כדפריך אקמייתא ומאי תיקן** -

**Just as the גמרא asked concerning the proof on the first ברייתא of ר"ה; so what is improved by saying the ותנא תנא on אידך דר"ה, when the same question remains.**

Tosfos answers:

<sup>4</sup> The אידך דר"ה teaches that הילך does not remove the מוב"מ. If we wish to substantiate this from the שבועה of our משנה (which is a case of הילך) we must first ascertain that our משנה is a case of מוב"מ. It can be a case of מוב"מ only if we assume רה"ק that העדאת עדים is the equivalent of מוב"מ. Therefore, argues Tosfos, we either prove both rulings of ר"ה or none. At this point Tosfos ignores the issue of וכו' כי היכא דאנן סהדי וכו'.  
<sup>5</sup> An admission from an adversary is stronger than witnesses, for witnesses can be contradicted but not an admission. See (both) מה על תוספות ד"ה on the previous עמוד. See (however) 'Thinking it over'.

<sup>6</sup> The explanation of the גמרא would be as follows. The משנה is a case of מוב"מ since מה דתפיס האי is stronger than עדים; it is as if his adversary is מודה to half. This הודאה is accompanied by הילך for הוא הילך and nevertheless he swears; proving אידך דר"ה. However, it does not prove רה"ק, for the חוב שבועה of the משנה is on account of מוב"מ and not עדים. (We are still ignoring the וכו' להאי וכו'.)  
<sup>7</sup> We cannot say that the משנה is a case of מוב"מ and הילך, since each one is admitting. It is more than obvious that if after making the initial claim and subsequent denial, the מלוה admits that he is owed only half and the לוה admits that he owes half, there is no שבועה. The המשנה has no association with מוב"מ!

**ויש לומר דהשתא נמי מוכח מכח טעמא דבסמוך –**

**And one can say; that even now (at this point in the discussion) the גמרא also depended on the reason the גמרא will mention shortly; namely that -**

**– אי הילך פטור לא הוי מתקני רבנן שבועה דליכא דכוותה באורייתא<sup>8</sup> –**

**If הילך is פטור from a שבועה, then the רבנן would not have instituted a שבועה for which there is no counterpart in the תורה -**

**אבל לרבי חייא קמייתא כי נמי בהעדאת עדים פטור –**

**However, concerning the first ר"ה there is no proof, for even if העדאת עדים is פטור from a שבועה in opposition to ר"ה, nevertheless -**

**מתקני רבנן שבועה במתניתין דחשיב הודאה במאי דתפיס חבירה<sup>9</sup> –**

**The רבנן would institute a שבועה in our משנה, for it is considered that each one concedes that part of the טלית which his friend is grasping.**

Tosfos is not satisfied:

**– דוחק דלפי זה הא דלא קאמר ותנא תונא אקמייתא –**

**And this explanation is lacking! For according to this explanation, the reason the גמרא did not say the תונא אקמייתא, is -**

**משום דמאי דתפיס חשיב כהודאה –**

**Because grasping is considered admission and not העדאת עדים -**

**וזו לא היתה פירכתו למעלה אלא מטעם כי היכי דאנן סהדי להאי<sup>10</sup> כולי:**

**But this was not his original refutation previously, but rather his refutation was that just as we are witnesses for this one, etc. we are witnesses for the other. Tosfos does not answer this question.<sup>11</sup>**

<sup>8</sup> It is obvious that the שבועה המשנה is not a שבועה דאורייתא of מוב"מ (because of the 'וכי היכי דהאי וכו' but rather a שבועה דרבנן. Nevertheless if הילך would be פטור משבועה, the חכמים would not make a שבועה in a case which is so similar to הילך.

<sup>9</sup> Even if עדים cannot be מחייב a שבועה, it would have no reflection on our משנה, for the שבועה of our משנה is based on מוב"מ since (according to תוספות) we consider האי דתפיס האי as if the other concedes it to him like a regular מוב"מ; it is not based at all on העדאת עדים as in רח"ק.

<sup>10</sup> Tosfos may be asking the following. We are now saying ותנא תונא is on the דר"ה (and we are dismissing the 'וכי היכי דהאי מודה להאי כו' with the understanding that the משנה is not a 'real' case of הילך by a מוב"מ; we are merely saying that if הילך would be פטור מדאורייתא, then our משנה would not have made them swear even דרבנן. We can therefore argue that our משנה is not really a case of מוב"מ but rather of העדאת עדים as we originally maintained (that it parallels רח"ק). The question of כי היכי דאנן סהדי וכו' we can safely dismiss (as we are dismissing it now concerning the דר"ה). We will say that if there would be no שבועה by דאורייתא then the משנה would not institute a כוותיה באורייתא שבועה. The issue here is whether the משנה is a case of העדאת עדים (as we initially maintained) and we can prove רח"ק, or is it an issue of מוב"מ (as Tosfos currently maintains) and we cannot prove רח"ק. From the גמרא however it seems that the reason why there is no proof to רח"ק from the משנה is (not because the משנה is a case of מוב"מ and not העדאת עדים, but rather) because of כי היכי דאנן סהדי להאי וכו' and that difficulty applies equally to רח"ק and דר"ה.

<sup>11</sup> See 74. # א"מ"ה and גאון צבי.

## **SUMMARY**

הילך by שבועת מוב"מ the תנא ותנא רש"י proves that there is a מוב"מ from the fact that there is a שבועה in the משנה [through עדים of the עדות (which is similar to מוב"מ)] even though the משנה is a case of הילך.

rejects this for if the שבועת המשנה is on account of עדים so there is proof for ר"ה קמייתא as well.

explains that מאי דתפס is equivalent to a הודאה (במקצת). The שבועת משנה is then (similar to) a מוב"מ when there is הילך. There is no proof however to רח"ק (since our משנה is considered as מוב"מ but not עדים of the עדות).

The גמרא at this point already knew that the משנה is a שבועה דרבנן, however if הילך would be פטור there would be no שבועה דרבנן by הילך as the גמרא concludes shortly.

The difficulty that remains is that according to the גמרא there is no proof for רח"ק because כי היכי דאנן סהדי להאי וכו'. However according to תוספות there is no proof to רח"ק because תפס is בע"ד הודאת not עדים.

## **THINKING IT OVER**

claims<sup>12</sup> that when the גמרא states 'וכו' דמאי דתפס האי וכו', it does not mean that we are merely witnesses that it belongs to the תופס, but rather it means that it is considered as if each one admits that whatever the other is תופס, belongs to the תופס. Seemingly how can we say that each one is מודה that the other owns half; when each one claims שלי?<sup>13</sup>

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<sup>12</sup> See footnote # 5.

<sup>13</sup> See סוכ"ד אות יט and נה"מ.