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Inscribed to the memory of my beloved teacher
Srv. Moses Mielginer.

Aug. 2/81

[1903.]

Introduction.

The Masechta "Maccoth" [stripes] belongs to Seder Nezikin [damages] and treats (1) of false witnesses and their punishment, (2) of those who commit accidental homicide, of their exile to cities of refuge, and of matters pertaining to these cities, and (3) of crimes punishable with stripes. These three subjects are discussed in three parts into which the tractate is divided. Part I contains nine chapters the contents of which are as follows:

Chap. I: concerning cases in which the law of retaliation is not applied to false witnesses.

Chap. II: concerning the fine that is imposed on false witnesses when the loss of a Kethubah is involved.

Chap. III: concerning the fine that is imposed on false witnesses when the time of payment of a debt is involved.

Chap. IV: concerning the principle of inflicting two penalties for a single act of perjury — either both fine and stripes or 80 stripes.

Chap. V: concerning the principle that false witnesses can be condemned only by evidence that has direct reference to their very persons and the manner in which this is done.

Chap. VI: concerning the principle that false witnesses are not to be sentenced to death until the verdict has been pronounced against the accused party.

Chap. VII: concerning the principles that two witnesses may convict any number of perjury, and that the whole number of witnesses in one set, whatever their number, must be sentenced to death before any one of them can be executed.

Chap. VIII: concerning when and how witnesses are to be included in one set or more.

Chap. IX: concerning the jurisdiction of a court to try cases which have already been tried in other courts.

Part II contains eleven chapters as follows:

Chap. I: that the penalty of exile is inflicted only in case of accidental homicide by a downward stroke

Chap. II: concerning a dispute between Rabbi and the sages as to a murder that is accidentally committed by an ox slipping off its handle or by a chip of wood flying off the block.

Chap. III: concerning the throwing of a stone into a public place; into a private place; whether the act by which the injury is committed must be optional in order to be culpable.

Chap. IV: concerning those who may and those who may not be sentenced to exile in case of accidental homicide.

Chap. V: whether a blind man or an enemy may be sentenced to exile; the principle that is to be applied.

Chap. VI: concerning the places and the manner of exile.

Chap. VII: " " death of the high priests and the return of the exiles.

Chap. VIII: what relation the death of the high priest has to the time of the pronouncing of the sentence; the right of the avenger to slay the murderer if he be found outside the prescribed boundary.

Chap. IX: concerning the matter as to when and how a bee which stands partly within and partly without the boundary of refuge, is to be considered as affording refuge.

Chap. X: concerning the case of an exile or a Levite who commits accidental homicide within the city of refuge.

Chap. XI: concerning the right of cities of refuge to confer honors upon exiles; whether the exiles have to pay the Levites for their refuge; whether the exiles are restored to their former position when they return home.

Part III does not fall within the province of this Thesis.

(1)
Part I.

Mishna.

How is the law of retaliation [Lev. 19¹⁹], and ye shall do unto him, the false witness, as he devised to do against his brother] to be applied to false witnesses?
If witnesses say: We testify that this man [who is a priest] is the son of a divorced woman or of a woman refused in Levirate marriage [in which case the priest becomes unfit for his office], and it is proved that their testimony is false we do not say that these false witnesses [who happen themselves to be priests] should, in place of the accused, be declared to be the son of a divorced woman or of a woman refused in Levirate marriage [and therefore unfit for the priesthood], but they are punished with forty stripes.

Similarly when witnesses falsely charge a man with a crime the penalty of which is exile, we do not say that they should be sentenced to the very punishment which they tried to bring upon the accused, but they are punished with forty stripes.

Amara.

The above Mishna [from the cases that it cites] should read: How about the law of retaliation when it is not applied to false witnesses? Especially since, further on cases when the law is applied, are treated of. We read on page 5^a that when other witnesses say to the witnesses in question: How can you testify since on that very day you were with us in a certain place! — in such a case the witnesses who were testified against stand convicted of perjury, and are punished according to the law of retaliation. Consequently our Mishna must here treat of cases in which the law of retaliation is not applied. Why then does it commence as it does?

The teacher of the Mishna refers to Baubedrin [H. 89] where we read that all false witnesses are sentenced to the same mode of capital punishment that they would have brought upon the accused party, except those false witnesses who testify against the [married] daughter of a priest that she has committed adultery, in which case the witnesses are condemned to death by hanging which would have been the fate of the paramour, and not by burning which would have been the fate of the woman. Since in this case the law of retaliation is not strictly applied, the teacher of the Mishna simply goes on to enumerate other cases of false testimony when the law

retaliation is not at all applied, but the penalty of flagellation is inflicted.

What Biblical basis is there for the above statement that false witnesses who priests and testify against a priest to the effect that he is the son of a divorced woman or of a woman refused in Levirate marriage, are themselves not punished according to the law of retaliation, but with forty stripes?

R. Joshua b. Levi finds a basis for the above conclusion in the verse: "And shall do unto him as he devised to do unto his brother." [Lev. 19¹⁹] Scripture says "unto him," and not unto his offspring. And can you make the witness himself unfit, without doing the like to his offspring?

But he would have done just that very thing against the accused party! Why then should he not be punished according to the law of retaliation?

Because in this case the law is not to be applied.

Bar Pada tries to base the above statement of the Mishna on an inference. Since a priest who marries a divorced woman and thereby makes his offspring unfit for the priesthood is not himself made unfit, shall then these false witnesses who merely tried to make another unfit but did not succeed in doing so, — shall they themselves become unfit?

