

## When they were standing within it

## בעומדין לתוכה –

### Overview

The **החזיק בקרקע קנה** **ברייטא** which states **קנה** (and the **עבדים** is discussing a case where the **עבדים** were within the **קרקע** (and the **עבדים** are **נקנה** through **הקרקע**). **תוספות** presents a difficulty based on the inference of the **גמרא's** reconciliation.

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והא דקאמר לא קנה באין עומדין לתוכה<sup>1</sup> –

**And that which** the other **ברייטא** states **that** if he made a **קרקע** he is **not קונה** the **עבדים**, that is in a case **where** the **עבדים** are **not standing within** the **קרקע** (for if they were within the **קרקע** they would be <sup>2</sup>**נקנה**).

ואפילו הכי במטלטלין קנה דלא בעינן צבורין במטלטלין דלא ניידים –

**But nevertheless** that **ברייטא** states that (in the same case where it was not **קונה** if he made a **קרקע** in the **קרקע** **he is קונה** the **מטלטלין**, **because we do not require by stationary מטלטלין that it should be piled up** in the **קרקע**. **קנין** **אגב** is effective even if the **מטלטלין** are elsewhere.

**תוספות** mentions a slight difficulty:

ולקמן<sup>3</sup> דדייקין והא קיימא לן דלא בעינן צבורין מגופה הוה מצי למידק:

**And later when we ask; 'but it is established that צבורים is not required',** it was not necessary to refer to the **ק"ל** that **צבורים** is not required, **for we could have inferred this from the text of this ברייתא**.<sup>4</sup>

### Summary

We can derive from the **ברייטא** of **קנה עבדים** that by **מטלטלים** we do not require **צבורים**.

### Thinking it over

What explanation can we offer why the **גמרא** chose to cite the **'והא קיי"ל'**, as opposed to using the inference from the **ברייטא**?<sup>5</sup> [What advantage would there be if we did use the inference from the **ברייטא** as opposed to the **והא קיי"ל**]

<sup>1</sup> The **גמרא** states this. **תוספות** is perhaps mentioning it as an introduction to what follows, which is a prelude to his question why the need for the **'והא קיי"ל'**.

<sup>2</sup> See following **למה** **תוספות** ד"ה, with which **קנין** is he **קונה** the **עבדים**.

<sup>3</sup> ריש ע"ב.

<sup>4</sup> The **ברייטא** is discussing a case where **עומדין לתוכה** (that is why **עבדים** **קנה**) and nevertheless **מטלטלין קנה** **החזיק בקרקע**, therefore it is evident that by **צבורין** **לא בעינן**.

<sup>5</sup> See **נח"מ**.