

ואי טעין ואמר לפירות ירדתי כולי –

**And if he claimed and said, I descended for fruits, etc.**

### **OVERVIEW**

ruled that if the מחזיק told the מערער that he is in the field for the פירות only (but he did not buy the field),<sup>1</sup> the מחזיק is believed regarding the פירות which he already consumed that he need not pay for them. The reason given is that no one will be that brazen to consume someone else's פירות, unless he has a right to them. Tosfos qualifies the case and explains the necessity for the abovementioned reason.

פירוש תחלה כי אמר ליה מאי בעית בהאי ארעא –

The explanation is that this claim of לפירות ירדתי was made initially when the מערער asked him מאי בעית בהאי ארעא; but not that initially he claimed זכיני and later (when he could not find חזקה) he retracted and said לפירות ירדתי.<sup>2</sup>

anticipates a difficulty:

אף על גב דבשעה שאכל היה בעל השדה יכול לעכב ולא היה נאמן לומר לפירות הורדתי –  
Even though that while he was eating the פירות, the owner of the field could have prevented him from continuing to eat, and the מחזיק would not be believed to claim לפירות הורדתי, so why is he believed regarding the past?

replies:

מיהו כיון שכבר אכלו זה בא להוציא נאמן לומר לפירות ירדתי –  
Nonetheless since the מחזיק ate the פירות already, and the מערער comes to take it away from the מחזיק, therefore the מחזיק is believed to claim לפירות ירדתי.

asks:

ואם תאמר מאי איריא משום דלא חציף תיפוק ליה משום דתפיס<sup>3</sup> –  
And if you will say; why mention that the מחזיק is believed because no one is so brazen to eat the פירות that do not belong to him, the same ruling can be derived

<sup>1</sup> See רשב"ם ד"ה אמר that the מחזיק claims that he is employed by the מערער as a sharecropper, or that he bought the rights of the פירות from the מערער for a specific amount of time.

<sup>2</sup> In this case he will not be believed since he is a חוזר וטוען (see מהימן ד"ה). This may be the interpretation which Tosfos is rejecting by saying 'פירוש'.

<sup>3</sup> Tosfos has just established that the rule of נאמן by לפירות ירדתי is only concerning the פירות which he already consumed (and the מערער wants him to pay for it), but not for future פירות, therefore Tosfos asks that the logic of לא חציף is unnecessary; we can derive the same ruling on account of הראיה עליו.

because he already seized the פירות and the onus of proof is on the מערער who is a מוציא מוחביר. This is -

מידי דהוה אמתלטלין שאין עשויין להשאיל ולהשכיר דאי אמר לקוחין הן בידי נאמן –

**Similar to movable objects which are not made to lend or to rent out, in which case if the מחזיק of these מטלטלין says, 'I bought them', he is believed, even against a known קמא.** The reason is because (by מטלטלין) possession determines ownership. The same should apply here by לפירות ירדתי regarding the פירות which he already consumed. We do not know whether he had the right of לפירות ירדתי or not, therefore we maintain the status quo; for whatever he consumed he is פטור, but he cannot continue to consume.

answers: תוספות

ויש לומר דאיצטריך טעמא דלא חציף אם לקטן והניח ברשות שאינן שלו דלא תפיס בהן –

**And one can say; that the reason of חציף לא is necessary in a case where the מחזיק harvested the פירות (but did not consume them; they are still here), and he placed them in a domain which does not belong to him, so he did not seize them;** they are not in his possession, the law of הראיה עליו הריא does not apply here. Nevertheless he is believed that לפירות ירדתי and is exempt from returning the פירות because of לא חציף.

asks: תוספות

ואם תאמר כי לא אמר נמי לפירות ירדתי אלא דאייתי סהדי דאכל ב' שנים כי הך דשמעתין –  
**And if you will say; even in a case where the מחזיק did not claim לפירות ירדתי, but rather brought witnesses that he consumed the פירות for two years, as this case of our גמרא, nevertheless -**

יהא נאמן<sup>4</sup> בטענתיה במיגו דאי בעי אמר לפירות ירדתי –

**He should be believed with his claim that he bought it from the מערער with a מיגו that he could have claimed לפירות ירדתי!**

responds: תוספות

לאו פירכא היא דאין זה מיגו שהרי בא לתבוע גם הקרקע<sup>5</sup> –

**This is not a challenge! For it is not a valid מיגו, since the מחזיק comes to claim the קרקע as well; not only the פירות.**

<sup>4</sup> is (seemingly) asking that he should not be required to return the פירות of the two years, because he could have kept those פירות, by claiming לפירות ירדתי, so even though he claimed מיגו זביני (for which he is not believed concerning the קרקע), nevertheless he should be believed regarding the פירות. See 'Thinking it over'.

<sup>5</sup> His claim is מיגו זביני which (if substantiated) would give him the קרקע and the פירות. We cannot say that he had a 'better' claim of לפירות ירדתי, since that claim at best would give him only the פירות, but not the קרקע.

concludes: תוספות

**ודוקא פירי דתרתני שנין הדרי אבל פירי דשנה שלישית לא הדרי –**

**And the מחזיק is obligated to return only the פירות of the two years** (for which there are עדים that he consumed them), **however the פירות of the third year are not returned** to the מערער, even though the מחזיק claims/admits to eating פירות for three years. The reason is -

**דאי מהימן במאי דאמר שאכלה שלש שנין גם הקרקע תהיה שלו<sup>6</sup>:**

**For if the מחזיק is believed in that which he said that he ate פירות for three years** (and therefore we obligate him to pay for all three years), then **even the land should belong to** the מחזיק for he has a שנים ג' חזקה.

