

THE OBSERVANCE OF THE TITHES
AFTER
THE DESTRUCTION OF THE TEMPLE.

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TABLE OF CONTENTS

Introduction.....	1-2
Chapter I	
Recorded Changes in the Tithing System.....	3-30
Chapter II	
Territorial Divisions- Palestine.....	31-34
Chapter III	
Recorded Cases of Tithal Observance.....	35-47
Chapter IV	
The Amhaarec and the Tithes.....	48-57
Chapter V	
The Relation of Jew and Gentile in the Tithing System.....	58-62
Chapter VI	
Syria in the Tithing System.....	63-65
Chapter VII	
The Diaspora in the Tithing System.....	66-69
Notes and References.....	70-135
Bibliography.....	136

INTRODUCTION

The problem of the observance of the Tithes after the destruction of the Temple is both instructive and interesting. Although the material which has been preserved in the literature of the two Talmuds on this subject is scant, Halakhic, and at times very vague, it nevertheless affords an insight into the condition of the land of Israel in post-exilic times from the economic as well as the legalistic angles.

Not alone is it possible to get a glimpse of the relationship of the schools of learning to each other, and their trends of thought in respect to the Tithes, but it is also possible to obtain an understanding of the relationship of Jew and Gentile in matters that probably occupied the center of thought in those dismal times, namely, landed property and produce of the soil. The economic and emotional struggle are so harmoniously blended that it is hardly possible to separate the two.

And aside from this enlightenment, an understanding of the relationship of the educated and ignorant classes in Jewry itself may also be obtained from the literature. The struggle of the Haberim and the Ame-haares is one of supreme interest and necessity for an appreciation of the moral conflict which prevailed in Israel in post-exilic times. And it is even more interesting to note how the unfavorable sentiments towards the common masses were gradually modified until the line of demarcation finally disappeared altogether.

The greatest difficulty involved in the analysis of the material on hand is the exact understanding of its chronological order. There can be little doubt that the contemporaneous conditions of later rabbinic times were read into the past by the various rabbis who participated in the discussions of the schools. But this fact in itself reflects serious conditions in the Jewry of Talmudic times, and must be taken into account for a true analysis of the subject.

Another difficulty is the heterogeneity of opinion which abounds in the literature on this subject. At times it is almost impossible to arrive at any definite conclusion on some phases of the problem. In such instances the opinions of later scholars have been adopted as a working basis for an hypothesis. To this extent, the Code of Maimonides, the Kaphtor-V'ferakh, and other authorities are frequently mentioned in this paper.

Although this paper is to a great extent of an Halakhic nature, it must be remembered that the material on hand could not very well have been handled in any other manner, and essentially called for an Halakhic interpretation. And regardless of this legalistic character, the paper as a whole reveals rather clearly the situation in post-exilic Israel with reference to the Tithes.

RECORDED CHANGES
IN
THE TITHING SYSTEM

The problem of tithal observances in post-exilic Israel is too complicated to be clearly understood without a preliminary consideration of the historic background in pre-exilic times. It is therefore essential to obtain, if possible, a unified picture of the tithing conditions as they prevailed in Israel prior to the destruction of the second Temple. Fortunately, the literature of the Talmud is not altogether devoid of reports and traditions which have a bearing on this subject, and which undoubtedly reflect, to a certain degree, the tithing conditions as they obtained in Israel in post-exilic times. The few positive traditions which have been preserved in the literature are vague and abstruse, and hence the conclusions arrived at cannot be guaranteed against fallibility. But the attempt must at least be made to decipher these reports in order to arrive at some coherent knowledge of the subject-matter involved.

The principal report under consideration is as follows:

...היה כהן גדול אחד ששמו היה יוחנן
היה זה יוחנן המכבי

"The High Priest Johanan abrogated the tithal confession...and in his day no man had to inquire about the Dmai." ¹

The identity of this Johanan High Priest has been ² fully established by various scholars. He was no other than John Hyrcanus the Maccabean, to whom are attributed a number of other ³ reforms besides those mentioned above, and in whose day the

cleavage between the Pharisees and Sadducees was definitely established.⁴ Graetz expressly states that these reforms were the work of John Hyrcanus, and not of John the successor of Simon the Just.⁵ This view is also maintained by both Weiss and Vogelstein,³ contrary to the opinions of Maimonides and the other commentators of the Mischna.⁷

The abrogation of the tithal confession by John Hyrcanus is a manifest transgression of the scriptural law, which expressly enjoins that the confession be recited on the removal of the tithes every third year.⁸ And this violation of the law by Hyrcanus forms the central theme of the discussions of both the Palestinian and Babylonian Talmuds, and the conclusions vary accordingly with the two schools. The Palestinian Talmud, after a protracted and rather hazy discussion of the subject, comes to the conclusion that the confession was not really abolished in toto,⁹ but that Hyrcanus instituted that it be recited in a muffled tone. The Babylonian Talmud, on the other hand, maintains that Hyrcanus actually abolished the confession, but that this abrogation only affected the Haberim, since the Am-haares was not separating the tithes altogether.¹⁰ But this interpretation involves another problem, namely, the meaning of the second reform mentioned above: "in his day no man had to inquire about the Dmai." On this point the Palestinian Talmud informs that Hyrcanus instituted guards,¹¹ 'Zugoth'; while the Babylonian Talmud interprets the report of the Mischna as a positive reform, wherein Hyrcanus decreed concerning the produce of the Amhaares, making it subject to tithes.¹²

It is interesting to note how the Talmud arrived at these conclusions. In commenting on the Mishna, the Talmud accounts for the abrogation of the confession by saying that the tithes were given to the priests instead of the levites, as the law prescribes. Hence the confession could not be recited, since it includes the clause, ¹³ וְיָתִיתִי לְלֵוִי, "and I have also given it to the levite;" but we give it to the priest, ¹⁴ וְיָתִיתִי לְכֹהֵן.

This latter statement reported by R. Jose is clearly as problematic as the abrogation of the confession itself, since it also involves the abolition of the Biblical law which enjoins that ¹⁴ all the tithes be given to the levites, and not to the priests. It is apparent therefore, that instead of clarifying the original problem, the Talmud has only added another, thus making the entire situation more complicated and difficult.

The Talmud, however, must have been aware of this dilemma, for in another instance it endeavors to account for the custom of giving the tithes to the priests by saying that ¹⁵ Ezra fined the levites of old, depriving them of their portion. But this penalty in itself demands a reason, and hence we find a dispute between two rabbis on this point. According to one opinion, Ezra fined the levites for not going to Jerusalem with him; and according to the other opinion, Ezra deliberately deprived them of the tithes in order that the priests may have sustenance in their days of levitical impurity. ¹⁶

On analysis, however, both of these answers prove to be mere conjectures. And above all, the very fundamental proof

of the assumption that Ezra fined the levites is altogether lacking. The Talmud seems to accept it as an undisputed fact that Ezra fined the levites, depriving them of the tithes. But throughout the entire books of Ezra and Nehemiah no statement can be found to this effect. The passage in Ezra which reads: "And I gathered them together to the river that runneth to Ahava, and we encamped there for three days; and I viewed the people and the priests, but found there none of the sons of Levi" ¹⁷ which is quoted by the Talmud in support of the conjecture, in truth proves nothing. From the mere mention that the levites were not present at that time, the radical theory that Ezra fined them, depriving them of their sustenance, cannot be deduced. Furthermore, even if we should assume with the Talmud that Ezra did penalise the levites for their reluctance to go to Jerusalem with him, this penalty would undoubtedly affect those levites of his own time and age alone. This type of penalty would be altogether legitimate, as it would be an ¹⁸ *hukh*, a decree made necessary by the exigency of the hour, and which is not uncommon in Talmudic literature. Maimonides likewise assumes that this penalty ¹⁹ inflicted by Ezra applied only to the levites of that generation. But all decrees of this nature are only momentary, and not binding for all times. This penalty, however, as it is recorded in the Talmud, evidently implies its prevalence down into the third and fourth generations of the common era, as is evident from the statement of R. Jose: "We give it to the priests." Hence it would be quite

ridiculous to assume that Ezra could establish a penalty in his own generation which would apply to all future generations.

Furthermore, if this penalty against the levites was actually inflicted by Ezra for a specific cause, as is stated in the Talmud, it would require no Biblical support. Yet the Talmud seeks to establish and justify the practice on the basis of Biblical verses, the most puzzling of these statements being the one by R. Joshua ben Levi, who maintains with strong Biblical proof, that in twenty-four instances in the Scriptures the priests are identified with the Levites. ²⁰

Again, if the attitude of the Talmud is adopted that Ezra penalised the levites, and decreed that the tithes be given to the priests, the question might then readily be asked, why did he not also abolish the confession at the same time, since his decree was a direct violation of the Biblical injunction. The confession virtually depends upon the proper distribution of the tithes, and when the levites were penalised, and the tithes given to the priests, the tithal confession would automatically cease to have its original function, and should therefore, have been abolished at that time. According to this view adopted by the Talmud, it is also very strange that since the days of Ezra to the age of John Hyrcanus, not a single priest-ruler endeavored to do away with the tithal confession, and no one realised that in giving the tithes to the priests the Law of Moses was being directly violated. For nearly four hundred years this maladjustment was current without a single protest, either by the levites, or the

righteous who made an effort to live in full accordance with the dictates of the Law.

The opinion of the other rabbinic authority that Ezra decreed that the tithes be given to the priests as an ameliorative provision, that the priests have sustenance in their days of levitical impurity, is even more untenable than the other opinion. This opinion does not answer the question in any way, and which is more, it would have been an act of conscientious cruelty on the part of Ezra to deprive the levites of the tithes, since there was really no legitimate reason for doing so. According to this opinion the act was not a penalty altogether, but a mere display of prejudice or preference by Ezra, and for this there was no legitimate cause.

Above all, it is quite impossible to assume that Ezra instituted the practice of giving the tithes to the priests on purely Biblical grounds. Contrary to the opinion of the Talmud, there is ample evidence that Ezra befriended the levites, and strove to re-establish the erstwhile practice of the tithes with the express purpose of bettering their economic condition in his own age. A passage in Nehemiah states expressly that the people pledged themselves "to give the tithe of the land to the levite."²¹ It may be safely assumed that this zealous promise of the people was the direct outgrowth of Ezra's influence. And this record completely overthrows all Talmudic speculation on the subject in-so-far as Ezra is involved. Hence we may safely conclude that this radical maladjustment of tithal distribution was not the

work of Ezra, and probably had its origin in a later period.

However, it is not difficult to understand why the rabbinic authorities attributed this social maladjustment to Ezra. As will be shown later, they faced this very problem in their own respective ages. A very strenuous struggle obtained even down into the fourth century of the common era on the problem of tithal distributions. Some rabbis held the opinion that the priests were entitled to the tithes, while others clung to the Biblical ordinance, and maintained that the levites alone could claim the tithes. And a reason had to be found for justifying this illegal practice. Naturally, not being able to discover any valid reason for the practice, and not being able to trace its origin, it was ascribed to Ezra. This fact is not only true of the discussion in consideration, but also applies to all reforms for which the Talmud could not adequately account. All these reforms were attributed to Ezra and the Soferim,²² and are known as the *mispat* *miEzra*, but are not to be found anywhere in the books bearing his name. The ten reforms ascribed to Ezra are as follows: 1) The Law should be read on Sabbath afternoons. 2) The Law should be read on Monday and Thursday. 3) The courts should preside on Monday and Thursday. 4) Clothes for the Sabbath should be washed on Thursday. 5) Garlic should be eaten on Friday. 6) Women should rise early in the morning and bake their bread. 7) Women should wear breech-clothes. 8) Women should comb their hair ^{before} during their ablutions. 9) Perfume peddlers should peregrinate through the small villages. 10) Persons stricken with ghonoreah should take

ablutions when healed.²³

Strange as it may appear, the reform of giving the tithes to the priests is not enumerated among these ten reforms attributed to Ezra, despite the fact that the Talmud ascribes this reform to him. And this strengthens the contention stated above all the more, that this maladjustment did not take place in the days of Ezra, and cannot be attributed to him under any circumstances whatsoever.

A faint ray of light on this problem, which may be taken as a clue to a possible theory, is shed, however, by the Palestinian Talmud. It is very interesting to note that whereas the Babylonian Talmud indulges in a protracted discussion introducing Ezra as the originator of this reform in tithal distributions, and that it was a penalty fixed by this sage upon the levites, the Palestinian Talmud knows nothing of the penalty inflicted by Ezra. In fact, it is safe to assume that the latter Talmud maintained that this maladjustment did not exist prior to the days of John Hyrcanus, who coped with the problem for the first time. And although the contention of the Palestinian Talmud may likewise be fallacious and untenable, the difference of attitude between the two schools is nevertheless worthy of careful consideration.

The proof for this contention of the Palestinian Talmud lies in the fact that it gives as the reason for the abrogation of the confession by Hyrcanus, the removal of a

practice which was taking root then and there among the people. The reason given is as follows: כְּתוּבָה שֶׁנֶּחֱשָׁדוּ לְהִיטֵל נִסְתִּין כֶּסֶף לַכֹּהֲנִים
"The Mischna which records the abolition of the tithal confession refers to a time when the people were first being suspected of violating the tithing laws by giving the tithes to the priests." ²⁴

It is quite evident then, that insofar as the Palestinian Talmud is concerned, this practice of giving the tithes to the priests had its incipency in or about the time of the High Priest John Hyrcanus, that is, in the first century before ² the common era. If the custom of giving the tithes to the priests had been in vogue prior to the the days of Hyrcanus there is no manifest reason why some other High Priest in power should not have taken the steps, either to rectify the maladjustment, or to abrogate the confession altogether as did Hyrcanus. And since no such record exists, and furthermore, since the abrogation of the confession is first mentioned in connection with John Hyrcanus, it is safe to maintain, according to this theory, that the practice began to take firm root in his age. Vogelstein likewise ascribes ²⁵ this practice to the period of Hyrcanus. But whereas this author would connect it all with the early struggle of the priests and levites since the days of Ezekiel, it will be seen that this practice had an entirely different origin altogether, or at least, that in the days of Hyrcanus it had nothing to do with the historic struggle of priests and levites.

However, before entering into a discussion of the Mischna as such, it is essential to discover whether the report of the Talmud that the practice of giving the tithes to the priests

was prevalent among the people has any historic basis, or can be supported from other sources. It must first be established whether such a practice was current before the cause for its existence can be determined. The answer to this query is in the affirmative. The levitical tithes were given to the priests, far down into the third century of the common era, and even later. And furthermore, not only was the practice current among the people, but it also constituted one of the problems for heated discussion among the rabbinic authorities. (It is true that) the records in the Talmud which report earlier conditions may be reflecting the conditions of a later period, but withal there is undoubtedly a substantial truth involved in these traditions.

It is essential to preface the dispute in the Talmud on this question with the interesting remark that the Sifre to Deuteronomy XXVI, 13ff completely ignores all reference to the levitical tithes in its comment to the tithal confession. In the comment to the passage *וְהָיָה כִּי יִשְׁכַּח אֶת הַתְּשׁוּבָה*, the Sifre says: *אֵין הֵנָּה*

הַתְּשׁוּבָה, "this is the priestly due, and the tithe of the tithe. There must have been good cause for ignoring the common reference to the levitical tithes in the confession by the Sifre. It could not be a conscious misinterpretation of the manifest Scriptural law. The Sifre, in its interpretation of the tithal confession is in direct conflict with the Mishna on this very point of levitical tithes. The Mishna still retains a reference to them in its interpretation of the tithal confession.

While it is possible to assume that the Sifre and the Mishna represent two distinct points of view on this subject, it is more likely that ~~the~~ both reflect conditions of distinct periods. And since the Sifre does ignore all reference to the levitical tithes in its interpretation of the tithal confession, it is safe to assume that the practice of giving the tithes to the priests had its incipency in a much earlier period, and may have been current in the days of the High Priest Hyrcanus. Hence there is good evidence for the contention that this practice of giving the tithes to the priests may have prompted Hyrcanus to abrogate the tithal confession. This will be shown more clearly later.

Even more interesting than the passage of the Sifre, is the categorical statement of R. Simon b. Gamliel, that "Just as the Trumah is the legitimate claim of the priest, so also the levitical tithe is the legitimate claim of the priest."²⁷ In the Tosefta this statement occurs with slight variation, but the essential meaning remains unchanged.²⁸ It reveals not only an existing condition, but presupposes a definite system of legislation on this very problem.

A report in the Palestinian Talmud introduces a²⁹ dispute between R. Joshua b. Hananya and R. Elazar b. Azariah. The former contends that the tithes cannot be given to the priests, but must be given to the levites; while the latter maintains that the levitical tithes can be given to the priests as well as to the

levites.³⁰ It is very interesting to observe that this dispute takes place between a priest and a levite; Elazar being a priest and tenth generation from Ezra the priest,³¹ and Joshua being a levite who had taken an active part in the service of the second Temple.³²

This controversy was not mere speculation, but was carried into actual practice in the fullest sense of the term. It is recorded that R. Elazar b. Azariah the priest, was accustomed to claim the levitical tithes of a certain garden. The garden had two entrances; one opened into a levitically pure place, and the other opened into a levitically impure place. Akiba heard of this practice of Elazar, and strongly objected. He persuaded the owner of the garden to close the pure entrance, and should a servant of Elazar come for the tithes he should be told that they must be called for by their claimant. Elazar soon discovered that Akiba had interfered, and later turned over all the tithes he had taken to the levites.³³

As is well known, Elazar b. Azariah was very opulent; the tithe of his cattle amounting to twelve thousand calves yearly.³⁴ He was therefore not in such straits to be forced to rely on the tithes for his sustenance. On the other hand, Joshua b. Hananya was very impoverished,³⁵ and could well afford to take tithes. Yet the record reveals that the tithes were taken by the opulent priest until rebuked, while the poor levite was deprived of his meager income. This instance is most likely one of a great many, and establishes beyond doubt the fact

that the practice of giving the tithes to the priests was a common custom among the people after the destruction of the Temple, and probably even much earlier. Hence there must have been some legitimate cause for such practice, and it could not have been a conscious usurpation of other men's rights.

There is likewise good evidence that the practice of giving the tithes to the priests must have been established by rabbinic legislation at some time or other. To this effect, the Palestinian Talmud reports that in the days of Joshua b. Levi the rabbis desired to vote against this practice. It was decided that Joshua b. Levi should be sent to the assembly to argue this matter to a finish with the opposing side, since he was himself a levite. But he disappointed them by arguing in favor of the practice. He legitimized the practice on Biblical grounds by saying that the priests are identified with the levites in the Scriptures. ³⁶ There were also other rabbis who legitimized the practice on similar ³⁷ Biblical grounds.

Hence it is clear that the practice of giving the tithes to the priests began at a very early age, and continued far down into the fourth generation of the Amoraic period, and possibly later, and formed the center of heated discussions among the rabbis.

In setting forth a solution of the problem, therefore, the first and most positive affirmation which can be made is, that there were current two distinct sets of opinions, two specific tendencies in the matter of tithal observances.

One side maintained that the levitical tithes were never intended for the priests, and must be given to the levites, as prescribed by the law of Moses. And in this respect it may be said that there were conscientious men, who refrained from accepting the tithes even though they were priests. R. Hunna and R. Aha, who were both priests, refused to take the tithes; and R. Hiyya bar Abba, another priest, decided to leave Palestine, and make his home in the Diaspora where the tithes do not obtain by Biblical injunction, in order that the Palestinian levites may not be deprived of their portion of income.³⁸ This tendency needs no proof or justification. It is simply the direct application of the Law of Moses.

