

אין הגזברין רשאים להוציא אותן לחירות –

The treasurers are not permitted to set them free

OVERVIEW

The גמרא stated that if someone was מקדיש his עבדים, the גזברין are not permitted to set the עבדים free, rather they may sell the עבדים to others (with the money going to the הקדש), and the buyers may free them. תוספות explains the reason for this rule.¹

וכן אמר בפרק הנזקין (לקמן נב,א) גבי יתומין –

And the גמרא states a similar ruling in פרק הנזקין regarding orphans -

דאין האפוטרופסין רשאים להוציא אותן לחירות² אבל מוכרין אותן לאחרים כולי –
that the trustees of the estate are not permitted to set the slaves free, but rather they can sell the slaves to others, etc. and the others may free them -

ונראה דהיינו טעמא דאסור דרך שיחרור דסברי דקא מזלזלי בנכסי יתומים והקדש³ –

And it seems that this is the reason, that it is forbidden to dispose of the slaves by means of emancipating them since the trustees (and the גזברים) are demeaning the property of יתומים and הקדש -

אבל דרך מכירה ידעי כולי עלמא שמוכרין אותן בשויין:

However, when the dispose of the עבדים by selling them, everyone knows that the אפוטרופסין וגזברין are selling them for their full value.

SUMMARY

גזברין and אפוטרופסין cannot free the עבדים (even if they pay the full value of their redemption) because people are suspicious that they took less than the true value.

THINKING IT OVER

Why does not תוספות learn like פירש"י here (and in הנזקין)⁴ that the גזברין (or גזברין?)⁵ cannot be משחרר the עבדים since קנוי להם

¹ The גמרא said that this ברייתא disagrees with רב and maintains that לא יצא לחירות עבדו and we assume that there is a קדושה on the העבד (not like רב who says גופו אינו קדוש [see previous תוס' ד"ה גופיה footnote # 28]). The question is, since גופו קדוש, so the עבד belongs to הקדש why cannot הקדש set him free.

² This rule applies even if the עבדים have sufficient funds to redeem themselves (see עיי"ש there רש"י [See 'Thinking it over']). We must assume that by הקדש the same rule applies in the same case (see רש"י here רש"י).

³ People may assume when they see the עבדים leave the רשות of הקדש or יתומים that the אפוטרופסין/גזברין (out of pity for the עבדים) may have taken less than the full value of the עבד thereby cheating הקדש/יתומים of their proper due.

⁴ See footnote # 2.

⁵ See נח"מ.