לא דכולי עלמא לית להו דשמואל –

No; for everyone disagrees with *Shmuel*

Overview

שמואל ruled that if a לוה gave a משכון to a מלוה, which was worth (much) less than the amount of the loan, the rule is that if the מלוה lost the משכון, the לוה is exempt from paying him anything for the loan. Initially the גמרא wanted to say that ר"א ור"ע argue whether we follow שמואל's ruling (ר"ע) or not (ר"א). The גמרא concluded that no one agrees with שמואל. Our תוספות discusses whether or not the ruling is like שמואל (and in which case).

בפרק שבועת הדיינים (שבועות דף מג,ב ושם דיבור המתחיל מתניתין) פריך לשמואל מדתנן -

In פרק שבועת הדיינים the גמרא **challenges** this ruling of **שמואל** (that אבד המשכון אבדו מעותיו, even if the משכון is worth less than the loan), **from a משנה** which states -

סלע[1] הלויתיך עליו ושקל היה שוה[2] והלה אומר לא כי אלא שלשה דינרים היה שוה[3] חייב -

The מלוה claims; '**I have lent you a סלע for this** משכון, **but** the משכון (which I lost) **was worth a שקל', and the** לוה **claims; 'it is not so, but rather** the משכון **was worth three דינרים';** the rule is that the לוה **is liable** for the שבועה of a מודה במקצת.[4] This concludes the משנה.[5] The גמרא asks; according to שמואל -

ואמאי[6] לימא הא קבלתיה -

But why?! Let the לוה **claim, 'but you accepted** the משכון', and according to שמואל if the משכון is lost, the לוה is פטור from paying anything!

תוספות cites (two versions of) the s'גמרא answer:

וגרס בספרים וכן פירש בקונטרס מתניתין בדפריש כי קאמר שמואל בדלא פריש –

And the texts read and so too does רש"י explain the s'גמרא answer; '**our משנה** ([in שבועות] which maintains that the לוה is חייב) **is where they were explicit** (that the loss of the משכון will only cause an equal loss of the loan, but not the entire

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[1] A סלע is the equivalent of two שקלים or four דינרים (a שקל is two דינרים). [The משנה is on מג,א.]

[2] The מלוה maintains that the לוה now owes the מלוה a שקל (or two דינרים). We subtract the value of the משכון (two דינרים) from the amount of the loan (four דינרים), the remainder of two דינרים is what the מלוה claims he is owed.

[3] The לוה claims that the משכון was worth three דינרים, so therefore he owes the מלוה only one דינר (4-3=1).

[4] The מלוה is claiming two דינרים (see footnote # 2), the לוה admits to owing one דינר (see footnote # 3); this is a classic case of מודה במקצת; the לוה pays one דינר (which he admits) and swears that he does not owe the other דינר.

[5] This משנה can either follow the view of ר"ע (even if it was a case of אבד או נגנב), or ר"א (where the משכון was lost בפשיעה [in which case ר"א would agree that he is liable for the משכון]); providing they disagree with שמואל.

[6] The question on שמואל is that not only should the לוה not swear, but he should also be exempt from paying anything, since the מלוה lost the משכון!

loan), **when did שמואל rule** that אבד המשכון אבדו מעותיו, **when they were not explicit';** nothing was mentioned when the משכון was taken.[7] This concludes the s'גמרא answer according to פרש"י and גרסת הספרים -

להאי גירסא אתי שפיר דלא מצי למימר הכא כולהו אית להו דשמואל[8] -

According to this גירסא, it is well understood that the גמרא **here could not have said, 'everyone agrees with שמואל' -**

דאי רבי אליעזר אית ליה דשמואל למה ישבע ויטול -

For if ר"א agrees with שמואל, why can the מלוה **swear** (that it was lost or stolen, and will be exempt from paying for the משכון like a ש"ח) **and collect** his money, for -

נהי דלית ליה דרבי יצחק מטעמא דשמואל יפסיד הכל -

Granted that ר"א **disagrees with ר"י** (who maintains בע"ח קונה משכון), nevertheless **he should lose the entire** loan **because of s'שמואל ruling!** This is so -

אפילו לא פירש ולא שוי כל שכן בדשוי[9] -

Even if nothing was explicit and the משכון **was not worth** the loan, and it is **certainly** valid **בדשוי** that he should lose the entire loan -

ואי אייריי בדפריש שלא יפסיד לא היה חולק רבי עקיבא[10] -

And if we are discussing a case where the מלוה **was explicit, that he will not forfeit** the loan if the משכון was lost, **ר"ע would not have argued** with ר"א.

