

## And the same, regarding monetary laws

## וכן בדיני ממונות -

### Overview

ruled that if one says to two people, 'go and be a woman for me', they are his **שלוחים** and they are his **עדים** (for שליח נעשה עד). The גמרא continues that the same rule applies to monetary matters.<sup>1</sup> תוספות qualifies this ruling.

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asks: תוספות

**תימה דאמר בירושלמי<sup>2</sup> וכן בקדושין הדא דתימא בשטר אבל בכסף לא<sup>3</sup> -**

**It is astounding! For it states in ירושלמי** 'and the same rule applies by **שטר** (then the **שלוחים** can be **עדים**), but if the **קידושין** was done with **money**, the **שלוחים** cannot be **עדים** in monetary matters?! How can we say here that the **שלוחים** can be **עדים** in monetary matters?!

answers: תוספות

**ויש לומר דההיא בתר דתקון רבנן<sup>4</sup> שבועת היסט:**

**And one can say; that the ruling of that ירושלמי is after the רבנן instituted a שבועת היסט.**<sup>5</sup> However, the ruling of ר"נ רבא was before the תקנה of היסט.<sup>6</sup>

### Summary

Once there was the תקנה of היסט, the **שלוחים** cannot be **עדים**.

<sup>1</sup> If the לוח sent two **שלוחים** to pay off his debt to the לוח, these two **שלוחים** may testify that the loan was paid.

<sup>2</sup> (כגב, in our ירושלמי it is on פ"ב ה"א).

<sup>3</sup> [See the גמרא (shortly) on this עמוד.] When the man gave the **שלוחים** money to be מקדש the אשה, they are not believed to testify that they were מקדש the אשה, because they have a vested interest in their testimony. They cannot testify otherwise, for then the משלה will ask them to return the money, so they must testify that they were מקדש her. Such a testimony where the **עדים** have a vested interest is (obviously) not acceptable. The same should apply if he gave the **שלוחים** money to repay the loan. Their testimony cannot be accepted since they have the same vested interest.

<sup>4</sup> According to תורה law a debtor can claim that he did not borrow the money or he repaid the loan and he is exempt from paying (it is only if he admits to owing part of the loan [מודה במקצת], that he obligated to swear a שבועה דאורייתא). However if he is a כופר הכל (he maintains that he owes nothing), he is exempt (from paying and even) from swearing. The רבנן, however instituted that even a כופר הכל must swear that he owes no money (this oath is called a שבועת היסט). In the case where the משלה sent money with the **שלוחים** (where we said they have a vested interest) that is only after the רבנן were מתקן a שבועת היסט, for if they would not testify that they delivered over the money, the משלה will ask them to give him back the money, so no matter what the **שלוחים** claim (whether we gave it back to you, or you never gave it to us), they will be required to take the שבועת היסט (which they do not want), therefore they are נוגע בעדות, when they say we delivered the money. However before the תקנה of היסט, the **שלוחים** are not נוגע בעדות, for they can just as easily say, we returned the money to you (as they can say we delivered the money) and they will be completely exempt, since before שבועת היסט a כופר הכל is completely פטור.

<sup>5</sup> היסט means inducement. The רבנן are inducing the כופר הכל to admit by obligating him to swear his claim is true.

<sup>6</sup> See 'Thinking it over'.

### **Thinking it over**

It is assumed (by some ראשונים)<sup>7</sup> that the שבועת היסט was instituted during the era of רב נחמן. It is likely that the תלמוד ירושלמי was completed before רב נחמן was a דיין. It is therefore very perplexing to say that the ruling in the ירושלמי was made after the שבועת היסט was instituted, and the ruling of רב נחמן, רבא אמר רב נחמן, was said before the תקנה of שבועת היסט!<sup>8</sup>

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<sup>7</sup> See 'בימי התנאים עדיין לא תיקנו שבועת היסט כי בימי רב נחמן תיקנה' that רש"י שבועות מח,ב ד"ה הא.

<sup>8</sup> See עד"ז בספר צור תעודה (להרב מנצור מרזוק) ע' עג, סוף עמוד ג.