

And ושמואל אמר מעות יש לו – rules he receives the money

OVERVIEW

There is a dispute between רב and ושמואל regarding a purchase of a stolen field. ושמואל maintains that the buyer can only collect his initial investment (but not any improvements). תוספות explains that he can collect his initial investment under all circumstances.

אפילו קנאה שלא באחריות כדפירושית לעיל¹ -

Even if he bought it without אחריות (he can collect from the seller) as I explained previously.

וכן משמע דמיירי דומיא² דהכיר בה שאינה שלו דלקמן³ -

And this is also indicated since we are presumably discussing a case which is similar to the following case of - הכיר בה שאינה שלו

דמיירי על כרחך שלא באחריות כדקאמר ושמואל מעות מתנה -

Which that case of הכיר בה is perforce discussing a sale for שלא באחריות the money which was paid by the buyer is considered **a gift** to the seller; this proves that it was bought באחריות -

דאי באחריות אמאי מעות מתנה:

For if it was bought באחריות why is the money a gift?! It should be returned to the buyer when the גזול retakes his field, since it was purchased באחריות!

SUMMARY

Someone who unknowingly purchases a stolen field must be compensated by the seller even if the sale was without אחריות.

THINKING IT OVER

Why was it necessary for תוספות to repeat himself that even without אחריות the לוקה is to be compensated? Is there any indication that here we are only discussing a situation with אחריות?!

¹ אחריות טעות סופר שטר הלואה שטר מכר. יד,א בד"ה שעבוד.

² These two מחלוקות between ושמואל and רב are (seemingly) cited in conjunction with each other

³ ט,ב. The case there is that the buyer 'recognized' (knew) that it was a stolen field and (nevertheless) he bought it. רב maintains that the money is a פקדון and needs to be returned to the buyer, while ושמואל maintains that the money is considered a gift from the buyer to the seller.