Rabbinia raised a strong objection against Bar Pada. If you argue in this manner, he said, you abrogate the whole law of retaliation with respect to false witnesses. [They should, then, never be punished according to this law since they never succeed in accomplishing their purpose]

Perhaps, then, the following argument from an inference, may be used as a basis for the above statement. Since witnesses who, by their false testimony cause a man to be stoned to death, are themselves exempt from a similar punishment because their perjury was not discovered until after the execution] shall then those witnesses whose falsity is detected before the execution of the perjured party — shall they not also be exempt from a similar fate?

The answer that was given at first, however, [that of R. Joshua b. Levi is the best.]

What is the Biblical basis for the conclusion that false witnesses whose purpose it is to bring exile upon another are themselves sentenced to the penalty of stripes?

Rish Lakish finds a basis for this conclusion in the verse "he shall flee to one of the cities of refuge." [Lev. 19⁵], that is, he shall flee but not the false witnesses.

R. Johanan attempted to base the above conclusion on an argument from an inference. Since a man who commits some positive [corporeal] act, if it be done intentionally; is not condemned to exile, shall then these false witnesses who committed no positive act at all, be condemned to exile merely because they testified intentionally?

Why, this very argument works against R. Johanan! Since he who committed a positive act with presumption is not exiled in order that he may not have the privilege of atoning, shall then not they who committed no positive act at all, but merely testified falsely with deliberate purpose, — shall they not be exiled and thus be given an opportunity to atone?

The answer of Rish Lakish is, therefore, better than that of R. Johanan.

Ulla asked: where is there an indication in the Torah concerning false witnesses?

Where is there such an indication! Why, it is written "and ye shall do unto him as he devised to do unto his brother." [Lev. 19¹⁹]

What Ulla really wants to know, however, is, where does the Torah indicate that false witnesses are at times to be condemned to forty stripes.

It indicates this in the following verse: "and they shall justify the righteous and condemn the wicked, and if the condemned be deserving of stripes etc." [Deut. 25^{1,2}]

shall witnesses be punished for justifying the righteous and condemning the wicked!

What the verse really means to say is this: if certain witnesses had condemned an innocent man, then other witnesses came and exonerated the innocent party, and, at the same time, accused the

(4)
former witnesses of perjury, then are these, the false witnesses, to be punished with stripes.

Why not derive the law of whipping false witnesses from the verse "thou shalt not bear false witness against thy neighbor?" [Ex. 20¹⁵]

Because this is a prohibition which does not involve a positive act [i.e. no bodily movement] and we do not inflict the penalty of flagellation for the violation of any prohibition which does not involve a positive act.

Our Rabbis teach in a Baraita that four laws obtain with reference to false witnesses:

(1) They may not be declared to be the sons of divorced women or women refused in Levirate marriage.

(2) They may not be committed to cities of refuge.

(3) They are not required to make indemnification for the ransom. [if they testified that a certain ox which was known to be dangerous had killed a man, they make it obligatory upon the owner of the ox to pay a certain amount as a ransom from the death-penalty. If their testimony be found false, they are not required to pay the ransom which the Court would under normal conditions impose upon the owner of the ox.]

(4) They may not be sold as Hebrew slaves. [if they testify against a man that he committed burglary, and the man has not the means to make restitution, he is sold as a slave. This penalty is not imposed upon the false witnesses.]

R. Akiba was of the opinion that in addition to the above, false witnesses are not permitted to make indemnification on their own testimony.

The first and second laws have already been discussed.

With regard to the 3^d: false witnesses are not required to pay the ransom because the ransom is an atonement [for the life of the owner of the ox, since he is guilty of death by divine visitation] and the false witnesses have done nothing which requires such an atonement.

Who is the Rabbi that is of the opinion that the ransom-money is an atonement?

R. Chisda says that it is R. Ishmael the son of R. Johanan b. Beruka. We learn this in the following Baraita: When Scripture says "and he shall pay the ransom of his soul" [Ex. 21³⁰] it refers to the loss that is sustained by the party who was slain or by his heirs [hence the ransom is merely an indemnification]. R. Ishmael, however, thinks that it refers to the loss of life to which the party who is responsible for the death is liable. Hence the ransom is an atonement for his own life, and its amount should be estimated accordingly.

Is it not to be supposed that the difference of opinion here is ~~see~~ to whether the ransom is an indemnification or an atonement?

No! said Papa. All agree that the ransom is an atonement. But they differ on this point. Our Rabbis are of the opinion that the ransom is estimated according to the losses sustained by the party killed or his heirs, while the other maintains that it is estimated according to the worth of the party who is responsible for the damage.

What reason have the Rabbis for their opinion?

Their reason is based on an inference. There is reference to an estimate above [Ex. 21²² in connection with a man who injures a pregnant woman], and there is reference to an estimate below [Ex. 21³⁰ in connection with a goring ox]: just as in the former case the estimate is made according to the damaged party, even so should the estimate be made in this case.

But, contended R. Ishmael, is it not plainly written: "and he shall give a ransom for his life?"

Yes, replied the Rabbis, we grant this. The ransom is for his life, but when we estimate its amount, we do so according to the damages sustained by the injured party.

With regard to the 4th law that false witnesses are not sold as Hebrew slaves:—

Rab Hammuna thinks it refers to cases when the party who has been falsely accused of burglary has sufficient money to make restitution if the accusation be sustained, and would, therefore, not be sold into slavery. In such cases the false witnesses themselves are not sold. But in cases when the accused party is liable to be sold because he has not the means to make restitution, then are the false witnesses sold even tho' they have the money to redeem themselves from servitude.