The other tendency was to uphold the practice of giving the levitical tithes to the priests, and maintain, at the same time, that this practice was not an infringement on the Law in any way.

This latter attitude can also be justified on reasonable historic and psychological grounds. There can be little doubt that the relative number of levites in the land of Israel from the days of Ezra and following was very insignificant. The very fact that Ezra found no levites among the masses who came to Jerusalem with him supports this contention. At best a mere handful are recorded, which is an imperceptible number when compared with the priests who came to Jerusalem in the hope of obtaining work at the Temple. And most likely the few levites who were there had very little to perform in the services of the second Temple.

In fact it is safe to assume that they had very little to do in the services of the first Temple. Their help was needed primarily during the existence of the Tabernacle, which they were commissioned to carry during the wanderings in the wilderness. But even though they performed but little in the services of the first Temple, the landowners could well afford to give them the tithes, since the land was left to thrive in peace and plenty. And aside from this, the levites owned large tracts of land and the cities allotted to them by Moses and Joshua, from which they could gather their livelihood. But all this property was lost to them after the destruction of the first Temple. They probably did not own any land nor any cities during the era of the second Temple. Hence there was really nothing to inspire them to come back to Palestine from Babylon, and the vast majority of them did not return with the masses who came with Ezra. It is little wonder then, that the latter did not find any levites among the people.

The period of the second Temple prior to the Maccabean revolt was so unsettled by the wars that ensued that the actual track of the observance of the tithes could probably not be maintained. It is safe to assume that the tithes may not have been observed altogether during the period of unrest prior to the Maccabean era. But with the Maccabean victory and the restoration of peace, the problem of the tithes was again introduced as a vital issue. But the levites had most likely dropped out of the scene altogether by this time, except perhaps, for a scant number who sang the liturgy at the Temple. At the same time the priests had

been receiving the prescribed portions of the sacrifices all through the services of the Temple; and they had likewise been receiving the Trumah and the other gifts allotted to them by Law. And since there were but few levites, and even those who were there took no active part in the services of the Temple, the priests were naturally next in line to receive the tithes, when stress was once again being laid on their observance.

In this respect the statement of Joshua b. Levi mentioned above has good psychological bearing on this problem. The priests, he maintains, are identified with the levites in the Scriptures. It would hence be a matter of but little difficulty to go just one step further and say that the priests are in a sense, the levites. Hence the practice of giving the tithes to the priests was not a usurpation of levite dues as Vogelstein would have it be. The conscientious observer of the Law who felt that he must tithe his produce, likewise felt obligated to reward the priest for his services at the Temple; and thus the priests became heirs to the tithes which originally were allotted to the levites. And it is very likely that because the practice was very common among the people, that the Sifre assumes total ignorance of the levitical tithes in its interpretation of the tithal confession. It is also very true that there were many people among the inhabitants who did not observe the tithes altogether. But for this there was a very good reason, as will be seen later. However, the method of exerting brute force to usurp the tithes illegally by individual priests, mentioned by Vogelstein, was only a much later innovation,

and most likely did not obtain before or during the priesthood of John Hyrcanus.

Another reason why the tithes may have been given to the priests instead of to the levites is that the latter were included among the poor of the land.³⁹ And since Ezra instituted a community storehouse for the poor,⁴⁰ there would be no palpable reason for giving the tithes to the levites. They could obtain their sustenance from the public fund for the poor. That such fund existed even in the days of the High Priest John Hyrcanus, and later, is evident from the discussion of this very problem in the⁴¹ Palestinian Talmud.

Hence, on the basis of the above discussion, it is possible to construct one of a number of theories for the statement in the Mishna that Johanan High Priest abrogated the tithal confession. The tithes were being given to the priests instead of the levites, just as the Talmud reports. And this practice had taken root during the period of semi-tranquillity following the Maccabean victory, that is, in the age of John Hyrcanus, or somewhat prior. The confession could therefore not be recited since it includes the clause, "I have also given it to the levite"; and this, as has been observed was not being done.

The question may now readily be asked why did he not rather endeavor to rectify the maladjustment, and re-establish the prescribed method of tithal distributions, instead of abrogating the confession altogether. But this query may be answered in

a number of ways. In the first place he could really find no grounds for restoring the old system, since the priests were actually performing all the services at the Temple, while the levites had been all but eliminated from the ceremonies. Hence the tithes and the other priestly dues constituted the remuneration of the priest for his services rendered. And in the second place, since the relative number of levites was insignificant, Hyrcanus being a priest would naturally favor the priests, or in other words,

הַכֹּהֵנִים מֵעַד הַלְוִיִּים , the priest aids the priest. Perhaps this is the reason why Elazar b. Azariah, who was likewise a priest, sided with those who favored the giving of the tithes to the priests.

This contention of course is an admission that with the abrogation of the confession Hyrcanus abolished a positive Biblical injunction. But this fact would have to be admitted in the case of any possible theory offered in the solution of the problem.

And above all, the abrogation of the tithal confession may not have been considered such a radical infringement of the law altogether. There was really nothing positive involved in this act. It was simply what is known in rabbinic literature as a *shema' b'ra' d'ra'*, a neutral or negative attitude; and this form of procedure is not considered a direct violation of the law by rabbinic authorities. The reform of Hillel in instituting the *prusbul* likewise falls under this category, although it has the semblance of a direct violation of the Law.

Hence it has been seen that the abrogation of the tithal confession by John Hyrcanus was a natural outgrowth of the conditions of his age, and did not involve any serious violation of the law.

But this very contention brings about another difficulty, namely, the meaning and interpretation of the last statement of the Mishna, 'וְכִי־יִשְׁכַּח אִין אֶת צִדִּיק לִפְנֵי הַדַּמַּי', in his day no man had to inquire about the Dmai. This difficulty is obviated, however, by another report in the Talmud. It is recorded that Hyrcanus sent throughout the land of Israel, and discovered that the people were only separating the Trumah, but not the other tithes. So he alleviated the situation by saying that it was not really necessary to separate the tithes, since no one could prove that they were not being separated.⁴² The clause

אִין אֶת צִדִּיק, implies an ameliorative provision by which the burden was lightened, and not as the commentators would have it, a more rigid process of having each individual who bought produce separate the tithes for himself. And because of this manifest meaning of the clause, it becomes clear that the quotation of the Tosefta in the Talmud is no doubt erroneous.⁴³ The Talmud simply misquoted the Tosefta, since the majority of quotations were mere memory-work, and not quoted from written records.

Thus there were two distinct types of tithal observance. Some observed both the Trumah and the tithes; while others merely separated the Trumah, and ignored the tithes altogether. In all instances, however, both the Trumah and the tithes

were given to the priests. Hence the abrogation of the tithal confession by Hyrcanus, in all, tended to strengthen the prevailing tendencies of his age, and altogether, the entire reform, if it may thus be termed, was of a negative character.

The Talmud offers another theory towards the solution of the problem, which is however not likely. After a rather lengthy discussion of the subject-matter of the Mishna, the conclusion is reached that Hyrcanus instituted two distinct reforms: 1) He abolished the tithal confession of the Haberim, because they were not executing the tithing law properly in giving the tithes to the priests instead of the levites; and 2) He decreed concerning the Dmai of the Amhaares.⁴⁴ This interpretation is fundamentally erroneous, as the struggle between the Haberim and the Amhaares did not take definite shape until long after the age of Hyrcanus, and was most likely introduced as a definite issue after the Hadrianic persecutions in the assembly at Usha. The Talmud, however, was forced to this conclusion by the statement of the Tosefta, wherein it appears that the abrogation of the tithal confession and the decree of the Dmai are two distinct and separate reforms.⁴⁵ In fact the Tosefta does construe the Mishna to mean that Hyrcanus "abolished the tithal confession, and decreed the Dmai." However, from the Mishna it is clear that the decree concerning the Dmai was in reality the removal of a hardship, and not the exaction of a more rigid requirement. The Tosefta without doubt simply misunderstood the Mishna. In its

mention of the Haberim and the Amehaares, the Talmud was probably reading into the past a struggle which obtained in much later times. This interpretation of the Mischna is therefore untenable.

Another theory which might be offered on this subject is the following. Hyrcanus abolished the tithal confession because some of the levites were extorting the tithes by brute force. The tithal confession could not be recited therefore, as it specifically qualifies that the tithes must be given by man's own free will, and this was not the case, since some of the levites were taking them by force of arm.

The Palestinian Talmud includes a statement in its discussion of the subject which may perhaps throw some light on this theory. It is recorded that two men, Elazar ben Pehora and Judah ben Pehora were taking the tithes by brute force.⁴³ The commentators would have it that these men were taking the produce from the community storehouse at Jerusalem, which is very unlikely as that place must have been well guarded against such violence. And since the Talmud does not say of what status these men were, it is altogether likely that they were levites who went about the land taking the tithes by force. The mere record of such condition prevailing, even though it may have been later misunderstood by the Talmud, is in itself enough basis for contending that there may have been levites who extorted the tithes against the will of the people. And some such condition may have prevailed in the days of Hyrcanus, whereby it became necessary to abolish the tithal confession.

And in view of this contention, the meaning of the second clause of the Mishna, namely, that in the days of Hyrcanus no man had to inquire about the Dmai, becomes quite clear. No man had to inquire about the Dmai because there really was no Dmai. The Dmai is produce about which there exists a doubt if it had been tithed. But if the tithes were extorted by force by some levites who travelled about the land for this express purpose, then the produce was naturally tithed. Hence the last clause of the Mishna is a natural complement and the direct outgrowth of the first statement, and both together record one and the same thing.

Another possible interpretation of the Mishna may be offered on the basis of the statement in the Palestinian Talmud that Hyrcanus instituted governmental officials, Zugoth,⁴⁷ for the purpose of forceful collection of the tithes. Hyrcanus may have realised that in his age he had no lawful right to enforce the tithing of all the produce. This may have been due to two things. In the first place, the land was probably quite desolate after having been ravaged by the numerous wars, and as a result the produce was very limited. And secondly, the people were obliged to pay heavy tribute to the foreign rule, and Hyrcanus also had to raise great sums for his treaties. Hence the tithes were a twofold burden on the people, and Hyrcanus realised that he could not enforce the separation of all the tithes either by law or reason. And because of such prevailing conditions, many of

the people probably refrained from separating the tithes altogether, as is recorded in the tradition that Hyrcanus sent about the land and found that the tithes were not being observed by a great many. But to abolish the tithes altogether would also be wrong. And hence he made the entire system of the tithes dependent on the individual will, and left it all to the sentiments of the people. He only enforced only the separation of the Trumah and the tithe of the tithe. And hence the report that Hyrcanus established government officials to see to it that these indispensable tithes, the Trumah and the tithe of the tithe, should be fully observed according to the fullest detail of the law. And since these officials forced the observance of these tithes, the tithal confession was abrogated. And the burden of the Dmai was likewise alleviated by leaving the observance of the other tithes to the individual will and sentiment of the people, and at best no one could authentically establish, when buying produce, that it had not been tithed.

However, on the basis of this same statement of the Palestinian Talmud, that Hyrcanus instituted government officials, or Zugoth, to collect the tithes by force, another theory may be advanced towards the solution of the problem, which is probably nearer to the truth than any of the others. As may be ascertained from the tradition misapprehended by the Talmud, Hyrcanus sent about the land of Israel, and discovered that the tithes were not being separated, and therefore he collected them by force.

This he did by means of the Zugoth, or government guards. This report of the Talmud has been greatly misunderstood by the commentators, who assume the interpretation to be that they were appointed for the purpose of enforcing the separation of the tithes on the part of the individual buyers of produce. But this at best would be a rather inefficient method of enforcing the law, as these guards could not have taken care of all the people who bought produce. Likewise the contention of others that these Zugoth were scholarly couples such as Jose ben Joezer Ish Zereda and Jose ben Johanan Ish Yerushalyim is even more fallacious and ridiculous. Scholarly couples of this type existed long before the age of Hyrcanus, as is very evident from the fact that these two Joses mentioned above lived long before Hyrcanus, and were of an altogether different character and function.

It is quite definite therefore, that the guards set up by Hyrcanus were neither of the scholarly couples, nor for the purpose of executing the law by merely seeing to it that individual buyers tithed the produce they purchased. They were the very persons who collected the tithes by force for Hyrcanus. In this respect they were of the same category as the 'dekateutes', the farmers of tithes, or simply, tithe-collectors. Since tithe-farmers existed in other lands, there is no reason to doubt that the same office was instituted by Hyrcanus in Palestine.

The theory that the tithes were collected by force during the latter period of the second Temple is irrefutably supported by two stray reports in Josephus. In Antiquities XX,

8:8, the following report is recorded: "...And such was the impudence and boldness that had seized on the High Priests, that they had the hardiness to send their servants into the thrashing floors to take away the tithes that were due to the priests; inasmuch that it so fell out that the poorest sort of priests died of want." In Antiquities XX,9:2, the following is recorded by the historian: "...he also had servants who were very wicked, who joined themselves to the boldest sort of the people, and went to the thrashing floors and took away the tithes that belonged to the priests by violence, and did not refrain from beating such as would not give these tithes to them. So the other High Priests acted in like manner, as did those, his servants, without any one's being able to prohibit them; so that (some of the) priests that of old were wont to be supported with those tithes died for want of food."⁴⁸

While it is true that Josephus is here recording a later condition, the custom of taking the tithes by force must have had its origin in an earlier period. And hence, with the support of the Talmudic record, it is safe to maintain that this practice was first instituted by the High Priest John Hyrcanus. In later years this practice deteriorated into base violence, as is rightly reported by Josephus.

A report in the Tosefta also throws great light on the rabbinic tradition that Hyrcanus set up guards to collect the tithes by force. The Tosefta states that "in former times the court officials would travel to all city gates, and if a person came with produce in his hand, they would take it from him, giving

him enough food for three meals, while the remainder they stored away in the community storehouse." ⁴⁹ Hence it is evident did send forth special officials to take produce from the people, and it is not unlikely that this Tosefta reflects a condition current in much earlier times, when the government officials were sent into all the market places to collect the tithes of all the produce by force. The expression *שׁוּמְרֵי דְּבִירָא*, "he set up guards", is here to be taken literally, and definitely shows that these guards were set up in places of public concourse, that is, in the market-places. In later times, the government, or priests, became so bold as to send these officials directly to the thrashing floors, and there take the tithes by force.

There also exists positive information in the Talmud for further support of this theory. As has already been mentioned above, the Talmud reports that two men, Elazar b. Pehora and Judah b. Pehora took the tithes by force. The Talmud did not fully apprehend the import of this tradition, and therefore it speaks derogatorily of Hyrcanus for abrogating the confession on their account, instead of rectifying the evil by punishing these men and putting an end to the practice. This derogation is groundless, however. These two men were none other than the tithe-farmers instituted by Hyrcanus for the purpose of collecting the tithes by force. And in so doing, they did no more than execute their official duty to which they had been assigned by the High Priest in power.

The contention of the Talmud, however, that because these men were taking the tithes by force, Hyrcanus abrogated the

tithal confession, is quite correct. Since the tithes were collected by official legislation through the government officials, and were not given by the own free will of the people, the tithal confession could not be recited in full conformity to the Biblical law, as the entire confession implies that the tithes were given of one's own free will. And since this was not the case, the recital of the tithal confession would be a manifest falsification of the truth. Therefore it was abolished.

It is not necessary to mention that the reason why the tithes were collected by the government was for the purpose of raising funds for the treaties with the outside powers which had been re-established by Hyrcanus, as is recorded in Josephus,⁵⁰ and for maintaining the public fund for the poor of the land, and probably for the maintenance of the government, and the Temple as well. All this required heavy sums, and they were gotten through the forceful collection of the tithes, probably in the place of the general taxes.

Hence it is not only possible to construct a coherent and logical story of the reform of Hyrcanus recorded in the fragmentary reports of the Talmud, but it is also possible, to a certain degree, to identify one of the very men appointed by him to execute the law of collecting the tithes. The Babylonian Talmud reports that the hatred of Hyrcanus for the Pharisees was incited by a certain Elazar ben Pu'era, who also counselled this priest to slay a great number of them for political reasons.⁵¹ This Elazar ben Pu'era may perhaps be the same Elazar ben Pehora mentioned in

Palestinian Talmud in connection with the practice of collecting the tithes by force. Hyrcanus probably remunerated him with a public office for this apparent show of friendship. The variation of the surname as it appears in the two Talmuds is probably the mistake of a copyist, or it may be that the tradition had been quoted so many times by memory and was so old that the variation came about in this way. In literature of this nature both types of such errors are possible and not uncommon.

Hence through such a comprehensive view of the entire situation, the last statement of the Mishna mentioned above becomes very clear. It is no more than a comment stating the effect of the reform of collecting the tithes by force. No man had to inquire about the Dmai because by this method of forceful collection all the produce was automatically tithed. The very wording of the comment substantiates this theory. It proves conclusively that Hyrcanus had done something to obviate the necessity of inquiring about the doubtful produce. And as has already been shown in the above discussion, he had obviated this necessity by establishing the government office of 'Tithe-Farmers', which collected the tithes by the strength of the law.

To sum up the discussion it may be said that in either case, whether the tithes were collected by force, or whether they were observed by the free will of the people, all in all, these records show that the tithes were observed in Palestine prior to the destruction of the Temple. And it will be shown later that they really never ceased to be observed in a greater or lesser degree throughout the subsequent ages.

TERRITORIAL DIVISIONS

I. PALESTINE

The tithes are an integral part of the observances which are made dependent upon the land of Israel. And with reference to these observances, the world is geographically divided into three distinct territorial divisions, namely, Palestine, Syria, and the Diaspora.

Palestine in turn is subdivided into two geographic divisions. The first division consists of that portion of the land inhabited by the Jews who returned from Babylon; and the second division consists of that portion of the land which was conquered by the tribes who came up from Egypt.⁵²

But although the above division of Palestine appears to be quite clear, the exact territories which constitute the land are yet to be determined. A statement in b. Pesachim 52b, sums up the geographic area of Palestine as Judea, Transjordan, and Galilee. Judea and Galilee are easily traceable. But what constitutes Transjordan is not definitely established. Apparently the land referred to are the countries of Ammon and Moab, conquered by Moses through his conquest of Sihon, and occupied by the two and a half tribes. If this were the case, these territories would be Palestinian soil just as Judea and Galilee, and would fall under the same legal jurisdiction. But the opinion in the Talmud are at variance on this very point. According to the statement mentioned above, Transjordan is an integral portion of Palestine,

and is subject to all Palestinian legislation. But according to various other statements in the Mishna,⁵³ and the Palestinian Talmud,⁵⁴ it appears that these lands were not considered to be a portion of Palestine.

On final analysis, however, there is evidence that the rabbinic authorities divided the countries of Ammon and Moab into two distinct territorial entities. The first is that portion of Ammon and Moab which was conquered by Moses in his conquest of Sihon, and which was considered an integral part of Palestine in all matters; and the second is that portion of Ammon and Moab which was never subjected by Moses. This latter territory remained in the hands of the Gentile, and was never considered a part of Palestine,⁵⁵ although many Jews dwelt there.

