

העובד כוכבים והכותי שתרמו כולי -

A Gentile and a *Kuti* who were *Toiraim*, etc.

Overview

The Gemara cited a Mishna which states that if a נכרי or a כותי separated תרומה, it is a valid תרומה and it is forbidden to be eaten by non-כהנים. The issue at hand is whether the produce of a נכרי is חייב בתרומה.

פירוש בקונטרס¹ דקסבר אין קנין לעובד כוכבים² -

explained, the reason there is a חיוב הפרשת תרומה, is because the תנא of this משנה maintains that a נכרי has no acquisition in ארץ ישראל to a degree that he should be able to remove its קדושה regarding תרומות ומעשרות -

offers an alternate interpretation:

ונראה לרבינו יצחק דאפילו למאן דאמר יש קנין משכחת לה -

And it appears to the ר"י that we can find such a case of חיוב תרו"מ even according to the one who maintains that a נכרי has a קנין in א"י to remove its קדושה regarding תרו"מ; that is in a case

כשגדלה שליש³ ביד ישראל וקנה ממנו עובד כוכבים⁴ -

When the produce grew a third of its entire growth by a ישראל and the נכרי bought it from him afterwards -

responds to an anticipated difficulty:

ולא מיפטר מטעם לוקח⁵ דתבואת זרעך קרינא⁶ ביה כיון שגדלה הרבה ביד עובד כוכבים -

And it does not become now exempt from תרו"מ by the נכרי on account that it was purchased, because we 'read' (call) this produce as being תבואת זרעך (produce of your seed), since it grew a lot by the נכרי -

offers an alternate scenario:

¹ בד"ה שתרמו.

² Therefore even if the produce grew entirely by the נכרי, nevertheless since it grew in א"י it is מחויב בתרו"מ.

³ Produce which grew a שליש and was then harvested is מחויב בתרו"מ. Therefore, once it grew a שליש by ישראל there is a חיוב הפרשת תרו"מ.

⁴ It grew the remaining two-thirds by the נכרי.

⁵ The גמרא in פסוק (דברים [ראה] יד, כב) which states עשר תעשר את כל תבואת זרעך, to include only produce that you grew, but not produce which you bought. Therefore it would seem that since the נכרי bought the produce from a ישראל it should be exempt from תרו"מ, nevertheless תוספות concludes that in this case it is תבואת זרעך.

⁶ See 'Thinking it over'.

אי נמי⁷ כשזרעה העובד כוכבים⁸ ומכרה לישראל וגדלה שליש וחזר וקנאה ממנו -

Or you may also say that it is discussing a case where the נכרי planted it, and he sold it to a ישראל, and it grew a שליש by the ישראל, and the נכרי then bought it back from the ישראל.

Another suggestion:

ועוד דפירש רבינו תם בסוף פרק קמא דבכורות (דף יא, ב דיבור המתחיל טבלים) -

- מסכת בכורות פרק of פרק ר"ת explained in the end of the first דלא מיפטר לוקח היכא דלקח⁹ קודם שנתמרח¹⁰ -

That a buyer is not exempt from תרו"מ in a case where he bought it before מירוח, so we can be discussing a case where the נכרי bought the produce from a ישראל (so it is מחוייב before מירוח (so there is no issue of לקוח) before מירוח (בתרו"מ) -

A final alternative:

אי נמי בחכר¹¹ שדה מישראל חייב הגדל בו בתרומה ואפילו יש קנין לעובד כוכבים:

Or you may also say; that the נכרי rented a field from a ישראל, in which case whatever grows there is חייב in תרומה, even if we maintain יש קנין לעכו"ם.

Summary

There is a חיוב for תרו"מ for the produce of a נכרי if we maintain אין קנין לעכו"ם בא"י. There can be a חיוב even if we maintain יש קנין וכו' if it grew a שליש by a ישראל (either initially or later). Produce which was purchased מירוח or through a חכירה is חייב even if it is by a נכרי.

Thinking it over

גדלה שליש ביד ישראל nevertheless if it was נכרי, יש קנין לעכו"ם וכו' writes that even if it was נכרי and the rest by the נכרי it is not considered לקוח since it grew

⁷ One may argue that since it says תבואת זרעך, it must be planted by you (in order not to be considered לקוח), however in the case תוספות suggested previously it was planted by the ישראל and the נכרי purchased it so it may be considered לקוח.

⁸ In this case the נכרי planted it so it cannot be considered לקוח. The difficulty with this scenario is that it seems a bit unusual to sell it and then buy it back. Or perhaps since it grew from the planting of a נכרי it cannot be מחוייב בתרו"מ even though later it grew a שליש by a ישראל.

⁹ See נחלת משה that this means he bought the field (?) and the produce before מירוח.

¹⁰ After the grain is winnowed, etc., it is gathered into a pile and smoothed out neatly. This process is called מירוח. The דברים (in written) as it is referred to as דגנך, for only then is it referred to as דגנך, ראשית דגנך וגו' תתן לו (שופטים) that requires מירוח to be considered דגנך.

¹¹ חכר is a rental where (in this case) the נכרי (the renter) obligates himself to give the landlord (the ישראל) a certain amount of produce which will grow on this land.

(so much) by the נכרי it can be called תבואת זרעך.¹² However this seems to be self-contradictory, for if it is called תבואת זרעך of the נכרי, so it is not מ"מ בתרו"מ since¹³ !יש קנין לעכו"ם וכו'?

¹² See footnote # 6.

¹³ See # 66. אוצר מפרשי התלמוד