

ואי¹ לפירא אחתיה מאי הוה ליה למעבד –

And if he allowed him for פירות; what could he have done

OVERVIEW

דלי ליה צנא [even if he is believed to claim הפירות הורדתי מערער]; but only within the first three years, however after three years he is not believed to claim הפירות הורדתי, and the מחזיק retains the field (even if there was no contract was for more than three years. תוספות clarifies what רב אשי intended to ask.

אין לפרש דרב אשי סבר דלעולם נאמן לומר לפירות הורדתי² –

One should not assume that ר"א maintained that the מערער is always believed to claim הפירות הורדתי (even after three years) and he argues with רב זביד -

דאם כן קשה לרב אשי מאי טעמא דרבנן דבעו שלש שנים מיום ליום –

For if this is indeed so that one is believed to claim הפירות הורדתי even after three years, there is a difficulty according to ר"א; what is the reason of the רבנן in our משנה who require three full years from day to day -

דהא לדידיה ליכא למימר כדמפרש רבא בריש פרקין³ –

For according to ר"א we cannot say that the reason of the רבנן is like רבא explained it in the beginning of our פרק, namely -

דעד שלש שנים מיזדהר איניש בשטריה טפי לא מזדהר –

That a person is careful with his שטר up to three years, but after three years he is no longer careful with his שטר; this is not true according to ר"א -

דהא לעולם צריך לשמרו כן יאמר לפירות הורדתי⁴ –

For a person must guard his שטר forever, lest the מערער claim הפירות הורדתי!

לפירות הורדתי offers an additional proof that ר"א does not maintain that one can claim הפירות הורדתי

¹ Others amend this to read אי.

² One may interpret the question of ר"א as follows. He disagrees with ר"ז, who maintains that after three years the מערער cannot claim הפירות הורדתי, but rather the מערער can always claim הפירות הורדתי, even after three years. ר"א disagrees with ר"ז and proves that he is correct, for otherwise what can one do if he sells his פירות for more than three years. Obviously he must be believed. תוספות rejects this explanation. See 'Thinking it over' # 2.

³ כטא.

⁴ If we assume that ר"א maintains that a מערער can always claim הפירות הורדתי (and unless the מחזיק presents the שטר מכירה, the מערער will retake the field, even after the מחזיק was there for three years), we can no longer use the explanation of רבא that since a person keeps his שטר for no longer than three years therefore the חכמים were מתקן that after three years it is a חזקה; for a person must keep his שטר forever out of concern that the מערער will claim הפירות הורדתי and will be believed to retake the field, ומה הועילו חכמים בתקנתם, (according to this understanding of ר"א).

after three years:

ועוד דאם כן היכי קאמר דאי לא תימא הכי דאיבעי ליה למחויי –

And in addition; if indeed it is so that ר"א argues with ר"ז and maintains that one is believed to claim לפירות הורדתי even after three years, how did רב כהנא answer ר"א; ⁵ that if you (ר"א) will not agree that the מערער should have protested –

אלא לא בעי למחויי דחזקתו אינה חזקה דיכול לומר לפירות הורדתי –

But rather you (ר"א) maintain that the מערער need not protest, for the חזקה of the חזיק is not a חזקה, since the מערער can claim הורדתי; in order to disprove this line of reasoning, ר"כ –

ומייתי⁶ ממשכנתא דסורא⁷ –

Cites the case of משכנתא דסורא to disprove ר"א –

ומאי מייתי אדרבה אם כדברי רב אשי תו ליכא פסידא שיכול לומר לפירות הורדתי⁸ –

But what proof is ר"א bringing from משכנתא דסורא, on the contrary, if ר"א is correct; there can no longer be any loss to the ליה, for he can claim to the מלוה that לפירות הורדתי!

bought two proofs that ר"א never maintained that לפירות הורדתי is effective after three years. ר"א will now explain the question of תוספות.

