

וכותב ומעלה בערכאות שלהם –

And he writes and brings it up to their courts

OVERVIEW

The ברייתא states that if a נכרי forcibly took possession of a Jew's house and the ישראל is not able to evict him, the ישראל is permitted to take payment from the נכרי for the house and write a bill of sale to the נכרי and he may bring it to the secular courts. There is a dispute between רש"י and תוספות as to what the novelty is in this ruling that he is כותב ומעלה בערכאות שלהם.

פירש בקונטרס¹ אף על פי דחשיבות הוא להן -

explained; even though that by doing this he is giving a **recognition of importance to the** ערכאות, nevertheless one is permitted to be מעלה בערכאות –

פרש"י asks on תוספות:

וקשה דשטרות העולין בערכאות של עובדי כוכבים מכשרין² -

And there is a difficulty with this explanation, for the משנה rules; ‘any documents which are brought before the secular courts are valid’ -

ולא מפלגין בין לכתחילה בין לדיעבד³ -

And we do not distinguish whether it was done **initially or** only where it **was already done**; it is always כשר, so what is the novelty here that he may bring the מכירה to the ערכאות?!

תוספות offers his explanation as to what the novelty is here:

ומפרש רבינו תם דאף על גב דנראה כמקיים המקח⁴ שרי הכא -

And the ר"ת explained that even though it appears that he is certifying the sale, nevertheless it is permitted here –

תוספות responds to an anticipated difficulty:⁵

¹ בד"ה ומעלהו.

² See previously the משנה on ב, י.

³ If we were to distinguish between לכתחילה and לדיעבד, and maintain that ערכאות are only כשר בדיעבד, the novelty here would be that in this case it is even מותר לכתחילה since he is מציל מידם, but now that we know from the משנה that it is כשר even לכתחילה, what is the חידוש here?!

⁴ Under normal circumstances one is forbidden to sell his house to a נכרי (in ישראל), as the ברייתא states, so we may have thought that he should not bring the deed to be approved by the ערכאות, for it seems like he is certifying the sale willingly. The ברייתא teaches that he may do it, nonetheless.

⁵ See ‘Thinking it over’ # 2.

וההיא דפרק קמא דעבודה זרה (דף יג,א) הולכין ליריד של עובדי כוכבים -

And that ברייתא in the first פרק of ע"ז which states, 'we go to the fairs of נכרים -

ולוקחים מהן בהמה ועבדים⁶ מפני שהוא כמציל מידם ומעלה בערכאות של עובדי כוכבים⁷ -

And we buy from them animals and slaves, because he is saving it from them, and he may bring the sales document to the ערכאות of the נכרים' –

תוספות replies:

התם נמי מקיים המקח ומתפרסם הדבר שמהנה לעבודת כוכבים⁸ ואפילו הכי שרי:

There too he is certifying the sale and it becomes public knowledge that he is aiding the נכרים, and nevertheless it is permitted because he is מציל מידם.

SUMMARY

According to רש"י the novelty of מעלה בערכאות is that it is permitted even though that חשיבות הוא להן, while according to תוספות there needs to be some impropriety in the deal,⁹ and nevertheless it is permitted מציל מידם.

THINKING IT OVER

1. We see here and in the ברייתא of ע"ז that one may be מעלה בערכאות, only if it is שטרות העולין (לכתחילה) the משנה state that (even) כמציל מידם; why therefore does the כשרין בערכאות של עכו"ם¹⁰ is that?

2. Is the question from ע"ז¹¹ apply according to פרש"י as well?¹²

⁶ The text there reads עבדים ומעלה בערכאות של עכו"ם מפני שהוא כמציל מידם (the order is reversed). See נחלת משה.

⁷ What is the novelty there; seemingly he is not doing any איסור (unlike here where one is forbidden to sell his house to a נכרי), so what is the חידוש of בערכאות (נכרי)?!

⁸ The יריד was (usually) in conjunction with some holiday of the נכרים, so it appears as if the ישראל is participating (ח"ו), in their holiday.

⁹ This can be either selling them a house בא"י or being לעכו"ם.

¹⁰ See נחלת משה.

¹¹ See footnote # 4.

¹² See נחלת משה.