

## ולייזיל בתר רובא דעלמא – And let us follow the majority of the world

### OVERVIEW

The משנה stated that if the bird was found between two שובכין (whether they were both within fifty אמות of the bird, or whether they were both outside the fifty אמות);<sup>1</sup> the rule is that it belongs to the closer שובך. The גמרא established the משנה that both שובכין were of equal size (therefore we follow the קרוב). The גמרא asked but let us follow the רובא דעלמא and assume that the birds came from elsewhere, so the finder should be allowed to keep it. תוספות discusses this question.

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תוספות responds to an anticipated difficulty:

הוי מצי לשנויי דאין כי אם שני שובכין תוך ל' ריס<sup>2</sup> -

The גמרא could have answered that there are only these two שובכין within thirty ריס -

אלא בעי לשנויי דומיא דרישא<sup>3</sup> דיש שובכין הרבה -

Rather the reason the גמרא did not give this answer is because it wanted to answer in a manner that this case of שובכין בין ב' שובכין should be similar to the רישא, where there are many שובכין –

תוספות anticipates a difficulty:

אף על גב דהשתא דמוקי לה בשביל של כרמים<sup>4</sup> לא הוי דומיא דרישא -

Even though that now when the גמרא establishes this case of שובכין בין ב' שובכין, by a 'path in a vineyard', the רישא is not similar to the רישא -

דהא רישא לא מייירי בשביל של כרמים<sup>5</sup> -

For the רישא is not discussing a שביל של כרמים, so why is the גמרא's answer better than the proposed answer (that there are no more שובכין within ריס ל'); in both answers it is not דומיא דרישא –

תוספות responds:

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<sup>1</sup> See previous מצאו תוס' ד"ה מצאו (TIE footnote # 5).

<sup>2</sup> Generally these birds cannot fly more than thirty ריס, therefore they cannot have come דעלמא; they must be from one of these two שובכין, and since they are of equal size, we follow the קרוב.

<sup>3</sup> The רישא here refers to the case where it was found ל' אמה חוץ ל' אמה, where the rule is that it belongs to the finder. We must say that in this case there are other שובכין within ריס ל', for if there are no שובכין except for this one, why does it belong to the finder, it should definitely belong to the בעל השובך (see ד"ה הכא at the very end).

<sup>4</sup> See the גמרא on the top of כד, א.

<sup>5</sup> The רישא of מוצאו חוץ ל' אמה הרי הוא של מוצאו cannot be discussing a שביל של כרמים, for in that case why does it belong to the finder, it should be given to the closest שובך [see ד"ה הכא (that by a שביל של כרמים it can be מדדה more than ל' אמה)!]

**בהא לא קפיד במאי דלא הוי דומיא דרישא -**

**Regarding this** (that the סיפא is in a case of כרמים של שביל) the גמרא **is not particular that it is not similar to the רישא** (which is not in a case of כרמים של שביל); the reason the גמרא is not particular is -

**כיון שאין מזכיר במשנתנו שביל של כרמים בשום מקום<sup>6</sup> -**

**Since the משנה does not mention anywhere the concept of שביל של כרמים –**

ועוד הוה מצי לשנויי קרוב לזה שלו תוך חמשים אמה ובמדדה:

**And additionally,** the גמרא **could have answered** the reason we do not follow רובא רובא in the case of two שובכין is because when the משנה ruled that when it is **closer to one** שובך **it belongs to that** בעל השובך, it is in a case where the bird was found **within fifty אמות**, and it can only be מדדה so it cannot come דעלמא, only from one of these two שובכין and since they are of equal size, we follow the קרוב.

## SUMMARY

The גמרא could have answered that there was no other שובכין within thirty ריס, but that would make the סיפא different from the רישא. However, it could have established the רישא where it was found within נ' and it was מדדה.

## THINKING IT OVER

It seems from תוספות that we cannot establish the case of ב' שובכין where there are no other שובכין, because that would contradict the רישא (where there must be other שובכין).<sup>7</sup> However it also seems that we cannot establish the רישא by a שביל של שביל either,<sup>8</sup> so why can we establish the סיפא by a כרמים של כרמים?<sup>9</sup>

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<sup>6</sup> However, regarding the fact that there must be other שובכין in this area (even though the משנה does not state this [at all]), nevertheless since we cannot understand the משנה (of חוץ לנ' אמה) unless it is in a case where there are other שובכין (see footnote # 3), therefore it is considered as if the משנה clearly states that there are other שובכין (in the רישא), therefore we also want to establish the סיפא that there are other שובכין. See 'Thinking it over'.

<sup>7</sup> See footnote # 7.

<sup>8</sup> If the רישא is discussing a שביל של כרמים why is the rule that חוץ לנ' אמה the finder may keep it; for since there is a שביל של כרמים the bird can be מדדה outside the אמה נ'!

<sup>9</sup> See נחלת משה.