

Go, return them

זילו אהדורו –

Overview

The **מלוה** of **נהרדעי** as well as **חנא בר בזנא** ruled that a **מלוה** can collect the **עבדי** from the **יתומים** as payment for his loan (presumably because **עבדי** (מלוה בשטר¹). However **ר"נ** ordered them to reverse their ruling and have the **מלוה** return the **עבדי** back to the **יתומים**, since **עבדי** לאו כמקרקעי הוי. The question here is why they had to reverse their ruling. If a **דיין מומחה** makes a mistake in his estimation of the law; the ruling remains². **תוספות** will explain this.

חשיב להו כטועה בדבר משנה:

He (**רב חנא בר בזנא** and **דייני דנהרדעא**) **considered them** (**רב נחמן**) **as one who is mistaken in a ruling of a משנה**. The rule is if a **דיין** rules against a **משנה**³, 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 דמי (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 **טועה בדבר** (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 **טועה בדבר משנה** (and the **פסק** is **בטל**).

Thinking it over

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**!⁴

2. Why did not **רב נחמן** order the **מלוה** to return the **עבד** to the **יתומים**?⁵

¹ If we maintain **ע"פ** **מלוה** **שעבודא דאורייתא** then this ruling would apply even by a **מלוה**.

² 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.

³ 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 **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**.

⁴ See **אמ"ה הערה 6**.

⁵ See **שטמ"ק**.