The observance of the tithes in Palestine after the destruction of the Temple depends altogether on the question whether the land was consecrated for all subsequent ages through the first conquest.⁵⁶ All rabbinic authorities agree that there were two consecrations of the land;⁵⁷ one in the days of Joshua, and one in the days of Ezra. But as to which of these consecrations was the permanent one is a matter of dispute.⁵⁸ Thus R. Joshua and R. Johanan⁵⁹ maintain that the first consecration of the land was permanent, and that the reoccupation of the land in the days of Ezra did not add to, or detract from its former status in any manner. This is to say that when the Israelites conquered Canaan in the days of Joshua, it was consecrated for all times, and no matter what befell the land in later years, it never lost its

original state of sanctification, and hence the tithes are obligatory for all times as a strictly Biblical injunction.

On the other hand, R. Eliezer,⁶⁰ R. Jose,⁶¹ and R. Simon b. Lakish⁶² hold the view that the first consecration was only binding temporarily, and was nullified as a Mosaic institution with the devastation of the land. The lasting consecration of the land, according to this opinion, occurred in the days of Ezra, and extended to all parts occupied by those who returned from Babylon. The tithes therefore, from the days of Ezra and following, are purely a soferic or rabbinic institution.

It is very difficult to formulate a definite decision in the face of all these conflicting opinions. According to the Talmudic principle- that wherever R. Joshua disputes on a subject, the law is always established in his favor; and likewise wherever R. Johanan disputes with Resh Lakish, the opinion of the former is fixed as the law- it would be necessary to decide in favor of those who maintain that the first consecration of the land was permanent, and hence the tithes would be obligatory as a Biblical injunction even after the destruction of the Temple.

But despite this dictum of the Talmud, the opinion of these rabbis cannot be established as final. It will be necessary to decide in favor of the other group of rabbis, who hold the view that the first consecration of the land was only binding temporarily, and that the second consecration was the real lasting one, and hence the tithes are obligatory by rabbinic ordinance only.

This decision is based on the fact that the opinion of R. Joshua and R. Johanan is purely an abstract notion without the least foundation or support, whereas the opinion of the opposite group of rabbis is strongly supported with proof and illustration in the Talmud. ⁶³ Maimonides ⁶⁴ and ⁶⁵ Parchi likewise establish the decision in favor of the latter group.

Consequently the observance of the tithes in Palestine after the destruction of the Temple is not considered obligatory as a Mosaic legislation, and were to be observed as a rabbinic institution formulated on the same basis and principle as the institution of tithes before the destruction of the Temple in all its minute detail.

It will be observed later, that this belief in the inviolate sanctity of the land of Israel- whether through the first conquest, or the second occupation- brought about a series of complicated problems, and was one of the primary reasons for the preservation of the institution of the tithes in Palestine and the surrounding countries, even when there was no longer any Temple, and the priests and levites had ceased to function in the ceremonial life of the Jew.

RECORDED CASES OF
TITHAL OBSERVANCE

In spite of the struggle that ensued after the destruction of the Temple and the devastation of Palestine, and despite the rapidly decreasing economic standards, there is yet sufficient evidence in the literature of the Talmud to establish the fact that the tithes were observed in post-exilic times by vast numbers of the population,⁶⁶ though not always in minute conformity to the law.⁶⁷ The assembly at Usha, which convened after the Hadrianic persecutions, and which was probably the recognised legislative body of that age, coped with the urgent practical problems of that period. Indeed many of the problems reflected in the literature of this period existed long before the convocation of the assembly at Usha, and it will be pointed out later that some problems may have had their origin as far back as the Maccabean era; but there can be little doubt that this assembly organised a considerable number of these problems into a definite system, and adopted resolutions accordingly. The vast number of legislations concerning the Amhaares and the non-Jew in the tithing system most likely owe their origin, as systematic legislations, to this assembly; and resolutions of such a practical nature would not have been adopted if the situation had not been of sufficient import to warrant them. It is true indeed that the majority of legislations concerning the Amhaares and the non-Jew in the tithing system are

not directly attributed to the assembly at Usha, but it will be observed later that there is sufficient evidence in the literature to establish the theory that these legislations owe their concrete form to some of the members of this assembly.

The dispute between R. Tarfon and R. Elazar ben Azariah concerning the status of Amon and Moab with respect to the tithes in the seventh year of the cycle,⁶⁸ may here be cited as a concrete illustration of the assumption that the problems which confronted the leaders in the period immediately following the destruction of the Temple were of an urgent practical nature. Here was a problem of a most pragmatic character which had to be solved in order to establish an ameliorative standard for the poor of the land. And the mere fact that a vote was taken and the law decided in favor of R. Tarfon proves beyond doubt that the leaders coped with the exigent problems of their age, and did not always indulge in pure theoretical speculation.

The fact, too, that a Brotherhood of Haberim existed in post-exilic times, which had as part of its functional program the preservation of the Institution of the Tithes and the education⁶⁹ of the Amhaares to observe these laws, presupposes a situation wherein the tithes must have been observed, at least by the members comprising this brotherhood.

It is to this effect that the Talmud has established the following important principle: "The presumption is that the Haber will not permit anything to pass out of his hands which has⁷⁰ not been ritually prepared.

While this principle may have reference to the ritual preparation of all foods, it is made applicable, however, in most instances in the literature, to the ritual preparation of grain, vegetables, and fruits, by the separation of the tithes. ⁷¹

Although this statement of the Talmud is made as a purely theoretical principle, there is no doubt whatsoever that it originated in established practice, and the following recorded instances of the observance of the tithes in post-exilic times are sufficient evidence in support of this contention.

It is related of R. Hanina ben Dosa that on a certain Friday night the table upon which he was eating collapsed. On asking his wife if there was anything wrong, she told him that she had borrowed produce from her neighbor, but had forgotten to separate the tithes. Whereupon he tithed them conditionally, to be retithed after the Sabbath. ⁷²

An incident occurred in Figga where a Jew told a non-Jew to go out and separate the priestly dues of his produce at the grannery. Accidentally the tithes fell back into the bin together with the other produce. When the case came up before R. Simon ben Gamliel, he ruled that since a non-Jew had separated the priestly dues, the separation was not valid, and the produce must be retithed by a Jew. ⁷³

R. Gamliel and the Elders separated the tithes while travelling in a ship. R. Gamliel gave the tithes of his produce to R. Joshua ben Hananya, who was a levite; and the poor-tithe to R. Akiba ben Joseph, who was the provider of the poor.

R. Joshua ben Hananya, in turn, gave the tithe of his tithe to R.
74
Elazar ben Azariah, who was a priest.

R. Elazar ben Azariah was accustomed to go into a certain garden and claim the tithes. The garden had two entrances; one opening into a levitically pure place, and the other into a levitically impure place. These tithes, however, which were being taken by R. Elazar ben Azariah, legally belonged to the levites, and he, being a priest, had no legitimate claim to them. When R. Akiba heard of this practice he persuaded the owner of the garden to keep the levitically pure entrance closed; and should R. Elazar send a disciple or servant after the tithes, they were to be told that the tithes must be called for by their claimant. R. Elazar soon discovered the author of this interference, and realising his
75
mistake, he turned over all the tithes he had taken to the levites.

Besides observing the produce-tithes, R. Elazar ben Azariah also observed the tithe of his cattle. It is reported that the tithe of his herd amounted to twelve thousand calves every
76
year. Even if this number is greatly exaggerated, the fact remains, nevertheless, that he observed this tithe.

R. Tarfon received priestly dues. Once he was met by an old man who asked him why people speak derogatorily of him for accepting such dues the entire year from anybody; as otherwise all his actions were most upright. R. Tarfon referred to a rule which he had received from R. Johanan ben Zakkai on which he had based the acceptance of these dues. But he declared that hence-
77
forth he would act more strictly.

It is also related of R. Tarfon that he once failed to come to the Synagog in the evening. The following morning he was accosted by R. Gamliel who demanded an explanation. R. Tarfon laconically answered that he had been occupied with the service the evening before, at which remark R. Gamliel was greatly surprised, since there was no Temple-service at that time. R. Tarfon then told him that he had been obliged to go to the neighboring villages to receive and eat the priestly dues, and that this act was comparable to the service of the Temple.⁷⁸

In a year of drought R. Tarfon betrothed several women to himself in order to enable them to eat of the priestly dues which he received.⁷⁹ This report bears remarkable evidence to the fact that even in times of the most deplorable economic pressure, the priestly dues were nevertheless observed by the people.

Once it happened that some of R. Simon Shezuri's untithed produce became mixed accidentally with tithed produce, and he went to R. Tarfon for advice. The latter advised him to buy more produce from the market and retithe the entire lot.⁸⁰

It happened that the rabbis visited a Samaritan village, and the villagers brought vegetables before them for food. R. Akiba tithed the vegetables with the certainty that they had not been tithed. R. Gamliel was not pleased at this, and asked him how he could disregard the authority of his colleagues. R. Akiba answered that with the act he had not meant to establish a law in Israel, as he had merely tithed the vegetables belonging to him. R. Gamliel that the act did establish a law.⁸¹ When he came

among the Samaritans he established their produce and vegetables as Dmai, and their fruits as Vaddai. But when he again revisited the villages he discovered that they had ignored the law completely; and so he established all their produce, grain, vegetables, and fruits, as Vaddai.

82

Rabbi Akiba picked a citron tree, and separated of the fruit both the second-tithe and the poor-tithe, according to the opinions of both Beth-Shamai and Beth-Hillel.

83

Rabbi and R. Jose ben Judah were the guests at the home of a certain man. But before they came, an eavesdropper went to this man and told him that the rabbis who were to be his guests suspected him of being lax in the observance of the tithes. During the meal he sat and watched them as they ate in order to discover what they would do. The rabbis feigned throwing bits of food to each other inadvertantly. But in reality they were tithing the food in this manner, and left these bits uneaten.

84

Rabbi Johanan even tithed the meat and the eggs which he ate.

85

Alifussa gave the tithes of his produce to Simon bar Abba who was a levite.

86

Rabbi Jose ben Saul instructed his farmhand to tithe his fruits.

87.

R. Jeremiah sent a basket of untithed dates to R. Zera. R. Zera did not tithe them because he believed that Rabbi

Jeremiah would not have sent him fruit which had not been tithed. On the other hand R. Jeremiah had not tithed the fruit because he assumed that R. Zera would not eat anything which had not been tithed, and would therefore tithe the fruit himself. Consequently the dates were eaten untithed. When they met on the following day they discovered that this had been due to the fault of both of them.⁸⁸

R. Jonah gave the tithes of his produce to R. Aha bar Ulla, not so much because he was a priest, but because he occupied himself with the study of the Law.⁸⁹

Once he purchased wheat from a merchant named Bar-Hekulla. Later he began to feel doubtful about the tithes of the produce he had purchased, and went back to the market to question the merchant. He stubbornly persisted that the merchant tell him the truth, whether the produce had been tithed; and he did not leave the spot until he had been fully convinced that the tithes had been separated.⁹⁰

These illustrations furnish conclusive evidence that the tithes were being observed- at least by some- from the period immediately following the destruction of the Temple, and even far down into the fifth Amoraic generation in Palestine.

But aside from these concrete illustrations of practical observance of the tithes in post-exilic Israel, many inferences may be drawn from the purely theoretical speculations of the Talmud on this subject, which also strengthen the belief that the tithes were observed.

Hence the entire dispute between the rabbis on the point of exact tithal distributions- whether they should be given to the priests or to the levites- which existed in record from the period immediately following the destruction of the Temple through the age of R. Joshua ben Levi, and which has been fully discussed in the first chapter of this paper, lends evidence to this contention that the tithes were observed all through these decades.

The report of R. Jose bar Hanina- of the second generation of Amoraim- is of utmost importance in this respect. He states unequivocally that "We give (the tithes) to the priests."⁹¹ And although it appears at first glance that he is interpreting the reason of Hyrcanus for the abrogation of the tithal confession, it is not unlikely that he was voicing the practical sentiments of an entire class of people who were distributing the tithes to the priests instead of the levites in his own age, and he was included in this group. And although this practice was not altogether legal, it proves conclusively, nevertheless, that the tithes were being observed.

The reasons underlying the practice of tithal observances in a time when the Temple was no longer in existence, and when both Priest and Levite had ceased to function in the ceremonial life of the Jew, are a matter of uncertainty, and cannot be determined very easily. However, a number of subjective and objective causes may be suggested.

First and foremost, the fact must be taken into consideration that the Jew considered the Bible and all its laws as eternal and unchanging verities. Consequently the laws regulating the tithes are also eternal, and it would be very difficult to conceive of an entire system of legislation being completely abolished because of the tragedy which had befallen the land. The sacrificial cult had indeed ceased to be with the destruction of the Temple. But this was not due to any inherent fault of the people. It had come to pass by the Will of God. But the tithes did depend on the individual will of the people; and hence they were observed as eternal practices of an eternal Law. Furthermore, since the foremost cult had ceased with the destruction of the Temple, it was necessary to lay as much stress as could be exerted on the other observances; and the tithes were probably next in importance to the sacrificial cult itself.

Another factor- already touched upon in the second chapter of this paper- may have entered into the causes for this observance. This is the belief in the inviolate sanctity of the

land of Israel. In addition to this, the tithes, as has been seen, were considered an integral part of the observances which were made dependent upon the soil of Palestine. And since the sanctity of the land was never nullified, even after the destruction of the Temple, the observances dependent upon it were likewise never nullified. Whether this consecration of the land was due to divine or Biblical ordinance, as in the first conquest, or whether it was due to common consent, as in the second occupation in the days of Ezra, is of minor importance. The fact remains that the land was considered consecrated for all times; and hence the tithes must necessarily be observed as a system of legislation dependent on this consecrated land.

Another reason for the observance of the tithes after the destruction of the Temple may be gathered after a consideration of the historical sentiments underlying this practice. During the existence of the Temple the tithes were distributed as a compensation to the levites for their services rendered at the sanctuary.⁹² But this conception of the tithes changed with time, and was surely antedated with the destruction of the Temple. As early as the days of Hezekiah it is already recorded that the tithes were ordered to be given to the priests and levites "in order that they may occupy themselves with the study of the Law."⁹³ In like manner, the prophet Malachi rebuked the people for having destroyed the covenant of the Levite in not observing the tithes, "for the lips of the priest guard knowledge, and the Law is to be

sought from his mouth." ⁹⁴ Hence it is evident that the priest was virtually the teacher even in pre-exilic times. But as long as the Temple was in existence, and the priests and levites functioned in the ceremonies, this conception of the tithes as a remuneration for teaching the Law was probably a secondary consideration, as the priests and levites were recompensed for their services in the sanctuary, and not for their instruction. But with the destruction of the Temple this conception of the tithes as a remuneration for teaching the Law came to the fore, and no doubt was adopted as a primary reason for the observance of the tithes. It is to this effect that the rabbis considered the ⁹⁵ tithes a fence about the Law; which means simply that if the tithes are observed properly and given to the priests and levites they will be able to devote their time to study, and the Law will be preserved. Hence it is recorded that Rabbi Jonah gave the tithes of his produce to R. Aha bar Ulla, not so much because he was a priest, but because he occupied himself with the study of ⁹⁶ the Law. Thus it may well be that the tithes were observed in post-exilic times in recognition of this early historical concept of the tithes as a compensation to the priests and levites for ⁹⁷ their devotion to the Law.

And finally, the reason for the observance of the tithes after the destruction of the Temple may have been due to the fact that the Jew never relinquished the hope of the rehabilitation of the land of Israel, the restoration of the Temple with all its

cult and ceremony, and the reinstatement of the priests and the levites to their original station in the service. At that time it would again be necessary to remunerate the priests and levites for their services rendered at the sanctuary, and consequently the observance of the tithes was stressed even after the destruction of the Temple in order that they should not be forgotten among Israel. And as the hope in an imminent messianic era never died in the heart of the Jew, this observance was continued year after year until it developed into an habitual practice which could no longer be abolished.

Some support for this theory that the tithes were observed in post-exilic times in order that they should not be forgotten among Israel for the future messianic era is to be gathered from the fact that the Talmud legislates the observance of the Halla, the world over, "that it should not be forgotten among Israel."⁹⁸ There is obviously no reason for stressing this particular law above all others, unless some such psychological motive as stated above underly this legislation. And while the Talmud legislated the observance of the Halla with this particular motive, for the entire world, it is plausible to assume the same motive permeated the entire system of legislation which stressed the observance of the tithes in Palestine and the surrounding territories after the destruction of the Temple.⁹⁹

In the light of the foregoing theories, the entire system of legislation dealing with the Amhaares in matters of the

tithes becomes perfectly clear and comprehensible. The rabbis legislated the observance of the tithes for all alike, because the Torah and its laws were eternal, because the land had been consecrated for all times, and because the messianic era was near at hand, and Israel would again be regathered from among the nations, the Temple would be rebuilt, and the priests and levites would be reinstated to their historic station in the service of the sanctuary and the ceremonial life of the Jew.

THE AMHAARES AND THE TITHES

It has been established in the preceding chapter that the tithes were observed in Palestine after the destruction of the Temple. But the illustrations cited reveal a situation wherein these observances were practiced chiefly by the educated class of leaders, the rabbis. Hence, for a full comprehensive scope of the subject, it is essential to ascertain, if possible, the condition of the masses in their relation to the tithing system, whether they also observed the tithes like the educated class, or neglected them altogether.

The conclusions arrived at, whether they be positive or negative, must perforce be drawn from inference, primarily, as the recorded cases of actual tithal observance by the masses are very limited.¹⁰⁰ But sufficient legislations have been preserved in the literature, which, irrespective of their purely theoretical nature, presuppose a situation which necessitated their adoption.

Aside from the few recorded cases of actual tithal observance by the masses, which date about the close of the Tanaitic period, all evidence leads to the conclusion that a vast portion of the masses must have neglected the tithes altogether in the decades immediately following the destruction of the Temple,

and even prior to this time.¹⁰¹ Although there can be no certainty in the matter, the great principle that "the majority of the Amehaares separate the tithes" must have originated at a much later date- probably the beginning of the third century of the common era, or even later.¹⁰² But it will be seen that from this time and beyond, a striking change had taken place in the general religious status of the masses, which brought in its wake a revival of tithal observance. The cause of this spiritual reawakening was due primarily to the removal of the sentimental wall which divided the masses of the people from the educated classes, through the efforts of the latter to orientate the masses in all religious observances.

However, because of this utter neglect of the masses to observe the tithes in the period following the destruction of the Temple, a definite breach was established between the educated and uneducated classes towards the close of the first century of the common era, or somewhat later. The result of this breach was the formation or organisation of the Haberim, which may have been in existence long before this period, into a distinct order or brotherhood for the express purpose of preserving the Institution of the Tithes and Levitical Purity, in contradistinction to the Amehaares, who became conspicuous because of their neglect of the tithes and their disregard for levitical cleanliness.¹⁰³

It is here assumed that the Haberim were organised into a unified body, in contradistinction to the Amehaares, through

the influence of the assembly at Usha, which convened after the Hadrianic persecutions; although there is no direct statement to this effect in the literature, and although individual Haberim did no doubt exist long before the convocation of this assembly. The literature, as such, furnishes sufficient inferential evidence to warrant this contention. ¹⁰⁴ The vast majority of the legislations regulating the order are the opinions of rabbis who attended this historic gathering; and the very fundamental principles of the order constitute a dispute between Rabbi Judah and Rabbi Meir, ¹⁰⁵ who are mentioned first among the list of those who met at this assembly. ¹⁰⁶ It may be that this assembly merely discussed the problem of the Haber and the Amhaares, not as a new problem, indeed, but with the purpose of reestablishing old principles. But there is no evidence for this assumption. Established principles, as a rule, are quoted anonymously in the literature, or at least are attributed to the individual rabbis who maintained these opinions as traditions. But the principles regulating the order of Haberim are directly attributed to rabbis who lived during and after the Hadrianic persecutions, and who were members of the assembly at Usha. Hence it is quite probable that this assembly organised the individual Haberim of the land into a distinct and unified order with definite principles and a definite purpose. The reasons for stressing the observance of the tithes through the organisation of an order of Haberim have already been discussed in the preceding chapter.

