

Where it did not produce

היכא דלא אפיק –

OVERVIEW

בית אבי stated that if there were thirty trees planted in three סאה (ten trees to a סאה) and each year he ate the fruits of (only) ten different trees (spread throughout the three סאה) it is a חזקה. This ruling is qualified (even) further, that it is a חזקה only if (each year) the remaining twenty trees do not bear fruit. תוספות explains how it is possible that each year only ten of the thirty trees bear fruit.

פירש רבינו חננאל כגון בנות שוח¹ שמשעה שנחנטו עד לקיטתן ג' שנים –

The ר"ה explained that this scenario² can take place for instance by בנות שוח, where it takes three years from the time the fruit of these trees blossom until they are picked off the tree –

כדתנן (שביעית פרק ה' משנה א') בנות שוח שביעית שלהן שנה שניה פירוש בשנה ב' של שמיטה – As the משנה teaches, the בנות שוח of חזקת שביעית is the second year, meaning the fruits which are picked in the second year of שמיטה have a דין of שביעית –

לפי שאותן פירות שנלקטים בשנה ב' של שמיטה נחנטו בשביעית³ ואסורין כדין שביעית⁴ – Since those fruits that were picked in the second year of שמיטה blossomed on שביעית, so they are אסור as the laws of שביעית prescribe.

תוספות explains why it was necessary for the ר"ה to establish this case specifically by בנות שוח:

ולכך אוקמה רבינו חננאל בבנות שוח דבשאר אילנות באלף שנים לא יארע זה –

And the reason the ר"ה established this ruling of בנות שוח by אבי, is because by other trees this scenario will not happen even once in a thousand years, meaning – דבל⁵ אילנות ילקו בשדפון ג' שנים ואותן שילקו בשנה זו לא ילקו בשנה זו ובזו בזוי⁶ –

¹ See ע"ז יד, א which states; white figs – בנות שוח: אמר רבה בר בר חנה אמר רבי יוחנן תאיני חיוראתא;

² See 'Overview'.

³ Regarding the laws of שמיטה by trees we follow the חנטה; if the חנטה was on שביעית, those fruits have a דין of שביעית, they are not considered שביעית. Similarly if the חנטה was before שביעית and they were harvested on שביעית, they are not considered שביעית.

⁴ It is evident that the לקיטה (in שנה הב') is in the third year after the חנטה (on שביעית). Therefore in our situation ten trees had חנטה two years before the חזקה (and were harvested on the first year of the חזקה), ten trees had חנטה one year before the חזקה (and were harvested on the second year of the חזקה), and ten trees had חנטה on the first year of the חזקה (and were harvested on the third year of the חזקה). See 'Thinking it over' # 1.

⁵ Others amend this to read דל (not דבל).

⁶ To review, אבי requires that he harvests only ten trees a year and that they are spread evenly over three ב"ס and the remaining twenty trees (each year) are not producing fruit. If they are not producing fruit because of a plague or disease, how is it that only some trees are affected and others which are close to them are not affected, and the trees that were affected for two of the three years are not affected on the third year. This is an extremely unlikely

That (regarding) thirty trees (they) will be plagued by blight for three years and those (twenty trees) that are affected this year will not be affected the other year, and the ten trees that are not affected each year are spread out evenly over the three ב"ס.

asks: תוספות

ואם תאמר והיכי מצי מיירי בבנות שוח –

- בנות שוח And if you will say; but how can we be discussing

והא בריש פירקין⁷ אמרינן⁸ גבי חזקה בעינן דבעידנא דאיתיה להאי פירא ליתא להאי פירא –
For in the beginning of our פרק, **the** גמרא **stated regarding** חזקה, **there is a requirement that at the time this פירא is present** (for phase one of the חזקה), **the other fruit** (of the next phase) **is not present** (however if it is present, it is not a חזקה, for then it is all considered as one phase) -

והכא כשאכל פירות שנה ראשונה ושניה כבר נחנטו⁹ פירות שנת ג'¹⁰ –

So here when he ate the fruits of the first and second year, the פירות of the third year blossomed already; so it is a case of **פירי** (of the first and second years) **איתא להאי פירי** (of the third year), so how can it be a valid חזקה?!

answers: תוספות

ויש לומר כיון שעדיין יש שנה עד גמר שלהן¹¹ –

And one can say since there still remains a year until they ripen (so even though they already blossomed), nevertheless -

הוי שפיר בעידנא דאיתיה להאי פירא ליתא להאי פירא:

It can properly be considered that פירא ליתא להאי פירא, since it is so far removed from being ready to be harvested.

SUMMARY

The ruling of אביי is by **בנות שוח**. If there remains a year to harvest it is considered as if the **פירי** is not here even though it already blossomed.

occurrence. However by **בנות שוח**, it is a natural phenomenon.

⁷ כח,ב.

⁸ This explained why there can be no חזקה if he harvested three תאנים in [one day] (three days) because all the three תאנים are present (even though only one of them is ripe to harvest). See 'Thinking it over' # 2.

⁹ See footnote # 4.

¹⁰ Seemingly the question would be on the first year as well, that when he is eating the פירות of the first year there was already the חטנה for the פירות of the second year.

¹¹ This is in contrast to the תאנים which are grown and will ripen shortly. See footnote # 8.

THINKING IT OVER

1. According to the ר"ח, the חזקה of בנות שוח (whose פירות are harvested three years after the חנטה) is in three years.¹² Previously¹³ Tosfos taught us that we require three years of a complete harvest each year (including the planting and harvesting). Similarly here the חזקה should consist of a complete cycle beginning with the חנטה (in year one) and ending with the third harvest (in year five); why are three years sufficient, when it should seemingly be five years (the first two years only have the חנטה)?!¹⁴

2. Tosfos asks how can there be a חזקה by בנות שוח when there is the requirement of בעידנא דאיתא להאי פירי ליתא להאי פירי.¹⁵ Seemingly however this rule is only according to ר' ישמעאל who derives חזקה from שור המועד; however אב"י is discussing the view of the רבנן, who do not derive חזקה from שור המועד and therefore there may be no rule of בעידנא דאיתא להאי פירי ליתא להאי פירי!¹⁶

¹² See footnote # 4.

¹³ (TIE footnote # 3). לז, ב ד"ה מאי

¹⁴ See נח"מ.

¹⁵ See footnote # 8.

¹⁶ See נח"מ and בל"י אות רצ (רעח).