

[הודה במקצת כלים חייב –

He admitted partially to utensils, he is חייב

OVERVIEW

The Tosfos states that in a case where the claimant demanded קרקע and כלים and the defendant admitted partially to owing some of the כלים, the defendant must swear on what he denies like a מודה במקצת. Our Tosfos explains why the defendant should not be believed with a מיגו.

Tosfos asks:

ואם תאמר יהא נאמן במיגו דאי בעי כפר בכלים והיה מודה במקצת קרקעות¹ –
And if you will say; he should be believed without a שבועה on the כלים which he denies with a מיגו for he could have denied all the כלים and partially admit to the קרקעות; in which case he would be believed without a שבועה; so now also even though he denies the כלים partially he should also be believed without a שבועה.

Tosfos answers:

ויש לומר שמא חפץ בקרקעות יותר² [ספרים אחרים³ :
And one can say; perhaps he desires קרקעות more than כלים.]

SUMMARY

There is no מיגו by הודה בכלים that he could have been בקרקעות for it is possible that he prefers קרקעות over כלים.

THINKING IT OVER

What is Tosfos' view regarding whether we say לאפטורי משבועה מיגו or not?
How can we prove it and why?

¹ Let us assume that the claim was for one hundred זוז of קרקע and one hundred זוז of כלים. The נתבע denies all the קרקע and admits to fifty זוז of כלים; in short the תובע claims two hundred זוז and the נתבע admits to fifty. The נתבע is required to swear a שבועת מוב"מ, since he is מודה בכלים and כופר בפירה (besides the קפירה). However this מוב"מ has a מיגו; he could have denied all the כלים and admit fifty זוז of קרקע (in which case there would be no חיוב שבועה [since אין נשבעין על הקרקעות]; he would merely pay the fifty). There is no מעיז פניו here for the claim and the counterclaim are still the same; the תובע wants two hundred and the נתבע admits to fifty. Therefore even if he is מודה בכלים he should be משבועה since he has this מיגו.

² There is no מיגו for he does not want to admit to owing the קרקעות, for he would rather keep the קרקעות and forgo on the מטלטלים.

³ This Tosfos was found in other manuscripts; not in the usual manuscripts where the Tosfos were copied from.