

By orphans

ביתמי –

OVERVIEW

The גמרא explained that the ברייתא which states that בי"ד collects only from נכסים is referring to case where the מזיק died and the ניזק is seeking to collect from the יתומים. He can collect only from קרקע and not from מטלטלין, since there is no שעבוד on מטלטלין only on קרקע. Our תוספות will clarify why there is a שעבוד even on the קרקע.

תוספות asks:

ואם תאמר לרב ושמואל דאית להו בפרק גט פשוט (בבא בתרא דף קעה, א) –

- פרק גט פשוט who maintain in רב ושמואל And if you will say; according to דשיעבודא לאו דאורייתא¹ ומלוה על פה לא גבי מיורשין² –

That according to תורה law there is no lien on property, and therefore by an oral loan the מלוה cannot collect from the heirs; (even) properties which they inherited from the לווה. The ruling would therefore be (according to רב ושמואל, that the ניזק -

אפילו נכסים שיש להן אחריות אין נזקקין –

will have no claim even against the real properties that the יתומים inherited from the מזיק. The responsibility of the מזיק to pay is considered a מלוה ע"פ, which cannot be collected from the יתומים (even from the קרקע which they inherited from the מזיק).

תוספות answers:

ויש לומר דאיירי בשעמד בדין:

And one can say; that we are discussing a case where the בי"ד ruled (while the קול was alive) that the מזיק is obligated to pay a specific amount. After בי"ד rules, there is a קול that the מזיק owes the ניזק money; and the debt is considered a מלוה בשטר. This creates a שעבוד on the current נכסים of the מזיק. Therefore it can be collected (even) from the יורשים.

SUMMARY

עמד בדין creates a situation similar to a מלוה בשטר and the debt may be collected from the יורשים of the debtor.

¹ In the view of רב ושמואל, according to תורה law the creditor can only collect from the debtor as long as the debtor has with what to pay him. There is no lien on the properties of the debtor. If the debtor sells his properties or if he dies, the creditor has no claim on these properties even if it is a מלוה בשטר (which has a קול). It is the חכמים who instituted the concept of נכסים שעבוד in order ליום. However this תקנה is only by a מלוה בשטר where there is a קול. However by a מלוה ע"פ there is no שעבוד; and the creditor cannot collect from the לקוחות or from the יתומים, regardless. See previous כגון ד"ה.

² See 'Thinking it over'.

THINKING IT OVER

a מדרבנן for שעבודא דאורייתא we maintain question seemingly applies even if we maintain תוספות
³!מיורשים (ומלקוחות) cannot collect מלוה ע"פ

³ See בל"י. [See also 'Thinking it over' # 1 in the following שמע ד"ה תוספות]