As has been mentioned above, the order of Haberim had a fixed set of principles; and anyone desiring affiliation with the order must assume the following responsibilities: 1. He must tithe that which he eats, that which he sells, and that which he buys. 2. He must not accept an invitation to eat with an Amhaares. 3. He must not sell moist or dry (foods or produce) to an Amhaares. 4. He must not invite an Amhaares to eat with him unless the latter changes his garments.¹⁰⁷

In the Tosefta, the following three principles are also added: 5. He must not give the priestly dues and tithes to an Amhaares. 6. He must not prepare his levitically pure food by an Amhaares. 7. He must eat his food in levitical cleanliness.¹⁰⁸

While it is apparent from the above principles that the Amhaares must have been lax in the observance of all these practices, the statement is made expressly, nevertheless, that the Amhaares is the one who does not eat his food in levitical cleanliness and does not tithe his produce appropriately.¹⁰⁹

All the above rules could no doubt have been put into practice very easily, with the exception of the second rule, which prohibits the acceptance of an invitation to eat with an Amhaares. It is hardly conceivable that the order of Haberim was a completely isolated group, without any friends or relations among the Amhaares; and it is not conceivable, therefore, that this principle was put into practice according to the demands of

the order. Hence this principle is a matter of dispute among the rabbis, and it is quite evident that modifications of a more lenient character were introduced on this point, and the mere fact that a Haber accepted the invitation of an Amhaares was sufficient in itself that the food would be tithed appropriately and be prepared according to all the rules of levitical purity.¹¹⁰

There were no restrictions against anyone joining the order. But contrary as to what might be expected, the Talmid-haham was not automatically included into the order by virtue of his being educated.¹¹¹ It is evident therefore, that individual responsibility was desired through personal affiliation with the brotherhood,¹¹² and the acceptance of all the conditions of the order in full.¹¹³ Only through personal affiliation with the order could there be any certainty that the principles for which it stood would be faithfully observed.

But although the Amhaares was allowed to join the brotherhood on the same basis as the Talmid-haham, he stood in greater suspicion and liability. He was watched very closely, and was suspended immediately when suspected of violating any one of the responsibilities of the order. Suspicion according to the rabbinic legislation with regard to any one principle of the order meant that he was to be suspected of violating all the conditions of the order, and could not be trusted altogether in any of these matters.

It is with reference to the suspicion of the Amhaares that the literature of the Talmud abounds with numerous legislations. Because he was suspected of violating the tithes, the Amhaares suffered considerably as a result of this suspicion. All levitically pure foods were withheld from him,¹¹⁴ and he could not be trusted even as a messenger to purvey such foods, even when the recipient was a Haber.¹¹⁵ The Haber was forbidden to send an Amhaares to the market to buy produce for him, for fear he would buy of one who neglects the tithes;¹¹⁶ and in like manner, the Haber was not to be instrumental in the delivery of levitically pure foods to an Amhaares, and the request of the Amhaares in this respect must be flatly denied.¹¹⁷

In the category of those who are to be suspected of violating the tithes the Talmud includes an inkeeperess and one's mother-in-law,¹¹⁸ unless these were directly affiliated with the brotherhood of Haberim.

But while the Amhaares could not be trusted with tithed produce, he could be trusted with priestly dues, and in this respect he could be trusted even more than a priest who was an Amhaares, for the latter coveted the priestly dues, and might exchange the produce for some which had not been tithed.¹¹⁹ In all matters involving the reputation of those who could be trusted with the tithes, and in purely business matters, the Amhaares could be trusted without any suspicion or doubt.¹²⁰

It is apparent from the entire preceding discussion that the masses in general did not observe the tithes in the period following the destruction of the Temple. Hence it was necessary for the rabbis, who maintained that the tithes must be observed, to pass legislations coping with the problem, and the brotherhood of Haberin was strengthened with a system of definite principles for the same purpose.

The reasons why the general masses did not observe the tithes after the destruction of the Temple are very obvious. Primarily it was due to the fact that the land had been laid waste, and did not produce abundantly. Hence the tithes were a very heavy burden for the people to carry, and, added to this, they were pay-¹²¹ing heavy taxes to the foreign powers as well. It could not be expected therefore, that minute attention should be given to the observance of a practice which had already greatly degenerated prior¹²² to the destruction of the Temple. This consideration may account, to a certain degree, for the numerous methods of avoiding the tithes in post-exilic times, and even earlier, which are recorded in the¹²³ literature of the Talmud.

Another reason for the neglect of the tithes by the masses after the destruction of the Temple may have been due to the¹²⁴ fact that they were not adequately schooled in these observances. This condition, however, could be alleviated in time through popular

education of the masses; and would perforce come to pass as the result of the general spiritual reawakening following in the wake of the more elaborate organisation of the schools and academies throughout Palestine and the Diaspora.

It may be due to this last element which entered into the life of the people that the massive wall dividing the educated and uneducated classes in Jewry gradually fell away; and hence, in contradistinction to the severe legislations against the Amhaares, a sympathetic strain may be discerned among the various records of the Talmud. Thus, among the three exalted principles disseminated by Rabbi Judah ben Betheira of Nizibus, one was "to be gentle with the children of the Amhaares, for from them the Law will go forth."¹²⁵ This sympathy was probably evoked by the wretched circumstances in which the masses were cast in the decades following the destruction of the Temple; for in the parallel statement, the children of the Amhaares are identified with the children of the poor.¹²⁶

The brotherhood of Haberim also had as one of its functions the education of the masses to the observances of the tithes.¹²⁷ This particular education soon developed into a general movement for the education of the masses; and although there must have been those who refrained from having any contact with the Amhaares, yet the reward of teaching their children was so highly magnified that it must have influenced a great many rabbis in the upper ranks. As one of the inducements to teaching the children of the Amhaares, the rabbis said that God will revoke all evil decrees

against those who are occupied with this noble task.¹²⁸ It may have been due to this general effort of the Habirim to educate the masses to the observance of the tithes that the great principle was established that "the majority of the Amhaares separate the tithes."¹²⁹ Regardless of the fact that this principle is voiced in a purely theoretical manner, it reflects, nevertheless, a situation wherein the tithes must have been observed by the vast majority of the people.

But aside from the efforts exerted to educate the masses to the observance of the tithes, exhortations of a various nature were utilised to further the observance of these laws among the people. When the rabbis assembled at Usha, the question was asked, why diptheria begins in the bowels and culminates in the throat; and the answer was, "because the people eat things which are not tithed."¹³⁰ They believed that the maladies which befell them

were caused by the laxity in the observance of the tithes.¹³¹ Famine and drought also come as a punishment to humanity for not observing the tithes.¹³² Seven forms of punishment descend upon the world for the commitment of seven distinct sins. If a portion tithes the produce, and a portion does not tithe, a famine of drought comes. If a portion separates the priestly dues, and a portion does not separate the priestly dues, a famine of confusion comes. If a portion separates the Halla, and a portion does not separate the Halla, a famine of complete destruction comes. If the people decide to ignore the tithes altogether, the heavens are

closed, and do not pour rain or dew upon the world; humanity labors but cannot be satisfied; and the people are subjected to the yoke of the tyrant.¹³³ The very dispersion of Israel was attributed to the neglect of the tithes.¹³⁴ Hence, the observance of the tithes, aside from the fact that the rabbis considered it a binding law even after the destruction of the Temple, was looked upon as a virtue, and highly commended; God praised the opulent person who separated his tithes in private,¹³⁵ and he who observed the tithes¹³⁶ was considered the most trustworthy of persons.

In summing up this chapter it may be said, therefore, that the observance of the tithes among Israel never ceased altogether. Irrespective of the fact that the literature reveals a period after the destruction of the Temple, when the observance of the tithes by the masses was very low, and that some neglected the tithes altogether, in general, the chain of observance was never completely broken. Through the efforts of the Habirim and the rabbis to educate the masses to the observance of the tithes, and through the moral, ethical, and religious exhortations and influence which they exerted over the people, the situation in general was probably greatly improved, and the religious status of the people stabilised.

RELATION OF JEW AND GENTILE
IN THE TITHING SYSTEM

The problem of the relationship of Jew and Gentile with reference to ownership of landed property and the separation of the tithes of non-Jewish produce, developed as a result of the belief in the inviolate sanctity of Palestine as the divinely ordained home of Israel. It was likewise essential to fix the status of the tithes of the non-Jew in Palestine, although he was under no obligation to observe the tithing laws.

The problem of Gentile ownership of landed property in Palestine may have had its origin in the Maccabean age, when a considerable portion of the land was reconquered by the Jews. And although the vast majority of the records on this subject are of a much later period, they no doubt reflect sentiments of an earlier generation which was already being troubled by this problem.

The restrictive legislations against the non-Jew in matters of landed property were very severe. Thus the Jews were forbidden to rent both houses and fields to the non-Jews in Palestine;¹³⁷ and if a Jew released his field to a non-Jew, he was¹³⁸ obligated to tithe the produce as a penalty.

The sentiment underlying these legislations is quite obvious. The rabbinic authorities utilised every means within their power to keep Palestinian soil from passing into the hands of the Gentile; and the most powerful weapon they possessed was legal jurisdiction combined with religious sentiment. From their point

of view, with the undying hope and trust in the future messianic age, and the peremptory restoration of Israel to its own soil, it was absolutely essential that the Jews be the sole owners of the land. Hence the Jews were permitted to buy fields from the non-Jews in the seventh year of the cycle even if they had been planted in that very year; a procedure which was strictly prohibited if the field was owned by a Jew, since planting was not permitted in the seventh year of the cycle.¹³⁹ And owing to this attitude, many of the legislations which emanated from the academy at Usha¹⁴⁰ were simply penalties inflicted upon the Jew for being lax in his efforts¹⁴¹ to reclaim the soil of his ancestors.

The question was also very urgent in the immediate centuries following the destruction of the Temple, and even later, whether Gentile ownership of land in Palestine exempted the produce from the tithal obligations; that is, whether the Jew who bought produce from the non-Jew was obligated to separate the tithes in the same manner as when he purchased produce from a Jew.

The opinions on this problem vary considerably. Some of the rabbis maintained that the non-Jew does possess the property-rights in Palestine to exempt the produce from tithes.¹⁴² But the greater majority of statements in the Talmud are of the opinion that the non-Jew does not possess the property-rights in Palestine to exempt the produce from the tithes.¹⁴³ Maimonides,¹⁴⁴ and Parchi,¹⁴⁵ are also in accord with this latter opinion. This is to say, therefore, that no matter who owned and tilled the soil in Palestine, whether it be Jew or Gentile, the produce must be tithed in strict

conformity to the law.¹⁴⁶

In reality, however, the question was not one of exempting the produce of the non-Jew from all tithing obligations. As it has been recorded, the problem was merely theoretical and speculative, and had absolutely no bearing on the practical side of the observance of the tithes altogether. Even those rabbis who maintained the opinion that the non-Jew does possess the property-rights in Palestine to exempt the produce from tithes, this exemption was merely from the Biblical obligation, but they maintained, nevertheless, that the produce must be tithed by rabbinic legislation.¹⁴⁷ Hence it is apparent that according to either opinion, there was no possible way of exempting Palestinian produce from the tithes.¹⁴⁸

Aside from this semi-theoretical problem of the exemption of non-Jewish produce from the tithes, the records reveal many legislations of a more practical nature, which prove almost conclusively that problems of relationship of Jew and non-Jew in the tithing system did exist in post-exilic times. Thus the non-Jew could not be trusted with Jewish produce, because he might exchange it for produce which had not been tithed;¹⁴⁹ and if a non-Jew separated the priestly dues for a Jew the separation was not valid, although there is one opinion that if the separation is made at the request of the Jew it is valid.¹⁵⁰ This latter problem probably owes its origin to the fact that there were many Jewish landowners in Palestine after the destruction of the Temple who employed non-Jews on their farms;¹⁵¹ and naturally, the question arose whether

these non-Jewish farmhands were permitted to tithe the produce for their masters. This consideration may also account for the opinion that if the tithes are separated at the request of the Jew the separation is valid.

However, in spite of the stringent legislations against the non-Jew and his property in Palestine, an amicable relationship was maintained wherever it was possible to do so without any infringement of the law. And especially with reference to the actual observance of the tithes by the non-Jew, the legislations inclined, in many instances, to exaltation, and at times to raise the non-Jew even to the level of the Jew.

The non-Jew, of course, was under no obligations to tithe his produce. But in order to encourage and maintain a peaceful relationship, the priestly and levitical dues, and the consecrated dedications of the non-Jew were all valid and acceptable gifts; and the tithes could even be eaten by the priests without any scruples about impurity or defilement. ¹⁵² And since the tithes of the non-Jew were valid and acceptable in Palestine, it was ¹⁵³ permissible to tithe Jewish for non-Jewish produce, and vice-versa.

The consecrated dedications referred to above are no doubt the gifts dedicated to the Temple. And the fact that these gifts were valid and acceptable is sufficient evidence that the problem of relationship of Jew and non-Jew in matters of this nature already existed in pre-exilic times, during the existence of the Temple; since all forms of consecrated dedications were absolutely

154

prohibited in post-exilic times.

But whereas the priestly dues and the tithes of the non-Jew were valid and acceptable gifts in Palestine, the Halla of the non-Jew was not acceptable; and if a non-Jew separated the Halla in Palestine, he was to be informed that he was under no obligation

155

to do so. It is very difficult to draw a distinction between the Halla and the priestly dues in this respect, as the Halla is in itself a form of priestly dues; and from all logical premises, the one should have been acceptable as well as the other, or else neither should have been acceptable. However, the reason for this restriction may be that with regard to the Halla the Scriptures stipulate specifically that it must be taken from Jewish dough.

156

But this is without doubt a minor reason; and was most likely made use of to palliate the true situation. The underlying principle of this legislation probably owes its origin to the fact that the Jews refrained, as much as possible, from accepting all forms of

157

prepared foods from the non-Jews.

It is evident therefore, from the material on hand, that the relationship of Jew and Gentile in matters of landed property and the observance of the tithes was a problem of a very practical nature; and after a perusal of the records preserved in the literature, the conclusion may justly be drawn that this very problem became an open issue in Palestine during the second Temple, when the land of Israel was wrenched from the Jews by the invading

158

tyrant.

SYRIA IN THE TITHING SYSTEM

Syria was traditionally considered to be the land conquered by David, and in addition to this, because of its proximity to Palestine, it fell, in a great measure, under the same¹⁵⁹ legislations as the former country.

Aside from the vast number of regulations relating to the tithes, the Talmud laid down the principle that Syria was like Palestine in three ways, and like the Diaspora in three ways. It approximated Palestine in the following: 1) The tithes and the Sabbatical year were to be observed as in Palestine; 2) If possible, Syria was to be entered in levitical purity; and 3) The fields bought in Syria have the same status as the fields bought in the suburbs of Jerusalem. It was like the Diaspora in the following: 1) If a bill of divorce was brought from Syria, it was under the same regulations as a bill of divorce brought from the Diaspora, and the messenger must testify that it was written and sealed in his presence; 2) Its soil was considered defiled like that of the Diaspora; and 3) If a slave was sold to Syria, he was under the same regulations as though he were sold to the Diaspora, and automatic-¹⁶⁰ally became a freeman.

The observance of the tithes in Syria was entirely¹⁶¹ by rabbinic legislation; and in order to make some differentiation between Palestinian and Syrian produce, it was prohibited to¹⁶² tithe of one produce for the other. This distinction was at best a mere formality, since the entire system of the tithes in Palestine

after the destruction of the Temple was in itself a rabbinic obligation, stressed because of the hope in a future restoration which lingered in the hearts of the people, as has been observed already in the antecedent pages.

There are, in reality, no new notes of interest in the tithing regulations for Syria, and hence they may be given summarily as follows:

If a vegetable farm is bought in Syria, the tithes must be separated, provided it is bought before the tithing season; if it is bought after the tithing season, the tithes need not be separated.¹⁶³

If a merchant sells produce in Syria, and says that it is Palestinian, the produce must be tithed; if he says that it has already been tithed, he is to be believed, since he could have kept silent altogether; if he says that the produce is from his own field, it must be tithed; if he says that it has been tithed, he is to be believed, since he could have kept silent altogether; but if it is known that he owns a field in Syria, the produce must be

tithed under all circumstances.¹⁶⁴ If an Israelite buys a field in Syria, although he later sells it to a gentile, the produce must be tithed, since through the former ownership it had become fully obligated to the tithes.¹⁶⁵

If a Jew buys a field in Syria in partnership with a non-Jew, there is an opinion that the portion of the produce belonging to the Jew must be tithed,¹⁶⁶ and Maimonides

has fixed the law to this effect.¹⁶⁷ Jews who farmed fields for non-Jews in Syria were obligated to tithe the produce and observe the sabbatical year.¹⁶⁸ A field bought in Syria on the border of Palestine, if the owner is able to enter Palestine in levitical purity, that is, if there is no land between his farm and the soil of Palestine, the farm is to be considered undefiled; but if the owner cannot enter Palestine in purity, because a strip of land divided his farm from Palestinian soil, the farm is to be considered as defiled; nevertheless, he must observe the tithes and the sabbatical year.¹⁶⁹ The second-tithe was never observed in Syria.¹⁷⁰ It was permissible to carry out impure oil of the Trumah from Palestine to Syria; and in like manner, it was permissible to bring the priestly dues from Syria to Palestine.¹⁷¹

As has been stated above, the reason for stressing these observances in Syria was due to its nearness to Palestine; and in order not to effect an abrupt cleavage in the observances of the lands bordering on Palestine, the rabbis legislated many of the Palestinian practices, wherever it was possible to do so. And aside from this, the Jews who were scattered in these lands from earlier times had brought their Palestinian practices with them, and these could not be relinquished very easily; and hence it is altogether probable that a great many of these laws obtained in Syria even prior to the second occupation of the land of Israel in the days of Ezra.

THE DIASPORA
IN
THE TITHING SYSTEM

In matters relating to the tithes, the Diaspora was geographically divided into two territories. The first division included Egypt, Babylon, and the lands of Amon and Moab which were not conquered by Moses. In all these lands the tithes obtained by rabbinic legislation.¹⁷² The remainder of the world is completely free from all the tithing laws except the Halla.¹⁷³

It is not difficult to ascertain the terminus a quo of the tithing regulations in the Diaspora. They probably originated with the destruction of the first Temple, when the Jews were first scattered among these lands, and brought with them the established Palestinian practices. It may also be, that like Syria, these countries fell under Palestinian jurisdiction in all religious matters because of their proximity to Palestine.

