

אבל אם כתב עליו אונו זהו שחרורו –

But if he wrote a document for him; that is his emancipation

OVERVIEW

The ברייתא states that if someone sells his עבד to a נכרי, the עבד is freed but requires a גט שחרור from his Jewish master, unless (according to רשב"ג) the master wrote his שטר שחרור, then no other שטר שחרור is required. reconciles our ברייתא with a seemingly contradictory ruling.

asks: תוספות

ואם תאמר הא דאמר אמימר לעיל (דף מ,א) המפקיר עבדו¹ אין לו תקנה -

And if you will say; this which אמימר ruled previously, one who frees his slave, that slave has no recourse -

דאיסורא דאיכא גביה לא מצי מקני ליה וכאן משמע דיש לו תקנה בשטר -

For the איסור interest which the master has in this slave, he cannot grant him; however here it appears that he has recourse by receiving a שטר שחרור (or אונו) - ועל כרחך לא משחרר ליה עד שיברח² -

And perforce you must say that he is not freeing him with this אונו until after he escapes -

דאי לאלתר חייל השחרור היכי מזבין ליה ומסר ליה לעובד כוכבים להשתעבד בו³ -

For if the שחרור is effective immediately (when he wrote the אונו), how can he sell him and deliver him to the נכרי to enslave him?!

answers: תוספות

ויש לומר דלא דמי למפקיר דעובד כוכבים לא קני ליה אלא למעשה ידיו -

And one can say that the case of selling to a נכרי is not similar to one who is מפקיר the עבד, because the נכרי only acquires the עבד for his handiwork -

¹ The הפקר accomplishes that the master had relinquished (to the עבד) the monetary interest which he had in this עבד. However he still is an עבד to this master in the sense that he is still forbidden from marrying a חורין. This interest, which the master has in this עבד is considered an interest of איסור, but not an interest of money. אמימר maintains that this right of איסור cannot be granted to the עבד unless the master also has a monetary interest in the עבד.

² The אונו reads; לכשתברח ממנו אין לי עסק בך. One may argue that the owner means that when you escape from the נכרי, it is considered as אין לי עסק בך retroactively (before I sold you). If that was the intention we can understand why the אונו is effective, since at that time (retroactively) he was a complete עבד (even regarding monetary issues). תוספות however rejects this notion. See 'Thinking it over'.

³ How can he allow the נכרי to enslave him, since he is now (retroactively) a בן חורין and is מחוייב במצות! Therefore we must conclude that the שחרור becomes effective later after he ran away from the נכרי, but at that point the אונו had no monetary interest in the עבד, since he sold him to the נכרי. The question is that אמימר ruled that one cannot free a slave with a שטר if he only has an איסור interest in him, but not a ממון interest!

ואכתי פש ליה גבי ישראל ממונא דקני ליה לקנס⁴ ולולדות⁵ -

But there still remains a monetary interest of the ישראל in the עבד regarding the law of קנס and for offspring -

ולא הפקיעו ממנו חכמים עד אחר שיכתוב לו גט שחרור:

Which the חכמים did not take away from him until after he writes a גט שחרור.

SUMMARY

According to אמימר, if the master has no monetary interest in the עבד (when he is המפקיר (him) a שטר שחרור will not be effective; nevertheless it is effective by המוכר (him) a שטר שחרור, since the owner retains the monetary rights of קנס and ולדות.

THINKING IT OVER

It is apparent from תוספות that the contradiction to אמימר (who maintains המפקיר (him) a שטר שחרור) is from the ruling of רשב"ג (regarding עליו אונו);⁶ seemingly the same contradiction is from the חכמים as well, for they too maintain גט שחרור וצריך גט שחרור; why ask only from רשב"ג?⁷

⁴ This means that if an animal killed this עבד (after being sold to the נכרי) the thirty שקלים of קנס will be paid to the ישראל,

⁵ See פורת יוסף, who explains this to mean that the master may give this עבד (even after he was sold to the נכרי) a שטר שחרור to have children with her, which will belong to the master. These two monetary rights (קנס and ולדות) indicate that the master still retains a monetary interest in the עבד. Therefore he can free him with a שטר (איונו) (as opposed to המפקיר עבד where he relinquishes totally any monetary interest in the עבד, so a שטר שחרור is not effective [according to אמימר]).

⁶ See footnote # 2.

⁷ See מהר"ם, מהרש"א.