

## Go, return them

## זילו אהדורו –

### OVERVIEW

The עבדים of נהרדעי as well as חנא בר ביזנא ruled that a מלוה can collect the עבדים from the יתומים as payment for his loan (presumably because עבדי כמקרקעי דמי; and the עבדים are משעבד to the חוב; it was a בשטר<sup>1</sup>). However ר"נ ordered them to reverse their ruling and have the מלוה return the עבדים back to the יתומים, since עבדי לאו כמקרקעי. The question here is why they had to reverse their ruling. If a מומחה makes a mistake in his estimation of the law; the ruling remains.<sup>2</sup> תוספות will explain this.

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### חשיב להו כטועה בדבר משנה:

He (רב נחמן) **considered them** (רב חנא בר ביזנא and דייני דנהרדעא) **as one who is mistaken in a ruling of a משנה**. The rule is if a דיין rules against a משנה,<sup>3</sup> then the ruling is nullified. It is considered as if there was no ruling; and all monies collected or transferred must be returned to the original owners. ר"נ was of the opinion that if someone ruled that עבדי כמקרקעי (and therefore the עבד can be collected מנכסי יתומים) it is as if he ruled against a דין of the משנה. It was so obvious to ר"נ that (concerning this issue) עבדי is not כמקרקעי דמי, that he considered them to be טועה בדבר משנה. Therefore he told them that they should see to return the עבד back to the יתומים, who are the original owners.

### SUMMARY

There are certain rulings that are so obvious; that opposing them is considered as בטל (and the פסק is בטל). טועה בדבר משנה.

### THINKING IT OVER

1. Why should the מלוה be required to return the עבד, even if we assume that they were טועה בדבר משנה? The יתומים were already מייאש once the פסק was given and the מלוה took possession of the עבד!<sup>4</sup>

2. Why did not רב נחמן order the מלוה to return the עבד to the יתומים?<sup>5</sup>

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<sup>1</sup> If we maintain דאורייתא שיעבודא then this ruling would apply even by a מלוה ע"פ.

<sup>2</sup> The דיין will have to pay the aggrieved party. Here however ר"נ insisted that they return the עבד; meaning that the ruling is void.

<sup>3</sup> In the times of the אמוראים if one was טועה בדבר משנה (which was the ultimate authority in those days) the פסק is בטל. The same applies in later generation; if a טועה is דיין in a הלכה which is clearly accepted by the פוסקים (for instance if it is so ruled in the שו"ע without a מחלוקת) it is considered as טועה בדבר משנה and the פסק is בטל.

<sup>4</sup> See אמ"ה הערה 6.

<sup>5</sup> See שטמ"ק.