

And let him say to them, pay me first and I will chop it down afterwards – **וליימא להו הבו לי ברישא והדר איקוץ**

OVERVIEW

The גמרא concluded that the statement of רב כהנא (that קידרי דבי שותפי) applies to the case where the tree was planted before there was a city, and the rule is that קוצץ (first) and then דמים ונותן. Seemingly the tree owner should be able to claim, pay me first and then I will chop down the tree, in reply to this, רב כהנא stated קידרי דבי שותפי וכו' so it will never be done. Initially the גמרא compared our case with the case of one who planted a tree within twenty-five אמות of a בור, where the rule is also קוצץ ונותן דמים. Our תוספות explains why in that case the tree owner cannot claim, 'pay me first and then I will chop it down'.

גבי בור לא שייך למיפרך הכי¹ דניחא² כיון שסמך באיסור³ שיקוץ תחלה:

Regarding a pit it is not appropriate to ask this; for there it is understood that he must chop down the tree first, since he planted it close to the pit illegally.

SUMMARY

The claim, 'pay me first', is valid if there was no transgression of the law.

THINKING IT OVER

How are we to understand the difference whether קדם בהיתר or סמך באיסור, if he is entitled to the money, then in either case, he should be allowed to claim, 'pay me first'⁴ (or in either case he cannot claim 'pay me first')?

¹ The tree owner should say the בעל הבור, 'since you need to pay me, so pay me first and then I will take down my tree' (the same claim as the tree owner here is making to the city). By the pit we do not have the response of רב כהנא that קידרי דבי שותפי וכו' since we are discussing one individual only, namely the בעל הבור.

² The הגהות הב"ח amends this to read ניחא ליה כיון (instead of כיון).

³ However here where he planted his tree legally (אילן קדם לעיר); it is understood why he can claim, 'pay me first'!

⁴ There may even be more reason why by the בור he should pay him first (as opposed to the city), since at the time of the planting (even though it was באיסור, nevertheless) there is no damage to the בור now, the damage will happen much later (therefore the בעל הבור should pay first), however by the city (even though he was סמך בהיתר [for האילן קדם], nevertheless) that damage is immediate (when the city was built), since it detracts from the beauty of the city right away.