### SUMMARY

The claim of לפירות ירדתי must be made initially and does not allow for the מחזיק to continue eating the פירות, however it allows him (even) to keep the פירות which are not ברשותו. There can be no מיגו of לפירות ירדתי since it is a weaker claim that מינך. The מחזיק returns the פירות of the two years (for which there are עדים), but not for the third year, for if he ate three years he has a חזקה and should keep the land.

### THINKING IT OVER

תוספות asks that the מחזיק should be believed regarding the פירות even if he claims לפירות ירדתי<sup>7</sup>. It is evident [from תוספות]<sup>8</sup> that in a case where there are no עדים and the מחזיק claims פירות and he ate פירות for two years that he must return (the קרקע and) the פירות of two years, even though he has a מיגו (regarding the פירות) of לא אכלתי<sup>9</sup>. Why is it that in this last case the מיגו is ineffective (and he must return the פירות), while in our case תוספות claims that he should be believed with a מיגו of לפירות ירדתי?!<sup>10</sup>

### APPENDIX

A possible solution to the 'Thinking it over' question. There is a difference

<sup>6</sup> See previous תוספות on ד"ה ה"ג לג,א (footnote # 30). We will assume here that he only ate פירות for two years as the עדים testified.

<sup>7</sup> See footnote # 4.

<sup>8</sup> See previous תוס' ד"ה ה"ג לג,א.

<sup>9</sup> The reason (seemingly) is because we cannot differentiate between the קרקע and the פירות. Since the מערער receives the קרקע (for there is no חזקה) he also receives the פירות. The same should apply in our case that even though he has the מיגו of לפירות ירדתי (regarding the פירות), nevertheless we cannot separate the פירות from the קרקע!

<sup>10</sup> See סוכ"ד אות קצט and נח"מ. See 'Appendix'.

between the מיגו of לא אכלתי (when he claims ב' שנים) where the rule is לפירות ירדתי מיגו (when he claims הדרי ארעא והדרא פירי for the two years), and the מיגו of לא אכלתי and there are עדים that he ate two years) where תוספות asks that this should exempt him from paying for the פירות (even though the land reverts to the מערער).

When the מחזיק claims מינך זביני and I ate the פירות of ב' שנים, the קרקע reverts to the מערער (since he is the קמא) and once we establish that the field belongs to the מערער inevitably he is owed the פירות that were eaten בגזל. If the מערער would have claimed לא אכלתי (and therefore no חזקה) and the מערער would argue that you ate ב' שנים, indeed the מחזיק would be פטור for the פירות, but not because we believe him or grant him any right to the פירות, but rather only because הראיה, and as long as the מערער cannot prove that the מחזיק ate the פירות the מחזיק is פטור. However if the מחזיק admits that ate the פירות, we say that since the field reverts to the מחזיק, the מיגו of לא אכלתי, which does not give the מחזיק any rights to the פירות, is not sufficiently 'strong' to deny the מערער his payment for the פירות, for since the field is his (as a קמא), the פירות are also his.

However in the case where the מחזיק has the מיגו of לפירות ירדתי, this מיגו gives the מחזיק a right to the פירות (because of the סברא of לא חציף). Had the מחזיק claimed פירות not only would he be exempt from paying the מערער for the פירות which he consumed (because of הראיה), but he would be able to retain the פירות which are here and are not (even) in his רשות because of לא חציף. It is the view of תוספות that since the טענה of לפירות ירדתי gives the מחזיק the right to the פירות, that should be sufficient (as a מיגו) to deny the מערער payment for these פירות, even though the מערער receives the field; taking into consideration that we are not (as) certain that the field belongs to the מערער (he receives it only because he is the קמא [and the ריעותא of שטרך]), but we are (more) certain that the פירות belong to the מערער, if he claims ירדתי. This certainty should outweigh the rights of the מערער (since the מחזיק has the מיגו of לפירות ירדתי).  
[מיגו לגרוע concludes that there is no מיגו since it is a תוספות]

We will now also understand the order of תוספות.

Initially תוספות states that the claim of לפירות ירדתי is effective only if he initially claimed it; indicating that there is room (even for a fleeting moment) to consider that לפירות ירדתי may be effective even later (for it is such an effective claim).

After תוספות establishes that לפירות ירדתי is not effective for the future פירות, but only for those consumed, תוספות asks why the need for לא חציף; it is a regular case of המע"ה. תוספות responds that the סברא of לא חציף is necessary where the פירות are still בעין and not ברשות המחזיק, and nevertheless the מחזיק gets to keep them. Once תוספות establishes that the claim of לפירות ירדתי gives the מחזיק a right to the פירות, then תוספות asks that even if he claims זביני, he should still be פטור from the לפירות ירדתי because he has a מיגו with the powerful טענה of לפירות ירדתי.