

It certainly fell from that one

ודאי מההוא נפל –

OVERVIEW

The גמרא challenged ר"ה (who established our משנה that there is no other שובך nearby) from the סיפא, which stated that if the bird was found outside the אמה 'נ, it belongs to the finder. Why should it belong to the finder; it certainly belongs to the שובך?! Our תוספות discusses the certainty of this assumption.

תוספות asks:

ואם תאמר ודלמא מעוברי דרכים נפל¹ -

And if you will say; but perhaps this bird fell from travelers and therefore he may keep it -

כדאמרינן לקמך גבי זיקי דחמרא דאשתכחן בי קופאי -

As the גמרא states later regarding jugs of wine which were found in a Jewish vineyard –

תוספות answers:

ויש לומר דהיכא דודאי נפל³ ולא ידעינן ממי תלינן בעוברי דרכים -

And one can say that in a case where it certainly ‘fell’ [was lost] and we do not know from whom, we assume it to be from עוברי דרכים; since they are the רוב -

אבל הכא דמצי למימר דמשובך⁴ בא לית לן למיתלי ולאחזוקי בנפילה -

However here where we can assume that this bird came from this שובך, it is improper for us to assume that it was lost from a passerby -

דבני אדם נזהרין שלא יפלו מהם היונים:

Since people are careful not to drop their doves!

SUMMARY

We assume that an item may be from travelers, when we know for sure that the

¹ It is possible that a passerby lost this bird. We do not know who he is and there is no סימן on the bird, therefore the finder may keep it.

² כד, א. The jugs were found in a Jewish vineyard and רבא permitted the wine to be drunk. The גמרא asked that this seems to contradict ר"ה that we follow the רוב and the majority of wine is from נכרים. We see that even though it was in a כרם ישראל, nevertheless the גמרא felt that we should assume that the wine came from elsewhere; from עוברי דרכים. [The גמרא there answers that the רוב of those who pour wine from barrels into jugs were עיי"ש דרכים.] Similarly, here too we should assume that it may have been lost by the עוברי דרכים.

³ This jug of wine was [obviously] lost by someone, but we do not know who lost it. There is no reason to assume that the jug comes from the vineyard!

⁴ In contrast to the wine; here there is a reasonable assumption that a bird comes from a שובך, and it is unreasonable to assume (unless there is some indication) that it was lost by a passerby!

item was lost. However, where there is no such assumption, we negate the possibility that travelers lose their belongings (doves).

THINKING IT OVER

סיפא asks his question (that perhaps it was lost by the עוברי דרכים) on the חוץ מן' אמות. Why did not תוספות ask his question on the רישא, where the משנה states the תוך נ' it belongs to the בעל השוכך, but why; perhaps it fell from עוברי דרכים, so the finder should be able to keep it?!⁵

⁵ See מהרש"א.