But, objected Raba, might not the false witnesses in the latter case contend that since if the accused party could make restitution he would not be sold, why then, should they who can make restitution, be sold.

R. Hammuna really meant to say that whenever either the accused party or the false witnesses have the money to make restitution, the latter are not sold into slavery, but when neither the one party nor the other can do so, then the false witnesses are sold.

Again Raba objected. False witnesses are never in any case sold into slavery; for Scripture says, "and he shall be sold for his theft" [Ex. 22³] it therefore specifies that for actual theft, not for criminal intention, shall the penalty of slavery be inflicted.

What reason has R. Akiba for his opinion that false witnesses are not permitted to make restitution on their own testimony?

Because he thinks that such restitution is a fine, and no one is permitted to pay a fine on his own incrimination.

Rabba said: it is plain that such restitution is a fine, for altho' the false witnesses have not done any actual deed [the accused party has neither wrought any damage upon any one else nor has any damage been wrought upon him] nevertheless they are required to make restitution.

R. Nachman also spoke to the same effect: you can plainly see that such restitution is merely a fine, for even tho' the accused party has not as yet made the restitution which he has been sentenced to make, still the false witnesses must do so.

What is there in R. Nachman's statement that he should add his opinion to that of Rabba? Is it that the false witnesses have not committed any actual deed? Why Rabba has already said this.

R. Nachman simply expressed his agreement with Rabba.

R. Jehuda said in the name of Rab: Every false witness is held responsible for only his share of the penalty.

What does this mean? Does it mean that of two witnesses who have been convicted one bears half of the sentence and the other the remaining half? This cannot be, for we learn in the Mishna that the penalty may be distributed among many false witnesses when it is a monetary fine, but not when it is stripes.

R. Jehuda, however, alludes to a case in which only one of the witnesses has been convicted for false testimony, and should, therefore, be sentenced to only his own half of the total penalty.

But does the witness in this case have to pay anything at all? Do we not learn in a Baraita that the conviction of a single false witness does not render him liable to fine, since this requires the conviction of both witnesses?

Raba thinks that the statement of R. Jehuda holds in the case of a witness who confesses that he has given false testimony. ["I have testified falsely"]

Has he then the right to do this? Since he has already made his declaration, he may not recant.

But may not R. Jehuda's statement hold in the case of witnesses who confess in one court that they committed perjury and were convicted in a certain other court?

Whose opinion is this? It cannot be that of R. Akiba for he maintains that no penalty can be inflicted on witnesses on their own condemnation.

R. Jehuda's statement is valid in the case of a witness who confesses in court thus: We testified falsely and were convicted in court so-and-so, and were sentenced to pay a fine. [In this case the

witness does not condemn himself since the judges have already done so in the first court.]

One might also say that since it might have been supposed that because one witness cannot incriminate his associate, he cannot, in consequence, incriminate himself, therefore, to avoid such a conclusion the above statement of R. Jehuda's, as finally interpreted, was made.

Mishna:

If witnesses testify falsely against a man that he divorced his wife without giving her her Kethubah, — how much should they be sentenced to pay to the husband for the loss they tried to bring upon him? It is not right that they should pay the value of the whole Kethubah for it is possible that the man might really divorce his wife on some future day or he might die before her, and thus be obliged to give her the Kethubah anyway.

The judges estimate how much a man would be willing to give for the wife's right to the Kethubah, as a speculation: if she is widowed or divorced, he gets the Kethubah which he had purchased, if she dies before her husband, then the latter inherits the Kethubah and the buyer loses the amount of his purchase. This sum the witnesses are obliged to pay.

Amara:

Since both the husband and the wife have a claim upon the Kethubah which each may sell, — upon whose claim is the estimate made?

R. Chisda says the estimate is made upon the value of the husband's claim. [This is more valuable, since the husband has possession of it during the life time of the wife and can derive benefit from it, while she may enjoy it only in case of his death or her divorce.]

R. Nathan b. Ashiaya says it is made upon the value of the wife's claim.

R. Papa says that it is made upon the value of the wife's claim but only with regard to her Kethubah [not with regard to any other property belonging to her and which by their perjury they might have made the husband lose]

Mishna.

If witnesses falsely testify against a certain man that he owes another 1000 zuz payable in 30 days, and the man himself swears that the money is payable in 10 years — the judges then estimate how much the money is worth as capital for a period of 10 years minus 30 days, and impose this estimate upon the false witnesses as a fine.

Amara.

R. Jehuda said in the name of Samuel: if a man lend another money for 10 years, the 7th or Sabbatical year cancels the debt: for altho as yet [during the 7th year] we may not apply the law "he shall not exact" [since the note is not yet due] in time we will be able to do so. [where the prohibition "he shall not exact payment" deut. 15:2 could not be applied, the 7th year did not release.]

R. Kahana raised an objection. The Mishna says that the judges estimate how much the money is worth as capital for a period of 10 years minus 30 days, and impose this estimate upon the false witnesses as a fine. But if the 7th year, as you say, releases, then they might as well be sentenced to pay the whole amount. Since the 7th year would release them from it all.

When the Mishna, said Raba, seems to imply that the 7th year does not release, it refers to cases in which the loan is made upon a deposit or the notes are handed over to the court for collection. For we learn elsewhere in the Mishna that when one lends money on a deposit or transfers his notes to the court for collection, the 7th year cannot release.

