

ואי לא דאיננא לך כרב הונא אליבא דרבי יוסי¹ -

And if not, I will judge you as per the ruling of ר"ה according to ר"י.

OVERVIEW

fenced in רוניא on all four sides and demanded from רוניא payment of (at least) אגר נטירא (the cost of a watchman).² רוניא refused. רבא told רוניא that if he does not pay for this limited amount, he will rule that רוניא must pay a much greater amount in accordance with the opinion of ר"ה אליבא דר"י. The question is, whether רבא truly maintained that the הלכה is according to ר"ה אליבא דר"י, or perhaps רבא does not agree with ר"ה אליבא דר"י he only said it as a threat to induce רוניא to pay the minimal amount.

קצת היה נראה שלא להפחידו היה אומר כן –

It appears somewhat that רבא was not saying this to merely frighten him (רוניא); however רוניא himself maintains that the ruling of ר"ה אליבא דר"י is not legally binding. This is not so, rather רבא agrees that the legal ruling should follow the opinion of ר"ה אליבא דר"י, instead of the compromise that רוניא was offering.

תוספות proves his point that he was not merely trying to frighten him:

מדלא קאמר ואי לא מגבינא לאפדנא מינך³ או מחינא לך בסילואה דלא מבע דמא⁴ –

Since רבא did not say to רוניא 'I will collect the amount due for the fence, from your house' by placing a lien on it, or he should have told רוניא 'I will smite you with a thorn that hurts but does not draw blood'. These are the types of 'threats' that we find in the גמרא that various דיינים used. The fact that he did not use any of these threats but rather warned him that if he does not agree to the compromise he will rule according to the strictest interpretation of the law, indicates that indeed the law is the way it was expounded by ר"ה אליבא דר"י. If the law does not follow the opinion of ר"ה אליבא דר"י, why did רבא use an empty threat, which he could not follow up on? He should have used the threats mentioned, which he could impose, to coerce רוניא pay רוניא (at least) the אגר נטירא.

תוספות anticipates a question:

ואף על גב דבלולב הגזול (סוכה דף לד, ב ושם דיבור המתחיל ולדרוש) אמר שמואל להנהו דמזבני אסא –

And even though that in לולב הגזול, שמואל said to the myrtle (הדסים)

¹ 'הכל לפי מה שגדר' ניקף must pay ר"ה אליבא דר"י.

² רש"י ד"ה פייסיה.

³ See ב"ק דף יב,א.

⁴ See later ב"ב דף קנא, ב. This refers to a נידוי.

merchants (for the מינים) –

אשו זביניכו ואי לא דרשינן לכו כרבי טרפון –

‘Make your prices equal to the normal market value (do not overcharge because the people need the הדסים for טוב) **and if not** (if you refuse to listen to me) **I will interpret** the הלכה **according to רבי טרפון**’ who maintains that even a loped off הדס is כשר.⁵

ובעי למימר התם דלהפחידם היה אומר כן –

And the גמרא wanted to say there that שמואל said this in order to frighten the merchants, but not that the דין is actually like ר' טרפון. It appears from that גמרא that even though שמואל did not threaten them with the abovementioned threats (of smiting them with a thorn, etc.), nevertheless we do not assume that his threat to rule according to ר' טרפון was a real threat. The הלכה is not like ר' טרפון, it was only an empty threat to frighten them. We may argue that here too in the case of רוניא it was an empty threat, and the הלכה does not necessarily follow the opinion of ר"ה אליבא דר"י.

תוספות responds:

הכא נראה דהכי סבירא ליה כדפירש רש"י –

Here however it seems that רבא indeed maintained so, as רש"י explains; that we can infer from here that the הלכה is according to ר"ה אליבא דר"י. (תוספות does not explain the difference between our case and the case of the אסא.)⁷

ר"ה אליבא דר"י: רבא offers an additional proof that the הלכה is like ר"ה אליבא דר"י:

ועוד מדקאמר ליה זיל פייסיה במאי דאפייס –

And furthermore since רבא said to רוניא ‘go and appease him for the amount with which he agreed to compromise’, that -

משמע דמן הדין היה לו יותר אם לא בשביל שכבר נתפייס:

indicates that according to the law רבינא was owed more, if not for the fact that רבינא already agreed to compromise. רבא referred to the amount that he expected רוניא to give רבינא, as a compromise on s'רבינא behalf. This indicates that according to the strict

⁵ If שמואל had ruled like ר"ט that a הדס may be missing the top, the prices of הדסים would have fallen dramatically, since loped off הדסים are plentiful.

⁶ See רש"י ד"ה הגה"ה. We might infer from this תוספות that תוספות accepted this הגה"ה to be the opinion of רש"י. Others however suggest that the גירסא in תוספות be emended to read either 'כדפיריש' or 'כדפירש ר"ש', referring to the רשב"ם. תוספות מורינן שמואל' is 'הגה"ה', which appears at the end of the 'תמ"ש' of ר"ת.

⁷ The commentaries explain that in the case of הדסים, there was no choice but to frighten them with an idle threat. שמואל could not have told them that he would make them pay. They did not owe anything to anyone; they merely raised the prices of הדסים (which perhaps they may have had the legal right to do so). Here however, if the הלכה is that he is required to pay (only) אגר נטירא, then רבא should have threatened him accordingly, and not with an empty threat.

interpretation of the law, רבנא would be required to pay more.

SUMMARY

רבנא maintains that רבא is in agreement with the ruling of ר"ה אליבא דר"י. If not, he would not have made this empty threat, but rather would have warned רבנא that there are ways to coerce him to pay רבנא the נטירא.

An empty threat may sometimes be used, when there is no other way to coerce the wrongful party, as in the case of שמואל and the הדסים merchants. Another indication that רבא agreed with ר"ה אליבא דר"י is the fact that he referred to רבנא's offer as a compromise, indicating that legally רבנא could have demanded more.

THINKING IT OVER

1. Seemingly the second תוספות of ראייה is readily understood. Why is it only a 'second' proof?⁸
2. If we were to assume that רבא disagrees with ר"ה אליבא דר"י; what would רבא himself maintain in this case?
3. Can this case be in accordance with the לישנא אחרינא, that בנייהו איכא וניקף וניקף איכא בינייהו?⁹

⁸ See נח"מ and פני שלמה

⁹ See בל"י אות קא.