

Here there is fruit on the land

הא דאית ליה פירא בארעא -

OVERVIEW

The גמרא reconciled two contradictory statements whether an אריס (sharecropper) can testify on behalf of the property owner, or not; by saying one case is where there is fruit on the land and the other is where there is no fruit on the land. תוספות explains this distinction.

לא יעיד דנוגע בעדות¹ הוא לפי שהיה נותן לו למחצה לשליש ולרביעי² -

An אריס **cannot testify** that the land belongs to the owner (his employer), where there is fruit (produce) on the land, for **he has a vested interest in his testimony, since the owner would give him a half, a third, or a quarter** of the produce -

ואם יזכה המערער הרי שלא ברשות³ ירד וידו על התחתונה⁴ -

However if the מערער (the one who is contesting the ownership of the field) **will win** the case, the אריס will not get paid that amount, **for** it is a case **where** the אריס **entered the property** to improve it **without permission** (from the real owner [the מערער]) so the rule is **he has the 'underhand'** (which is much less than למחצה לשליש ולרביעי -

אבל לית ליה פירא בארעא לא חייש אם יסלקוהו דכמה שדות ימצא באריסות:

However if there is no produce on the land, the אריס may testify on behalf of his employer, even though he may lose his job if the מערער wins the case, nevertheless **he is not concerned** that perhaps the מערער **will remove him** from his job, **for the אריס can find many fields, which to sharecrop.**

SUMMARY

The מערער will pay the אריס much less than the owner. There is no shortage of אריס opportunities.

¹ The אריס has an interest that the initial owner (the one who hired him to be an אריס) to retain the field, but not the one who is contesting the ownership (the מערער).

² If the owner will win the case and retain the field he will pay the אריס with either half, a third, or a fourth of the produce for the work he did (according to what was agreed upon).

³ The אריס was hired by the initial owner, not by the מערער; therefore if it turns out that the field was owned by the מערער, the אריס had no right to work this field.

⁴ The rule of ידו על התחתונה (by יורד שלא ברשות) is that the owner pay the worker the lesser of the two; either the expense, or the improvement. If the expense is less than the improvement, the worker receives only his expense; certainly not מחצה וכו' of the produce. [See (however) 'Thinking it over'.] Therefore the אריס is prejudiced for the owner and is not an unbiased עד.

THINKING IT OVER

The rule⁵ that *היורד שלא ברשות* is only in case where he planted trees in a field which is *עשויה ליטע*, however if he worked the field in the manner that it needs, the rule is *כאריסי העיר*, so seemingly he will receive the same amount, no matter who turns out to be the owner.⁶

⁵ See footnote # 4.

⁶ See *נחלת משה* בגמ' ד"ה הא.