

## With a guarantee

## באחריות –

### OVERVIEW

stated the following ruling; if **ראובן** sold a field with a guarantee (that if the field is taken away from **שמעון** [because of a lien from a creditor], **ראובן** will return to **שמעון** the money of the sale [but **ראובן** had no other assets]). However, **שמעון** did not pay **ראובן** for the field but rather converted the money owed into an independent loan that he owes **ראובן**. Later **ראובן** died and his creditor came to collect this field from **שמעון** (as payment for his loan to **ראובן**);<sup>1</sup> however **שמעון** convinced the creditor to take money (the price of the field) instead of the field. **שמעון** now claims that he need not pay the heirs of **ראובן** for the debt, since he discharged his debt by paying off the creditor (for the debt the heirs would need to pay [if they would have assets]). **רמי בר חמא** ruled that the heirs can collect the debt **שמעון** owed their father (for the purchase of the field), because **שמעון** should not have given the creditor the money (which he owed to the deceased [and his heirs]), for that money is מטלטלין and there can be no lien on מטלטלין.<sup>2</sup> Our תוספות discusses the reason that the case was set up where it was sold באחריות (for seemingly the same rule applies if it was sold שלא באחריות).<sup>3</sup>

comments:

**שלא באחריות פשיטא דיתן ליורשיו אפילו לא זקפן עליו במלוה**<sup>4</sup> -

If **שמעון** bought the field **without** **אחריות** it is obvious that **שמעון** will need to pay the heirs even if **שמעון** did not convert the money due for the sale to become an independent loan -

**אבל באחריות קא משמע לן דהוה אמינא יעכבם לעצמו דהוי ליה כתופס מחיים** -

**However**, since **ראובן** bought the field באחריות, in this case **רמי בר חמא** is teaching us a novelty; **for we would have thought** that **שמעון** can retain the moneys owed to him (for the confiscation of [the value of] the field) **for himself**, for since he has a guarantee, **it is as if** **שמעון** seized his compensation while **ראובן** was still alive. Therefore **רב"ה** -

<sup>1</sup> The creditor could not collect from **ראובן**'s heirs because (as mentioned) they did not inherit any 'real' assets from **ראובן**.

<sup>2</sup> See **ראובן** in רש"י that **שמעון** has no claim against the heirs based on the guarantee (from **ראובן**), since the heirs did not inherit any real property from **ראובן**; they are not responsible for the guarantee.

<sup>3</sup> See 'Thinking it over'.

<sup>4</sup> The buyer (**שמעון**) certainly needs to pay up for the purchase of the field since **ראובן** did not guarantee the sale. Even if the creditor took the field, **שמעון** would have no recourse but to pay the heirs what he owed **ראובן** for the field.

**קא משמע לן דלא חשיב ליה כתופס מחיים כיון<sup>5</sup> דזקפן עליו במלוה:**

**Teaches us that it is not considered as if he grabbed (his compensation) during the lifetime of ראוּבֵן; the reason is because it was converted into a loan.**

### **SUMMARY**

If זקפן עליו במלוה he cannot retain the money if אחריות he bought the field with ראוּבֵן, but he can retain the money if במלוה. However if שמעון bought the field (לא זקפן עליו במלוה). (לא זקפן עליו במלוה even if he can never retain the money (even if he bought the field with אחריות)).

### **THINKING IT OVER**

1. It seems that תוספות wanted to explain why the case was with אחריות since the same rule applies if it was sold without אחריות.<sup>6</sup> However this is difficult to understand, for it is obvious that if it was sold without אחריות that the buyer must pay the heirs for the property (and even though he lost it, for he bought it without אחריות). There is a חידוש only if he sold it with אחריות, where one would think that the buyer can withhold payment in lieu of the אחריות, which he is entitled to. What is bothering תוספות?<sup>7</sup>

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<sup>5</sup> However if it were not in a case of במלוה and there was אחריות, there would be no obligation for שמעון to repay the debt. In this case (of זקפן עליו במלוה), שמעון is holding the sale money and since there is a guarantee on the sale, שמעון can rightfully hold back the sale money as his security for the guarantee money. However once it was זקפן עליו במלוה, the money that שמעון owes ראוּבֵן is not the sale money anymore but rather an ordinary loan (not connected with the sale), therefore he had no right to (use this money to pay off the creditor and cannot) retain it as a security, and he owes it to ראוּבֵן's heirs.

<sup>6</sup> See footnote # 3.

<sup>7</sup> See (the beginning of) ד"ה ראוּבֵן (and the פנ"י there).