

לחוצה¹ לארץ יצא לחירות - To outside of *Eretz Yisroel*; he is emancipated

Overview

The משנה stated that if one sold his slave to (a buyer in) חו"ל, the slave becomes emancipated. תוספות explains under which conditions this ruling applies.

תוספות asks:

ואם תאמר היכי דמי אי אזיל מנפשיה איבד את זכותו כדאמר בשמעתין² -

And if you will say; under which circumstance is this, if the עבד went on his own volition to חו"ל, he lost his right to be set free, as the גמרא shortly states -

דבעל כרחי³ אינו יכול להוציאו כדאמרין בשלהי כתובות (דף קי,ב) דאין הכל מוציאין -

For the new master cannot take the עבד out of ישראל against his will, as the משנה states in the end of כתובות that not everyone can take someone out from — א"י

תוספות answers:

ויש לומר דמיד כשמכרו קנסינן ליה⁴ פן ישתדלנו לוקח בדברים לילך אחריו:

And one can say that we penalize the master immediately when he sells him to someone who lives in חו"ל, for we are concerned perhaps the buyer with his smooth talking will convince the עבד to go with him to חו"ל.

Summary

The קנס is levied as soon as the sale takes effect, so that the עבד will not be convinced to go to חו"ל.

Thinking it over

Why cannot we say that we are discussing a case where the עבד went with his new master to חו"ל, however the master intended to return back to א"י, in which case the ruling is that לא איבד זכותו⁵?

¹ A marginal note indicates that this תוספות is referencing the משנה on מג,ב.

² See later on this עמוד.

³ אין מוציאין מא"י is stating that the only way the עבד goes to חו"ל is if he agrees to it, otherwise the rule is that איבד את זכותו. Therefore if the only option is מדעת, the עבד is not set free, since זכותו את זכותו.

⁴ At this point the עבד did not yet go to חו"ל so he did not lose his זכות. This קנס is a preventive measure so that no one sells their slave to someone who lives in חו"ל.

⁵ See # 130. אוצר מפרשי התלמוד and מהרש"א.