

ואי דליכא אחרניי ודאי מההוא נפל –

And if there is no other, it certainly fell from that one

OVERVIEW

The הלוח established the משנה (according to רב חנינא who maintains הרוב) in a case where there was no other שובך (larger than the one within the fifty אמות).¹ The גמרא asks [if that is the case] how do we understand the סיפא, which states that if the ניפול was found outside the fifty אמות it belongs to the finder, but since there is no other שובך closer than this one, why should it belong to the finder it should belong to the closest בעל השובך?! Our תוספות explains how the משנה would be understood if there were other larger שובכים further away.

דבשלמא אי איכא דנפיש מיניה אתי שפיר דהוי של מוצאו² -

For it would be understandable that it belongs to the finder if there is a larger שובך further away -

כגון דהוי ההוא דנפיש של הפקר או של כותים³ -

If for instance this larger שובך was הפקר or it belonged to Gentiles -

אבל השתא דליכא ודאי מההוא נפל -

But now that we are saying that there is no other שובך in the vicinity, so certainly it came from that closest שובך that is more than fifty אמות away; where else could it have come from? Why does the משנה rule that it belongs to the finder?!

תוספות anticipates a possible solution:

ולא מצי לשנויי כגון דליכא דנפיש אלא שוין⁴ -

And we cannot answer that the משנה is discussing a case where there are no other שובכין which are more populace, rather all the surrounding שובכין are of equal size, and therefore it belongs to the finder –

תוספות rejects this:

¹ See the previous דליכא בדליכא תוס' ד"ה that there was no שובך within רים שלשים.

² תוספות is responding to an obvious question; It seems that the question on ר"ה is because he established the משנה in a case where there is no other larger שובך in the area. However, if we assume there is a larger שובך, there is still a question on ר"ה, since according to ר"ה we should go אחר הרוב, so why can the finder keep it; he should return it to the larger שובך?! The question on ר"ה seems to be in either case; regardless whether or not there is a larger שובך nearby.

³ One may keep a lost object of a כותי (and obviously of הפקר).

⁴ Therefore, it belongs to the finder; since no בעל השובך can prove that it belongs to him, for they are all the same size, so there is no רוב. See 'Thinking it over'

דמכל מקום אמאי הוי של מוצאו כיון שקרוב לזה⁵ -

For nevertheless why should it belong to the finder, since it is closest to this one –

⁶ שובך shows that the סיפא is discussing a case (even) where it is closest to one

דהכי משמע דחוץ לחמשים אמה הרי הוא של מוצאו אף על פי שקרוב לזה מזה⁷ -

For this is what the משנה is indicating when it states **that** if it was found **'beyond the fifty אמות it belongs to the finder'**, this means **even if it is closer to one שובך than to the other**. We have now established that the משנה of אמה לנ' חוץ לנ' אמה is (even) in a case where it is closer to one שובך, and nevertheless it belongs to the finder. The question is, (even) if we were to establish the משנה where כולן שוות all the שובכים have the same amount birds, how can the ruling be that it belongs to the finder -

דהא תנן מצאו בין שני שובכין קרוב לזה שלו דכשהן שוין אזלינן בתר קרוב:

Since our משנה teaches that 'if it was found between two שובכין, it belongs to the closer one', the reason is **that when they are equal in size, we follow the קרוב**, therefore this attempted answer that כולן שוות does not explain our משנה.

SUMMARY

We could possibly understand the משנה (that it belongs to the finder) if there was another larger שובך nearby which was הפקר. However, (even) if all the שובכים are equal it should belong to the most קרוב.

THINKING IT OVER

תוספות attempted to explain the rule of ה"ה של מוצאו where all the surrounding שובכים were of equal size (and equidistant). However why should it belong to the finder, let it be divided by the owners of the various שובכין (like the משנה states, if they were equidistant the rule is יחלוקו)?!⁸

⁵ The נפול is closest to this שובך even though he is more than fifty אמות away from it.

⁶ Perhaps the משנה is in a case where all the שובכים are of equal size and equidistant from the נפול. That is why it belongs to the finder. תוספות rejects this and proves that the ruling of מוצאו של הרי הוא is even if it is closer to one שובך

⁷ Otherwise, if the משנה maintains that if it is closer to one (חוץ מנ' אמה) it belongs to the שובך; the משנה should have made this distinction. However, since the משנה made a blanket statement that חוץ מנ' אמה it belongs to the finder this indicates that this rule applies in all cases even if it is closer to one שובך.

⁸ See נחלת משה.