In summation; According to רש"י, the rule of שמואל applies by לא פריש; however by פריש the מלוה does not lose the loan (above the value of the משכון). Therefore ר"א cannot agree with שמואל for if he does, then if it was לא פריש, why does the מלוה collect the loan (partially), and if it was פריש, how can ר"ע maintain אבד המשכון אבדו מעותיו.

תוספות cites now another version of the s'גמרא answer in שבועות:

אבל לפי גרסת רבינו חננאל דגריס התם מתניתין בדלא פריש -

However according to the גירסא of the ר"ח; the text there reads (in the s'גמרא answer), '**our משנה** (which maintains he only loses כנגד המשכון) **is where they were not explicit;** no stipulation was made when the משכון was taken -

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[7] According to this version, the ruling of שמואל is a (greater) novelty; every time a משכון is taken, the מלוה risks losing his entire loan, even if the משכון is worth considerably less than the loan. See footnote # 11.

[8] תוספות is explaining why our גמרא here could not have said that כ"ע איתא לדשמואל (according to this גירסא); we could not explain the מחלוקת between ר"א ור"ע if they agree with שמואל, regardless whether it is a case of לא פריש (where s'שמואל ruling applies) or if פריש (where s'שמואל ruling does not apply), as תוספות continues to explain.

[9] If we follow שמואל that the entire loan is lost even if the משכון is worth less than the loan, then certainly the entire loan will be lost if the value of the משכון is equal to the loan. [The אפילו may be referring to the לא שוי. Alternately the אפילו can be referring to לא פירש that he will lose the loan, and כ"ש if he was פירש that he will lose the entire loan.]

[10] When a stipulation is made we follow it; whether the פריש was that nothing should be deducted from the loan if the משכון is lost, or whether only the value of the משכון should be deducted, in all case we follow the stipulation; how can there be a מחלוקת! See (however) 'Thinking it over'.

ושמואל בדפריש שיאבד כל מעותיו[11] -

And the ruling **of שמואל is where it was explicitly** stipulated **that** the מלוה **will lose all his money** if he cannot return the משכון -

וכן נראה לרבינו תם עיקר דאין סברא שיאבד כל מעותיו בדלא פריש -

And it also appears to the ר"ת that this is the **preferred** גירסא, **for it is not logical** that שמואל maintains **that** the מלוה **should lose all his money if לא פריש –**

תוספות will now explain how our גמרא assumed initially that ר"א ור"ע argue in שמואל:[12]

והכי פירושו למאן דמוקי פלוגתייהו בדשמואל דרבי אליעזר לית ליה דשמואל -

And this is the explanation according to the one who established the dispute between ר"א ור"ע **in שמואל; that ר"א disagrees with שמואל** (we do not say אבד המשכון (אבדו כל מעותיו) -

ואף על גב דפריש לא יועיל דאסמכתא[13] היא[14] -

And even if it was פריש, the stipulation **will not be effective, for it is an אסמכתא -**

וכיון דלא איבד מעות היתירים על המשכון גם מה שכנגד המשכון לא הפסיד[15] -

So since the מלוה **did not lose the money which is more that the משכון** is worth (for that stipulation is merely an אסמכתא), **he also does not lose** even the money **which corresponds to** the value of **the משכון;** the מלוה collects his entire loan -

כדאמר באיזהו נשך[16] (לעיל דף סו,ב ושם) דמי קאמר ליה קני לגוביינא[17] -

As the גמרא **states in איזהו נשך** פרק **; 'did** the לוה **say to the** מלוה; '**acquire** this משכון **to collect** your debt from it''? Since he did not say קני לגוביינא, the מלוה cannot collect his loan from the field in lieu of money. This concludes the view of ר"א (according to the ר"ח). תוספות continues explaining the view of ר"ע -

ורבי עקיבא סבר דלא מקרי אסמכתא[18] אלא היכא שאמר להסמיך חבירו על דבריו -

And ר"ע maintains that here **it is not considered an אסמכתא,** for an אסמכתא is

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[11] s'שמואל ruling is more readily understood according to this גירסא. See footnote # 7.

[12] Seemingly if שמואל is discussing a case of פירש; how can ר"א (or anyone) disagree with שמואל; it was פריש?!

