This is the same as the case of **נסכא דר' אבא** – **היינו נסכא דרבי אבא**

Overview

The גמרא told of a case where the מחזיק brought only one עד to testify that he made a חזקת ג' שנים. The רבנן who were there assumed that this case parallels that of נסכא דר"א, where the ruling is מתוך שאינו יכול לישבע משלם, here too the מחזיק is not believed and is liable (to pay) The גמרא was not explicit whether we are discussing the obligation to pay for the פירות that he ate (for three years!),[1] or whether we are discussing the obligation to return the field to the מערער. Our תוספות clarifies this.

לא אקרקע קאי[2] דפשיטא שמחזיר הקרקע אחר שאין לו שנים עדים –

This comparison to נסכא דר"א **was not in reference to the land, for it is obvious that he returns the land** to the מערער even without the comparison to נסכא דר"א, **since he does not have two witnesses** that he ate חזקה שני -

אלא השתא נמי אפירי מסיק –

But rather even now the רבנן **were discussing** only that **the פירי** need to be returned (on account of the ruling by נסכא דר"א) -

וסבר השתא כאילו חד סהדא לאורועי למחזיק קאתי על הפירות שאכל –

And the רבנן **presently assumed** that it is considered **as if the single עד is testifying against the מחזיק regarding the** stolen **פירות which he ate -**

ואינו יכול לכפור ולימא לא אכלתי –

So that the מחזיק **cannot deny and claim, 'I did not eat** the פירות' since the ע"א contradicts him -

וכאילו בא לחייבו שבועה על הפירות אם יכפור ויאמר לא אכלתי –

And it should be considered **as if** the ע"א **is coming to obligate** the מחזיק **to swear regarding the פירות, should he deny and claim, 'I did not eat** them**' –**

תוספות anticipates a difficulty with this line of reasoning:

ואף על פי שמעיד שהחזיק בה ג' שנים –

And even though this ע"א **is testifying** on behalf of the מחזיק, **that he made a חזקה** in this field for **three years,** so how can it be considered as if the ע"א is testifying against the מחזיק and is seeking to obligate him to swear, when in fact he is testifying on behalf of the מחזיק

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[1] It would seem difficult to assume that we are discussing the payment of the פירי for three years. If we assume that he ate פירות for three years then he is a מוחזק (as he claims) and not only is he not obligated to pay for the פירות but he should receive the קרקע as well since he is a מוחזק (see end of תוס' ד"ה ואי on this עמוד). See footnote # 3.

[2] See previous footnote # 1. Regarding קרקע at least the ruling would be correct that the קרקע reverts back to the מערער (even though it may be פשיטא), as opposed to פירי where the ruling is (seemingly) incorrect.

that the field is his for he made a proper חזקה?!

תוספות replies; nevertheless -

כיון דאין אחר עמו הרי כאילו אינו מעיד על החזקה אלא נעשה עד אחד לתובעו פירות[3] –

Since there is no other witness **with** this ע"א to support this חזקה claim, **it is considered as if** the ע"א **is not testifying on the חזקה** to support the מחזיק, **but rather he becomes a** prosecuting **ע"א to demand** payment for **the פירות.**

הכי סלקא דעתיה וטועה עד דאמר[4] אביי דלא דמי לדרבי אבא –

This was the initial thought of the רבנן, **until אביי told [them] that** this case **is not similar** to the case of **דר"א** נסכא **-**

דהכא חד סהדא לסיועי קאתי בין לקרקע[5] בין לפירות שהרי הוא מעיד שגם הקרקע שלו –

For here the ע"א comes to assist the מחזיק **both regarding the קרקע as well as the פירות, for** the ע"א **is testifying that even the קרקע belongs to** the מחזיק.

תוספות anticipates a difficulty regarding what he said in the beginning that (even) in the ס"ד the discussion revolved around the פירות [exclusively]:

והא דאמרינן במסקנא אלא אי דמיא לדרבי[6] אבא לחד סהדא לתרתין שנין ולפירי –

And regarding that which אביי **stated in the conclusion** of this סוגיא, '**however,** the case of **ר"א is comparable to** a case **regarding פירי** where an **ע"א** testified that the מחזיק ate the פירות for **two years'** (not three years as in our case) -

לא הוה צריך למינקט ולפירי כיון דעד השתא נמי לא איירי אלא בפירי –

There was no need for אביי **to mention 'ופירי', since even up to this** מסקנא (in the ס"ד) **we were only discussing פירי** and not קרקע, so why mention פירי?!

תוספות responds:

אלא אגב תרתין שנין נקט נמי לחד סהדא[7] ולפירי:

Rather we must say **that since he** needed to mention **two years** (as opposed to

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[3] A possible explanation (see footnote # 1) may be as follows. The מחזיק claims that he bought the field (and lost the שטר). Had there been two עדים that he was in the field for three years we would believe him that he bought the field. The fact that he does not have two עדים (and no שטר) indicates that he did not buy the field at all. Once we make that assumption then it would be similar to case where the מחזיק does not claim that he bought the field but admits to eating the פירות for three years, where he would have to pay for all three years (because it is חזקה שאין עמה טענה). Similarly here we disregard the claim of מינך זביני and consider it as if the עד is only testifying that he ate the פירות of three years בגזל. See עליות דר"י and רה אות בל"י.

[4] The הגהות הב"ח amends this to reads אביי דאמר **<u>להו</u>**.

[5] See footnote # 3. אביי argues that we cannot consider the עד as only testifying on the פירות, for he is testifying to support the מחזיק that the קרקע is his. If we believe him regarding פירות, we believe him regarding the קרקע.

[6] The הגהות הב"ח amends this to read דרבי (deleting the 'ל').

[7] תוספות mentions חד סהדא in the reply (even though he did not ask about חד סהדא) to point out that things can be restated even though they applied in the first case as well.

three), **he also mentioned one עד and פירי** (even though ע"א and פירי are the same as in the previous case).

Summary

The comparison to נסכא דר"א (even in the ס"ד) was only regarding the פירי.

Thinking it over

Can we perhaps distinguish between the reference to פירי that the רבנן were discussing, and the reference to פירי that אביי mentions?[8]

[8] See כוס הישועות on the גמרא לד,א.