The literature of the Talmud furnishes both theoretical and concrete evidence that the tithes were observed in the Diaspora for many centuries after the destruction of the Temple- at least by some individuals. To this effect, Rabbi Johanan directly makes the statement in the Palestinian Talmud that "Our masters in the Diaspora separated the priestly dues and the tithes until the 174 came and abolished them." And there is likewise evidence that some rabbis observed the tithes in the Diaspora even at a much later period than the age of Rabbi Johanan.

Altogether, the concrete records of tithal observance

in the Diaspora are very limited. Of the period immediately following the destruction of the Temple there is but one concrete illustration that the tithes were observed. It is recorded that Rabbi Simon ben Gamliel once saw the Son of Kahana drinking the wine of the Trumah in Acre, which he confessed had come from Calci-laya, of the Diaspora. The rabbis decreed that he drink it in the ship; and he was not permitted to bring it ashore,¹⁷⁵ because it was forbidden to bring Trumah from the Diaspora to Palestine.¹⁷⁶ Nitai of Tekoa brought the Halla from Bethar, but it was not accepted; and the men of Alexandria also brought their Halla to Palestine, but it was not accepted.¹⁷⁷ Since these latter reports are recorded in the Mishna, it may be assumed that they are of an early origin, not later than Mishnaic times. Of the observance of the tithes in the Diaspora in post-Mishnaic times, two concrete examples have been preserved in the literature. It is reported that Rabbi Tuvi bar Kisna had a jug of wine of the Trumah;¹⁷⁸ and that Rav Huna was accustomed to dilute each portion of wine of the Trumah with two portions of common wine.¹⁷⁹

The theoretical legislations regulating the tithes of the Diaspora are more numerous. Hence the opinion of Samuel,¹⁸⁰ that the Trumah of the Diaspora becomes neutralised in a Majority, must have been founded on practical experience and necessity.

The same distinction was drawn between Palestinian and Diasporic produce as was drawn between Palestinian and Syrian produce; and hence it was forbidden to tithe Palestinian for Diasporic produce, as a matter of formality.¹⁸¹

It was forbidden to take impure oil of the Trumah and the produce of the Sabbatical year from Palestine to the Diaspora.¹⁸²

If produce was brought into Palestine from the Diaspora, the Halla must be separated from it; but if Palestinian produce was taken out into the Diaspora, it was not subject to the law of Halla.¹⁸³ This latter regulation is not a contradiction of the legislation already noted, that the Halla was to be observed the world over, as this exemption was deduced directly from Scriptural inference, which stipulated that Palestinian produce was subject to the law of Halla only in Palestine, and not in the Diaspora.

In general, a note of leniency may be discerned in the entire system of legislations regulating the tithes in the Diaspora. This was probably due to the fact that the entire system as such was originally the product of rabbinic legislation, and had never been founded on Scriptural authority, as was the case with Palestine prior to the destruction of the Temple. And it is probably because of this consideration that the literature has preserved a record of an effort on the part of the rabbis to free the outlying portions of Palestine from the tithes altogether.

It is reported that in the days of Rabbi Hoshayya, the rabbis desired to take a vote and free the Har-hamelech from the tithes. This could not be done, however, without the participation of Rabbi Hoshayya, as he had been chosen to preside over the assembly. But before he arrived, the assembly dispersed, and the undertaking failed.¹⁸⁴

But aside from all these illustrations it is very

evident from the report of Rabbi Johanan, quoted above, that the observance of the tithes in the Diaspora disappeared in due time; and if the tithes were observed at all, it was a matter of personal piety, and not because it was considered binding by any law. To this effect, Zemach ben Paltai Gaon of Pumbeditha writes in one of his responsa: "It appears to me that the law of Trumah is surely not binding in this age, and there is in reality no obligation incumbent to separate the Trumah in the Diaspora. But the former rabbis, whose words we reiterate, were accustomed to observe these laws because of personal piety."¹⁸⁵

In conclusion, therefore, it may be said, that although the literature has preserved legislations regulating the tithes in the Diaspora, they were not really binding in the strict sense of the term. The entire system of tithal observance depended either on personal piety, or was founded on the sentiments connected with Palestine. Both Zemach ben Paltai Gaon of Pumbeditha and the Ittur observe that the practice of the tithes in the Diaspora was a matter of emulating the practices of the Palestinians, and the desire to preserve in the Diaspora those practices bound up with the soil of Palestine. The Jews scattered in foreign lands may also have been animated by the same hopes and dreams of an imminent messianic era and the regathering of all the exiles to their own home land, Palestine. The Temple with all its ceremonial would again be restored, and the priests and levites would again render service in the ceremonial life of the Jew as of old.

NOTES

Chapter I.

1. b. Sota 9,10. Maasersheni 5,15
2. Graetz. Geschichte..111,28.
Weiss. Dor Dor.. v.l. ch.14
Vogelstein. Der Kampf...p.76.
3. See Sota 9,10
4. b. Kidd. 66a
5. Graetz. l.c.
6. L.c.
7. See Maimonides and other commentaries to above Mishna
8. Deut. 26,12ff.
9. y. Maasersheni 5,5
10. b. Sota 48a
11. y. Maasersheni l.c.
12. b. Sota l.c.
13. Ibid.
14. Num. 18,21-24.
15. b. Yeb. 86b
16. Ibid.
17. Ezra 8,15
18. cf. b. Yeb. 90b
19. Codex Maaser 1,4.
20. b. Yeb. 86a-b. Hullin 131b ect.
21. Neh. 10,38
22. Vogelstein. Der Kampf...p.75.

23. b. Kamma 82a
24. y. Sota 9,11. Maasersheni 5,5
25. l.c.
26. Maasersheni 5,10
27. y. Keth. 1,7; 13b
28. t. Peah 4,10
29. y. Maasersheni l.c.
30. In b. Yeb. 86a-b, Akiba contends with Elazar.
31. b. Berach. 28a
32. b. Orachin 11b
33. y. Maasersheni 5,5
34. b. Bezah 23a
35. b. Berach. l.c.
36. y. Maasersheni l.c.
37. Ibid.
38. Ibid.
39. Deut. 26,12
40. Neh. 10,40
41. y. Maasersheni l.c.
42. t. Sota 13,10
43. b. Sota 48a
44. Ibid.
45. t. Sota l.c.
46. y. Maasersheni l.c.
47. Ibid.

48. Vogelstein in bringing forth these passages from Josephus in proof of the struggle between the priests and levites, brings only evidence testifying against his theory. These records of Josephus prove exactly the opposite. The power of the priesthood soon degenerated into a vicious anarchism over which there was absolutely no control, and the records most likely favor the contention that the practice of having the tithes collected by government officials ultimately developed into a practice of brute extortion.
49. t. Shebiith 8,1.
50. Antiquities XIII,8-9.
51. b. Kidd. 66a

Chapter II

- 52. b. Shebuoth 16a
- 53. Yaddayyim 4,3
- 54. y. Halla 4,4; 26a
- 55.

A complete analysis of the problem is essential for a clear understanding of the difficulties involved. In b. Hagiga 3b, R. Eliezer makes the following statement: "I have received a tradition from R. Johanan b. Zakkai, who received it from his master, and his master from his master, a Mosaic legislation at Sinai, that Amon and Moab (that is, the Jews dwelling in these parts) separate the poor-tithe in the seventh year of the cycle of seven, because the first consecration of the land was only temporary, and not binding for all times."

It is very significant to note that this statement specifies the observance of the poor-tithe in Amon and Moab as a Mosaic legislation received by tradition, while in fact this very problem was a matter of heated discussion at the academy at Jamnia. In Mischna Yaddayyim 4,3, we read: "On that day, (when Gamliel was impeached) the question was brought up regarding the status of Amon and Moab in the seventh year of the cycle. R. Tarfon decreed the poor-tithe. R. Elazar b. Azariah decreed the second-tithe. Said R. Ishmael: Elazar

b. Azariah, it is for you to bring proof, since you are the more exacting, and he who is more exacting must bring proof. Said R. Elazar b. Azariah: Brother Ishmael, I did not depart from the chronology, but my brother Tarfon did depart, and therefore he must bring the proof. R. Tarfon answered: Egypt is in the Diaspora, and Amon and Moab are in the Diaspora; just as Egypt observes the poor-tithe in the seventh year of the cycle, so Amon and Moab must observe the poor-tithe in the seventh year of the cycle. R. Elazar b. Azariah then answered: Babylon is in the Diaspora, and Amon and Moab are in the Diaspora; just as Babylon observes the second-tithe in the seventh year of the cycle, so Amon and Moab must observe the second-tithe in the seventh year of the cycle...A vote was taken, and it was decided that Amon and Moab should observe the poor-tithe in the seventh year of the cycle.

It seems almost incredible that these two rabbis should not have heard of the tradition quoted by R. Eliezer. And aside from this, it is quite evident from this Mishna that the problem of Amon and Moab came up for the first time at this period. That there is a confusion in the entire problem can be seen from the fact that in b. Yeb. 16a, the identical statement of R. Eliezer is made by Dosa b. Horkinas in the name of the prophet Haggia. It may therefore well be that in order to make the law completely binding for all times

See b. Yeb. 16a

R. Eliezer quoted the tradition in the name of Moses.

However the case may be, this latter statement of the Mishna seems to identify Amon and Moab with the Diaspora according to both the opinions of R. Tarfon and R. Elazar, since both compare these lands to Egypt and Babylon. And this very opinion is in direct contradiction to the statement mentioned in b. Pesachim 52b, where Transjordanian land is identified with Palestinian soil. It remains therefore to be established what are the lands here referred to as Amon and Moab.

Rashi in commenting on the passage in b. Yeb. 13a, remarks that the Amon and Moab referred to here are the lands which Moses wrested from Sihon, which were consecrated with the general consecration of the land, and where Israelites dwell. But in the days of the second Temple their holiness is void, and the Jews plant their fields in the seventh year of the cycle. In b. Hagiga 3b, he adds that the Jews who returned from the exile did not consecrate these lands in order that the poor may rely on them for sustenance in the seventh year of the cycle when planting is forbidden in the rest of Palestine, and that the institution of the poor-tithe was by rabbinic ordinance. (cf. Yaddayim 4,3)

There is a manifest contradiction involved in this interpretation of Rashi. He maintains that Amon and Moab are

a part of Palestine, of the lands conquered by Moses; and yet he must maintain that the poor-tithe was observed there in the seventh year of the cycle. This contradicts the Mishna in Yaddayyim 4,3, where both R. Tarfon and R. Elazar agree that Amon and Moab are of the Diaspora. If it is of Palestine, then the Jews who returned from Babylon could in no way alter its historic status essentially with reference to the tithes, except perhaps insofar as they would become a rabbinic instead of a Mosaic legislation. But at all events they would have the same status as other Palestinian soil, about which there is no dispute, and farming in the seventh year of the cycle would be absolutely prohibited.

A similar contradiction is apparent in the statement of R. Eliezer, in b. Hagiga 3b, who maintains that the observance of the poor-tithe in these lands was a traditional Mosaic decree, whereas from the Mishna in Yaddayyim 4,3, it is apparent that the entire legislation was the result of a rabbinic vote.

Above all, the opinion of the Mishna Yaddayyim identifying Amon and Moab with the Diaspora is in direct opposition to the statement in b. Pesachim 52b, where Transjordan is identified with Palestinian soil, and where the seventh year of the cycle must be strictly observed. This is to say that planting in any form in that year is strictly

prohibited. And this would preclude all speculation regarding the tithes of these lands in the seventh year of the cycle.

Consequently we must look to either one of these two statements to discover any possible solution of the problem.

The Mishna in Yaddayyim which bases the entire system of the tithes in these lands on rabbinic legislation can be supported by another statement in the Talmud, which seems to establish the fact that the Amon and Moab here under consideration are not the Amon and Moab identified with all Palestinian soil, and that the tithes in these parts are either not obligatory altogether, or they are obligatory by rabbinic legislation only. In b. Bathra 53a we read: "All the land which God showed to Moses is obligated to separate the tithes." And here the comment of the Talmud is: "All, with the exception of the Mount of Seir, and Amon and Moab." This comment of the Talmud strengthens the theory that these lands were originally not obligated to observe the tithes altogether, but that the observance of the tithes in these parts is by later rabbinic legislation. And this statement is in perfect accord with the opinions of R. Tarfon and R. Elazar, and the latter statement in the Mishna Yaddayyim which ascribes the institution of the tithes in these lands to a rabbinic vote.

In fact it is essential to maintain that the dispute between R. Tarfon and R. Elazar in the Mishna Yaddayyim, 4,3,

contains the real clue to the solution of the problem, since both of these rabbis argue the question on purely rabbinic grounds, and do not touch upon the subject of the consecration of the land altogether. Furthermore, it must be borne in mind that if there existed any such tradition such as R. Eliezer quoted, that these lands were the Amon and Moab conquered by Moses, both R. Tarfon and R. Elazar would have been familiar with it, and would not have argued on a question which had been established by tradition. But since they dispute on rabbinic grounds only, it is therefore evident that the Amon and Moab they have reference to, are not the countries conquered by Moses in his subjugation of Sihon, but some other territories in proximity to Amon and Moab, and probably belonging to them, but which were never conquered by Moses. It is not unlikely that Moses did not conquer the entire territory of Amon and Moab, since he was forbidden to wage war against them altogether. But he did subject that portion of Amon and Moab which had been conquered previously by Sihon, and these lands he annexed in his conquest of Transjordan.

The conclusion therefore is, that according to the statements in the Talmud, Amon and Moab are divided into two distinct geographic areas. The first is that portion which was conquered by Moses in his conquest of Sihon, and which was deemed an integral part of Palestine throughout; and the second is that portion which was never conquered by Israel altogether, and about which there exists the dispute mentioned above.

A dispute in the Palestinian Talmud supports the assumption that there did exist a portion of territory in Transjordan which was identified with the Diaspora. In y. Halla 4,4; 26b, we read: "Some rabbis consider the Jordan as Palestine; some consider it as the Diaspora; and still others consider it a neutral point."

According to all three opinions here stated, the dispute is centered primarily about the river Jordan only, but it is quite apparent that all three opinions agree unanimously that the territory beyond the Jordan is the Diaspora. While the statement does not specify which portion of the Jordan is here referred to, and it might well be that they had in mind the upper portion of the river which is wholly out of bounds with the lands of Amon and Moab, yet this is not likely, as such an opinion would have been stated specifically. (cf. also b. Bechoroth 55a.)

However, there still remains one difficulty which must be obviated to establish the above theory beyond doubt. This is a statement in b. Hagiga 3b, appended to the tradition of R. Eliezer, and given as the reason for that very tradition. Here it is stated that "many cities were conquered by the Israelites who came up from Egypt, which were not conquered by the Jews who returned from Babylon, and these cities were left (unconsecrated) in order that the poor might find support therefrom in the seventh year of the cycle of seven."

Now according to the conclusion reached above, that the Amon and Moab under consideration in the dispute of R. Tarfon and R. Elazar, are not the territories of Amon and Moab conquered by Moses, this statement is entirely misleading and superfluous, since it maintains that these lands were conquered by the tribes who came up from Egypt. It must be considered therefore, as a comment upon the tradition by some later rabbi other than the author of the tradition. That this is the likely solution is evident from the fact that in the Mischna Yaddayyim where this tradition is quoted by Rabbi Eliezer verbatim, the appendix mentioned in b. Hagiga 3b, is entirely lacking.

Hence all difficulties have been obviated, and the entire discussion is clear. The statements which legislate the observance of the tithes in the lands of Amon and Moab in the seventh year of the cycle of seven refer to that portion of these countries not conquered by Moses, and where the entire system of the tithes were obligatory through rabbinic legislation; while the other statements which identify these lands with Palestinian soil refer to that portion which was conquered by Moses and inhabited by the two and a half tribes, and where the tithes are obligatory as elsewhere in Palestine, and where planting in the seventh year of the cycle is strictly forbidden.

56. It is very obvious that the Talmud assumes the acts of consecration of the land, whether temporary or permanent,

to have been conscious acts on the part of the Jews, and not that the land became consecrated accidentally with the occupation. In b. Shebuoth 16a, we read: "R. Ishmael b. Jose says: Why did the sages enumerate these (cities which are walled in. See b. Orachin end.)? Because when the children of the exile returned, they found these and consecrated them; but the state of holiness of the former (cities) was nullified when the land was laid waste.

57. b. Orachin 32b

58. In b. Shebuoth 16a, the following statement occurs: "R. Joshua says: I have heard that sacrifices are offered, though there is no Temple; that portions of the wholly consecrated sacrifices are eaten, though there are no curtains; that portions of the partially consecrated sacrifices are eaten and that the second tithes are eaten, though there is no wall, because the first consecration of the land was permanent."

59. In b. Zebachim 107b: "He who offers sacrifices in ^{of 12 outside of} this age, - R. Johanan says, he has incurred penalty. Resh-Lakish says, he has not incurred penalty. R. Johanan says he has incurred penalty, because the first consecration of the land was permanent. Resh Lakish says he has not incurred penalty, because the first consecration of the land was only temporary, and not binding for all times."

Again in b. Yeb. 81a, we read: "R. Johanan asked Resh-Lakish: Do you think that Trumah in this age is oblig-

atory merely by rabbinic legislation? He answered, Yes." And this dispute whether the Trumah in this age is obligatory by Biblical ordinance or rabbinic legislation also revolves about the same theme of the permanency of the first and second consecration of the land.

60. In b. Hagiga 3b: "R. Eliezer said: I have received a tradition from R. Johanan b. Zakkai, who received it from his master, and his master from his master, a Mosaic legislation at Sinai, that Amon and Moab (that is, the Jews dwelling in these parts) separate the poor-tithe in the seventh year of the cycle, because the first consecration of the land was only temporary, and not binding for all times."

According to one version, the Talmud also ascribes the statement of R. Ishmael bar Jose in b. Shevuoth 16a, to an opinion of R. Eliezer. (see above note # 56)

61. In Seder Olam Rabba, c. XXX, the following statement occurs: "...You have the first and second (inheritance of the land); but you have not a third (inheritance of the land.)"

This statement undoubtedly implies that the second consecration of the land, which occurred in the days of Ezra, was made permanent and binding for all times.

In b. Yeb. 82b, the Seder Olam is quoted as follows: "We have learned in the Seder Olam: '...which thy fathers have inherited, and you will inherit it'— the first and second inheritance they do have, but a third they do not have. And R.

Johanan said that the author of the Seder Olam is R. Jose."

Apparently, R. Johanan quotes R. Jose in the Seder Olam in support of his own view that the first consecration of the land was permanent, and that the tithes are binding, therefore, by strict Biblical ordinance, but this cannot be the case. The Seder Olam could not possibly contend that the first consecration of the land was permanent, since it specifically mentions the second consecration. And this means that the first consecration of the land, which made the tithes obligatory by Biblical ordinance, was completely nullified with the destruction of the Temple. According to the opinion of R. Johanan, the statement of the Seder Olam should have been: "Afirst inheritance they do have; but a second inheritance they do not have." Then it would be clear that the Seder Olam considers the first consecration as the permanent one; which is not so, however, according to its present form.

In y. Kidd. 1,9; 22a, the statement of the Seder Olam is advanced by one authority with the purpose of fixing the law that in the days of Ezra, that is, with the second consecration of the land, the Jews were obligated to observe all the commandments dependent upon the land of Israel, and which includes the tithes also, by the old Biblical injunction. But this view is immediately refuted by R. Elazar, who maintains with Scriptural support, that in the second reoccupation of the land in the days of Ezra, the Jews adopted the laws of the tithes of their own free will.

