

## Rather it is like *Rovin Bar Shmuel*

## אלא כדרבין בר שמואל -

### Overview

The *גמרא* concludes that the *ברייתא* of *וכו' מכר לו וכו'*, which distinguishes between *בית* and *פרה* and *וטלית*, is not discussing a case of *גזלן* but rather is teaching us the ruling of *רבין בר שמואל* regarding a sale of *קרקע*, where the seller cannot testify on behalf of the buyer against a *מערער*. Our *תוספות* clarifies the situation of the *ברייתא* and of *רבין בר שמואל*.

ואיירי ברייתא דוקא שלא באחריות דאזי יכול להעיד על פרה וטלית<sup>1</sup> -

And the *ברייתא*, which discusses both *קרקע* and *מטלטלין*, is specifically in a case where the sale was without a guarantee, for only then can the seller testify regarding the *פרה* and *וטלית* on behalf of the buyer. This is concerning the *ברייתא* -

ומילתא דשמואל איירי בכל ענין<sup>2</sup> ורבותא<sup>3</sup> נקט אפילו שלא באחריות:

However, regarding the ruling of *רבין בר שמואל* (which only discusses *קרקע*) this ruling is in all cases (whether it was sold with *אחריות*, or without *אחריות*) and he mentions a novelty that even if it was sold *באחריות*, nevertheless the seller cannot testify on behalf of the buyer.

### Summary

<sup>1</sup> Let us assume that *ראובן* owes *שמעון* \$100. *ראובן* sells *לוי* either *קרקע* or *מטלטלין* for \$100. *יהודה* comes to *לוי* and claims that the *קרקע* or *מטלטלין* belong to him. The *ברייתא* rules that *ראובן* (the seller) cannot testify on behalf of *לוי* against *יהודה* in the case of *קרקע* but he can testify on behalf of *לוי* by the *פרה* and *וטלית*. This distinction is true only if *ראובן* sold *לוי* (the *קרקע* or *מטלטלין*) without a guarantee. Therefore regarding the *מטלטלין*, which *שמעון* (the *מלוה* of *ראובן*) cannot take it away from *לוי* (for the *מטלטלין* of *לוי* are not *משועבד* to the lender), so *ראובן* can testify on behalf of *לוי*, since to *ראובן* there is no difference whether the *מטלטלין* remain by *לוי* or are taken away from *לוי*. He does not gain anything if the *מטלטלין* remain by *לוי* since *ראובן* will still have to pay the *מלוה* (for the *מלוה* cannot collect from *לוי*). He does not lose anything if *יהודה* takes away the *מטלטלין* from *לוי* since he never guaranteed *לוי* (and the *מלוה* would have not been able to collect from *לוי* anyway). However if *ראובן* guaranteed *לוי*, obviously he cannot testify on behalf of *לוי* (against *יהודה*), for *ראובן* is a *נוגע בעדות*. If *יהודה* were to take away the *מטלטלין* from *לוי*, it would be necessary for *ראובן* to reimburse *לוי*, since it was sold *באחריות*. We assume that the case of *קרקע* is similar to the case of *מטלטלין* that it too was sold *באחריות*, but, nevertheless *ראובן* cannot testify on behalf of *לוי*, since *ראובן* has a vested interest that the property remain by *לוי*, for then his *מלוה* will be able to collect his debt from the property. Otherwise if *יהודה* removes *לוי* from the property, then *שמעון* will not collect his loan and *ראובן* will be a *שלם ולא ירשע*. See 'Thinking it over'.

<sup>2</sup> If *ראובן* sold the field to *לוי* with *אחריות* then obviously he cannot testify on his behalf, since *ראובן* wants the field to remain by *לוי*, for if *יהודה* removes *לוי* from the field, *ראובן* will have to compensate him (since he sold it *באחריות*). The novelty is that even if *ראובן* sold it without *אחריות*, nevertheless he is a *נוגע בעדות*, for he wants that *לוי* should retain the field in order that *שמעון* (his *מלוה*) will have where to collect from, and *ראובן* will not be a *שלם ולא ירשע*.

<sup>3</sup> *תוספות* may be saying that even though the *גמרא* states that the *ברייתא* is according to *שמואל*, it does not mean that the *ברייתא* is exactly like *שמואל*, but rather there is a (slight) difference, for the *ברייתא* must be discussing a case of *אחריות*, whereas the ruling of *שמואל* is in all cases, whether with or without *אחריות*.

The *ברייתא* is in cases without *אחריות* and in *שמואל'* case it does not matter.

### **Thinking it over**

We understand from *תוספות* that if *ראובן* sold the *קרקע* to *לוי* even without *אחריות*, he cannot testify on his behalf (against *יהודה*), since *ראובן* has a vested interest that the property remain by *לוי* so that *שמעון* (the *מלוה* of *ראובן*) will have from where to collect his debt. Otherwise (if *יהודה* retains the property) *שמעון* will not have collected his debt and *ראובן* will be called a *לוה רשע ולא ישלם* (he borrowed money and did not pay it back).<sup>4</sup> However if the field remains by *לוי* and *שמעון* takes it away, should not *ראובן* be considered a *לוה רשע ולא ישלם* regarding *לוי*, since *לוי* paid him money and received nothing in return. It seemingly should make no difference to *ראובן* who is losing out on his account; whether it is the *מלוה* (who is not paid back and lost his money) or whether it is the buyer (who paid money and received nothing). Why do we say that *ראובן* is a *נוגע בעדות*, what difference is there to *ראובן*, whether *יהודה* takes the field and the *מלוה* loses<sup>5</sup> or if *לוי* takes the field and *לוי* loses on account of *ראובן*, since *שמעון* the *מלוה* of *ראובן* takes it away from him?!<sup>6</sup>

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<sup>4</sup> See end of footnote # 1.

<sup>5</sup> It is difficult to answer that if *יהודה* takes the field then both the *מלוה* and *לוי* lose, so he is a double *לוה רשע*. This is not so; a person is considered a *לוה רשע* only if he causes the loss (like if the *מלוה* does not receive his payment, or if *לוי's* field is taken by the *מלוה* because *ראובן* owes him money). However when *יהודה* takes it away from *לוי* this is not the fault of *ראובן*, for he claims that *יהודה* is a liar and the field belongs to him. ודו"ק.

<sup>6</sup> See מהר"ם.