

## For instance, a package came into his possession - כגון שבאת חבילה לידו -

### Overview

explained to רבא that the ברייתא which ruled that the owner can hire new workers (after the original workers quit), for up to forty or fifty זוז (a rate much higher than a worker receives), is where the owner has the original workers' tools in his possession (so he can sell them and use the proceeds to hire new workers, even if it is at a much higher rate).<sup>1</sup> Our תוספות explains this ruling.

תוספות asks:

**ואם תאמר אם כן פשיטא -**

**And if you will say; if indeed it is so** (that באת חבילה לידו) **it is obvious** that he can hire new workers for even forty or fifty זוז?!<sup>2</sup>

תוספות answers:

**ויש לומר דהוה אמינא אסמכתא<sup>3</sup> היא ולא קני -**

**And one can say; that one would have thought that** חבילה **guarantee is an אסמכתא, which is not effective;** therefore ר"נ rules that it is effective for it is not an אסמכתא.

תוספות offers an alternate solution, why it is not פשיטא:

**אי נמי דפועל לא נותן לו אלא לשכור בשויה ולא מן הכל:**

**Or you may also say; that one may have thought that the worker gave him the חבילה, only in order to hire other workers for the going market rate, but not to collect from the entire חבילה, and pay a higher wage.** Therefore ר"נ rejects this notion and maintains that he can hire workers for the entire value of the חבילה, even if he is paying the new workers above the market rate.

### Summary

The novelty of ר"נ's ruling is either that it is not an אסמכתא, or that the workers

<sup>1</sup> We assume that the workers deposit their tools by the owner as collateral to guarantee they will complete their work, so that if they do not, he can use the proceeds of the sale of these tools to hire other workers to complete the job. See מהר"ם. [It is also in their interest, for they are more likely to be hired if they can provide this guarantee.]

<sup>2</sup> See footnote # 1. They left it as a guarantee, so obviously he can use it.

<sup>3</sup> אסמכתא (literally, depends on) is a stipulation a person makes in a transaction (like, 'if I do not deliver the goods by a certain date, you can have it for free') trusting that it will never come to pass. In this case the person was sure he would deliver it in time and trusted himself that it would never happen, therefore this stipulation is invalid, and the buyer does not receive it for free, but must pay the original price. Here too one may have thought that this stipulation by the workers is merely an אסמכתא (they depended [on themselves] that they would finish the job). Nevertheless ר"נ rules that it is not an אסמכתא. See 'Thinking it over'.

implicitly agreed that he can use the entire value of the חבילה to pay an exorbitant rate.

### **Thinking it over**

תוס' maintains that this is not an אסמכתא.<sup>4</sup> Why indeed do both answers of תוס' assume that this is not an אסמכתא?<sup>5</sup>

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<sup>4</sup> See footnote # 3.

<sup>5</sup> See ריטב"א and תוספות הרא"ש.