

גזלן הוא ואין מביאין ממנו בכורים -

He is a robber and we do not bring *Beekurim* from it

Overview

stated that whoever owns a tree which is growing within sixteen אמות of a neighbors field, is considered a robber,¹ and we do not bring ביכורים from that tree. offers two interpretations for this ruling.

פירוש רבינו חננאל משום דאין מביאין גזל² על גבי המזבח -

The ר"ה explained the reason we do not bring ביכורים from this tree is because we do not offer anything which is stolen, to be brought on top of the מזבח -

שנאמר אני ה' שונא גזל בעולה (ישעיה סא³) וכתוב והבאתם גזול וגומר (מלאכי א⁴) -

As it says; 'I, ה', hate a עולה which is stolen', and it is written, 'and you bring that which is stolen', etc. -

ולית לן דעולא דהא בהדיא פסקינן כרבי יוסי⁵ דאמר זה נוטע בתוך שלו כולי -

However, we do not accept this ruling of עולא, for we explicitly rule like ר"י, who maintains, 'this one plants within his property', etc.

asks:

ואם תאמר לפירושו עולא כמאן סבר -

And if you will say; according to the explanation of the ר"ה, whose ruling does עולא follow; he cannot follow ר"י as we just explained -

דכרבנן נמי לא הוי דרבנן לא בעו הרחקה אלא ד' אמות⁶ ולעולא שש עשרה אמה -

For he is also not in accord with the רבנן, since the רבנן require a distancing of only four אמות and עולא requires sixteen אמות!

answers:

ויש לומר דעולא הוי מוקי מתניתין בצונמא -

And one can say that עולא will establish our משנה (which requires only four אמות

¹ See גזלן ד"ה גזלן that the owner is considered a גזלן because his tree is receiving nourishment from his neighbor's field.

² The fruits of this tree are considered גזל because they grew and were nourished by his neighbor's property without his consent.

³ פסוק ח'.

⁴ הַאֲרֵצָה אוֹתָהּ מִיָּדְכֶם אָמַר ה'. פסוק יג.

⁵ כה,ב. אמר רב יהודה אמר שמואל הלכה כר' יוסי גמרא. The אמר רב יהודה אמר שמואל הלכה כר' יוסי גמרא there states גמרא. A person may plant his tree on his property wherever he chooses, even if it is close to his neighbor's field; therefore, he is not considered a גזלן, and may bring ביכורים.

⁶ See our משנה on כו,א.

distancing) by a rock (between the properties) -

כדמוקי לה בריש פירקין' ולהכי לא בעי אלא ד' אמות -

Just as we established this משנה by a צונמא **in the beginning of our פרק, so therefore only four אמות are required**, since there is no nourishment from the neighbor's field (the rock prevents it), however by regular fields one would be required (according to עולא) to distance his trees sixteen אמות from his neighbor's field.

פר"ה asks on the תוספות:

ומיהו קשיא לרבי יצחק דפריך לקמן⁸ לעולא מהקונה אילן וקרקעו מביא וקורא -

However, the ר"י has a difficulty with the פר"ה, for later the גמרא challenges עולא from a משנה which states, one who buys a tree with its land, he brings and reads the פרשה of ביכורים, the גמרא continues -

מאי לאו כל שהוא -

Is it not so that this rule of מביא וקורא applies even if he bought a **miniscule** amount of land; this would contradict the ruling of עולא that a tree requires sixteen אמות of land. This concludes the citation from the גמרא. תוספות continues with his question on the פר"ה,

ומאי קושיא שאני התם שקנאו ולא הוה גזלן⁹ -

but what is the גמרא's question on עולא, there it is different for he bought the tree so he is not a גזלן -

תוספות prefers רש"י interpretation:

ונראה כפירוש הקונטרס¹⁰ דאף על גב דמותר לסמוך אין מביאין ממנו בכורים -

And it would appear like רש"י's interpretation, that even though it is permitted to plant a tree close to the neighbor's boundary, nevertheless one cannot bring ביכורים from such a tree (even though he is not a גזלן) -

דבעינן אשר תביא מארצך¹¹ -

Since we require, regarding מצות ביכורים, that it be, as the פסוק states אשר תביא מארצך (which you will bring from your land)¹² -

⁷ יח,א.

⁸ כז,א.

⁹ It is obvious that when he bought the tree it was understood that he has the rights of his tree being nourished by the surrounding land (even though he does not own it), so there is no issue of גזילה therefore he is וקורא. What is the question on עולא according to the פר"ה?!

¹⁰ בד"ה ואין.

¹¹ The פסוק in כו,ב (תבוא) כו,ב regarding דברים הבאת ביכורים אשר תביא מארצך reads meaning that the fruit must grow and be nourished from your land; however in this case it is growing from the nourishment it received from the neighbor's land. See 'Thinking it over'.

¹² According to פרש"י the גמרא's question (see footnote # 9) on עולא is understood, for even though he bought the tree and it is understood that his tree may receive nourishment from his neighbor, nevertheless it is not his land!

clarifies a possible misunderstanding:

ולקמן¹³ דאמר אילן הסמוך מביא וקורא¹⁴ שעל מנת כן הנחיל יהושע את הארץ -

And later where the גמרא states, 'a tree which is close to the boundary, one may bring ביכורים and read the פרשת ביכורים, for it was with this stipulation that יהושע granted the land' of א"י to the בני"י -

לא קאמר שעל מנת כן הנחיל שיהא מותר לסמוך דבלאו הכי שרי -

It does not mean that he granted the land with this stipulation that it is permitted to plant close to the border, for even without this stipulation of יהושע it is permitted (since the הלכה is like ר' יוסי) - לסמוך

אלא על מנת כן הנחיל שיהא חשוב כמו מארצך ויכול לומר¹⁵ אשר נתת לי:

Rather the גמרא meant to say that it is with this stipulation that יהושע granted the land that when a tree is planted near the border, the fruit growing on these trees should be considered just like they grew from your land, so he will be able to proclaim '[from the land] which You (ה') gave me'.

Summary

עולא maintains (according to פר"ה) that one is not permitted to be סומך within sixteen אמות therefore if was סומך he is a גזלן and cannot bring ביכורים. While רש"י explains that even though it is מותר לסמוך, nevertheless he cannot bring ביכורים (according to עולא), since it is not מארצך.

Thinking it over

According to פרש"י that one is מותר לסמוך and the issue here is 'מארצך';¹⁶ why did עולא say, 'גזלן הוא';¹⁷ why is he a גזלן if it is מותר לסמוך?!¹⁸

¹³ כו,ב.

¹⁴ The גמרא disagrees with the ruling of עולא and maintains that one brings ביכורים וקורא even from a tree which is סמוך למיצר.

¹⁵ The הגהות הב"ה amends tis to read לומר מן האדמה אשר (instead of אשר).

¹⁶ See footnote # 11.

¹⁷ See footnote # 1.

¹⁸ See מהר"ם.