Handwritten notes:
... as a first
(continuing) but a
second one for which
there is no biblical
support (Ezra 10)
but there is no need of
a third...
181

Additional matter toward the opinion of R. Jose is found in b. Zebachim 80a-b; "R. Jose said three things in the name of three scholars, one of which is: R. Ishmael says: I would think that a man might bring his second-tithe to Jerusalem, and eat it there in this age...therefore it is written (Deut. 12,6.), '...thither shall ye bring your tithes ...and the firstlings of your herd.' He likens the tithes to the firstlings of the herd; just as the firstlings of the herd can be brought to Jerusalem only during the existence of the Temple, so also the tithes can be brought to Jerusalem only during the existence of the Temple."

And finally, the opinion of R. Jose, that the first consecration of the land was only temporary is irrefutably established by a report in y. Shebiith 10,2; 29b; "R. Jose says: When the Israelites were exiled to Babylon, were they not liberated from the commandments dependent upon the land of Palestine?"

This remark of course does not mean to say that the Jews were liberated forever from the duties bound up with the land of Israel; but that the consecration of the land as a Biblical law was nullified by the exile, so that when the Jews returned to Palestine in the days of Ezra they were no longer obligated to observe the tithes as a Biblical injunction, but purely as a rabbinic institution.

62. See above note #59.

63. In b. Orachin 32b: "What is the reason for maintain-
that the first consecration of the land was only temporary, and
not binding for all times ? It is written: 'And all the people
returning from the exile built booths, and they dwelt in booths
for they had not done so since the days of Joshua, and there
was great rejoicing.' (Neh. 8,17) Now is it possible that
David came and did not build booths; or that Solomon came and
did not build booths, until Ezra came ? But he likens their
coming in the days of Ezra to their coming in the days of
Joshua; just as their coming in the days of Joshua they counted
the cycles of seven and forty-nine, and were obligated to
observe the tithes; so also their coming in the days of Ezra,
they counted the cycles of seven and forty-nine, and were
obligated to observe the tithes. It is also written: 'And the
Lord thy God will bring thee to the land which thy fathers have
inherited, and you will inherit it.' He likens your inherit-
ance to the inheritance of your fathers; just as the inherit-
ance of your fathers was with the innovation of all these
practices; so also your inheritance is with the innovation of
all these practices."

The above statement endeavors, at least, to find
support for maintaining the view that the first consecration
of the land was only temporary. For the opposite view, how-
ever, there is no support. And consequently, according to
this statement, all the practices that obtained in the days
of the first Temple were readopted a second time. This view

is also supported by the statement of R. Elazar in y. Shebiith 6,1; 16a, where he maintains that the Jews adopted the laws of the tithes of their own free will in the days of the second reoccupation of the land, that is, in the days of Ezra.

64. Maimonides, Code Trumoth 1,1, makes the following statement: "Priestly dues and the tithes are not obligatory as a Biblical injunction except in the land of Israel, whether it be before or after the existence of the Temple."

From this statement it is apparent that Maimonides holds the view that the tithes were obligatory as a Biblical law, even after the existence of the Temple, which implicitly means that the first consecration of the land was permanent and binding for all times.

But in the same code, 1,26, he writes: "Priestly dues in this age, and even in those places inhabited by the Jews who returned from Babylon, and even in the days of Ezra, are not obligatory as a Biblical law, but are purely a rabbinic institution. For there is no Scriptural Trumah except in the land of Israel, and when all Israel is there, as it is written: 'When you come'; the coming of all of you. Just as they were in the first inheritance, and as they are destined to be in the third inheritance; not as they were in the second inheritance which transpired in the days of Ezra, and which was only a partial coming; and therefore they were not obligated by Biblical law. And it seems to me that this law also

obtains with reference to the levitical tithes; that they are not obligatory in this age except by rabbinic legislation."

These two statements of Maimonides are obviously contradictory to each other.

Joseph Caro, in his commentary the Keseph-Mischna, after a lengthy discourse, endeavors to solve the contradiction in a manner which is absolutely impossible and out of the question. He assumes that Maimonides interprets the clause 'Yerusha Rishona', as does Rabenu Hananel, to mean that the first inheritance of the land was in the days of the Patriarchs, Abraham, Isaac, and Jacob; and from then on the land remained consecrated forever. (This interpretation is introduced by the Tosefoth in b. Orachin 32b.) But this interpretation is quite impossible. First of all, there is absolutely no basis for it in the least. The Tosefoth also bring it as an individual opinion of Hananel without any reason or support. And secondly, it is a manifest contradiction of the statement of the Talmud in b. Orachin 32b, and the Seder Olam, where it is expressly stated that the first inheritance of the land, or the first coming, took place in the days of Joshua, while the second took place in the days of Ezra. And above all, the interpretation of Caro is a direct perversion of the text of Maimonides mentioned above, and must be rejected on these grounds. Maimonides concisely states that the second occupation of the land took place in

the days of Ezra; and that the tithes in this age are by rabbinic, and not by Biblical injunction.

However, this manifest contradiction is easily obviated if Maimonides' interpretation of the clauses 'Bifne Habayyith' and 'Shelo Bifne Habayyith' is understood in its proper light. Notwithstanding all the interpretations of the clauses to mean 'during and after the existence of the second Temple', it is quite apparent that Maimonides interprets them to mean 'before and after the existence of the first Temple.' Hence it becomes clear that Maimonides maintains the opinion that the tithes were obligatory as a Biblical law, only before and during the existence of the first Temple. But with the destruction of the first Temple the sanctity of the land was completely nullified; and from that time and onward the observance of the tithes in the land of Israel obtains only by rabbinic legislation. And even during the reoccupation of the land in the days of Ezra this status was not altered in the least. And this interpretation of Maimonides is in perfect accord with his opinion in 1,26 of the same code, and there is in reality no contradiction altogether.

However, while Maimonides maintains that the state of consecration of the land of Israel was nullified with the destruction of the Temple, he nevertheless holds the opinion that Jerusalem and the Temple mount never lost their original state of holiness, and remained forever consecrated. He gives

as the reason for this opinion the belief that in these two places the Shekhinna had its abode, and though city and Temple were laid waste during the siege, the Shekhinna remained in these places forever.

65. Kaphtor-V'Ferach c.III

Chapter III

66. Buchler. Economic Conditions of Judea; p.35
67. See chapter on the Recorded Changes in the Tithing System.
68. Yaddayyim 4,3
69. B. Bechoroth 30b
70. b. Erubin 32a ect.
71. Ibid. b. Pesachim 9a ect.
72. y. Dmai 1,3; 4a
73. t. Trumoth 1,15
74. Maasersheni 5,9
75. y. Maasersheni 5,3; b. Yeb. 86b
76. b. Sabbath 54b
77. t. Hagiga 3,36
78. b. Pesachim 72b; Sifre Numbers XVIII
79. t. Keth. 5,1
80. t. Dmai 5,22
81. The objection of R. Gamliel was not because R. Akiba
 had tithed the produce, but because he had tithed it vaddai.
82. t. Dmai 5,24
83. b. Yeb. 15a
84. y. Dmai 7,1; 30a
85. y. Dmai 1,3; 3b
86. y. Trumoth 1,1; 3b
87. y. Dmai 1,4

88. y. Dmai 1,3; 3b
89. y. Maasersheni 5,3; 31a
90. y. Dmai 4,1; 17b
91. b. Sota 48a
92. Numbers XVIII,21,31
93. 2 Chron. XXXI,4
94. Malachi 2,7
95. See version 2 of the Tos. Yomtob to Aboth 3,13; and compare Tshuvoth Hageonim edition Lyck, 1864, 18b.
96. y. Maasersheni 5,3; 31a

97. This reason however, appears to me to be of minor importance, since with the rise of the Talmid ~~Haham~~ the status of the priest greatly degenerated, and the former virtually replaced him in the social order. (cf. b. Nedarim 62a: Just as the priest has claim to the first portion, so the Talmid Haham has a claim to the first portion.) And even an educated bastard was rated higher than an ignorant High Priest (b. Hurioth 13b), and the law strictly forbade giving the tithes to such a person (Aboth D'r. Nat. 41). In consideration of all these facts, I have excluded this theory for the observance of the tithes in post-exilic times from the final summary of this chapter.

98. b. Bechoroth 27a

99. The reason why the Talmud has selected the Halla from among all other forms of tithes is because it is most

common, and can be more easily observed, as it has little value, and the tax would not be too great. The grounds for this last assumption can be well supported by a statement of Zemach ben Paltai Gaon of Pumbeditha in one of his responsa.

He writes: "It appears to me that the law of Trumah is surely not obligatory in this age, and there is in reality no duty incumbent to separate the priestly dues in the Diaspora. But the former rabbis whose words we reiterate were accustomed to observe these laws because of piety. However, the law of Halla, which is separated from the dough, is unlike the Trumah of corn, wine and oil, because the Halla is more common, and therefore the rabbis decreed that it should be observed in the Diaspora, and everyone does observe this law because of the Palestinian observance of the Halla, in order that it should not be forgotten." (Kaphtor Vaferach c.15.)

Hence it is quite apparent that the reason for selecting the Halla from among all other forms of tithes for universal observance is because it is most easily observed and least expensive, whereas the other tithes would constitute a heavy drain on the resources of the Jews in the Diaspora, where the law at best was not binding either by Biblical or rabbinic ordinance, and therefore they were stressed only in Palestine and the immediate vicinities.

Chapter IV

100. y. Dmai 1,3; 4a. It is reported that R. Pinhas ben Jair once visited a certain community, and the people complained to him that a horde of rats was devouring all their produce. He decreed that the rats gather in one spot, which they did, with loud squeaking. He asked the people if they understood what the rats were saying; and upon receiving a negative answer, he told them that they were saying that the produce had not been tithed, and that they were privileged therefore to consume it. Upon request he tithed the produce for the community, and taught them how to tithe for themselves. On another occasion he visited a certain community, and the people complained to him that the well did not supply enough water to irrigate the fields. He told them that it was all because they did not tithe their produce. Upon request he separated the tithes for them, and taught them how to tithe.

Disregarding the mythical element in these reports, we may assume with safety that this sage did tithe the produce for these communities, and taught them how to tithe for themselves. But this report is the only concrete illustration of mass observance of the tithes to be found in the literature.

101. The report of the Tosefta, Sota 13,10, bears ample evidence to this contention. Hyrcanus sent throughout all the land of Israel, and discovered that the people were

observing only the priestly dues, but as to the tithes, some did observe and some did not observe them. This report of the Tosefta may indeed be reflecting later conditions, but the fact remains, nevertheless, that they had a tradition that the tithes were not observed by all the people even as early as the days of the High Priest Hyrcanus. And again, it cannot be said that the laxity in the observance of the tithes developed suddenly with the destruction of the Temple. It must have been developing very slowly all through the period of the second Temple, and no doubt reached a climax when the land was conquered by the enemy. (See also chapter on recorded changes in the tithing system.)

102. b. Bezah 35b, the Tlamud comes to a definite conclusion that the majority of the masses separates the tithes, and this is of a late Amoraic period.
103. b. Berachoth 47b.
104. b. Sabbath 33b. When the rabbis assembled at Usha (Jamnia), the question was asked why diptheria begins in the bowels and culminates in the throat; and the answer was because they eat things which have not been tithed. It is quite impossible that this question should be asked at this assembly, unless some definite measures were being adopted with which to alleviate this situation of tithal rampancy. Hence it is safe to assume, even though it be through mere inference, that

the problem of tithal observance in general was discussed at that assembly, and measures adopted accordingly; and as a result the Tosefta abounds with legislations which are attributed, in the majority of instances, to the rabbis who met at this assembly.

105. Dmai 2,2. In the Tosefta (l.c.) the opinion of Rabbi Judah is attributed to Rabbi Meir.
106. b. Berachoth 63b: "When our masters entered the vineyard in Jamnia, Rabbi Judah, Rabbi Jose, Rabbi Nehemiah, and Rabbi Elazar the son of Rabbi Jose the Galileean were there...." The mention of Jamnia here is doubtless a corruption as is evident from the parallel passage in Canticles Rabba 2,5,16: "Towards the close of the (Hadrianic) persecutions, our masters entered Usha, and they are the following: Rabbi Judah, and Rabbi Nehemiah, and Rabbi Meir, and Rabbi Jose, and Rabbi Simon the son of Yohai, and Rabbi Eliezer the son of Jose the Galileean...."
107. Dmai 2,2. It is quite apparent that the Haber is identified in the literature with the Neemon, since the only one who could be trusted was the Haber; and consequently the two appellatives are used interchangeably both in the Mischna and the Tosefta. An important observation may however be made while this point is being discussed. The Mischna does not stipulate numerically the principles of the order. But the Tosefta, in basing itself on the Mischna, begins with the

statement that there are four principles, but only enumerates three, in one instance, and two in another.

108. t. Dmai 2,2

109. b. Berachoth 47b. The Amhaares who did not eat his food in levitical cleanliness is known as the Amhaares of Rabbi Meir, since he is of the opinion that this laxity stamps one as an Amhaares; and thus is he known throughout all the literature of the Talmud.

110. t. Dmai 3,6. "The Haber must not participate in the feast of the Amhaares nor at his meal, unless he prepares the food himself; even if it be a mere goblet of wine. Therefore, if a Haber participated at the feast of an Amhaares or at his meal, the presumption is that the feast has been prepared in all conformity to the tithing laws."

111. b. Bechoroth 30b. "He who comes to be initiated into the order of the Haberim must be initiated by three members; and even a Talmid-haham must be initiated by three members; an Elder who presides over an academy does not have to be initiated by three Haberim, for he has already been initiated by virtue of the fact that he presides over the academy. Abba Saul says, that a Talmid-haham does not have to be initiated by three Haberim; and what is more, he can initiate others."

112. There is a difference of opinion among the rabbis as

to whether the family and servants of the Haber become members of the order automatically with his initiation. It is quite apparent that the Haberim desired to initiate each member of the order individually in order to make certain that the members of the order remain faithful. In b. Bech. 30b, the following Tosefta is recorded: "He who comes to join the order of the Haberim must be initiated by three members, but his children and servants do not have to be initiated by three members. R. Simon ben Gamliel says: Even his children and servants must be initiated by three members, for the acceptance of the Haber cannot be compared to the acceptance of the son of the Haber."

This last statement of the Tosefta is not clear. In the parallel statement of the Tosefta (t. Dmai 2,14.), the version is even more difficult. The following is recorded: "He who joins the order (of Haberim) in the presence of a group, (Habura) his children and servants do not have to be initiated by a group, (Habura) but he can initiate them himself; R. Simon ben Gamliel says: When a member of the order sins, (kilkel) it cannot be compared to when the son of a member of the order sins. (kilkel)"

This remark of R. Simon ben Gamliel carries the implication that the reason for stressing individual initiation into the order was because of ultimate responsibility. The mistake of the Haber could be remedied in some way by the order, but not the mistakes of those who were not members.

But the statement of the Tosefta as quoted in the Talmud leads to the conclusion that there may have existed another form of initiation for minors and servants than was utilised in the initiation of the adult who desired affiliation with the order. It may be that minors and servants were only obligated to the promise of following the instructions of the master of the household, and that this promise constituted the initiation into the order. One thing however is clear; individual initiation into the order was an absolute necessity to safeguard all the principles upon which the order was founded.

In b. Bechoroth 30b, we read again: "The wife of an Amhaares who married a Haber, and in like manner the daughter of an Amhaares who married a Haber, and in like manner the servant of an Amhaares who was sold to a Haber, must all be initiated into the order of Haberim at the very start. But the wife of a Haber who married an Amhaares, and in like manner the servant of an Haber who was sold to an Amhaares, do not have to be initiated into the order of Haberim. R. Meir says: Even these latter persons must be initiated into the order. R. Simon ben Gamliel related in the name of R. Meir that a woman once married a Haber and used to bind the phylacteries about his arm; then she married an Amhaares and used to bind the publican's badges about his hand." From this last illustration it is apparent that individual initiation into the order was

necessary as a means of pledging the members to live up to all the obligations of the order, and to safeguard against any future violation of these obligations.

113. b. Bechoroth 30b. "When one comes to accept the responsibilities of the Haberim with the exception of one condition, he cannot be initiated into the order. In like manner a non-Jew who desires to accept the Jewish Law with the exception of one article cannot be accepted into the Jewish fold. R. Jose ben R. Judah says: Even if he refuses to accept one point of the Soferim, he cannot be accepted. In like manner a Levite who comes to accept the responsibilities of the order of the Levites, and a Priest who comes to accept the responsibilities of the order of the priesthood, but who refuse to accept one point of their respective orders, cannot be accepted into the orders."
114. t. Dmai 2,22. "An Amhaares who asks a Haber to feed him bread and wine, the Haber is forbidden to do so, for it is prohibited to submit levitically pure foods to an Amhaares."
115. t. Dmai 2,20
116. Ibid. 4,5
117. Ibid. 2,21
118. Ibid. 3,5-6. "He who gives food or produce to an innkeeper-ess must tithe that which he gives her and that which he receives from her, for she is suspected of exchanging. R. Jose

maintains that we are not responsible for cheaters, and therefore he need only tithe that which he receives from her alone. When one gives produce to his mother-in-law, he must likewise tithe that which he gives her and that which he receives from her, for she too is suspected of exchanging that which can be confounded. R. Judah maintains that the mother-in-law is pleased to have her daughter live according to regulation, and is ashamed of her in-laws. (and therefore she should not be suspected of exchanging the produce.)"

119. t. Dmai 4,28

120. Ibid. 4,6. "If one enters a city where he recognises no one he must ask for some one who can be trusted, that is, who tithes. If some one informs him that he personally cannot be trusted, but points out one who can be trusted, he is to be believed." In t. Dmai 3,4: "When one takes produce to a miller who is an Amhaares, the produce remains in the status of being tithed (and there need be no fear that the Amhaares has exchanged the produce for that which has not been tithed)."

121. Sota 9,13. "R. Simon ben Gamliel says: The tithes have eaten up the fat of the crops." And according to the parallel clause in the Tosefta (l.c.) "the tithes have eaten up the fat and the crops." Traditionally, of course, this statement has been interpreted that the neglect of the tithes had brought about this condition. But it may also have the meaning given above.

122. t. Sota 13, end. See also note #101

123. Many methods of avoiding the tithes were in vogue at the time; and the peculiar thing about them is that they were all considered legal.

The Bene Hanan, in ^{Temple times} ~~pre-exilic~~ times, of whom it is reported that their shops were destroyed three years before the general destruction of the land, avoided the tithes by the means of hermeneutical interpretations of the Scriptures, until they came to the conclusion that neither the buyer nor the seller of produce was really obligated to observe the tithes. (y. Peah 1,5; 9b.). R. Johanan likewise reports that "the earlier generations were far different from the present one, for they brought in the produce from their fields by way of the Traksimon, in order to make it liable to tithes; but the present generation brings in the produce from the fields by way of courts and enclosures to free it from the tithes, for produce does not become liable to the tithes until it sees the front of the house." (b. Berachoth 35b). Again it is said that "man may deal wisely with his produce by bringing it into the granaries with the sheaves, thereby exempting it from the tithes." (b. Berachoth 31a).

All these statements reflect a serious condition; and if there had been no good cause for such trickeries, they would not have been contrived.

