

חוץ להמשים אמה הרי הוא של מוצאו –

Beyond fifty cubits, it belongs to its finder

OVERVIEW

The משנה taught that if a chick was found within fifty אמות of the שובך, it belongs to the owner of the שובך, however if it is found beyond the fifty אמות it belongs to the finder. תוספות discusses this ruling.

דאזלינן בתר רובא דעלמא¹ -

The reason it belongs to the finder, **for we assume** that this chick **came from the majority of chicks in the world**, but not necessarily from a neighboring שובך –

תוספות anticipates a difficulty:

ואפילו למאן דאמר² אין הולכין בממון אחר הרוב -

And even according to the one who maintains that in monetary issues we do not follow the majority, so why do we say here that it belongs to the finder because אזלינן אולינן³?! הולכין אחר הרוב when in דיני ממונות we are not רובא דעלמא, בתר רובא דעלמא

תוספות responds:

היינו במקום⁴ שהוא מוחזק⁵ אבל הכא דליכא חזקה דממונא⁶ אזלינן בתר רובא -

That is only where [one person] is in possession (only in that case does שמואל maintain הרוב אחר הרוב (אין הולכין בממון אחר הרוב), **however here where there is no one in possession of the money** (the chick), **we do follow the majority**.

תוספות asks:

ואם תאמר בפרק אלו מציאות (בבא מציעא דף כד, א ושם) לרבנן דרבי שמעון בן אלעזר -

¹ When the ניפול is found within fifty אמות from a שובך we assume that it came from this שובך (it hopped this short distance). However, if it was found beyond fifty אמות from any שובך, [obviously someone brought it here, and we do not know who, therefore] there is no reason to return it to the בעל השובך, since the majority of chicks are from the entire world and not from this שובך, therefore we follow the majority and assume that it does not belong to this שובך.

² This refers to שמואל. See later צב,א.

³ Seemingly תוספות question is that we should give it to the closest שובך. See (however) 'Thinking it over' # 1.

⁴ The הגהות הב"ח amends this to read, במקום שהאחד מוחזק (instead of שהוא מוחזק).

⁵ שמואל (seemingly) maintains that חזקה (being in possession of the money) is 'stronger' than the opposing רוב (which demands that the money be taken away from him). רוב is not sufficient proof that the money does not belong to the מוחזק. We need the proof of עדים (or something similar) to take away money from whoever is in possession of it.

⁶ When the person found it, the ניפול was in no one's possession, we are not sure to whom this bird belongs, therefore since no one is a מוחזק, we follow the רוב, and the finder can keep it.

And if you will say according to the פרק אלו מציאות רבנן who argue with רשב"א -

דאמרי אפילו בעיר שרובה כותים חייב להכריז בדבר שיש בו סימן -

And maintain that even in a city where the majority is gentiles, one who finds an article is obligated to announce it, if it has an identifying sign; the question is -

ואמאי לא אזלינן בתר רובא⁷ כיון דליכא חזקה דממונא⁸ -

But why do we not follow the majority (who are נכרים), since there is no חזקה דממונא?!

answers: תוספות

ויש לומר דתקנת חכמים היא כדי לקיים מצות השבת אבידה -

And one can say that this is an enactment of the חכמים in order to fulfill the מצוה of returning lost objects -

כיון דיכול להתברר על ידי הכרזה אם היא של ישראל⁹ -

Since by announcing this אבידה it can be verified whether it belongs to a Jew -

וישראל נמי לא מייאש¹⁰ דמסיק אדעתיה דלמא משכח ישראל ויכריז:

And the Jewish owner is also not despairing on his lost object, for he assumes that perhaps another Jew will find it and announce it.

SUMMARY

The finder of the גיפול may keep it since there is no מוחזק therefore הרוב הולכין אחר הרוב (even by ממונות). However, when there is a סימן there is a תקנת חכמים to be מכריז even when there is רוב that would permit you to keep it.

THINKING IT OVER

1. אין הולכין בממון אחר discussed why the finder can keep it, if we maintain תוספות.

⁷ One may keep an article that a נכרי lost (even though one may not outright steal from a נכרי).

⁸ We ruled here that since there is no חזקה ממון by the גיפול, therefore the finder may keep it since there is a רובא (סימן), and here too the רובא דעלמא are נכרים (to whom we are not obligated to return an אבידה [even with a סימן]), and there is no חזקה ממון, so the finder should be able to keep it, why is he חייב להכריז?!

⁹ In our משנה where there is no סימן on this גיפול [see 'Thinking it over' # 3], we can only follow the ruling of רוב (since there is no חזקה) for we have no other guidance. However there by מציאה, granted that if we should follow only the רוב, the finder should keep it, however since there is a סימן, there is the possibility that we will be able to identify the owner, therefore even though one may argue that we should follow the רוב, the חכמים intervened and made a תקנה that we should announce, since there is (even) a (slight) possibility that the owner will be found.

¹⁰ Tosfos needs to add that the owner was not מייאש (even though there are רוב כותים [see 'Thinking it over # 2]), for otherwise if he was מייאש, there certainly would not be any purpose to be מכריז, since once he is מייאש, the article belongs to the finder.

הרוב. Seemingly תוספות was asking that it should belong to the קרוב.¹¹ However this is difficult to understand for if we do not follow the רוב, we certainly should not follow the קרוב,¹² since רוב is 'stronger' than קרוב; what did תוספות want that the ruling should be if we maintain אחר הרוב בממון?¹³

2. תוספות concludes that the ישראל is not מייאש for he assumed that a ישראל will find the אבידה and announce it.¹⁴ However since it is place of רוב נכרים, why do we assume this, presumably since the ישראל knows that it is רוב נכרים, he will assume that a נכרי will find it and keep it?!

3. Our משנה is discussing a ניפול which has no סימן.¹⁵ Why was it necessary for תוספות to explain that it belongs to the finder since רובא דעלמא, when הולכין אחר רובא דעלמא, תוספות could have simply said it belongs to the finder since it has no סימן?¹⁶

¹¹ See footnote # 3.

¹² See רש"ש.

¹³ See נחלת משה.

¹⁴ See footnote # 10.

¹⁵ See footnote # 9.

¹⁶ See נחלת משה.