

לפטרו במנין הראוי –

They should be exempt because of the proper counting

OVERVIEW

אבי asks if we can give מעשר ממה נפשך then why does the משנה teach that if that all are פטור from מעשר; we should give מעשר (the tenth of each batch) ממ"נ. If the קפץ is not in this group of ten then the tenth is a valid מעשר, and if the קפץ is in this group of ten (so the tenth is not a מעשר), it does not matter (that no מעשר was taken from these nine), for they are exempt from מעשר since they are considered a מנין הראוי. Our תוספות challenges this assumption that it does not matter that מעשר was not taken from these ten for they a במנין הראוי פטור, for indeed it does matter, and furthermore it can be rectified.

asks: תוספות

– תימה דהכא לא שייך מנין הראוי –

It is astounding! For the exemption of מנין הראוי is not applicable here -

– דלא שייך אלא היכא דאין כי אם עשרה והתחיל למנות ומת אחד מהן ואין כאן י' –

For the exemption of מנין הראוי is applicable only in a case where there are only ten sheep, and he began to count, and one died before he counted ten, so there are no ten sheep here and מעשר will not be taken -

– אפילו הכי פטורים אותן שיצאו ולא יצטרפו לגורן אחר –

Nevertheless those that went out (and were counted) are exempt from מעשר and need not be combined to another corral -

– כיון שתחילת יציאתן היה ראוי להשלים המנין –

Since from the beginning of their exiting there was the capability to complete the counting of ten sheep. Therefore we say that those that exited are פטור (מצטרף לגורן אחר) (and those that remain will be).

– אבל הכא שיש בעדר הרבה ישלים המנין¹ ויהא עשירי וי"א קודש² –

However here where there are many sheep remaining in the flock let him complete the counting and the tenth and the eleventh sheep will be קודש

– ויקרא לשניהם עשירי מספק אם יש מנוי ביניהם אם לאו –

¹ The ten that exited (assuming that the מנוי was בתוכם) should not be exempt from מעשר because of מנין (as אבי suggests), since there is a (simple) way to have מעשר taken from them.

² See מ"ם. Others suggest that he can make a תנאי, saying if the tenth is מעשר then the eleventh will be a שלמים and vice versa. לשני ימים ולילה אחד eaten (קדשים קלים) and מעשר (בהמה) of קרבנות.

And he will pronounce them both, 'tenth', because of the doubt whether the מני was amongst the first ten (wherefore the eleventh should be קודש or not (and the tenth should be קודש)³ -

וכן יעשה בכל אחד עשר⁴ ובאחרונה שלא ישאר עשרה⁵ יצטרפו לגורן אחר⁶:

And he should do the same by each group of eleven (pronouncing the tenth and eleventh as קודש), and at the end when there will not remain ten, those sheep will be combined to another corral.

⁷ does not answer this question. תוספות

SUMMARY

In a case of קפץ the ruling should be that the tenth and eleventh are קודש מספק.

THINKING IT OVER

Had אבי said as תוספות asks that we should be מעשר the וי"א (and not עשירי וי"א), would אבי be able to prove his point that ספיקא בעי ואי ס"ד (לפטרו במנין הראוי), עישורי לעשר ממ"נ or not?⁸

³ question is on the הראוי במנין הראוי the גמרא should have said (see לעשר ממ"נ וכו' ואי לאו בר חיוביה הוא לפטרו במנין הראוי) (תוספות הרא"ש) that the tenth be מעשר (as אבי suggested) but rather the tenth and eleventh. We should not just have the tenth be מעשר (as אבי suggested) but rather the tenth and eleventh. הראוי is not sufficient cause to allow these nine and the מני not to have מעשר taken from them, when we can have the (tenth and the) eleventh to be מעשר.

⁴ This means that 10 & 11 are הקדש and then 20 & 21 are הקדש (#11 [which is מספק] will be counted as # 1 for the second group), 30 & 31, etc.

⁵ This means ten besides the ספק who might be there. If only ten remain then they are אחר.

⁶ In the גורן also, מעשר will be given from the וי"א עשירי, because perhaps the מני was in the remaining sheep.

⁷ See אמ"ה # 184.

⁸ See גאון צבי.