[13] The term אסמכתא, literally 'a support', is where one person commits himself in an outlandish way; he promises to meet his friend tomorrow, and says, 'if I do not come there on time, I will give you a substantial sum of money', and he did not come on time. The rule is that he is not obligated to give him any money, since he never intended to give any money, for he was sure he would come in time, and he 'supported' himself (he relied) on this 'sureness' that he will not have to pay the monies promised. תוספות will shortly offer another example of an אסמכתא (footnote # 16).

[14] Therefore the מלוה never agreed to forfeit his large loan if he cannot return the measly משכון

[15] See later in this תוספות by footnote # 25.

[16] The case there is where a לוה told the מלוה if I do not pay back the loan within three years, this field (which is worth more than the loan) is yours. This is an אסמכתא and the לוה gets to keep the field (and can pay off the loan with money. רב פפא wanted to say that the מלוה can at least claim part of the field (which equals the value of his loan) as payment in lieu of money. The גמרא rejects this, saying; did the לוה say קני לגוביינא.

[17] We see from there that when there is an אסמכתא because the offer is outlandish, then there is no deal even כנגד החוב.

[18] Therefore since he was פריש, the מלוה loses the entire loan.

only when he says something in order **that his friend should rely (rest) on his words -**

כגון[19] אם אוביר ולא אעביד אשלם אלפא זוזי -

For instance if the שוכר says, '**if I will allow** the land to **lie fallow and I will not work it, I will pay you a thousand זוז'**; this is an אסמכתא which is worthless -

אבל הכא המלוה מחל כל חובו אם יפסד המשכון[20] -

However, here the מלוה is forfeiting his entre loan if he loses the משכון. This concludes the פר"ח.

תוספות asks on the פר"ח:

וקשה דלפי גירסא זו אמאי לא קאמר הכא כולי עלמא אית להו דשמואל[21] היכא דפריש -

And there is a difficulty; for according to this גירסא, why does not the גמרא **say here; 'everyone agrees with שמואל when he is פריש** (that cannot be the מחלוקת between ר"א ור"ע) -

והכא בשוי שיעור זוזי[22] ולא פריש ובדרבי יצחק קמפלגי –

Rather here (by the מחלוקת between ר"א ור"ע) it is a case **where the** משכון is **worth the amount of the loan and it was not פריש** (that אבד המשכון אבדו מעותיו), **and** ר"א ור"ע **argue in 'ר''י' -**

תוספות explains why the גמרא should have said כ"ע אית להו דשמואל:

דהא הלכתא כוותיה דשמואל[23] דרב נחמן ונהרדעי סבירא להו כוותיה התם -

For the הלכה is according to שמואל, since ר''נ and the נהרדעי agree with שמואל

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[19] This is a case where someone (an אריס/sharecropper) rented a field and committed to pay the owner either a certain amount of produce or a certain percentage of the harvest. The שוכר/אריס, in order to secure the deal, promises the משכיר that in case (you are worried that) I will not till the soil, etc. I guarantee you that I will pay you a thousand זוז if I do not work the field. The שוכר has no intention of (not working the field and certainly) giving the משכיר a thousand זוז. He is only saying this to have the משכיר rely and be supported (אסמכתא) by this promise. See footnote # 13.

[20] In the case of the אריס, the אריס is interested in acquiring his tenancy, so he makes an outlandish promise. We all understand that the אריס intends to till the land, etc. therefore his promise of a thousand זוז is an אסמכתא. However by the משכון, why did the מלוה stipulate or agree that אבד המשכון אבדו מעותיו, he has the upper hand. He can easily refuse the loan. There is no reason for him to exaggerate; therefore we say that (for whatever reason) he is serious that he is willing to forfeit the loan if he cannot produce the משכון. It is not an אסמכתא!

[21] The גמרא when it wishes to change its mind that they do not argue בדשמואל but rather בדר' יצחק, had two options (according to the ר"ח), it could have said כ"ע לית להו לדשמואל (which it did), or it could have just as well said כ"ע אית להו לדשמואל, why did the גמרא choose the former but not the latter?!

[22] When we previously assumed that בדשמואל קמפלגי their argument is both by שוי and לא שוי שיעור זוזי (and by פריש), but now that we maintain כ"ע אית להו לדשמואל, the argument can only be if it is שוי (and לא פריש). It cannot be by פריש (that אבד המשכון אבדו מעותיו), for since all agree with שמואל, why does ר"א maintain that the מלוה collects the loan. It must also be בדשוי, for otherwise why would the מלוה lose the money above the value of the משכון (according to ר"ע) even if he agrees with ר' יצחק, since s'ר' יצחק ruling only explains why the מלוה loses כנגד המשכון.