There is however, another version of this matter. According to this version R. Jehuda is reported to have said in the name of Samuel that when a man lends money for a period of 10 years, the 7th year does not cancel the debt; for altho in time the prohibition "he shall not exact payment" is applicable, as yet [in the 7th year] it is not. [since the note is not yet due.] Consequently the 7th year does not release.

R. Kahana said: we learn the same principle in the Mishna: for we read — the judges estimate how much the money is worth as capital for a period of 10 years minus 30 days, and impose this estimate upon the false witnesses as a fine. Nor, should you say that the 7th year

releases, then the judges might as well impose the whole amount as a fine since the 7th year would cancel the whole sum.

Raba added that when the Mishna seems to imply that the 7th year does not release, it refers to cases in which the loan was made upon a deposit, or the notes handed over to the courts for collection. For we learn elsewhere in the Mishna that when one lends money on a deposit or transfers his notes to the court for collection, the 7th year can not release.

Furthermore, R. Jehuda said in the name of Samuel: if a man borrows money with the proviso - "the seventh year shall not release me" - the proviso is invalid. Presumably Samuel thought the proviso invalid because it was made against an express ordinance of the Bible. [that the 7th year shall release.]

Is then every condition that is contrary to the Bible invalid? Why Samuel himself does not think so. For we learn elsewhere that when a man makes a sale to another with the proviso: "thou shalt not hold me accountable for any overcharge" - Raba is of the opinion that he is held accountable, while Samuel maintains that he is not. [and yet in this as in the former case, the proviso is against the Bible.]

a certain Amora, Rab Anon, is reported to have remarked concerning this matter as follows: It was explained to me that Samuel's opinion is to be interpreted thus: - If the merchant [who sells] make the condition, "you shall not hold me accountable for any over-charge," he is not held accountable. [since he is within his rights if the buyer is willing to agree to the condition.] But if the merchant stipulates, "there shall be no overcharge in this sale," then he is held accountable if he overcharged him. [since he dealt treacherously.] Similarly Samuel is of the opinion that when the lender makes the proviso, "thou shalt not ask release from me in the 7th year," he may do so, if the borrower is satisfied, but when he stipulates: "on condition that the 7th year shall not give release," then the 7th year does release. [since the 7th year was not given to him to do with it what he pleases.]

We learn in a Baraita that when a man lends money to another without stipulating the time of payment, he may not exact payment in less than 30 days.

Raba b. b. Hana said in the presence of Rab that this has reference only to loans made on notes, for no man would trouble himself to draw up a note for less than 30 days. But in the case of loans made under verbal contract, the lender may exact payment at any time.

Rab, however, pointed out to Raba b. b. Hana, that in the opinion of R. Hiya the lender may not exact payment in less than 30 days either in the case of documentary, or verbal, contract.

We have a Baraita also to the same effect: If a man lend money to another without specifying the time of payment, he is not permitted to exact payment in less than 30 days, whether the loan be made under documentary or verbal, contract.

Samuel said to R. Masne: You must not sit down until you explain this opinion of the above Baraita to me. What Biblical basis did the Rabbis have for their statement that the lender who fails to specify the time of payment may not exact payment in less than 30 days, whether the contract be verbal or documentary.

R. Masne answered Samuel thus: Scripture says: "the seventh year, the year of release" [15th deut.] If scripture had merely said "the 7th year", would I not know that it is the year of release? But it uses the words "the year of release" to indicate that there is another release like that of the 7th year, and this second release has reference to the case of a loan that is made without the time of payment being specified. In such a case the borrower is released from payment for 30 days; for, as a certain Rabbi said, "30 days in the year are considered as a year."

R. Jehuda said in the name of Rab: If a man makes an opening for his neck in a new shirt on Sabbath, he is guilty of ~~sin~~ ^{transgression}.

R. Nakana raised a strong objection. Is there any difference between opening a barrel and opening a shirt?

Yes, replied R. Jehuda, the shirt is all one piece, while the barrel is not, its top being merely fastened on.

Furthermore R. Jehuda said in the name of Rab. If a Kustub of wine has fallen into three Login of water and made it look like wine, and then the whole mixture falls into a bath, it does not make the bath unfit.

H. Kahana again raised a strong objection: Is there any difference between wine-water and faint-water? and yet R. Jose teaches us that three Login of faint water make a bath unfit.

Raba replied to Kahana: In the latter case the mixture is called faint-water [and makes the bath unfit] while in the former case, it is simply called mixed wine [and does not make the bath unfit.]

But do we not learn that even this mixture spoken of by R. Jehuda makes a bath unfit, in the opinion of R. Hija?

There is here no difficulty, however, replied Raba. Rab simply agrees with R. Jochanan b. Nuri, while R. Hija agrees with the Rabbis. For we read elsewhere in the Mishna: If a Kustub of wine falls into three Login minus a Kustub of water and makes the mixture look like wine, and then if the mixture falls into a bath, it does not make the bath unfit. Similarly if a Kustub of milk falls into three Login less a Kustub of water and gives the water the appearance of milk, and then the mixture falls into a bath, it does not make the bath unfit.