124. The expression of the Talmud (b. Berachoth 47b) is deserving of consideration. It does not say that the Amhaares

does not separate the tithes altogether, but that he "does not separate his tithes properly" This defect in the proper separation of the tithes was most likely due to the lack of information on the subject by the common masses.

- 125. b. Sanhed. 96a
- 126. b. Nedarim 81a
- 127. b. Bechoroth 30b
- 128. b. Mezia 85a
- 129. b. Sabbath 13a ect.
- 130. Ibid. 33b
- 131. See b. Sabbath 32-33
- 132. Aboth 5,8
- 133. Aboth Dr. Nathan c.38
- 134. Ibid. c.20
- 135. b. Pesachim 113a
- 136. Aboth Dr. Nathan ed. Schechter c.35; version 2

Chapter V

137. In b. Aboda Zara 21a, we have the following statement: "Houses cannot be rented to them in the land of Israel; and it is not necessary to mention that fields cannot be rented to them in the land of Israel."

The Talmud comments that the reason why the rabbis were more severe with fields than with houses is because of two dangers. The first and foremost danger is that the non-Jew might ultimately get possession of the field, and the rabbis desired very much that this should not come to pass. And in the second place, by renting the field to a non-Jew, the Jew brings about a situation whereby the produce is exempt from the tithes. This latter statement does not mean to imply that the non-Jew exempts the produce altogether from the tithes even when the produce is purchased by a Jew. The Jew who buys the produce would certainly be obligated to tithe, as will be observed later. It simply means that the non-Jew will not tithe the produce, since he is under no obligation to do so.

The above legislation constitutes a dispute between Rabbi Meir and Rabbi Jose, and supports the view that many of these legislations emanated from the academy at Usha.

138. t. Dmai 7,11. "He who releases his field to a non-Jew...even though he is not permitted to do so, must separate the tithes for them." (see also note #141)
139. t. Dmai 1,22. Because of this passionate desire to maintain

the land of Israel as the home of the Jew for the future messianic era, we have that very extraordinary legislation "that he who buys a home in the land of Israel is permitted to write (to have the bill of sale written) the bill of sale even on the Sabbath." (b. Kamma 80a) The love of the land of Israel is fully apparent throughout the entire literature of the Talmud.

140. See above, pp.49-50, and see also note #106

141. See above, note #138.

In Dmai 6,2, we read: Rabbi Judah says: "He who farms the field of his fathers for the non-Jew (for half of the produce) must first separate the tithes of all the produce, then give the non-Jew his share."

An interpretation of this statement of R. Judah is given in b. Mezi'ah 101a, in dual form: Rabbi Judah says: "He who farms the field of his fathers for the non-Jew must first separate the tithes of all the produce, and then give the non-Jew his share. - They thought to say that the field of his fathers refers to Palestine, and it is called the field of his fathers because at one time it was the land of the patriarchs, Abraham, Isaac, and Jacob; and he (R. Judah) maintains that the non-Jew does not possess the property-rights in Palestine to exempt the produce from the tithes. But if this is the case, what is the meaning of the following Tosefta: Rabbi Judah says: He who receives the field of his

fathers to be farmed, from a gentile oppressor, must first separate the tithes of all the produce, and then give the non-Jew his share. Why does the Tosefta specify an Oppressor ? Does not the same apply in the case where the non-Jew is not an oppressor ? But it must therefore be said that in general the non-Jew does possess the property-rights in Palestine to exempt the produce from the tithes. And what is the meaning of the 'field of his fathers' ? It means most literally the fields once possessed by his ancestors. And the rabbis merely penalised him (the Jew) (that he must separate the tithes), because, since the land is precious to him, he should put forth the effort to regain it by buying it back from the non-Jew."

There are also many other such legislations which are pure penalties to prompt the Jew to reclaim the land.

142. See note #141.

b. Gittin 47a: Rabbi Elazar says: "The non-Jew possesses the property-rights in Palestine to exempt the produce from the tithes."

b. Gittin 43b: "Tennants, Lessees, those who farm tribal lands, and the non-Jew who gives his field in pledge to a Jew, even though they abide by the prevailing customs, the field is exempt from the tithes."

t. Maaserishon 3,8: "He who uproots his plants in order to replant them in the Diaspora, to relinquish his ownership of

them, or to sell them to a non-Jew, has incurred penalty, for by so doing he exempts them from the tithes."

The important point here is that plants owned by a non-Jew in Palestine are exempt from the tithes. It may however be that the reason why the Jew has incurred guilt is not because the non-Jew will exempt the produce from the tithes if it is bought by a Jew, but because the non-Jew will not tithe the plants since he is not obligated to do so. But this interpretation is however not likely. The expression 'lehafkiah' denotes in all instances to exempt from the obligation of the tithes because of gentile ownership. In all other instances where the Talmud desires to express the total lack of obligation, the expression 'Eyno Hayyav b-' is used throughout the literature.

b. Bathra Sla: "Rabbi Meir would even obligate fruit bought from the market. But is it not written 'of thy land' ? This is to exclude the Diaspora. But is it not written 'of thy soil' ? This is to exclude the soil of the non-Jew."

143. See note #137.

Peah 4,9: "The Leket, Shikha and Peah of the non-Jew must be tithed."

However, the most convincing of the numerous reports in the literature that the non-Jew does not possess the

property-rights in Palestine to exempt the produce from the tithes is the record in Tosefta Dmai 5,22, with its appended commentary in b. Menachoth 31a:

Rabbi Simon Shezuri says: "It once happened that some of my tithed produce became accidentally mixed with some produce which was untithed, and I went to Rabbi Tarfon for advice. He advised me to go to the market and buy more produce, and retithe the entire lot."

In its comment to this report the Talmud asks why Rabbi Tarfon did not advise him to buy produce from a non-Jew; and the answer is because Rabbi Tarfon maintains that the non-Jew does not possess the property-rights in Palestine to exempt the produce from the tithes. (And if he did buy produce from the non-Jew he would even then be unable to tithe from it for the mixed lot; since the produce of the non-Jew is Vaddei, and the lot which had become mixed is Petur, and it is impossible to tithe from that which is obligated by Biblical law for that which is not obligated by Biblical law.)

In that very place the Talmud establishes the final opinion in accordance with the dictum of Rabbi Tarfon, proving incontestably that in rabbinic times the Jew was not deemed as possessing the property-rights in Palestine to exempt the produce from the tithes.

In b. Gittin 47a, Rabbah also maintains the opinion that the non-Jew does not possess the property-rights in Palestine to exempt the produce from tithes.

144. Maimonides, (Code Trumoth 1,10) establishes this law very decisively in the following statement: "A non-Jew who buys land in Palestine does not exempt it from the obligations, but it remains in its original sanctification. Therefore, if a Jew repurchases the land from him, it is not considered an individual conquest (which has been established not to be a conquest altogether insofar as the laws are concerned. cf. b. Gittin 47a), but he must separate the priestly dues and the tithes, and bring the first fruits; and all this is (as) Biblical, as though the land had never been sold to the non-Jew. But in Syria the non-Jew does possess the property-rights to exempt the produce from the tithes, and the entire obligations of the seventh year of the cycle."

145. Kaphtor-V'ferach c.IV

146. See note #148

147. y. Dmai 3,4; 16a: "Rabbi Judah and Rabbi Simon say, that the non-Jew does possess the property-rights in Palestine to exempt the produce from the tithes. Rabbi Jeremiah said in the name of R. Hiyya bar Abba in the name of Rabbi Johanan

that Rabbi Simon admits that the Jew must separate the tithes by rabbinic ordinance."

148. Only on one condition was the produce of the non-Jew exempted from the tithes, and this is when it was completely harvested and winnowed by the non-Jew.
- b. Bechoroth 11a: Rabbi Hanina says: "He who buys untithed, winnowed, produce from the non-Jew must separate the tithes, but he may retain them for himself." In commenting upon this statement the Talmud comes to the conclusion that the reason why the tithes must be separated is because the produce had been winnowed by a Jew, but had it been winnowed by a non-Jew, it would have been exempt altogether- since in all other instances "the non-Jew does not possess the property-rights in Palestine to exempt the produce from the tithes." However the reason why the tithes may be retained in this instance is because the Jew can argue that if the non-Jew had not engaged him, the Jew, to winnow the produce, but had winnowed it himself, it would have been exempt from the tithes altogether.
- See also note #123 for the various other methods of avoiding the tithes in Palestine.

149. t. Dmai 4,25

150. Trumoth 1,1. The statement of the Mishna appears as a dispute, and in slightly modified form in the Tosefta (Trum.

1,15): "The non-Jew who separates the priestly gifts from the produce of a Jew, even at his request, the separation is not valid. And an incident occurred in Figga where a Jew requested a non-Jew to go out and separate the priestly dues of his produce at the grannery, but accidentally the tithes fell back into the bin with the other produce. When the case came up before Rabbi Simon ben Gamliel, he ruled that since the separation had been made by a non-Jew, it was not valid (and the produce automatically returns to the status of being untithed). Rabbi Isaac says, that if a non-Jew separates the priestly dues, and the act is sustained by the owner, the separation is then valid."

151. See Buchler; Economic Conditions of Judea. c.II, pp.29-55.
152. Trumoth 3,9. In the Tosefta (Trum. 4,12) this statement is somewhat elaborated and modified: "The priestly gift of the non-Jew is valid. When does this apply? Only at the grannery. If he separated the priestly dues and gave them to a priest, the tithe and gave it to a levite, and the poor tithe and gave it to the poor, his produce has been well prepared (and the Jew who buys of it need not separate the tithes again). But if he should first gather his produce into his house, it has been spoiled (for the tithes).
153. This statement is only according to one opinion of the Tos. (Dnai 5,21): "It is permissible to tithe Jewish for non-Jewish

and non-Jewish for Jewish produce...this is the opinion of Rabbi Meir; Rabbis Judah, Jose, and Simon say: It is permissible to tithe Jewish for Jewish produce, and non-Jewish for non-Jewish produce; but not Jewish for non-Jewish produce, and not of theirs for Jewish produce

154. b. Bechoroth 53a

155. t. Trumoth 4,3; y. Halla 4,4; 27a

156. y. Kiddushin 1,9; 22a: "Rabbi Jonah asked; why is not the Halla also included ? Rabbi Jose said to him: The Mishna only mentions those things which are applicable to both Jew and Gentile. But the Halla applies only to Jews, and not to Gentiles. The reason for this is because the Scriptures say; "Your dough," and not the dough of the Gentile. (Numbers 15,19)

But no matter how this statement may endeavor to account for the prohibition of the Halla of the non-Jew, it is nevertheless difficult to understand why the line was drawn between the Halla and the priestly dues and the tithes. It is quite apparent that the priestly dues are subject to the same laws of impurity, and require the same minute care from impurity and defilement as does the Halla. Yet the priestly dues were accepted from the non-Jew without question. But it may perhaps be that the rabbis considered the Halla

more liable to impurity than the priestly dues, since it was separated from the dough, and had come in contact with water. But this answer does not fully account for the distinction, as the priestly dues are also defiled only after they have come in contact with water, since anything which is perfectly dry cannot receive impurity.

Maimonides, (Trumoth 4,15) writes as follows: "The priestly dues which the non-Jew separates from his produce, should not be considered as valid according to the Biblical law. But the rabbis decreed that it should be considered as Trumah because of the 'Baale Kissin', the opulent Jews; that all the wealth may not fall into the hands of a Jew who will turn his produce over to a non-Jew for preparation, and thus free it from the obligation of the tithes."

Hence, according to this statement of Maimonides, there was really no plausible reason for accepting the Halla from the non-Jew since it amounted to a trifle at best, and the reason of the 'Baale Kissin' did not apply in this case, as the Jews were never suspected of violating the laws of Halla and Trumah.

The possibility may be, however, that the reason for not accepting the Halla of the non-Jew was because his in-

tention at the time of the separation may have invalidated the act; that is, he may have considered the Halla he was separating as an actual sacrifice to heaven, and has thus consecrated the food, which made it prohibited. (see b. Bech. 53a). And in this regard, the Trumah has the same status as the Halla.

A statement in b. Orachin 6a, furnishes evidence for this contention: "When a non-Jew separates the priestly dues from his bin, he is to be interrogated. If he says that he did it with the knowledge of a Jew, it can be given to a priest, but if not, it must be buried; for we suspect that his intention was to heaven."

The clause 'with the knowledge of a Jew' is given two interpretations by Rashi, in the commentary. One interpretation is, that the non-Jew intended for the Trumah to go to the same place where the Trumah of the Jew goes, that is, to the priest; and the other interpretation is, that a Jew simply told him to separate it. And the reason why it must be buried is, because the non-Jew may have had the intention of consecrating it to heaven; and consecration, and consecrated matter are both forbidden in this age. (3. Bechoroth 53a). Hence the Trumah is forbidden on the grounds that it is consecrated through the intention of the non-Jew.

It is apparent, therefore, that the element having real weight in this consideration is the intention. And in this respect, the Halla has the same status as the Trumah, and it could not be given to the priest, since the non-Jew may have had the intention of consecrating it to heaven. But it need not be buried, since the Jews were very careful about the Halla, and would not eat it in any case.

This last consideration, why the Halla need not be buried, is more clearly understood, however, in the light of the fact that the Jews abstained from accepting any form of prepared food from the non-Jew; and this is probably the real reason why the Halla was not accepted altogether from the non-Jews in Palestine.

157. If the question be asked in this regard why the priestly dues of the non-Jew were not accepted in the Diaspora, this objection may be met with the answer that the Jews probably considered the Trumah of the Diaspora as defiled, and the Trumah could therefore not be eaten that it should not be said that defiled Trumah is being eaten.

158. Tosefta in b. Mezhiah 101a. See also b. Gittin, 55b, Mischna.

The Tosefta as it is quoted in b. Mezhiah 101a, makes direct reference to the lands taken from the Jew by the tyrant (Metsik nachri); and the same is true of the Mischna in b. Gittin 55b. (Sokarikon).

Chapter VI

- 159. Maimonides; Code Trumoth 1,3.
- 160. b. Gittin 8a; t. Kelim b.k. 1,5
- 161. Yaddayyim 4,3
- 162. t. Trumoth 2,9
- 163. Maaserishon 5,5
- 164. Dmai 6,11
- 165. t. Trumoth 2,11
- 166. Ibid. 2,10
- 167. Maimonides Code Trumoth 1,20
- 168. Halla 4,7
- 169. Ohaloth 18,7
- 170. y. Peah 7,5
- 171. Shebiith 6,5

Chapter VII

172. Yaddayyim 4,3
173. b. Bechoroth 27a (See also note #183)
174. y. Halla 4,4.

The complete report of the Talmud is as follows;

לְבַרְכֵינוּ שֶׁנִּשְׁלַח הָיוּ כְּפִיזִין מְרֻסִּים וּמְעֻרָּהּ עַד שֶׁמָּצָא
הַרְבֵּי וְכַלּוּ אֶתְּמָר מִן אֵילָן הַמִּזְבֵּיחַ מִלְּפָנֵינוּ

And because of its obscure character, this statement has been the subject of various theoretical speculations by the later critics of the Talmud. Since the Talmud also desired an interpretation of the report, it is quite evident, therefore, that it was a matter of obscurity even to the rabbis of that early age. As may be easily observed, the difficulty revolves about the exact meaning of the words *לְבַרְכֵינוּ* and *מִלְּפָנֵינוּ*, which are both incomprehensible.

However, before stating the various theories which have been advanced by the scholars in the interpretation of this esoteric report, it is essential to note the heterogeneous versions recorded in the later literature.

The reading of the Semag is a dual variation: (Essin 133)

לְבַרְכֵינוּ שֶׁנִּשְׁלַח הָיוּ כְּפִיזִין מְרֻסִּים וּמְעֻרָּהּ עַד שֶׁמָּצָא
הַרְבֵּי וְכַלּוּ אֶתְּמָר מִן אֵילָן הַמִּזְבֵּיחַ מִלְּפָנֵינוּ

The reading is also preserved in the Rosh (b. Aboda Zara 4,9) in the early editions, with the exception that the

saying of Rabbi Zeira follows in its original sequence, as in the text of the Palestinian Talmud.

This reading of the Semag is preserved in the reading of the Tosefoth, Aboda Zara 59a; while in Kiddushin 36b, the version is הוּמַרְתָּ instead of הוּמַרְתָּ.

In Tosefoth Rosh-Hashana 12a, the reading is הוּמַרְתָּ instead of הוּמַרְתָּ.

The Ittur and the Kaphtor-Vaferach both maintain the version as it occurs in the Palestinian Talmud.

With reference to the versions of the Semag and the Tosefoth, Aboda Zara, 59a, there is little doubt that there is either an original error on their part, due to a possible citing of the Yerushalmi by memory; or that a later copyist confounded the original order of the statement as it is recorded in the Talmud.

The reading הוּמַרְתָּ with a ה is also eliminated by the majority of the versions, as well as the reading of the Tosefoth, Kiddushin 36b, הוּמַרְתָּ instead of הוּמַרְתָּ.

The statement must therefore be interpreted according to its original form as it has been preserved in the text of the Palestinian Talmud.

The traditional interpretation of the report by Moses Margolis in his commentary to the Palestinian Talmud, the Pene Moshe, as well as of the Seder Hadoroth, is that it has reference to Judah and Hezekiah, the sons of Rabbi Hiyya.

It is true that the sons of Rabbi Hiyya were known as רבין, and were thus termed on one occasion; (cf. Hulin 20a. The other references to the Robim, as in Tamid 1,1, refer to the young priests; and the statement in y. Hagiga, 3,4,20b, may either refer to the sons of Hiyya, the priests, or else it remains unintelligible altogether).

Hezekiah is also called the interpreter מפרש , in Genesis Rabba 65.

But there are many difficulties involved in this interpretation. First of all, it is not definitely known who the Hezekiah mentioned in the Midrash really is, and it may be that he is not the son of Rabbi Hiyya altogether.

But far more difficult is the fact that no record has been preserved in the literature of the Talmud to the effect that these sons of Hiyya ever returned to Babylon, or the Diaspora. And this report states specifically that the tithes were observed in the exile until the Robim came and abolished them. On the contrary, the records have preserved references to the effect that they came from Babylon to Palestine together with their father Hiyya. (Hulin 86a; y. Maaser Shenit 5,5; 33a)

Above all, there seems to be no reason why the sons of Hiyya should be called the מפרש , since there are no special references to their individual interpretations. On these grounds, the above interpretation remains impossible.

Asher ben Yehiel quotes two sources in the interpretation of this statement (Aboda Zara 4,9), to the effect that these Robin or Turgomania may have been either the great men of Israel who came to Babylon and taught that it was not at all necessary to observe the tithes; or that they were Christian sects (Kuthim) who came there and established a system of tithes for the support of their order, and as the Jews would have been compelled to contribute, the tithes were abolished altogether.

Although this interpretation is quite simple, there is, however, no basis for it, except that it may have been a traditional interpretation. It is altogether too vague; and aside from this there is no record of these scholars coming to Babylon and abolishing the tithes, and the Christian sects which he may have had reference to did not possess any power in those early days to be able to force the abolition of an established system of definite practices. The Kuthim here mentioned may have reference to the Persians, which would be more likely, if it were not so indefinite.

The contention of J. M. Sachs (in Rapaport's Erech-Millin p.119) is that *תשנ"א* is the corruption of a Greek word meaning 'three months'; and that it has reference to Judah and Hezekiah, the sons of Hiyia, about whom there exists a legend that they were born three months apart (b. Niddah 27a).

