

ונימא שבועה שכולה שלי – ‘I swear it is all mine’

OVERVIEW

The גמרא asks, why do they each swear מחציה; שאין לו בה פחות מחציה; since each one claims כולה שלי, let them each swear that כולה שלי. Our תוספות qualifies this question somewhat.

תוספות responds to an anticipated question; how can they both swear כולה שלי, for then בי"ד will be causing (one of) them to swear falsely. תוספות explains

לרבנן דבן ננס¹ פריך דלא חיישי לשבועת שוא:

The question that that the text of the שבועה should be כולה שלי, is only according to the רבנן who argue with ננס בן ננס and maintain that there is no concern that בי"ד is causing a false oath.² However according to ננס בן ננס we cannot institute that both litigants should swear כולה שלי for then (at least) one of them would be swearing falsely.

SUMMARY

According to ננס בן ננס they certainly cannot each swear כולה שלי, for we are causing one to swear falsely.

THINKING IT OVER

It is apparent from תוספות that according to the רבנן דבן ננס, it is acceptable that it will come to a שבועת שוא. Seemingly however there is a difference between the case of חנוני and our משנה. In the case of חנוני, the owner is justified in demanding from both the חנוני and the worker to swear that he owes them, before he pays them; therefore we are not concerned about a שבועת שוא, in order to protect the employer. However here since we are eventually awarding each one only half, why should they each swear כולה שלי and cause a שבועת שוא when they can swear מחציה שלי?³

¹ See previously ג,ב and in כבן ננס (and in תוד"ה לימא in the ‘Overview’). To review: the employer authorized the חנוני to pay the employee. The חנוני claims that he paid the employee and wants to be reimbursed from the employer, while the employee claims that he did not receive his payment from the חנוני and wants the employer to pay him. The רבנן maintain that both the חנוני and the employee swear on their respective claims and the employer pays them both. While ננס בן ננס maintains that we cannot allow them both to swear since one will swear falsely; rather they both collect from the employer without swearing.

² The רבנן (perhaps) maintain that בי"ד is not causing a שבועת שוא; on the contrary by obligating them both to swear, בי"ד anticipates that the liar will refrain from swearing and admit to the truth.

³ See בל"י אות קכט.