R. Jochanan b. Nuri said that it all depends on the appearance of the mixture or liquid. [and not on the quantity]

R. Papa raised the following question: Does the matter stand thus?—Rab supposes the first of the above two cases cited by the Rabbis to refer to three Login minus a Kustub, implying that if there were three full Login they would, according to the Rabbis, [the anonymous teacher] render the bath unfit. Then R. Jochanan comes and says that it all depends on the appearance of the mixture; whereupon Rab agrees with R. Jochanan b. Nuri. Or does the matter stand thus? Rab does not suppose the first of the above two cases cited by the Rabbis to refer to three Login minus a Kustub but to three full Login, and where R. Jochanan differs he does so only with regard to the second of the two cases cited; consequently Rab might be in agreement both with R. Jochanan and with the Rabbis. Why then does Raba assert that he agreed with R. Jochanan?

To R. Papa the matter was in doubt: to Raba, however, it was clear—

R. Joseph said: I am a disciple of R. Jehuda and yet I never heard this report. Why, replied Abaye, you yourself told it to us, and thus you told it: that Rabbis does not suppose the fish of the above two cases cited by the Rabbis to refer to three Login minus a Kustub, but to three full Login, and when R. Jochanan differs, he does so only with regard to the second of the two cases cited; consequently Rab might agree both with the Rabbis and with R. Jochanan.

Furthermore R. Jehuda said in the name of Rab: If a man bathe in the Dead Sea at a spot where a barrel-full of drawn-water has fallen in, his bath does him no good, for we fear that three Login of the water may be in one place, especially so in the Dead Sea which is stationary; but this does not hold with rivers in general.

Similarly we learn in a Baraita that if a man bathe in the Dead Sea at a spot where a barrel-full of wine has fallen in, his bath does not avail him, for we fear that three Login of drawn fluid may be in one place. Likewise if a loaf of Terumah fall into such a place it is unclean. What need is there for this last statement? you might say that since the man is already unclean, he simply remains so, while since the loaf was before clean, it too remains so; therefore we are told that if

of witnesses falsely testify against a certain party that he owes another 200 zuz they are sentenced both to stripes and to restitution, for they have violated two injunctions of the Bible, one of which involves the penalty of stripes, while the other enjoins indemnification. This is the opinion of R. Meir. But the Rabbis maintain that in all cases of perjury where the witnesses are condemned to make restitution, they are exempt from the penalty of stripes.

If witnesses falsely testify against a certain man that he deserves 40 stripes, they are punished with 80 stripes, for they have violated two injunctions: "thou shalt not bear false witness against thy neighbor" [Ex. 20] and "ye shall do unto him as he devised to do against his brother." [Lev. 19] But the Rabbis maintain that they are punished only with 40 stripes.

more.
The opinion of the Rabbis is admissible since they argue that where Scripture says: a criminal shall be beaten "according to his crime" [Lev. 25] it implies that he shall be punished for only one crime, not for two. But what reason has R. Meir for his opinion?

Ulla said that R. Meir derives his opinion from an inference based on the case of the transduction of a newly married woman. Just as in this case a false witness is condemned both to stripes and restitution, so in all cases of perjury are both penalties inflicted.

How can R. Meir make this analogy, since the case of the Slander of a newly married woman is exceptional? [in that it involves a fine]

R. Meir agrees with R. Akiba that all cases of perjury are exceptional in that the penalty is imposed as a fine.

Some report the just quoted opinion of Ulla with reference to the following case in The Baraita. Scripture says: "and ye shall let nothing of it remain until the morning, and that which remaineth of it until the morning, ye shall burn with fire." [Ex. 12¹⁰] Scripture thus gives a command after a prohibition and thus indicates that in all such cases the culprit is not to be punished with stripes. This is the opinion of R. Jehuda.

R. Akiba thinks, however, that it is not in this verse that the reason is found for the exemption of the culprit from stripes. The reason lies in the fact that this verse is a prohibition which involves no positive act, and the penalty of stripes is never inflicted for the violation of a prohibition which involves no positive act.

It seems then that R. Jehuda is of the opinion that we do inflict the penalty of stripes for the violation of a prohibition which involves no positive act. What Biblical basis has he for his opinion?

Ulla said that R. Jehuda derives his opinion from an ~~an~~ inference based on the case of the slander of a newly married woman. Just as in this case, altho it has reference to the violation of a prohibition which involves no positive act, the evil-doer is whipped, so in all cases of the violation of a prohibition which involves no positive act, are the evil-doers punished.

How can R. Jehuda make this analogy since the case of the slander of a newly married woman is exceptional in that it is punishable with both stripes and restitution?

R. Simon b. Lakish said that R. Jehuda really bases his opinion on an inference from the case of false witnesses. Just as false witnesses, altho they violate no prohibition involving no positive act, are punished with stripes, so in all cases of the violation of such a prohibition is the penalty of stripes inflicted.

But how can you make an analogy with the case of false witnesses since in such a case the antecedent warning is not required; therefore, the terms of the analogy do not hold.

R. Jehuda, however, reverts to his analogy with the case of slander and claims that this analogy proves his point. He reinstates the former argument and derives his conclusion by generalizing several special provisions. The case of false testimony is in some respects unlike the case of slander, and the case of slander is in some respects unlike the case of false testimony; both are, however, alike in this respect:— they are both cases of prohibition involving no positive act and entailing the infliction of stripes. Therefore all such cases are punishable with stripes.

But how can you make the above generalization since both cases are similar in that they are both exceptional in the fine they involve? [a difference of two special provisions has first to be shown before they may be generalized]

There is here no difficulty. R. Jehuda simply does not agree with R. Akiba that the case of false witnesses is exceptional in that its penalty is regarded as a fine. Granting even this, these cases are still exceptional in that both have a rigorous side. [the one is punished with both stripes and restitution, while the other requires no antecedent warning]

R. Jehuda, however, did not consider this objection.

What use do the Rabbis make of the verse: thou shalt not bear false testimony against thy brother?

