

For the person is not yet liable

דאכתי גברא לא מחייב -

Overview

The גמרא says if the (first set of) עדים came to testify before the עבד took his master to ב"ד to claim his freedom, these עדים (who wrongfully testified that the עבד should be freed), should be required to pay the full amount of the עבד to the master, for at the time of their testimony the master was not as of yet obligated to free his slave.¹ תוספות explains why indeed was he not obligated to free the slave.²

אין הטעם משום דאי הוה בעי הוה אתי לבית דין ומודה³ ומיפטר⁴ -

The reason why the man is not considered liable to free his slave (when he knocked out his eye/tooth) before any of the עדים came to testify) **is not because the master, if he would have wanted, could have come to ב"ד, and admit** that he knocked out the tooth/eye, **and he would be exempt** from freeing the slave.

תוספות rejects this reasoning:

דאפילו לשמואל דאמר לקמן (דף עה,א) מודה בקנס ואחר כך באו עדים חייב⁵ -

For even according to שמואל who maintains later, one who admitted to a קנס, and afterwards witnesses came and testified that he did the action which results in a קנס, he is liable to pay the קנס -

הכא כיון דלא עמד בדין לא חשבינן לגברא בר חיובא לענין קנס -

Here in our case, since he did not stand in judgement before a ב"ד, **the person is not considered liable regarding קנס** -

כדפרישית בסוף המניח (לעיל לג,א ושם עמוד ב' דיבור המתחיל איכא⁶) בשמעתין דהוחלט השור:

¹ They are claiming (incorrectly) that the master has to free the slave. On account of זמן, כאשר זמן, they should pay the master the value of the slave, since with their testimony they plotted that the master should lose his slave.

² The case (as we are discussing it now) is that the latter עדים (the המזימים) claim that the incident took place before the day that the ע"ז testified that it took place (Sunday, instead of Monday), so seemingly the owner was already liable to free his slave on Sunday; why does the גמרא state, דאכתי גברא לא מחייב, ?!

³ Freeing a slave for knocking out an eye/tooth is a קנס (a fine), and the rule is that מודה בקנס is פטור. So therefore, even though he knocked it out on Sunday, but since the עדים did not come and testify in ב"ד until some time later, the master had the option to admit to his action and he would not be liable to free the slave. Therefore, when and until the עדים testified, he was not liable because he could have admitted to his action. תוספות reject this reasoning.

⁴ This is seemingly the explanation of רש"י בד"ה ואי דלא.

⁵ קנס is פטור, only as long as there are no עדים, once however עדים testify, he is liable to pay the קנס. Therefore, this reasoning mentioned above, will not be valid according to שמואל, since in our case עדים came later, so therefore one cannot say he is not liable since he is מודה, for in our case there were עדים. Nevertheless, the discussion here presumably follows the ruling of שמואל as well, there must therefore be a different reason why דאכתי גברא לא מחייב.

⁶ The עמוד תוס' there on the לג,א, however this explanation is mentioned in the continuation of 'איכא' ב'.

As I have explained⁷ in the end of פרק המניח, in the discussion regarding ‘the ox is assigned’.

Summary

The reason why the person is not obligated is not because he could have admitted, for that reasoning would not work out according to שמואל.

Thinking it over

If we would assume according to שמואל in a case of מודה בקנס ואח"כ באו עדים where he is a חייב, that this חייב takes effect retroactively to the time of the action (the knocking out of the tooth/eye), would that present a problem?⁸

⁷ There is a difference between ממון and קנס. By ממון the obligation to pay stems from your action, borrowing money, damaging someone's property, etc.; the בי"ד is there just to verify and implement the payment. However, by קנס, the whole obligation is only if בי"ד rules the you are liable for this קנס, until then there is no obligation at all (as we see מודה בקנס פטור [which is not the case by ממון]). Therefore, if it was לא עמד בדין, even though the master knocked out his tooth/eye he is not obligated to free his slave until בי"ד rules that he has to free him. See נחלת משה for an alternate explanation.

⁸ See נחלת משה.