

בההיא הנאה דקא סמיך כולי –

On account of that pleasure that he trusted, etc.

OVERVIEW

The גמרא explained the manner in which the לוקח acquires the field when the גזול buys it from the גזול. It is in a case where the לוקח trusted the מוכר (the גזול) that he will deliver the field without restrictions. The גזול is so grateful to the לוקח for his trust that he troubles himself to purchase the field and grants it to the לוקח. This answer needs further clarification; what is the קנין. Our תוספות explains it.

הוויא כאילו אמר ליה שדה זו תהא קנויה לך לכשאקחנה:

And it becomes as if the לוקח (at the time of purchase¹), this field shall belong to you when I will buy it.

SUMMARY

The שטרא is not a חספא for we consider there to be an implied stipulation that when the גזול buys the field it will belong to the לוקח.

THINKING IT OVER

The גמרא writes that בההיא הנאה וכו' גמר ומקני ליה. Are we to understand that the גזול receives from the לוקח (similar to שוה), or is the שטר which was transferred to the לוקח? (כסף), מעשה קנין the הנאה which the גזול receives from the לוקח (similar to שוה), or is the שטר which was transferred to the לוקח? Seemingly it cannot be the הנאה for תוספות already stated that we are discussing an בכספא, and how can it be the שטר for it is a חספא and if it is not considered a חספא (because it is as if he said שדה זו), then why mention the הנאה? ²

¹ See מהרש"א. The מעשה קנין was done at the time the שטר was written and given to the לוקח, with an implied stipulation that this מעשה קנין will be effective (חל) when the גזול will eventually purchase the field from the גזול. This קנין will be effective even if we maintain "ל"א מקנה דבר שלב"ל (as רב ששת ask), because here there is סמיכות דעת (as answers רבא) since דלא נקרייה גזלנא (or דליקום בהימנותיה) [However In a case where the seller says מעשכיו לך מעשה קנייה לך, שדה זו לכשאקחנה קנויה לך, the buyer will not acquire it if we maintain "ל"א מקנה דבר שלב"ל since there is no סמיכות דעת, for the reason דלא נקרייה גזלנא (or דליקום בהימנותיה) does not apply.]

² See ח"ב אות שב.