[23] The גמרא should have therefore said we would rather that ר"א ור"ע do not argue in שמואל (and ר"א disagrees with שמואל), but rather all agree with שמואל and they argue in ר' יצחק etc.

there in שבועות מס',[24] so why did not the גמרא say כ"ע אית להו לשמואל?!

תוספות answers:

ויש לומר דסבר גמרא דאי בדפריש מפסיד כל החוב בדלא פריש נמי מפסיד כנגד המשכון -

And one can say; that the גמרא assumes that if by פריש, the מלוה **loses the entire loan** (because of שמואל), then **by לא פריש** the מלוה **should also lose** part of the loan which **corresponds** to the value of **the משכון -**

דמה שכנגד המשכון כדפריש דמי[25] -

For that amount of the loan **which equals** the value **of the משכון is considered as** if he **explicitly** stipulated that if it is not returned, that amount should be deducted from the loan.

ולהכי לא מצי למימר כולי עלמא אית להו דשמואל -

So therefore the גמרא **could not have said; 'everyone agrees with שמואל'** (even ר"א) -

דאם כן לרבי אליעזר למה ישבע ויטול כל מעותיו -

For if this is indeed **so** (that ר"א איתי ליה לשמואל) **why can the** מלוה **swear and take all his money according to ר"א,** when the rule should be -

דמה שכנגד המשכון יש לו להפסיד כיון דאית ליה דשמואל -

That the מלוה **should lose** the amount **equal** to the value **of the משכון, since** ר"א **agrees with שמואל.** This explains why the גמרא could not have said (regarding the מחלוקת between ר"א ור"ע) that all agree with שמואל, for if ר"א agrees with שמואל, the מלוה should lose the part of the loan which is כנגד המשכון, but ר"א rules that the מלוה collects the entire loan.

ומכל מקום הלכתא כשמואל בדפריש[26] -

But nevertheless (even though the גמרא writes כ"ע לית להו דשמואל), **the הלכה is like שמואל by פריש** (even though ר"א disagrees with שמואל).

ורבינו חננאל פירש דאין הלכה כשמואל -

However the ר"ח maintains that the הלכה is not like שמואל -

וטעמא משום דקאמר הכא כולי עלמא לית להו דשמואל -

And the reason is **because** the גמרא **states here, 'everyone disagrees with שמואל' –**

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[24] שבועות מג,ב. See footnote # 28; if the גמרא could have said כ"ע אית להו לשמואל and chose not do, it would indicate that the הלכה is not like שמואל. However, תוספות maintains that the הלכה is like שמואל. See later in this תוספות.

[25] This is different from that which we assumed previously (see footnote # 15). When we assumed that ר"א disagrees with שמואל (even בדפריש), we can understand that by לא פריש the מלוה does not lose even כנגד המשכון, for since even by פירש it is an אסמכתא (according to ר"א) because we assume that the משכון is not in lieu of payment, so certainly by לא פירש it does not replace the loan (even כנגד המשכון), it is merely an incentive for the לוה to pay. However now that we assume that ר"א agrees with שמואל (by פריש) even when the משכון is less than the חוב (meaning that it is not an אסמכתא), because a minimal משכון is considered as payment for a large loan (meaning that a משכון`is not merely an incentive, but rather a form of payment), it therefore stands to reason that even if לא פריש, nevertheless whatever is כנגד המשכון is considered as if it was explicitly stipulated that this portion of the loan is to be paid with the משכון.

[26] We do not say that it is an אסמכתא. See footnote # 11.

תוספות does not accept this reasoning:

ואין זו ראיה שכן דרך הגמרא לדחות דכולי עלמא לית להו אף על גב דכן הלכה -

However, this is no proof (from the fact that the גמרא stated כ"ע לית להו דשמואל), **for this is the manner of the גמרא to reject** a proposal and say, '**no one agrees with this** proposition', **even though it is the הלכה;** the reason the גמרא does this is -

כיון דלא מצי למימר כולי עלמא[27] איתא להו[28] -

Since the גמרא **could not have said, 'everyone agrees to it'** (as is the case here, where we could not say כ"ע איתא להו דשמואל as תוספות just explained) –

תוספות offers an additional reason why the ר"ח's proof is invalid, and the הלכה is כשמואל:

