

If so; then even the land as well

אי הכי אפילו ארעא נמי –

OVERVIEW

The גמרא explains the reason why if he claims לפירות ירדתי (or he states איזיל פירות (or harvest a tree) which does not belong to him. [This reason allows him to keep what was already harvested, but he may not continue to harvest in the future.] The גמרא asks if this is so, that he may keep the פירות on account of לא הציף, then נמי אפילו ארעא. Seemingly the גמרא means to ask that he should be allowed to keep the land.¹ גמרא rejects this interpretation and offers a different explanation of the גמרא.

למאי דפרישית לעיל² דאינו נאמן אלא בפירות שלקט³ כבר –

According to what I explained previously that if the מחזיק claims לפירות הורדתי, he is believed only regarding the פירות that he already gathered -

אבל מכאן ואילך אינו נאמן אפילו בפירות אף על גב דשטרא בפירי⁴ לא עבדי אינשי⁵ –

However, from now and for the future he is not believed even regarding the פירות; this is true even though people do not make written contracts for פירי, so how can the גמרא ask נמי ארעא נמי א"ה אפי' ארעא נמי, since we are (seemingly) discussing the future status of the קרקע, how can the גמרא even entertain the thought that he should be allowed to keep the קרקע for the future –

תוספות responds:

צריך לפרש אפילו ארעא⁶ אם הוא טוען שהקרקע שלו שלקחה לא יחזיר פירות שכבר אכל⁷ –

It will be necessary to explain the question of ארעא אפי' א"ה to mean that [even] if he claims that the land is his (he did not claim לפירות הורדתי, but rather) that he bought it, he should not be obligated to return the פירות which he already

¹ See רשב"ם ד"ה אי הכי.

² (עמוד בתוס' ד"ה ואי).

³ לפירות ירדתי if he claims תוספות ד"ה ואי (and not שאל כל) because according to תוספות writes purposefully שלקט (since the פירות he already consumed (because of (המע"ה) but he is believed (because of (הציף) even for פירות which he already harvested and did not consume even though they are not in his רשות. See 'Thinking it over'.

⁴ The הגהות הב"ח amends this to read לפירי (instead of בפירי).

⁵ Therefore there is no ריעותא of שטרך (since no שטר is written for a פירות contract), and nevertheless he is not believed for the future פירות, so obviously he cannot be believed regarding the [future] possession of קרקע (where there is [in addition] the ריעותא of שטרך).

⁶ The הגהות הב"ח amends this to read ארעא אפילו אם.

⁷ See 'Thinking it over'.

consumed⁸ -

אבל קרקע פשיטא שיחזיר דאינו נאמן להבא:

However, regarding the קרקע it is obvious that he returns it to the מערער for he is not believed regarding the future (even without the ריעותא of שטרא (אחוי שטרא).

SUMMARY

The גמרא never entertained the thought that the מחזיק should keep the land; only that he should keep the פירות שאכל.

THINKING IT OVER

Why is it that initially תוספות writes כבר שלקט כלא בפירות;⁹ however in his explanation (of the s'רא question) תוספות writes שכבר אכל,¹⁰ why is not the question that he should keep [even] the פירות שכבר לקט (even though he was not אכל yet)?!

⁸ The גמרא is asking since the חזקה of לא חציף is effective that he may keep whatever he harvested, so even if he claims קרקע to the owner, since it is a חוצפה, he should be believed for the past. [Even though we are returning the קרקע to the owner, so how can we separate the קרקע from the פירות, nevertheless one may argue (see 'Appendix' to ו"ה ואי) that we return the קרקע to the מערער, only because he is a מרא קמא (but not because we 'know' that he is the rightful owner), therefore regarding the past we should rely on (the מוחזקות of the מחזיק and on) the לא חציף and let him keep the פירות, and regarding the future where there is no מוחזקות, and לא חציף is not effective, we return the קרקע to the מערער. The גמרא answered that since there is the ריעותא of שטרא, therefore we return the קרקע to the מערער (not only because he is the מרא קמא, but also) because there is proof that the מחזיק is lying, for he has no שטר. In that case it is obvious that the מערער receives the פירות (of the past), since we have ascertained that indeed he is the owner.]

⁹ See footnote # 3.

¹⁰ See footnote # 7.