ונראה לרבינו שמשון בן אברהם דרב אשי לא בא להאמינו אחר ג' אם אומר לפירות הורדתי –

And it is the view of the רשב"א that ר"א did not intend that we should believe the מערער if he claims לפירות הורדתי after three years (as תוספות just proved that this cannot be the intention of ר"א) –

אלא שואל איזו תקנה יש לעשות מתחלה שלא יוכל לומר לאחר שלש שלי היא –

But rather ר"א was (merely) asking what provision can we initially make (for one who is leasing his field for פירות) so that the מחזיק should not be able to say

⁵ We are now assuming that ר"א (argues with ר"ז and) maintains the מערער can always claim הורדתי, because otherwise how can one protect himself if he leases out his field for more than three years. ר"כ rejects this proof, for in reality one cannot claim לפירות הורדתי after three years, and if one leased for more than three years he should protest (in order to protect himself) within three years, saying that this field which is in the possession of the מחזיק has only been leased to him and not sold (so if it was indeed sold the מחזיק should keep his מכירה, and if it was not sold, the מערער is in no danger of losing his field). This was the refutation of ר"כ to the proof of ר"א.

⁶ מחא proves his point that this type of מחא where the מערער claims לפירות הורדתי (within three years) is a valid מחא (equal to the מחא of מוחא גולנא הוא), from the case of משכנתא דסורא (see following footnote # 7). If the מחא of לפירות הורדתי is not a proper מחא, how can the חכמים institute a משכנתא דסורא which may cause the ליה to lose his field?! This proves that there is no concern, for the ליה can be מוחא that לפירות הורדתי (within three years.). תוספות now challenges that ר"א did not disprove ר"א at all (if we assume that ר"א maintains that לפירות הורדתי is valid even after three years).

⁷ A משכנתא דסורא is where the מלוה and ליה agree that (instead of the ליה repaying the loan with money at a given date) the מלוה will eat the פירות of the ליה's field for a set amount of time (regardless whether the amount of פירות will exceed the loan or be less than the loan), and after this time the field will revert back to the ליה.

⁸ ר"א will maintain that there never was a problem by משכנתא דסורא, for the ליה can claim at the end of the משכנתא that לפירות הורדתי (and he need not be מוחא within three years; the claim of לפירות הורדתי is sufficient).

after three years, 'it is mine', in a case -

כשהורידו לפירות -

Where the מחזיק was allowed just for פירות. asked this question -

דסבר לא מהני מחאה אלא כשאמר פלניא גזלנא הוא דקא אכיל לארעאי בגזלנותא -

Because he thought that a מחאה is effective only when the מערער said, 'that person is a גזלן for he is consuming my land illegally' -

והיכא דאחתיא לפירות לא מצי למחויי הכי⁹ וכן פירש הקונטרס¹⁰ -

But where the מערער brought down the מחזיק for פירות (only), he cannot make such a מחאה of וכו' הוא גזלנא הוא וכו'; for the מחזיק is legally consuming the פירות, and the רשב"ם explains the גמרא in a similar fashion.

והשתא מייתי שפיר ממשכנתא דסורא דמהניא מחאה כי האי גוונא -

And now indeed ר"כ brings a proper proof from משכנתא דסורא that this type of מחאה (of לפירות הורדתיו) is a valid מחאה (provided it is made within three years).

[ועיין תוספות בבא מציעא קי, א דיבור המתחיל אמר ליה:]

SUMMARY

All agree that לפירות הורדתיו can [only] be claimed within three years.

THINKING IT OVER

1. Why did רב אשי assume that only the מחאה of פלניא גזלנא הוא is a valid מחאה; however the מחאה of לפירות הורדתיו is not a valid מחאה (even if it is made within the first three years¹¹)?¹²

2. גמ' goes through much effort to disprove the 'אין לפרש', and explains the 'גמ' according to the רשב"א ורשב"ם¹³. What would lead us initially to reject the פי' 'אין לפרש' and (mistakenly) assume the הרשב"ם?

3. According to the לפרש, why is it that if the מערער claims (after three years) לפירות הורדתיו he is not believed, but if he claims (after three years) שדה זו גזולה ממני he is believed?¹⁴

⁹ presumed that making a מחאה of לפירות הורדתיו (even within the first three years) will not be effective after three years; even if the מחזיק has no שטר he will still retain the קרקע. See 'Thinking it over' # 1. [Obviously during the first three years it will not be a חזקה, for he has no שטר; it is not because of the מחאה of לפירות הורדתיו.]

¹⁰ רשב"ם ד"ה דאי.

¹¹ See footnote # 9.

¹² נח"מ.

¹³ See footnote # 2.

¹⁴ See בל"י אות רנה-ו.