He said to them; he accomplished nothing – אמר להן לא עשה ולא כלום

Overview

A שכיב מרע threw his hat to a שפחה and told her, 'acquire the hat and acquire yourself' (as a בת חורין). רב נחמן ruled that nothing was accomplished by this exchange. תוספות explains why other rulings do not set her free.

פירש בקונטרס[1] משום דדברי שכיב מרע ככתובין וכמסורין דמו[2] ליכא -

רש"י explained that there is no cause that the שפחה should be freed **because** of the ruling **that דברי שכ"מ ככתובין וכמסורין דמו -**

שהרי לא צוה כמוסר לבניו להקנותה לעצמה אלא בקנין זה נתכוון לשחררה והרי הוא טעות –

Because he did not command that she should belong to herself (through מתנת שכ"מ) in a manner **as one who is transmitting** his wishes **to his children** (the usual מתנת שכ"מ), **but rather he intended to free her through this קנין** (of acquiring the hat), **and that** קנין **was a mistake** (for the קנין is ineffective, as the גמרא explains). This concludes פירש"י.

תוספות takes issue with פירש"י:

ולא שייך להזכיר כאן מתנת שכיב מרע דהויא ליה במקצת[3] –

And the concept of **מתנת שכ"מ is not applicable here[4] that** רש"י **should mention it, since it is a partial** gift. If anything -

ולמצוה לקיים דברי המת[5] איכא לדמויי אם היה כמוסר לבניו:

It could have been compared to מצוה לקיים דברי המת, if he was transmitting his wishes to his children.

Summary

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[1] בד"ה דהוה.

[2] The ruling is that the words of a שכ"מ (a deathly ill person) are considered as if they were written (in a שטר) and delivered (to the intended recipient), and the שכ"מ here intended to free her; nevertheless in this case it is not effective, as רש"י explains.

[3] See ב"ב קנא,ב that the rule of דברי שכ"מ ככתובין וכו' and no קנין is required, is only if the שכ"מ distributed all his assets, however if there is only a partial distribution, then a קנין is required. In our case he did not grant the שפחה (or anyone) all his assets therefore there is no rule of מתנת שכ"מ. See 'Thinking it over'.

[4] There is no need for רש"י to explain why מתנת שכ"מ is not effective here, since it is not applicable at all.

[5] There is a rule of מצוה לקיים דברי המת (in certain circumstances) even when the rules of מתנת שכ"מ do not apply. תוספות is saying it would have been appropriate for רש"י to explain that there is no מצוה לקיים דברי המת in this case (to have the יורשים free the אמה), since (as רש"י answered [concerning שכ"מ]) that he was not מוסר לבניו. It is only when he is מוסר לבניו that we say מצוה לקיים דברי המת. (See also תוס' ד"ה והא יג,א regarding מצוה לקיים דברי המת.)
מתנת שכ"מ is effective as soon as the שכ"מ dies and no other actions need to be taken. By מצוה לקיים דברי המת, the יורשים must act according to the wishes of the מת; it becomes effective when the יורשים take proper action.

מתנת שכ"מ במקצת requires a קנין. We say מצוה לקיים דברי המת if he was כמוסר לבניו.

THINKING IT OVER

רש"י states that she cannot be freed based on דברי שכ"מ because he was not צוה כמוסר לבניו, etc., while תוספות says because it is מתנת שכ"מ במקצת, and therefore the entire concept of מתנת שכ"מ is לא שייך כאן.[6] Why, according to תוספות explanation, is מתנת שכ"מ not applicable here, more that according to רש"י's explanation?!

[6] See footnote # 3 & 4.