This theory, however, is impossible on a number of grounds. Firstly, it presupposes a radical change in the reading of the text; from *קוניא* to *בבליא*, which is very unlikely. And secondly, there are no records to the effect that the sons of Hiyya ever returned to Babylon. The records in the Talmud reveal the exact opposite; that the sons of Hiyya lived in Palestine and died there (b. Moed-Katan 25a), and it would therefore be impossible to assume on purely conjectural grounds that they left Palestine and settled in Babylon.

Rapaport assumes that the Robim or Turgomania are the Amoraim who left Palestine in their youth together with Rav, and settled in Babylon. They are called Turgomania because they occupied themselves with the interpretation of the Mishna, and hence the Turgomania is merely another term for the Amoraim. The former is the Palestinian expression, while the latter is the Babylonian characterisation of all the scholars from the days of Rav. These Amoraim who went to Babylon during and after the days of Rav are called Robim because they all migrated in their youth- as the author of this theory endeavors to show all through the discussion. In fact he assumes that the Turgomania mentioned in the report of R. Johanan refer to none other than Rav, Levi, and Rabba bar bar Hanna. These scholars came to Babylon and taught that it was not necessary to observe the tithes in the

Diaspora, as there had never been any real obligation to do so even in very early times. (Erech-Millin pp.119-121)

This theory of Rapsport is open to many objections. First of all there is no definite statement anywhere in the Talmud that certain Amoraim came to Babylon and abolished the tithes. An act of this nature would certainly have been of sufficient import to warrant at least a mere mention of the fact in the literature; and if such action was really taken by any of the Amoraim it would doubtless have been mentioned together with the cause and reason which prompted the act. But there seems to be no legitimate reason for taking such steps by any of the rabbinic scholars, and therefore it is quite reasonable to assume that both the act and its cause would have been expressly discussed or at least mentioned in the literature- which is not the case.

Secondly, Rapsport contends that the individual men referred to in this report are Rav, Levi, and Rabba. But this is quite impossible, as the *דבורא דרבי* are none other than Rav and Samuel, as is expressly stated in b. Sanhedrin 17b. It would hence be erroneous to say that "Our masters in the Diaspora"- Rav and Samuel- "separated the Trumah and the Tithes until the Robim"- Rav, Levi, and Rabba- "came and abolished them."

Thirdly, the report seems to state something positive, namely, that the tithes were abolished. But there are records in the Talmud that the tithes were observed long after the

days of Rabbi Johanan. Hence it is stated that Ravina was accustomed to dilute each portion of the wine of the Trumah with two portions of common wine (b. Bechoroth 27a), and that R. Tuvi bar Kiena had a jug of the wine of the Trumah (b. Bezah 12b), and Rava also makes a statement that the Trumah of the Diaspora becomes neutralised in a majority (b. Bech. 27a), which tends to show that the Trumah (and tithes) were observed in the Diaspora almost to the close of Talmudic times. This would not have been possible if the tithes had been peremptorily abolished by the Amoraim.

Zachariah Frankel adopts the version as it appears in the Tosefot, b. Rosh-Hashana, 12a- *הוא הדין*, which would make it a connective clause having the force of 'He interpreted', that is, R. Zerah, who is mentioned in the report which immediately follows the one under consideration, interpreted the Robim as referring to R. Judah in the name of Samuel, or in other words, to Samuel. The word *הוא* would hence be a byform of *הוא*, of which many examples abound in the literature of the Talmud: *הוא הדין*, *הוא הדין*, and which mean, 'the Great'. Samuel was thus called the 'Great' according to this author's interpretation of this statement.

However, aside from the fact that the majority of versions eliminate the possibility of this reading, and this interpretation would be impossible on this ground alone, there

are still greater odds against such interpretation.

Firstly, it is very unlikely that the plural form, Robim, would be adopted to qualify the singular, Samuel.

Secondly, as stated above, Rav and Samuel were the 'masters in the Diaspora', and the report would have no logical meaning according to this contention.

And finally, according to this interpretation, the entire statement which follows immediately after this report in the Talmud becomes impaired and meaningless.

According to the interpretation of Frankel, the clause...בגזק דהכי קפילא דאחא דאחא becomes a new independent statement, without attribution to any particular person. And this cannot be so, as the identical statement occurs in two other instances in the Talmud as the explicit saying of Samuel, and even without the appended name of Rabbi Judah. In b. Bezah, 9a, we read the following: Samuel says: "The Halla of the Diaspora may be separated after some of the bread has been eaten." And in b. Bechoroth, 27a, this almost identical statement occurs: Samuel says: "The Trumah of the Diaspora may be separated after some of the produce has been eaten." And since in both of these instances Samuel is the independent author of these statements, the clause would be absolutely incomplete without the name of the author. It is therefore impossible to interpret the report of the Talmud in this light. If the Talmud had had some definite person in mind, it would have mentioned him by name.

A fanciful theory has been advanced by Israel Moses Hazan in his commentary to the Gaonic responsa called the Iyye Hay'yam (edition Leghorn, 1869).

In responsum #39, Hai Gaon interprets the passage in Joel, 4, 3; - "...and they have given the boy for a harlot, and a girl for wine", to have reference to those persons who leave Babylon to migrate to Palestine; and these are- according to this responsum- Zeiri and Rabba bar bar Hanna. Zeiri is identified with the 'boy', and Rabba is identified with the 'girl', as his name is feminine. Both are nevertheless termed as youths by Hai in the responsum.

The Talmud in b. Gittin, 6b, from whence this statement is derived does not contain the concluding remark of this responsum, that the passage in Joel refers to Zeiri and Rabba bar bar Hanna. But it is known that Zeiri migrated from Babylon to Palestine, as it is recorded that R. Johanan offered him his own daughter for wife, and he would not accept until convinced by this sage that he ought to become his son-in-law, for "if his Torah is acceptable, his daughter also ought to be acceptable." (b. Kidd. 71b). And here the Talmud refers to Zeiri as one who migrated from Babylon to Palestine. And as to Rabba, there is likewise evidence that he too came from Babylon (see b. Yoma, 9b). Both Zeiri and Rabba are mentioned in instances which directly involve Babylon (see Seder-Hadoroth- Zeiri and Rabba b.b. Hanna), and therefore the propounder of this theory maintains that it is

plausible to assume that they again returned to Babylon from Palestine.

And because they are termed as the 'Youths' in this gaonic responsum, he also assumes that these two were generally known as the 'Robim' in Palestine. They were called the Turgomania because they interpreted the earlier statements of the Rabbis, or because they elucidated obscure utterances of the Palestinians, not generally known to the Babylonians.

Rabba b.b. Hanna also quotes Rabbi Johanan in a statement wherein a system of avoiding the tithes is devised (b. Berachoth, 35b), and this method of avoiding the tithes may have been disseminated by Rabba in Babylon, which resulted in due time with the abolition of the tithes altogether in this country. But while Zeiri is not directly attributed with any utterance of this nature, he is reported as having interpreted many cloudy statements which were unknown to the Babylonians (see b. Hullin, 54b; Zebachim, 43b), and there is a definite record that Zeiri migrated from Palestine back to Babylon (b. Hullin 56a).

Hence the author determines on these grounds, that Zeiri and Rabba were in Palestine and returned to Babylon; that they were generally known in Palestine by the term Robim or the 'Youths' (according to the responsum of Hai Gaon); and above all, that Rabba cherished a tradition of a fixed method of procedure for avoiding the tithes, which he probably

disseminated among the Jews in Babylon. And on the basis of the statement in the Talmud immediately following the report under consideration, and wherein the name Zera appears, this author constructs the theory that the report of R. Johanan has direct reference to Zeiri and Rabba b.b. Hanna.

The complete report would hence be as follows: Rabbi Johanan says: "Our masters in the exile separated the Trumah and the tithes until the Robim came and abolished them." Who are the Robim? The Interpreters, Zeiri (and Rabba bar bar Hanna.)

Rabba is of course not mentioned in any connection with either of the two reports in the Talmud, but this is due, according to the propounder of this theory, to an error of a copyist, who omitted the name by mistake.

While this author has expended an enormous amount of energy in the construction of his theory, and has displayed an inimitable feat of mental gymnastics, the theory as such does not hold water.

Firstly, there is absolutely no Talmudic support for his contention that these two men were known as 'Robim' in Palestine; and even in the responsum of Hai Gaon- if it is genuine- they are not called Robim, but are simply referred to as 'youths' by implication. The statement made by Rabbi Evyathar in b. Gittin, 6b, merely compares the children of those men who leave their wives behind and migrate to

Palestine, to children born of harlots, and has absolutely no reference to anyone in particular, least of all, Zeiri and Rabba b.b. Hanna. And even if this statement would in any way refer to Zeiri and Rabba, it would still establish a fact that Zeiri was a married man, while the record in the Talmud tends to show that he was unmarried, as Rabbi Johanan offered him his own daughter in marriage (b. Kiddushin, 71b).

Secondly, the author of this theory has committed a serious error in confounding Zeira mentioned in the Talmud immediately after the report of R. Johanan, with Zeiri of elsewhere. They are two separate and distinct personalities. It is a known fact that the Palestinian Talmud always refers to R. Zera, of the Babylonian Talmud, as Ze'ira (see Seder-Hadoroth; Zera). Rabbi Zera, or Zeira as he is known in the Palestinian Talmud, was a disciple of R. Judah bar Ezekiel, who presided over the academy of Pumbeditha after the demise of Samuel. He migrated to Palestine against the wishes of his master, Judah (see b. Sabbath, 41a; Ketuboth, 110b).

Hence, the statement in the Talmud which immediately follows the report of R. Johanan under consideration- "Rabbi Zeira, Rabbi Judah in the name of Samuel: 'The Halla of the Diaspora may be separated after a portion of the bread has been eaten...'", is without the least doubt a complete coherent report in itself. It simply records a tradition quoted by R. Zeira in the name of his master Judah, who in turn had received it from his master, Samuel, and has no

relationship whatsoever with the antecedent report of Rabbi Johanan. Hence these two personalities, Zeiri and Zeira were unknowingly confounded by the author. Rabbi Zeira was of the third generation of Amoraim together with Rabba b.b. Hanna; but while the latter did return to Babylon (see b. Sanhedrin 5a), there is no record extant to the effect that Ze'ira ever left Palestine.

Thirdly, the author assumes that the name of Rabba was accidentally omitted in the Talmud by a copyist. While this may be a possibility, it is too remote in this case to carry any weight. The name of Rabba does not occur here because it has absolutely no place here, as has already been pointed out that the statement of Ze'ira is a unified report of a tradition in the name of his masters Judah and Samuel.

Finally, the author errs greatly in assuming that Zeira and Rabba could ever influence Rav and Samuel, who are the 'masters in the exile', to abolish the tithes. These two rabbis were dead long before the days of Zeira and Rabba, long before they exerted any influence on the rabbinic authorities, and they were most likely children when these two sages were already advanced to old age. Rabbi Judah bar Ezekiel assumed the headship of the academy at Pumbeditha after the death of Samuel, and Rabbi Zeira was a disciple of the former, and not of the latter.

In consideration of these foregoing objections, it remains an absolute impossibility to adopt the theory which has been advanced by this author.

A theory which appears to be quite plausible may be offered on the basis of the version of the Semag, Dubim, and which has also been preserved in the earlier editions of the commentary of Asher ben Yehiel.

These Dubim would be identified with the Persians, or the Turcomani, who are characterised in Talmudic lore as bears (see b. Kiddushin 72a) (Rapoport, Erech-Millin v.119)

The most plausible theory, however, is advanced by the annotator of the Aruch-Hachadash, to the effect that the Turgomania are identical with the Turcomani or Turkoman, a Persian-Armenian race living among the Georgias. The Robin mentioned in the report are 'archers', and this race is referred to as a race of archers, or a race of Armenian nomads who must have infested the country at this early period, and plundered the land of all its wealth and produce by the bow and arrow. As a result, the tithes were abolished as a matter of necessity.

Support for this theory may be found in the fact that history records a struggle between Rome and Persia on Armenian soil in pre-Christian times, which came to a climax in the year 387 c.e. Hence it is plausible to assume that some of these marauding bands of Turkoman archers pillaged the land as far as Babylon in or about the days that the academy at Pumbeditha was flourishing at its height, and as a result of which inroads the tithes were abolished.

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- 175. t. Shebiith,5,2
- 176. Shebiith 6,5-6
- 177. Halla,4,10
- 178. b. Bezah,12b
- 179. b. Bechoroth,27a
- 180. Ibid.
- 181. t. Trumah, 2,9
- 182. Shebiith,6,5-6
- 183. Halla,2,1.

With reference to the Halla, the statement is made in the Mischna (Halla,4,8) by R. Gamliel that there are three territories for the observance of this law: From Palestine to Geziv one Halla is to be separated, that is, one portion out of every forty-eight; from Geziv to the River (probably the Nile) and to Amon, two are to be separated, one to be burned, and one for the priest. The one for the priest has no fixed limit as to its size, but the one which is to be burned has a fixed limit. From Amon and beyond (The reading in the text is 'and within', which is a corruption. The correct reading has been preserved by Maimonides- Billurim,5,5- and by R. Samson in his commentary, both of whom read, -'and beyond'.) two must be separated; one to be burned, and one for the priest. The one to be burned has no fixed limit, but the one for the priest has a fixed limit.

The observance of Halla in post-exilic times is by rabbinic legislation, for even those rabbis who maintain that the priestly dues in this age are a Biblical requirement

admit that the law of Halla in this age obtains merely by rabbinic ordinance (b. Ketuboth, 25a). Maimonides likewise establishes the law of Halla in post-exilic times as a Soferic institution (Bikkurim, 5; 5-7).

As has already been pointed out, the Halla must be observed the world over in order that the law may not be forgotten among Israel (b. Bechoroth, 27a). To this effect Zemach ben Paltai Gaon of Pumbeditha makes the following observation: "...but the Halla which is separated from the dough is unlike the Trumah of corn, wine, and oil, because the Halla is more common, and hence the rabbis decreed that it should be observed in the Diaspora, and everyone observes this law because of the Palestinian observance of the Halla, in order that it may not be forgotten." (Kaphtor-Vaferach, chapter 15).

However, while there was definite legislation that this law be observed the world over, it appears that it was not universal. While Zemach ben Paltai observes that this law was practiced in Babylon in post-exilic times, Isaac ben Abbamari reports that in the provinces of Western Europe the Halla was not observed. He writes as follows: "....and I have observed the custom of Provence from early times that the Halla was not separated except on the Passover...for our masters were accustomed to eat their food in levitical purity after the destruction of the Temple; and they were accustomed to separate the Halla in levitical purity....just as our

masters were accustomed to do in the land of Israel. But now levitical purity no longer exists among us, and the Trumah and tithes have also been annulled in the Diaspora, and the Halla of the Diaspora has also been annulled; but in recent times they have begun to separate it, for I have seen that they do not separate it except on the Passover." (Sefer Ha-Ittur; Mazoh-Umaror)

184. y. Dma1,5,8; 23b

185. Additional matter for establishing the fact that the tithes in the Diaspora were observed purely as an act of personal piety may be obtained from various other sources. Hence the following statement is recorded in the Ittur by Isaac ben Abbamari: "We have read a statement in the Yerushalmi that our masters in the Diaspora were accustomed to separate the Trumah and the tithes until the Robim came and abolished this custom. ...and in the days of R. Ashi and Rabba, the Trumah, tithes, and the cancellation of debts were all observed in Babylon; and when these ceased, the Shemita also ceased, and sent forth the statement from the academy- 'Our masters in the Diaspora separated the Trumah and the tithes after the destruction of the Temple; as we find that R. Tuvi bar Kiena had a jug of wine of the Trumah (b. Bezah,12b), and Samuel also said that the Trumah of the Diaspora becomes neutralised in a majority (b. Bechoroth,27a), and R. Huna was accustomed to dilute each portion of wine of the Trumah with two portions of common wine

(Ibid.)....Surely, the law of Trumah does not obtain in this age....but the former masters whose words we reiterate would assume the responsibility, and even though they dwelt in defiled lands they practiced levitical cleanliness and purity, and ate their food in levitical cleanliness, and separated the Trumah and the tithes as did Israel dwelling on its own soiland the same applies to the gifts of the poor, as we read; 'Levi planted a field in Kishar, but there were no poor to take the Leket, Shikha, and Peah (b. Hullin,134b)'....and Kishar was not under any obligation to the Leket, Shikha, and Peah. It is a daily and yearly occurrence, and in all generations, that the gifts of the poor do not obtain, neither in Babylon, nor in any other land, except for those who assume this obligations as a super-responsibility; and we can bring no examples from these former masters...." (Ittur;-Prusbul)

In another instance he writes: "We have a tradition that the Trumah of the Diaspora may be separated after eating (b. Bechor.,27a)....but this requires some investigation, for I have seen the established customs of Provence from their ancestral days that they do not separate the Halla except on the Passover, but perhaps they consider it as Trumah and the tithes, for our early masters ate their food in levitical purity after the destruction of the Temple, and would separate their Halla in levitical purity....and their practices were like those of our masters in the land of Israel. But now levitical purity has ceased to exist among us, and Trumah and

the tithes have likewise ceased to exist in the Diaspora, and the Halla has also ceased to be observed in the Diaspora. But of recent times they have begun to separate it; for I have seen that they do not separate it except on the Passover, and they recite the Tize benediction upon it; and we read in the Yerushalmi: 'Our masters in the exile separated the Trumah and the tithes until the Robim came and abolished them!...and those ate their food in levitical cleanliness would separate them, but we cannot separate them, lest it be said that defiled Trumah is being eaten by the priests....' (Ibid.- Maza-Umaror)

It is quite apparent that the Ittur quotes a gaonic responsum in the first instance. But while this responsum is not available, the quotation as recorded by this scholar may be adopted as authoritative; and the main substance of this record reveals the fact that the tithes in the Diaspora were observed merely as an act of personal piety, and was not a legal obligation. The identical sentiment is likewise evident in the responsum of Zemach ben Paltai Gaon of Pumbeditha, and it may well be that the Ittur was quoting this sage in the records mentioned mentioned above.

Additional reports that the tithes in the Diaspora were not a legal obligation are also available. Hence it is recorded that Resh-Lakish once visited Basra, and on seeing that the people ate untithed produce he issued a prohibition. When he came to Rabbi Johanan, this sage told him to go back immediately and revoke his prohibition, because Bassar is not Basra. (b. Aboda Zara, 58b). Resh-Lakish had confounded Bassar

which is in the Diaspora, and is not obligated to the laws of the tithes, with Basra which is in Palestine, and which is subject to all tithing regulations.

The statement of Samuel, that the Trumah of the Diaspora becomes neutralised in a majority would be a direct contradiction of the law, if the produce of the Diaspora were legally subject to the tithes. Such leniency is only possible where the observance is practiced as an act of personal piety. In the same way, because the tithes were not a legal obligation in the Diaspora, the prohibition of priests and levites aiding at the granaries likewise did not obtain in these lands- a practice which is strictly contrary to all established law in those places where the tithes are to be observed as a legal obligation.

It is evident therefore, from all the above records, that the practice of tithal observances in the Diaspora after the destruction of the Temple, was a purely individual matter, without any legal background, and was relegated completely to the individual will and discrimination of the Jews dwelling in these foreign lands.

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