

## כולן נכנסו תחת הבעלים – They all take the place of the owners

### OVERVIEW

The **ברייתא** states that if a debtor sold all his fields to one customer (or to three customers simultaneously) the rules of collecting are the same as it was by the original debtor (i.e. the **ניזק** collects the **עידית**, etc.). The accepted ruling is that one may not collect from the debtor's sold properties, unless the creditor has a **שטר** signed by witnesses.<sup>1</sup> **תוספות** will explain why the **ניזק** may collect from the sold property, even though he has no **שטר** against the **מזיק**.

תוספות asks:

ואם תאמר והא נזקין מלוה על פה נינהו ומלוה על פה לא גבי ממשעבדי<sup>2</sup> -

And if you will say; but **נזיקין** is an oral loan, there is no signed documentation that the **מזיק** owes the **ניזק** money, and the rule is that a **מלוה ע"פ** does not collect from indentured property. Why should the **ניזק** be allowed to collect from the buyer (of the **מזיק's** field), who may have not known that the **מזיק** owed any monies to the **ניזק**?<sup>3</sup>

תוספות answers:

ויש לומר דכשעמד בדין כמלוה בשטר דמיא<sup>4</sup> -

And one can say; that when the case was adjudicated in **בי"ד** that the **מזיק** owes the **ניזק** money, then this debt is considered as a **מלוה בשטר**, and can be collected from the **משעבדים**. We are discussing such a case in our **גמרא**. The field in question was sold by the **מזיק** after the **העמדה** בדין so the **לקוחות** were aware of the debt.

כדאמר בהגוזל בתרא (לקמן קיב)<sup>5</sup> ובכמה דוכתין -

As the **גמרא** states in **פרק הגוזל** and in many places; that **כשעמד בדין** is considered as a **מלוה בשטר**.

תוספות offers another answer:

אי נמי מלוה הכתובה בתורה ככתובה בשטר דמיא וחייב:

<sup>1</sup> The reason is that a **מלוה על פה** has no **קול** and therefore (whether we hold **דאורייתא** or **שעבודא דאורייתא**) in order to protect the buyers, the creditor cannot collect from the **לקוחות**. [If we maintain **דאורייתא**, then any debt which has a **קול** (even if it is **ע"פ**) can be collected from **משעבדים**.]

<sup>2</sup> A **מלוה ע"פ** can only collect from **בני חורין**; assets which the debtor currently owns.

<sup>3</sup> The reason a **מלוה ע"פ** does not collect from **משעבדים** is because there is no publicity of the debt. People who wish to buy the debtor's properties are not aware that he owes money. Therefore in order to protect them, we do not allow the creditor to collect from **משעבדי**; unless there is a signed **שטר** which provides sufficient publicity, so that the buyers are aware of the lien on the debtor's properties. They buy then at their own risk.

<sup>4</sup> The **העמדה** בדין provides sufficient publicity so that everyone is aware of the debtor's obligation.

<sup>5</sup> The marginal gloss changes this to **הגוזל עצים קה,א**.

**Or you may also say that a debt which is written in the תורה is considered as if it was written in a שטר,<sup>6</sup> and he is obligated** to the extent that one may (even) collect from his נכסים משועבדים. The obligation of paying damages is כתובה בתורה;<sup>7</sup> it is therefore considered ככתובה בשטר and can be collected ממשעבדי.

### **SUMMARY**

The reason the עמד בדין was ניזק may collect from the לוקח is either because the ניזק (before the sale); or נזיקין, which is a מלוה הכתובה בתורה, is ככתובה בשטר דמיא.

### **THINKING IT OVER**

<sup>8</sup> ככתובה בשטר דמיא which is מלוה הכתובה בתורה is a נזיקין second answer is that תוספות However, even if it is considered ככתובה בשטר, but there is no קול.<sup>9</sup> Why should the לקוחות suffer?!<sup>10</sup>

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<sup>6</sup> יורשים. See קידושין יג,ב, that it is ככתובה בשטר in reference that there is an obligation on the תוספות ר"פ to pay what is due (but not on the לקוחות). See 'Thinking it over'.

<sup>7</sup> The תורה states that the מזיק must pay the ניזק; something that we may not have known on our own. By a loan, however, the payment is collected due to a mutual understanding; even if it were not written in the תורה.

<sup>8</sup> See footnote # 6.

<sup>9</sup> See (however) תוספות יד,ב ד"ה ש"מ.

<sup>10</sup> See חי' ר"נ, סוכ"ד (אות כה) ובל"י (אות רי"ג).