

שטר שיש בו אחריות נכסים אינו משמט -

A note in which there is a guarantee of assets is not released

OVERVIEW

ruled that if the **לוה** subjected his real estate assets to subordinate the loan, **שביעית** cannot be **משמט** this loan. The reason is that since the loan is secured (even if the **לוה** sells his assets, the **מלוה** can still collect them), it is considered as if the loan is already paid up.¹

anticipates a difficulty: תוספות

הא דאמרינן לעיל בפרק ב' (דף יח, א) דאונס² קנס³ ופיתוי⁴ שזקפן במלוה⁵ משמטין⁶ –

That which the **בריייתא** taught us previously in the second פרק that **אונס**, **קנס** and **פיתוי**, which were converted into a loan, are **משמט** -

ומפרש דהיינו משעת העמדה בדין⁷ –

And the **בריייתא** there explained that it is considered from the time that **זקפן במלוה** **this case was settled in court**, and the accused was found guilty and was required to pay the **קנס**. This concludes the citation of the **בריייתא**. asks -

אף על גב דמשעמד בדין גבי ממשעבדי⁸ כדמוכח בכמה דוכתי –

Even though once it was **עמד בדין** the creditor can collect even from **משעבדי** as is evident in many places -

וכן כתובה משתפגום ותזקוף משמטת אף על גב דגבי ממשעבדי⁹ –

And similarly by **כתובה** the rule is that it is **משמטת** after she received partial payment and/or¹⁰ she converted it [the remainder] into a loan, even though that **כתובה** may be collected from **משעבדי** –

¹ See רש"י ד"ה אינו.

² נערה בתולה refers to the fifty שקלים that one must pay if he forced himself on a.

³ קנס refers to the מאה כסף that one who is מוציא שם רע on his wife (that she was מזנה during אירוסין) must pay.

⁴ פיתוי refers to the fifty שקלים one must pay if he enticed a בתולה into a relationship.

⁵ The מאנס (or מפתה ומוציא ש"ר) did not have the money to pay and he owed it as a loan.

⁶ If משמט comes and the various קנסים were not paid, it is not owed any more, for שביעית is שביעית them.

⁷ If שביעית occurred after the העמדה בדין and the קנס was not paid, he is exempt from paying it.

⁸ Once it was עמד בדין there is public knowledge that the accused owes money, therefore they can/should be careful when buying property from him, knowing full well that this property is attached to a debt.

⁹ The question is, in all these cases mentioned it is גבי ממשעבדי, so why is שביעית משמטת? We learnt here (according to ר"י ור"ל) that a שטר שיש בו אחריות (because it is ממשעבדי); what is the difference between a שטר שיש בו אחריות and these cases mentioned here?!

¹⁰ According to רב we require תפגום and תזקוף for שביעית to be משמט, while according to שמואל either one is sufficient for שביעית to be משמט.

- גבי ממשעבדי (כתובה and קנסים) replies that even though they תוספות

מכל מקום אלים טפי כשמפורש שיעבוד בשטר¹¹:

Nevertheless the שיעבוד is stronger when the שיעבוד is written explicitly in the שטר.

SUMMARY

There is a difference whether a debt can be collected from ממשעבדי implicitly (where שביעית is משמט) or if it can collect ממשעבדי explicitly (where שביעית is not משמט).

THINKING IT OVER

According to the תוספות of ה"א (that there is no difference whether the שיעבוד is explicit or not) why did not תוספות ask that every שטר (even without אחריות) should not be משמט for since we maintain טעות סופר, every שטר is ממשעבדי?!¹²

¹¹ By the קנסים since there is no document that clearly states that this debt can be collected from ממשעבדי, therefore it is not considered כגבוי that שביעית should not be משמט. Regarding the כתובה however, even though אחריות נכסים is mentioned in the כתובה, nevertheless since she was פוגמת and/or זקפן במלוה it is like a new loan where אחריות נכסים is not mentioned explicitly and she collects ממשעבדי only because of העמדה בדין (see תפא"י).

¹² See אמ"ה # 238.