ועוד דלפי האמת דקיימא לן כרבה פליגי בדשמואל[29] וקאי רבי עקיבא ומתניתין כדשמואל -

And furthermore, in actuality that since **we establish** the הלכה **like רבה** (that a שומר אבידה is a ש"ח), so ר"א ור"ע must **argue in שמואל**, it turns out **that ר"ע and our משנה follow שמואל -**

ואם כן קיימא לן כדשמואל ואף על גב דרב פליג עליה[30] -

So therefore we will **establish** the הלכה **like שמואל and even though רב argues with** שמואל -

דהא בפרק הזהב (לעיל דף מח,ב ושם) **מדמי פלוגתא דרב דערבון[31] -**

For in פרק הזהב the גמרא **compares the argument between רב** and ר' יוחנן

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[27] Let us use our case as an example. We have the מחלוקת between ר"א ור"ע. We are not certain in what case they argue, or the reason for their positions. First we attempted to say that they argue בדשמואל and בדלא שוי. However we cannot be sure that this is so. Therefore if we cannot find another way how to explain their מחלוקת, we may assume that their מחלוקת is בדשמואל. The גמרא however feels we can find another way to explain the מחלוקת, and we do not need to say that they argue בדשמואל. Nevertheless we first need to understand, if they argue in something else (בדר' יצחק, ברב יוסף), what do they maintain regarding שמואל. The גמרא could not have said כ"ע איתא להו דשמואל, as תוספות just explained, therefore it is expedient to say כ"ע לית להו לשמואל, even though it may not necessarily be so; it is merely a דיחוי a deflection. We do not know for sure what their מחלוקת is based on (whether on ר' יצחק, שמואל or ר"י).

[28] However, in a situation where the גמרא could have said the כ"ע in both ways (either איתא להו or לית להו), and chooses one of these two ways then it is 'proof' that the הלכה is like the one which was chosen. See footnote # 24.

[29] This disproves the ר"ח who maintains כ"ע לית להו לשמואל, for according to the מסקנא, there is no other way how to explain the מחלוקת between ר"א ור"ע other than to say that בדשמואל פליגי; they cannot argue בדר' יצחק since his ruling is only שלא בשעת הלואתו [while the מחלוקת between ר"א ור"ע is בשעת הלואתו]; they cannot argue בדרב יוסף since the הלכה is like רבה, not like רב יוסף. Therefore we must conclude that both our משנה and ר"ע (who rule that the מלוה loses the loan), agree with שמואל.

[30] We do not find explicitly that רב argues with שמואל regarding אבד המשכון אבדו מעותיו; however we can infer from the following גמרות that רב argues with שמואל in this case as well. See footnote # 33.

[31] See רש"י there ד"ה הנותן that the term ערבון (guarantee) here means that the buyer told the seller that he will buy the item and as a guarantee deposited by him a sum of money (less than the full price of the sale) stating that if the buyer backs out, the seller can keep the money. ר' יוחנן said that this ערבון is like a קנין and neither can back out, while רב maintains that the קנין is effective up to the amount of the ערבון, but not for the entire sale. Regarding מטלטלין, which is not נקנה בכסף, the argument between them would be regarding a מי שפרע (see footnote # 34); according to ר' יוחנן reneging on any part of the deal invokes a מי שפרע, while according to רב there could be a מי שפרע only if one retracted כנגד הערבון but not for the amount more than the ערבון.

regarding ערבון -

לפלוגתא דרבן שמעון בן גמליאל ורבנן גבי ואינו שוה אלא פלג[32] -

To the argument between רשב"ג and the רבנן regarding the case '**where it is only worth half' -**

ובשבועות (דף מד,ב) **מדמי פלוגתא דרבן שמעון בן גמליאל ורבנן לדשמואל[33] –**

And in שבועות מסכת the גמרא **compares the** abovementioned **מחלוקת between רשב"ג and the רבנן to** the ruling **of שמואל -**

אם כן פלוגתא דשמואל ורב לענין מי שפרע[34] דאיסורא איתמר[35] והלכה כרב באיסורי -

So therefore that מחלוקת between רב and שמואל regarding a מי שפרע, was taught in reference to an **איסור** matter **and the הלכה is like רב** against שמואל **in איסור** matters -

הכא נמי דשמואל לענין דינא איתמר[36] והלכתא כשמואל בדיני[37] -

So **here too** the argument **of שמואל was taught regarding monetary** issues, **and the הלכה is like שמואל** against רב **in monetary issues -**

