

There he can divest him

התם דמצי מסלק ליה –

OVERVIEW

We derive¹ from the פסוק² of בישראל לי כל בכור that if a נכרי owns a share in an animal (whether it is in the mother or child) there is no דין of בכורה. רבא was asked concerning a בהמת ארנונא, where the king collects ten percent of the herd (for taxes), whether the owner is מחויב בבכורה. רבא responded that if the tax can be paid with money (thereby divesting the king from his interest in the cattle) then the בהמת ארנונא is חייב בבכורה; however if the tax must be paid with the cattle then it is considered that the נכרי has an ownership interest in the cattle and it is פטורה from בכורה. Our תוספות will qualify the extent to which ליה בזווי makes him the exclusive owner.



תוספות asks:

הקשה רבינו יצחק דבפרק איזהו נשך (בבא מציעא דף ע,ב ושם) אמר –

The ר"י asked; that in פרק איזהו נשך the גמרא states -

דהמקבל צאן ברזל³ מן הנכרי הוולדות פטורים מן הבכורה⁴ –

That one who accepted צאן ברזל from a נכרי, the offspring is exempt from בכורה -
אף על גב דמצי מסלק ליה לנכרי בזווי⁵ –

Even though the מקבל is capable of divesting the נכרי from taking the cow, by paying money to the נכרי -

כדאמר התם כיון דאלו בעי נכרי זוזי ולא משכח⁶ שקול בהמה⁷ –

As the גמרא explains there, since that if the נכרי would request money and would not find any, he would take the cow. Therefore it is considered as if the נכרי is a (partial) owner of the cow (and he is פטור from בכורה). It is evident from that גמרא that the claim

¹ מס' בכורות ב,א.

² במדבר ג, יג.

³ צאן ברזל (literally meaning 'iron sheep') refers to a transaction in which the owner of a cow (for instance) delivers the cow to a recipient (מקבל), and the current value of the cow is assessed and agreed upon. The מקבל accepts upon himself to raise the cow, and all profits which will be generated by this cow (for a specified time) including offspring, milk, etc. will be shared by the owner and the מקבל. The מקבל guarantees the owner will receive at least the initially assessed value of the cow. (Anything more will be shared between them.) Therefore the name צאן ברזל since the principal is guaranteed and is as solid as iron.

⁴ See בכורות טז,ב that even the וולדות of the צאן ברזל are פטור from בכורה for the children which they will bear.

⁵ The agreement was that the מקבל has the option of paying the נכרי the assessed value and half of the increase in cash and retaining all the cows.

⁶ The מקבל does not have money to pay the assessed value.

⁷ The נכרי may (even) take the וולדות (of the ישראל) as his payment (see footnote # 4). See 'Thinking it over'.

of מצי מסלק ליה בזווי is insufficient to remove the ownership of the נכרי from the cow. The same should be here, that even though the ישראל is מסלק ליה, nevertheless since if the ישראל would have no זווי, the cow would be taken away, it should be considered as if the נכרי (מלך) has a stake in this cow (and he should be פטור from בכורה).

answers: תוספות

ותירץ רבינו יצחק דשאני התם שמתחלה היתה הבהמה של נכרי –

And the ר"י answered that there (by צאן ברזל) it is different than here (by בהמת ארנונה), for there initially the cow belonged to the נכרי -

וכיון דאי בעי זווי ולא משכח שקיל בהמה לא נפקא מרשותיה –

And since if the נכרי requests money and cannot find any, he may take the cow, it is considered as if it never left the possession of the נכרי⁸ -

אבל כשהבהמה של ישראל ומצי מסלק ליה לנכרי בזווי לא נכנסה לרשותו:

However in our case (by בהמת ארנונה) where the cow belongs to the ישראל initially and he can be מסלק the נכרי with money, it never entered into the possession of the נכרי and therefore it is מחוייבת בבכורה.

SUMMARY

A cow which initially belongs to a ישראל and he can remove any lien on it בזווי is מחוייב בבכורה. However a cow which initially belongs to a נכרי even if the ישראל can divest him from his interest remains מן הבכורה.

THINKING IT OVER

תוספות asks why is ארנונה different from צאן ברזל from a נכרי⁹. Is תוספות (in his question) referring (only) to the offspring of the ולדות of the צאן ברזל or (even) to the offspring of the original ברזל?

⁸ The בהמה was initially his and he can repossess it if he is not paid, therefore it is considered his cow and the offspring is פטור from בכורה. This would apply to the ולדות as well; the ולדות are the offspring of the נכרי's cow and therefore (seemingly) belong to the נכרי.

⁹ See footnote # 7.