

He granted it to those that will be born; – הקנה לנולדים הכי נמי דלא קנו – is it indeed so that they do not acquire it

OVERVIEW

אמימר explained the reason מעמ"ש is effective is because it is considered as if the מלוה (מפקיד) said to the לווה (נפקד) לווה, 'I am committing myself to pay you or anyone whom you designate that I should pay'. רב אשי challenged אממר that according to your explanation it turns out that דלא קנו. There appears to be different גירסאות here and תוספות explains the statement of רב אשי according to both גירסאות.

פירוש הקנה לנולדים במעמד שלשה שלא נולדו עדיין בשעת מתן מעות הכי נמי דלא קנו – The explanation of מעמ"ש means that he granted the loan through מעמ"ש to those who were not as yet born when the money was given from the מלוה to the לווה; and רב אשי asks will it indeed be so that they will not acquire it.¹

גירסא addresses another תוספות:

ולספרים דגרסי הכי נמי דקנו הכי פירושו –

And according to the texts that read; 'is it indeed so that they do acquire it', this is the explanation of רב אשי's (rhetorical) question -

– הקנה לנולדים בקנין בעלמא בלא מעמד שלשה דלא הוה בשעת קנין שלא נולדו עדיין – If he granted it to נולדים, who were not born when the קנין was made, with a general קנין, not במעמ"ש -

הכי נמי דקנו דהא במעמד שלשתן קנו אפילו נולדו אחרי כן:

Is it indeed so that they acquire it (they should according to you אממר), since by מעמ"ש they acquire it even if they were born after the loan was given.

SUMMARY

We can be גורס either קנו or ה"נ דקנו. The question is the same; how can מעמ"ש be effective to a לעולם בא לעולם.

THINKING IT OVER

How is תוספות גירסא (even the first one) different than ours?²

¹ The שבוך of the לווה to the מלוה (and דאתו מהמתך) was made when the loan was given; however since these נולדים were not born as yet, it is a case of לעולם בא לעולם, were all agree that he is not קונה.

² See רש"ש.