They use it for the purpose of warning false witnesses.

Where then does R. Meir get his warning for false witnesses. [since he uses the above verse for another purpose.]

R. Jeremiah says that R. Meir derives it from the words: "and they that remain shall hear and fear and will not repeat the offense." [Elev. 1920]

To what, then, do the Rabbis apply these just-quoted words.

They find in them a basis for the act of proclamation at executions.

R. Meir bases this practice on the words: and they shall hear and be afraid.

ishna:

The court may distribute the penalty of restitution among the false witnesses, but not the penalty of stripes.

How, for example, does the court do this?

If witnesses falsely testify against a certain party that he owes another 200 jug, they are required to make restitution for the loss they might have caused the accused party, and the court may divide the penalty among them.

But if the case is one in which the penalty is stripes, then each of the false witnesses receives the full penalty.

marc.

What Biblical support is there for this Mishna?

Abaye says that the support is based on an analogy of expressions. The word "evil-doer" occurs as well in the law referring to corporal punishment [Lev. 25²] as in that regarding capital punishment [Num. 35³¹] as in the latter case we cannot divide the death penalty so in the former case may we not divide the penalty of stripes.

Raba objected: since the witnesses tried to bring a certain loss upon the accused party, then according to the law "ye shall do unto him as he devised to do against his brother", each false witness should be required to pay the full equivalent of the loss.

We do not, however, apply the law in this case.

But if you can apply it in cases of stripes why not apply it in cases where the penalty is monetary restitution.

Because money can be added together [joined] and thus the full equivalent of the loss made up, but this cannot be done with stripes.

mishna.

Witnesses are not convicted of perjury until their own persons are incriminated. Thus:— certain witnesses say: we testify against this man that he committed murder. Then other witnesses come and say: How can you testify thus, since the murdered, or the accused, party was with us on that very day in a certain place. In such a case the charge of perjury is not sustained. But if the witnesses say: How can you testify, since you were with us on that very day in a given place. In this case the first witnesses stand convicted of perjury and are sentenced to death.

If other witnesses come and accuse the first set of perjury, then other witnesses come and accuse the 2nd set, and so on even to a hundred sets, all of them except the last set are killed.

R. Jehuda, however, maintains that only the first set is killed for there seems to be some sort of conspiracy here.

gemara:

What Biblical support is there for the statement that the very persons of the false witnesses must be incriminated before they are convicted of perjury?

R. Elde said that the support is found in the verse "and behold if the witness be a false witness" etc [Leviticus 19¹⁶]. The Rabbis, however, read 7² for 7¹ and interpret it to mean until the body of the testimony [the person of the witness] has been falsified.

At the school of R. Ishmael it was taught that the words "to testify against him that which is false" [Leviticus 19¹⁶] are to be interpreted to mean; until the very person of the witnesses has been falsified.

Raba said: two witnesses testify that on the eastern side of a certain palace a certain man committed murder. Then two other witnesses come and say to the former: did we not see you with us on the western side of the palace? If, as the former witnesses stood to the west of the palace they were able to see to the eastern side, they are not condemned. If they cannot see that distance, they are condemned.

Why, this is self-evident!

No, it is not. you might maintain that perhaps the witnesses had unusually clear eye-sight and thus, altho they stood on the western side they were able to see to the eastern side; therefore they should be acquitted. From the above case of Raba, however, we see that such an argument would not be allowed, and that the witnesses should be condemned.

Raba furthermore said: two witnesses testify that in Sura in the morning a certain man committed murder. Then two other witnesses come and say to the former: "Why, we saw you with us in Nehardea on Sunday in the evening!" We then see whether the witnesses could have come from Sura to Nehardea in the interval from morning to evening. If they could, they are acquitted; if not they are condemned.

Why this is self-evident!

No, it is not. you might argue that the witnesses employed a very swift camel and were thereby enabled to cover the distance in the stated interval: they should, therefore, be acquitted. Raba's case, however, teaches us that such an argument would not be allowed.

Again Raba said: two witnesses come and say that on Sunday A killed B. Then two others come and say: "Why, you were with us on Sunday! It was really on Monday that A killed B." Now, even if the latter witnesses say that A killed B on the previous Friday, the former witnesses are sentenced to death; for at the time that they testified A was not yet worthy of death [since by voluntary confession he might have received a more lenient sentence, inasmuch as he had not yet been brought to trial before any court, the perjured witnesses being the first to testify.]

What use is there to say all this? Also we not learn in a Baraita that if one out of two sets of witnesses is convicted of perjury, it is killed, while the second set is acquitted?

Raba, however, said the above mainly for the purpose of what follows. He wished to show that the like conclusion does not hold with regard to the

to pronouncing of judgment. He goes on to say: two men come and say, on Sunday judgment was pronounced against A. Then two others come and say, "why, now with us on Sunday. It was really on the preceding Friday that the judgment was pronounced." May, even if the latter say that the judgment was pronounced on the following Monday, the former witnesses are not killed. For at the time that they testified A was already guilty of death.

The same conclusion holds in cases of fine. Two men come and say, on Sunday A stole an ox or a lamb, slaughtered it and sold it. [Ex. 21³⁷] Then two others come and say: "why you were with us on Sunday. It was really on Monday that this crime was committed." May, even if they say that the crime was committed on the preceding Friday, the former witnesses are obliged to make restitution. For when they gave their testimony, A had not yet been brought to trial and by confession might have escaped the penalty of fine. If however two men come and say that on Sunday judgment was pronounced against A for the above mentioned crime, then two others come and prove that the former witnesses were with them on Sunday but that judgment really was pronounced on the preceding Friday or the succeeding Monday, the former witnesses are not obliged to pay fine, for when they gave their testimony, A had already been sentenced to pay fine and no confession could alter it.

