

ואי דלי ליה צנא דפירי לאלתר הויא חזקה –

And if he loaded upon him a basket of fruit it is a חזקה immediately

OVERVIEW

אבא ruled if there are witnesses who saw the מערער loading a basket of fruit, from this field, on the מחזיק, it is a חזקה immediately (there is no need to wait three years).¹ רב זביד ruled that if, however, the מערער claims, 'I merely sold him temporary rights to the פירות', it is not a חזקה לאלתר for the land.

asks: תוספות

ואם תאמר ולהימניה במיגו דאי בעי אמר לפירות הורדתיו² –

And if you will say; in the case where the מערער denies selling anything to the מחזיק (including פירות), **let us believe the מערער with a מיגו, for he could have claimed, I let him into my field (only) for פירות**, but I did not sell him the field.

answers: תוספות

ויש לומר דהוי מיגו במקום עדים –

And one can say that this claim (that he never sold the מחזיק anything), which is supported by a מיגו, **contradicts עדים -**

דאנן סהדי כיון דדלי ליה צנא דפירי מודה שהיו הפירות שלו³ –

For we (the בי"ד) testify that since he loaded upon him a דפירי this indicates that the מערער admits that the פירות belong to the מחזיק.

offers another answer: תוספות

ועוד דאינו רוצה לטעון לפירות הורדתיו אלא תובע הקרקע והפירות:⁴

¹ In this case the מערער claims that he did not sell the מחזיק anything and the מחזיק is eating the fruits בגזלנותא.

² In the case where the מערער claims לפירות הורדתיו, the מחזיק is not believed to keep the field (only פירות [for a limited time]), so here, where the מערער claims that he did not sell it, nevertheless he should be believed [to the extent that he retains the קרקע] with the מיגו of לפירות הורדתיו. [The reason he was צנא דפירי; the מערער can claim that he did it because he was forced.]

³ The מערער claims he did not sell anything to the מחזיק (neither the קרקע nor the פירות), so why is the מערער helping the מחזיק with the loading of the פירות; it is obvious that he sold it to him. [We do not accept the reason (mentioned in footnote # 2) that he did it out of fear.] It cannot be that he sold him the פירות, since (the מחזיק and) the מערער denies there was a פירות sale; therefore we do not believe the מערער (that there was no sale at all since צנא דלי ליה צנא, דפירי), but rather we believe the מחזיק that the מערער sold him the field.

⁴ A מיגו is valid when the claim is better than the actual טענה; however here the actual טענה (of גזולה היא בידו) is better than the מיגו (of לפירות הורדתיו), for with the טענה there is the possibility that he may retain both the קרקע and the פירות, however with the מיגו claim the מערער is certainly forfeiting the פירות.

And in addition, the מערער has no מיגו of לפירות הורדתיו, **since he does not wish to claim לפירות הורדתיו**, for then he forfeits the פירות, **but rather he is claiming the land and the פירות.**

SUMMARY

There is no מיגו of לפירות הורדתיו, either because it is a במקום עדים, or he prefers not to claim לפירות הורדתיו in order to collect the פירות as well.

THINKING IT OVER

1. What are the relative advantages and disadvantages of two answers?
2. When the מערער made his claim (in בי"ד) of גזולה היא בידו, was he aware that there were עדים that saw צנא דפירי ליה?
3. What would be the ruling if there are no עדים that צנא דפירי ליה, but the מערער admits it; is he believed with a שאסר or not?⁵

⁵ See בל"י אות רנ.