

יכלי למימר לגדור מר גדירא בארעיה –

They could say; let the master fence in his land

OVERVIEW

When רב יוסף asked אביי to go to the תרבא and ask them to guard their goats so that they would not cause damage to רב יוסף, אביי responded that they may answer back, 'tell רב יוסף to fence his property and he will suffer no damage'. תוספות maintains that אביי was being evasive, for this argument of 'fence your field' is not valid.

היה נשמט אביי שלא היה חפץ לילך לשם -

אביי was evasive, for he did not want to go to the תרבא (for personal reasons), but not that the תרבו בי could have legally claimed, 'fence in your field' -

דהתנן (לעיל דף יט,ב) אכלה מתוך החנות משלמת כולי -

For we learnt in a משנה, if the animal 'ate from within the store she pays', etc. -

ולא אמרינן היה לו לנעול חנותו וכן אכלה מצידי הרחבה -

And we do not say the animal owner is not liable since he could claim, 'the store owner **should have locked his store**', and similarly the same משנה states if the animal **'ate from the sides of the plaza'**, the owner is liable to pay, and we do not say to the victim, 'why did you not protect your merchandise' -

ולעיל¹ נמי לא פריך דליפטר בעל הכלב מן החררה -

And also previously the גמרא **did not ask that the בעל הכלב should be exempt from paying for the חררה**. From all these places it is evident that the claim of the מזיק, 'why do you not protect your property', is invalid and meaningless.

ורב אלפס פסק כרב יוסף וליתיה לדאביי דדחויא בעלמא הוא:

And the רי"ף rules like רב יוסף and אביי is repudiated, for it was merely a deflection (and even אביי did not mean it seriously).

SUMMARY

A מזיק cannot claim exemption since the ניזק should have protected himself.

THINKING IT OVER

Did not אביי realize that רב יוסף would see through his ruse?!²

¹ כג,א where the גמרא asked that the בעל הגחלת should also be חייב for burning down the גדיש, but it did not ask that the בעל הכלב should be פטור from paying for the חררה, since the בעל החררה did not protect it. See תוס' there ד"ה וליחייב (הב') [TIE footnote # 5].

² See נחלת משה.