If, as R. Jehuda said, whenever there is a chain of witnesses of which each set confutes the next preceding set, the testimony is inadmissible [for fear of conspiracy] why then should the first set of confuted witnesses be killed?

R. Abahu said that this refers to a case in which the first set has already been killed before the inadmissible nature of the testimony as a whole was discovered.

If this is the case, since what has been cannot be altered, why then does R. Jehuda say that only the first set should be killed. [Evidently there must have been other sets.]

Raba thinks that R. Jehuda meant to say that if there is only one set of confuted witnesses, they are executed, but if there are more, they are not.

Why then does R. Jehuda specify that only the first set should be executed? [Evidently there must have been more than one set of confuted witnesses.]

There is here a difficulty which has not been explained.

There was a certain woman in whose behalf certain witnesses came and offered false testimony [they contradicted each other], then others came and they, too, were proved to be false. Then the woman went and brought still other witnesses, who seemed to give honest testimony, — should the testimony of the last witnesses be accepted?

R. Simon b. Lakish says, No! it is certain that the woman has committed perjury. [she is fixed, or confirmed, in perjury.]

Said R. Elazar to R. Lakish: if she is an inveterate liar does it follow that all Israelites are liars! [i.e. may not the testimony of the last witnesses be honest.]

At one time R. Elazar and R. Lakish were sitting in the presence of R. Johanan, and this matter came up before them. R. Lakish said: the testimony is not to be accepted as the woman is not trustworthy, she is an inveterate liar. R. Johanan replied: If she is an inveterate liar does it follow that all Israelites are liars! R. Lakish then turned and looking reproachfully at R. Elazar said: you received your opinion from R. Johanan b. Nafacha and yet you did not quote it in his name!

May we say that R. Lakish [the last set of witnesses ~~is~~ not believed in the above case of the woman] agrees with R. Jehuda [the last set of witnesses ~~is~~ not believed in a chain of confuting witnesses, since only the first set is killed], while R. Johanan [the last set of witnesses is believed in the case of the woman] agrees with the Rabbis [in a chain of confuting witnesses those who come later are always believed unless they have been proved false; hence all the preceding sets are killed]

R. Lakish might say: I agree with the Rabbis, too, only their view does not go so far as to be applicable to this case. In their case it is not likely that some one went about searching for false witnesses, [so I might agree with them] but in this case the woman might have done

R. Johanan might say: I can agree with R. Jehudah, too, only his view does not go so far as to be applicable in this case. In the case of R. Jehuda it is not likely that the whole world [so many sets of witnesses] would come to testify merely for the witnesses under trial, so I might agree with his conclusion, but in my case, the first witnesses simply could not testify, while the last witnesses could.

Shema. False witnesses are not condemned to death unless they have been convicted after the verdict of the accused party has already been pronounced.

The Sadducees, however, were of the opinion that false witnesses may be condemned only when they have been convicted after the accused party has already been executed. For the Bible says: "life for life" [Ex. 21²³]

But, argued the Rabbin, does not the Bible say: "and ye shall do unto him as he devised to do unto his brother," and thus imply that "his brother" is still alive?

Then, rejoined the Sadducees, why does Scripture say, "life for life".

Because, concluded the Rabbin, it might be supposed that witnesses should be condemned to death as soon as the falseness of their testimony has been proved, therefore Scripture says "life for life," to indicate that they are not to be condemned until the verdict of the accused party has already been pronounced.

Gemara.

Rabbi said: if false witnesses are to be put to death altho' their false testimony has not caused the death of the innocent, how much the more so when it really had fatal consequences. [false witnesses who were convicted after the execution of the innocent, were not liable to capital punishment.]

His father, however, raised an objection: Is not this an inference? and have not our Rabbin taught us that no penalty can be inflicted which is based on an inference? For we learn in a Baraita: Scripture says:— "when a man holds intercourse with his sister, the daughter of his father or of his mother, they shall be cut off from among the people," [Lev. 20¹⁷] thus referring only to a sister who is the daughter of his father but not of his mother, or the daughter of his mother but not of his father. How do we know that the injunction has reference to a sister who is at once the daughter of his father and his mother? Scripture refers to it in the words "he has exposed the nakedness of his sister" [Lev. 20¹⁷], thus precluding the use of any argument from an inference. For one might argue that since the evil-doer is punished on account of his father's daughter who is not at the same time the daughter of his mother, and also on account of his mother's daughter who is not at the same time

the daughter of his father, how much the more should he be punished on account of a sister who is the daughter both of his father and mother. But Scripture includes this argument by a specific reference. Hence you learn that no penalty is inflicted on the basis of an inference.

We here learn that only no penalty is inflicted on the basis of an inference. How do we know that no prohibition is valid on the basis of an inference?

Scripture says: "thou shalt not expose the nakedness of thy sister, the daughter of thy father or of thy mother" [Lev. 18⁹] Scripture here refers only to a sister who is the daughter of his father but not of his mother, or the daughter of his mother but not of his father. How do we know that the prohibition refers also to a sister who is the daughter both of his father and mother? ~~From~~

From the verse "thou shalt not expose the nakedness of thy father's wife, for she is thy sister" [Lev. 18¹⁰] Scripture thus prevents any deduction of such a prohibition from an inference. For you might argue: since the evil-deed is prohibited in the case of a sister who is the daughter of his father but not of his mother, or the daughter of his mother but not of his father, how much the more so in the case of a sister who is the daughter both of his father and mother. Scripture precludes this by an express reference. Consequently you learn that no prohibition may be deduced from an inference.

