

חיישינן שמא זיכה לו על ידי אחר –

We are concerned perhaps he transferred it through another party

OVERVIEW

The ברייתא states if the master says, 'I emancipated my slave', and the slave said, 'he did not' [the rule (seemingly) is (according to תוספות) that the slave is emancipated,¹ for], we are concerned that the master was מזכה the שטר שחרור to the עבד, through another party.² The issue תוספות discusses is if it is only a concern that perhaps he was מזכה ע"י אחר, how can we consider the slave a חורין בן חורין and allow him to marry a בת חורין.

האי חיישינן³ הוא ודאי כמו חיישינן שמא במי מילין כתבו⁴ (לעיל דף יט,ב):

This word חיישינן is to be understood to mean that we are certain that the master freed the slave אחר ע"י, just like the phrase חיישינן שמא במי מילין כתבו mentioned previously in our מסכת, where there too it means we are certain that כתבו במי מילין כתבו.

SUMMARY

In the case of the ברייתא the עבד is ודאי משוחרר. The term חיישינן can (occasionally) mean חיישינן ודאי.

THINKING IT OVER

Why does תוספות assume that when the ברייתא here states חיישינן it means that the עבד is משוחרר⁵, maybe it means only ספק משוחרר⁶?

¹ See 'Thinking it over'.

² The slave is freed since it is a זכות for an עבד to be freed, and זכין לאדם שלא בפניו (without his knowledge).

³ See 'Overview'.

⁴ There ruled that if a man said to his wife here is your גט and gave her a blank piece of paper, she is divorced, because we are concerned that he wrote the גט with מי מילין (water prepared in such a manner that after you write with it, the document appears blank). תוספות (presumably) assumes that she is מגורשת ודאי שמאול said מגורשת (even though שמאול states חיישינן), similarly here too (even though the ברייתא states חיישינן) it means ודאי just as by שמאול. The מהרש"א asks that the גמרא there concludes that she is not מגורשת ודאי unless the document is treated and the words of the גט appear (and even then, she is only מגורשת ספק) so how does תוספות prove anything from there?! [It is perhaps possible to explain תוספות, for the גמרא there challenges שמאול from a ברייתא. If however all that שמאול meant was that she is מגורשת ספק, then there would be no challenge. This proves that the מקשן assumed that שמאול meant מגורשת ודאי, even though שמאול used the term חיישינן. See (also) אמ"ה # 118-9.]

⁵ See footnote # 1.

⁶ See מהרש"א הארוך.