פוטר ממונו בממון כהן –

He exempts his money with the money of the כהן

Overview

תקפו כהן מוציאין אותו מידו. According to תוספות this proof is conclusive and we rule that ת"כ מוציאין אותו מידו. Similarly in other cases there can be no seizing from the original owner in a case of ספק. Our תוספות however qualifies this ruling. רב חנניה cited a ברייתא to support רבה who maintains that

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וכן הוא מסקנא[1] דאם תקפה כהן מוציאין מידו[2] –

And this is conclusive, that if the כהן seized it we take it away from him.

תוספות asks:

תימה דבפרק השואל (לקמן דף קב,ב ושם) **ובפרק בית כור** (בבא בתרא דף קה,א ושם ד"ה אבל) **-**

This is astounding! For in פרק השואל and in פרק בית כור, the גמרא states **-**

גבי אחד ששכר מרחץ[3] מוקי שמואל[4] הא דיחלוקו בבא באמצע החדש –

Regarding one who rented a bathhouse, where שמואל established that the ruling of יחלוקו that was given **is when** the owner **came in middle of the** extra **month -**

אבל בבא בסוף החדש כולו לשוכר[5] -

However if the owner **came at the end of the** extra **month** to collect the rent, it belongs **entirely to the tenant** and he is not obligated to pay for the thirteenth month. תוספות asks how can שמואל rule like this –

והא מסיק הכא דמוציאין מידו[6] –

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[1] It should be noted that the רמב"ם maintains ת"כ אין מוציאין אותו מידו (see הגהות הגר"א here).

[2] The reason for this is that the ישראל is considered the owner. The cow with the fetus of the ספק בכור certainly belonged to the owner before birth (a בכור belongs to the כהן only after it leaves the womb), therefore if the כהן cannot prove that it is a בכור we leave it by the original מוחזק; the מרא קמא. We derive from this that whenever there is a ספק (and a מ"ק), there can be no תפיסה; we award the item in question to the original owner. This forms the basis for תוספות following questions.

[3] The case there is regarding a bathhouse which was rented at the price of twelve דינרים per year, a דינר per month, and it turned out to be leap year (thirteen months), the question is whether the tenant is required to pay for the extra month (since the agreement was for a דינר per month) or not (since the agreement also stated twelve דינרים per year). The ruling was that יחלוקו; the tenant pays for half a month (since there is a ספק as to the understanding of the agreement which is somewhat contradictory).

[4] The הלכה is not like שמואל (but rather that קרקע בחזקת בעליה עומדת), nevertheless תוספות asks how will שמואל reconcile his ruling with the ברייתא of הספיקות which proves that מוציאין אותו מידו.

[5] Similarly if the owner came in the beginning of the extra month the tenant must pay for the entire month.

[6] The bathhouse belongs to the owner. The tenant would be required to pay for the extra month if the owner came in the beginning of the month (see footnote # 5). The reason he does not pay now is because it is considered as if he 'seized' the (doubtful) last month's rent; however we have concluded that when there is

For we concluded here that we take it away from him?!

תוספות answers:

ויש לומר דהתם נכנס בהיתר לכך מהניא תפיסתו[7] **–**

And one can say; that there by the מרחץ, the tenant **entered** into the מרחץ **with permission, therefore his seizing is effective -**

אבל הכא לא בהיתר תפס כי אם בספק –

However here by the בכור, the כהן **did not seize** the בכור **with permission, rather only** based **on the ספק,** therefore in such an instance the ruling is that מוציאין אותו מידו.

תוספות responds to an additional anticipated difficulty:

והא דאמרינן בפרק ב' דכתובות (דף כ,א ושם דיבור המתחיל ואוקי) **–**

And that which the גמרא **states in the second פרק of כתובות** regarding the ברייתא which states -

שנים החתומים על השטר ובאו אחרים ואמרו אנוסים היו כולי אין נאמנים[8] **–**

Two witnesses **who are signed on a שטר and other** witnesses **came and testified** that the witnesses on the שטר **were forced to sign it, etc.** the ruling is that **the** latter witnesses **are not believed -**

ומסיק דאוקי תרי בהדי תרי ואוקי ממונא בחזקת מריה –

And the גמרא **concluded** there that the ruling in this case is **that we place** the **two** witnesses of the שטר[9] **against the two** witnesses who claimed אנוסים היו, **and the money** of the loan which is allegedly owed **is placed in the possession of its owner** (the לוה is not required to pay, since it is a ספק).

