

By a שליחות against one's will etc. – בשליחות בעל כורחיה כולי

Overview

The גמרא explains that the fourth similarity (according to ר"מ) between גיטי שליחות בע"כ, is by קידושין, which is not found by נשים ושחרורי עבדים. There is a dispute between רש"י and תוספות as to what the גמרא is referring to.

explained: and this is what the ברייתא taught **פירש בקונטרס והכי קתני** **גיטי נשים** **with this similarity between** **בזו שוו גיטי נשים ושחרורי עבדים** **where the שליח was appointed** **against the will** of both the אשה and the עבד. It is known that the אשה and the עבד do not wish to be divorced or freed respectively¹. In such a situation -

if the master desired he may reconsider and retract the שטר שחרור. This according to ר"מ who maintains that it is a חוב for the עבד to be free (and obviously by the אשה it is a חוב for her to be מגורשת), therefore the שליח could not be שטר שחרור for the עבד.

This is not the case by קידושין that is בע"כ of the אשה - **מה שאין כן בקדושין** **that even though** that here too by קידושין the prospective **may retract** the שטר קידושין before it reaches the woman, nevertheless -

it is not similar to these (ג"נ וש"ע). In the case of ג"נ וש"ע the reason the בעל may be חוזר is because it is a חוב for them² and the שליח cannot be זוכה the שטר for them until it comes into their possession literally. Once however it does come to their possession the שטר takes effect; to divorce the אשה and to be משחרר the עבד. By שטר however since it is בעל כורחה, against her will, the שטר never takes effect even after it reaches the woman's 'hand'. A person cannot be מקדש a woman בע"כ (as opposed to אשה ועבד בע"כ of the אשה). Therefore the reason the בעל can be חוזר from the קידושין has nothing in common with ג"נ וש"ע. By קידושין the בעל can be שטר קידושין because since it is בע"כ, there is no meaningful שטר קידושין.

רש"י disagrees with תוספות.

and it does not appear that this is the interpretation of the גמרא **דאי מיירי בשליחות בעל כורחיהו** **for if we are discussing a שליחות** which is known to be **against their wills** (of the women and the עבד)

The רבנן will also admit to ר"מ **רבנן נמי מודו דחוזר בעבד** **retract** the שטר שחרור from the עבד (if it did not reach him as of yet).

and one may not acquire the שטר שחרור **on behalf of** **against his will**. The argument between ר"מ ורבנן, is only when we do not know the wishes of the עבד. Then the רבנן maintain that generally it is a זכות for the עבד to be freed. Therefore one may be שטר שחרור for the עבד, since זוכה the עבד, because since it is בע"כ, there is no meaningful שטר קידושין.

¹ From רש"י subsequent question on תוספות, it appears that this is how תוספות understood רש"י.

² In general it is a חוב for them, and particularly in this case where it is known that they oppose it.

However when we specifically know that the עבד does not want the שחרור, the רבנן will agree that חוזר בעבד since it is a חוב for him in this specific case.

תוספות offers an alternate explanation

And the explanation of the ר"ה is more appropriate – ונראה כפירוש רבינו חננאל

that since by עבד and the אשה who is being divorced דכיון דבעבד ואשה **The שליחות there is against there will;** איכא שליחות בעל כורחייהו the עבד and שטרות need not be consulted by the בעל to send them their respective שטרות **I might have thought that the בעל cannot retract** - הוה אמינא דאין יכול לחזור

for since it came into the 'hand' of the שליח דכיון דבא ליד השליח **it is as if it came to the woman's hand** who is being divorced (similarly it is if came into the hand of the עבד) **cannot prevent** the שליח from giving them the שטר. The שטר is effective without their consent. Therefore as soon as the בעל gave the שליח the שטר, it seems inevitable that the שטר will ultimately become effective, for the אשה cannot prevent it. There seems no reason why the בעל should be able to be חוזר. All that is required on his behalf was done; there is no stopping this process.

since the עבד ואשה cannot prevent **where the transaction cannot take place against her will;** **Howev**er by קידושין **must be with the woman's consent.** אבל קידושין דאין בעל כורחה **it is obvious that he may retract** his offer of קידושין. When the שטר left the master, it was in no way inevitable that the קידושין process will be culminated. It depends on the consent of the woman. Therefore since the sending of the שטר קידושין is only the beginning of a process, the prospective בעל may retract, as long as the woman did not willingly accept the קידושין.

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anticipate a certain difficulty with this interpretation. According to the ר"ה by the בעל can also be חוזר. The reason why it is not similar to ג"נ וש"ע is because by קידושין it is obvious that he may be חוזר. Why did not the גמרא say so? Why does the גמרא say that it is ליתא בקידושין, meaning that it does not exist by קידושין when in fact by קידושין the בעל may also be חוזר? תוספות responds:

and the expression 'an item that does not apply by קידושין - ומילתא דליתא בקידושין

it means that there is no novelty that by קידושין היינו דליתא חידוש בקידושין he may retract. In the case of קידושין it is obvious that the בעל may retract, since it depends on her consent as well, as previously explained.

תוספות asks a question:

And there is a difficulty; let the תנא teach us that there is an additional similarity between ג"נ וש"ע in a case of בע"כ; וקשה ליתני דשוו לבעל כורחיה

where it is permitted to send them a גט אשה and a שטר שחרור even **against their will**.

ג"נ וש"ע – **and there will be four similarities between ג"נ וש"ע even according to the רבנן**³. It will also be a מילתא דליתא בקידושין since a אשה can be only with her consent. תוספות does not answer this question.

Summary

According to רש"י the term שליחות בע"כ refers to the fact that it was known that the שליחות was against their wills. In all three cases the בעל can be חוזר. There is a difference however. By ג"נ וש"ע he can be חוזר because it is a חוב for them. By קידושין he is חוזר because there was no real שטר קידושין. תוספות argues that if it was known that the שטר שחרור was בע"כ of the עבד the חוזר בעבד would agree that חוזר בעבד.

תוספות follows the explanation of the ר"ח. By ג"נ וש"ע there is a חידוש that the בעל can be חוזר, since they cannot be מעכב, it would seem that the process is over as soon as the שטרות come into the hands of the שליח. By קידושין however where it must be מדעתה, so obviously the בעל can be חוזר. There is no חידוש that he cannot be חוזר. The question remains why did not the חכמים also say that there is a fourth similarity, namely that by ג"נ וש"ע it is בע"כ; however by קידושין it must be מדעתה.

Thinking it over

Is תוספות last question connected to the פירוש ר"ח or is the same question applicable to פירש"י?⁴

³ The difference between תוספות question on רש"י and his question on the ר"ח is: According to רש"י the fourth similarity is equally valid for the רבנן as it is for ר"מ. The question on the ר"ח is; why indeed did not the ברייתא list a fourth similarity according to the רבנן as well? See מהר"ם שי"ף.

⁴ See מהר"ם שי"ף.