ועוד דרבי יוחנן פליג אדרב בערבון וסבר כשמואל -

And additionally ר"י argues on רב in the case **of ערבון and agrees with שמואל** that the ערבון is קונה כנגד הכל -

וקיימא לן רב ורבי יוחנן הלכה כרבי יוחנן[38] -

And we have an established rule that in a מחלוקת between **רב ורב יוחנן, the הלכה is**

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[32] The case there is where a מלוה lent money for a משכון, which was worth half the loan, and שמיטה passed; רשב"ג maintains that שמיטה is not משמט (the מלוה collects the loan), while ר"י הנשיא maintains that שמיטה is משמט (whatever is more than the value of the משכון), ש"עיי. ר' יוחנן (who maintains that the minimal ערבון is קונה הכל) would follow רשב"ג (that a minimal משכון exempts the entire loan from שמיטה), while רב (who maintains that one is קונה only כנגד הערבון) would follow ר"י הנשיא (that the small משכון cannot prevent שמיטה from the entire loan).

[33] רשב"ג (who maintains a small משכון exempts a large loan from שמיטה) agrees with שמואל that אבד המשכון אבדו מעותיו so therefore if there is any משכון, there is no דין שמיטה, while ר"י הנשיא disagrees with שמואל. We have here several arguments that are interdependent on each other. A) the case of ערבון, B) the case of שמיטה, and C) the case of the משכון. The גמרא compares case B to both case A and case C. It turns out therefore that רב ושמואל (who take sides in the argument of שמיטה [(case B) where according to רב the משכון is not effective כנגד כל החוב and שמואל will maintain that the whole חוב is exempt from שמיטה]) also argue by ערבון, where רב rules כנגד ערבון and שמואל will maintains כנגד אבד המשכון אבדו מעותיו (like שמואל rules where המלוה על המשכון כולו (like ר' יוחנן and רשב"ג.) They will also argue by רב will maintain he loses only כנגד המשכון (like ר"י הנשיא) and (ר"י and רשב"ג).

[34] מי שפרע (literally, 'he who extracted punishment') is a type of curse that we impose on someone who reneges on a sale of מטלטלין (movable objects) where there was (only) a transfer of money. The rule is that מטלטלין cannot be acquired withy money (it requires משיכה, הגבהה or קנין חליפין), nevertheless once the buyer paid money either of parties who retracts is subject to the מי שפרע curse.

[35] See footnote # 31. The גמרא there is (mainly) discussing the rules of מי שפרע. A מי שפרע is a 'religious matter'; there is no money issue. We need to decide whether or not he receives a מי שפרע.

[36] We are discussing here whether the מלוה can or cannot collect his loan; this is purely a monetary issue.

[37] It would then seem that regarding an עירבון במטלטלין, where the issue is (only) מי שפרע, the ruling would be like רב (that the מי שפרע is only כנגד הערבון), however if the ערבון was given for קרקע (which is נקנה בכסף and therefore דיני ממונות), the ערבון would be קונה כנגד הכל. See רש"י הזהב מח,ב ד"ה הוא וד"ה ור' יוחנן.

[38] It is therefore possible that even by ערבון, which is איסור, the הלכה is not like רב but like ר"י ושמואל.

like ר''י -

וכרב נחמן קיימא לן בדיני לגבי כולי עלמא וסבר כשמואל:

And we also follow ר''נ in monetary issues **against everyone** (no matter who argues with him), **and** ר"נ **agrees with שמואל,** so therefore the הלכה is like שמואל (in a case of פריש).

Summary

According to רש"י the ruling of שמואל is (even) by פריש לא, according to the ר"ח and ר"ת the ruling of שמואל is only by פריש. The ר"ת rules like שמואל while the ר"ח does not.

Thinking it over

תוספות states that according to פרש"י, it is understood why the גמרא here cannot say כ"ע איתא לדשמואל, because if it is פריש, how can ר"ע argue with ר"א.[39] Seemingly we can say that they argue in a case of פריש, if, for instance, they stipulated, that the loss of the משכון should not incur a loss of the (emtire) loan, however they did not say whether the מלוה should be liable for גניבה ואבידה, and this is the מחלוקת between ר"ע (that he is חייב) and ר"א (not חייב)![40]

[39] See footnote # 10.

[40] See אוצר מפרשי התלמוד and מהרש"א # 100-103.