

## כשעמד בדין על הקרן ולא על הפירות –

**When a judgment was rendered regarding the principal, but not regarding the produce**

### OVERVIEW

The ברייתא explained that according to רבא<sup>1</sup> and הונא<sup>2</sup> the רבה בר רב הונא is discussing a case where the גזול had already taken the גזול to a תורה regarding the stolen property and גזול בי"ד ruled in favor of the גזול. Therefore the גזול can collect from any קרקע the גזול sold after the העמדה בדין. However, since there was no די"ת regarding the פירות the גזול can collect only from the גזול for אכילת פירות (after בי"ד will award him that right), but not from the העמדה (which the גזול sold after the העמדה בדין but before the העמדה בדין of the פירות<sup>3</sup>). Our תוספות discusses the reason for this ruling

asks: תוספות

– **תימה אם כן מאי מפני תיקון העולם<sup>4</sup>**

**It is astounding; if this is indeed so** (that there was no judgment rendered regarding the פירות), **why** does the משנה state that the גזול cannot collect for because of **תיקון העולם** נכסים משועבדים from אכילת פירות

– **הלא בדין לא גבי דמלוה על פה לא גבי ממשעבדי**

**When in truth the גזול cannot legally collect** from משעבדי for אכילת פירות, **for an oral loan does not collect** ממשעבדי; so why does the משנה give as the reason תיקון העולם?! מפני

<sup>1</sup> רבא explained that the גזול ruined the field and therefore (he cannot return the field to the גזול, but rather) the גזול must repay the גזול.

<sup>2</sup> הונא explained that גזול took away the field from the גזול and are now occupying it; therefore the גזול must repay the גזול for he is not capable of returning the field.

<sup>3</sup> Let us assume the העמדה בדין for the קרקע took place on ר"ח ניסן and the העמדה בדין for the פירות took place on the following ר"ח סיון. The מלוה may collect for the קרן any property which the גזול sold after ר"ח סיון. However, for אכילת פירות he cannot collect from any property which the גזול sold before ר"ח סיון. He may however collect from the גזול (after the העמדה בדין). [If the גזול admits to consuming a certain amount of פירות (or there were witnesses to that effect) but there was no העמדה בדין he may collect it from the גזול but not from the משעבדי.]

<sup>4</sup> The משנה (cited on יד, ב) states that one cannot collect from משועבדים נכסים because of תיקון העולם. We cannot be aware how much פירות were or will be eaten (by the debtor, thief, etc.) therefore the לקוחות do not know how to protect themselves (by assuring that the seller has sufficient property to cover any loss due to פירות). The ברייתא (cited above) explains this משנה. However, now that רבה and רב"ה qualified this ברייתא to a case of הפירות על עמד בדין, where the פירות are merely a מלוה ע"פ which has no publicity and cannot collect from משעבדי, it is similar to every מלוה ע"פ. Why does the משנה give the reason of תיקון העולם, when in fact it is not ממשעבדי since it is a מלוה ע"פ?!

answers: תוספות

ויש לומר דאי לאו מפני תיקון העולם –

**And one can say; that if it weren't for תיקון העולם -**

**הוא אמינא הואיל ועמד בדין על הקרן יש קול גם לפירות:**<sup>5</sup>

**I would have thought that since judgment was passed regarding the principal** (בי"ד ruled that the גזלן must pay the נגזל for the קרקע which he stole), there we can assume that **there is publicity also regarding the פירות** so the נגזל should be allowed to collect from the משעבדי (once בי"ד rules in on the פירות) even for the פירות. The משנה teaches us that מפני תיקון העולם; the נגזל can collect for the פירות only from the גזלן but not from משעבדי.<sup>6</sup>

### SUMMARY

There is a need for תיקון העולם to explain why we are not ממשעבדי גובה for גובה ממשעבדי; otherwise we may have thought that since there is a קול for the פירות; אכילת פירות; (for which there was a בדין (העמדה בדין) there will also be a קול for the פירות.

### THINKING IT OVER

Does the העמדה בדין make the obligation as a מלוה בשטר (and therefore it can be collected ממשעבדי), or does the העמדה בדין merely make a קול for the obligation (and therefore it can collect ממשעבדי)?<sup>7</sup>

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<sup>5</sup> There was a די"ת concerning the קרן which had a קול (and can therefore be collected ממשעבדי). The לקוחות should obviously know that there will also be a claim for the פירות. They should ascertain what that claim is and make sure the גזלן has assets to cover that claim before they buy. This should be considered as a מלוה בשטר since there is a קול (just as the העמדה בדין creates a קול for the קרן).

<sup>6</sup> The תיקון העולם is that even though there is a קול, since however the actual amount of פירות that were consumed is not fixed (there was no העמדה בדין) therefore it cannot be collected from משעבדי (מהר"ם). Alternately; there is the possibility that some לקוחות may have not heard [regarding the פירות] (רש"ש).

<sup>7</sup> See (ואילך) (also as to the נפק"מ between these two versions).