The apparent difficulty is that the ברייתא states אין נאמנין, indicating that it is a valid שטר and the מלוה can collect, but the גמרא concluded that אוקי ממונא בחזקת מריה; that the מלוה cannot collect. This issue is addressed there by רש"י.

ואין נאמנין דקאמר פרש"י[10] **דאם תפס המלוה לא מפקינן מיניה –**

And רש"י explained that when the ברייתא **states that 'they are not**

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a known owner, seizing is meaningless (in a doubtful situation), therefore he should have to pay the full rent regardless of when the owner came. See 'Thinking it over' # 1.

[7] When the thirteenth month arrived the tenant was legally in possession of the house. He merely extended his rights due to the ספק.

[8] The שטר חוב was authenticated by two witnesses who recognized the signatures. Two other witnesses claimed that the עדים who signed the שטר were threatened that they would be killed if they did not sign (causing the שטר to be invalid).

[9] A שטר מקויים is considered a valid שטר. We do not suspect that anything illegal happened (such as they were forced or they were minors etc.). Therefore it is considered as if there are two עדים that the עדי השטר were not אנוסים opposing the עדים who claim they were אנוסים.

[10] כתובות כ,א ד"ה ואוקי. See 'Thinking it over' # 2.

believed' this means **that if the מלוה seized** the assets of the לוה, **we do not take it away from** the מלוה. It is to that extent only that the latter עדות are not believed and the מלוה keeps the money based on the שטר.

תוספות qualifies this פרש"י based on what was said previously that תפיסה does not help to be מוציא from the מוחזק by a ספק. Therefore -

צריך לומר שתפס קודם שבאו עדים לפסול השטר דהיינו קודם שנולד הספק –

It is necessary to say that the מלוה **seized** the assets of the לוה **before the** latter **witnesses came to disqualify the שטר, meaning** that the seizing was done **before the ספק was created,** therefore it is a valid תפיסה**.**

תוספות offers an alternate explanation of the term אין נאמנין which the ברייתא states:

ועוד יש לומר דאין נאמנין דלא מקרעינן ליה[11] ולא מגבינן ביה ולא לענין תפיסה:

And in addition one can say that אין נאמנין means **that we do not tear up the שטר, however we cannot collect with it** either, **but** אין נאמנין **is not regarding seizing,** for seizing לאחר שנולד הספק is ineffective.

Summary

תפיסה is not effective unless it was done בהיתר or קודם שנולד הספק.

Thinking it over

1. תוספות asks how can שמואל rule by the מרחץ that כולו לשוכר since the ruling is מוציאין אותו מידו.[12] Why cannot we distinguish that there since the owner did not come for the rent the entire month, this indicates that he admitted that he does not owe him for that month?![13]

2. It seems that רש"י in כתובות[14] maintains that the תפיסה there would be effective even after שנולד הספק. How can רש"י differentiate between ספק בכור (where the תפיסה is ineffective) and the ספק of תרי ותרי by the מלוה (where it is effective)?[15]

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[11] The advantage of לא מקרעינן ליה (even though לא מגבינן ביה) is that if later there are other עדים who testify that the עדים who claimed אנוסים היו were themselves פסולי עדות, then the מלוה will be able to collect with this שטר (but not if it was torn up). Alternately the לוה may not be comfortable knowing that there is a שטר against him and he may be willing to pay something to the מלוה in order to destroy the שטר.

[12] See footnote # 6.

[13] See אמ"ה # 104.

[14] See footnote # 10.

[15] See נח"מ and אמ"ה # 110.