What Biblical basis have we for the principle that false witnesses are not sentenced to stripes unless they have been convicted after the judgment has already been pronounced upon the accused party?

Because the word "evil-deeds" occurs as well in the law referring to corporal punishment [Lev. 25¹²] as in that regarding the execution of capital punishment [Num. 35¹¹] The argument is based on an analogy of expressions.

How do we know that the same principle holds with regard to false witnesses whose penalty is exile?

Because Scripture uses the word "murder" both in the verse referring to one case as well as in the verse referring to another, thus giving an analogy of expressions on which the conclusion is based.

The Baraita reports R. Jehuda b. Tabai to have said: May I never behold the final resurrection if I did not sentence to death even a single witness who had been accused of false testimony, that I might refute the teaching of the Sadducees that false witnesses are not to be put to death unless they have been convicted after the execution of the accused party.

Thereupon Simon b. Shetach said to him: May I never behold the final resurrection if you did not spill innocent blood! For the Rabbis say that a single false witness is not to be sentenced either to death or stripes, unless both witnesses have been convicted.

At once R. Jehuda b. Tabai resolved that he would have no other teacher [whenever he was perplexed] than Simon b. Shetach. And all his days R. Jehuda used to prostrate himself on the grave of the witness whom he had sentenced to death, and whenever his voice of lamentation was heard, people would think that it was the voice of the dead witness, and he would exclaim, "It is my voice!" When in the process of time R. Jehuda died, the voice was no longer heard.

R. Aha asked R. Ashi: Did R. Jehuda expect the dead to rise up with him in judgment or did he [by means of his prayers] hope to give the dead freedom and peace.

Mishna.

Scripture says: "a man may be sentenced to death on the testimony of two or three witnesses." [Lev. 17^c] If two are sufficient what need is there to speak of three?

Scripture thus indicates that as three witnesses can convict two of false testimony, so can two witnesses convict three.

But how do we know that two witnesses can convict even a hundred?

Because Scripture uses the indefinite plural "witnesses."

R. Simon said: as two witnesses can be sentenced to death only when both are convicted, so in the case of three false witnesses must all of the three be convicted.

How do we know that the same principle holds even when

there are 100 false witnesses:

Because Scripture uses the plural "witnesses," which indicates an indefinite number.

R. Akiba said: since a third witness is superfluous, it might be thought that when he along with the other two witnesses gives false testimony, he should be treated more leniently. But he is to be treated just as severely as the others, and his judgment should be like theirs.

If this is so, if Scripture inflicts the same penalty on the man who merely joins himself to criminals as it does on the criminals themselves, how much the more should it confer the same reward on him who merely joins himself to righteous men as it does on the righteous men themselves.

As in the case of two witnesses, if one of them be found a relation or otherwise unfit, their whole testimony is invalid, so is it in the case of three witnesses, and because Scripture uses the indefinite plural "witnesses," the same principle holds even when there is a set of 100 witnesses.

R. Jose said that this principle is valid only in criminal cases, but in civil cases the testimony of the remaining qualified witnesses is accepted.

Rabbi said that this principle holds both in civil and criminal cases.

This principle holds, however, only when the witnesses have been previously warned that their testimony, because of kinship or other unfitness, would not be accepted.

But suppose this warning had not been given — what could two brothers do who as they were walking along saw a man commit murder?

remark.

Raba said: in order that many witnesses may be considered in the same set, there must be no interval during the deposition of their evidence. One must commence almost as soon as another retires or ceases to speak.

R. Ahqashed Rabina: what is meant by the words "almost as soon as another ceases to speak."

The interval must be no longer than the time it takes for a pupil to greet his teacher [with a good-morning or some such word.]

But suppose there are more than 100 witnesses!

Then, Rabina replied, one must commence to speak as soon as another ceases, and so on.

R. Papa said to Abaye: [if the above law about relatives being unfit to testify and invalidating the whole testimony of the set of witnesses to which they belong, holds, then it can be proved that] the murdered party himself is the means of liberating the murderer. [since he is a relative unto himself and thus as a relative invalidates the testimony of the other witnesses who saw the crime committed at the same time, and thus find themselves in one set.]

Abaye replied; do not take it for granted that when a man commits murder he does it from behind, [and is therefore not seen by the murdered party. Hence the latter cannot be considered as a witness and thus cannot invalidate the testimony of the other witnesses]

But how about a case of sodomy. Is not the one on whom the crime is committed a relative unto himself? And does he not invalidate the testimony of all the witnesses who are included in his set? Consequently is he himself not the means of freeing the culprit?

No! we take it for granted that in such a case the deed is committed from behind. Consequently the party upon whom the crime is committed can not see the criminal, and thus not being a witness himself, cannot invalidate the testimony of other witnesses.

But the party who commits the murder or the sodomy can certainly see himself, and is certainly related to himself. Does he not, therefore, invalidate the testimony of the other witnesses?

Abaye remained silent.

When however Abaye came before Raba and explained the case to him, Raba said: By the words "the case shall be established" [Lev. 19¹⁵] Scripture refers to those who offer testimony, not to those who are the direct parties in the crime. In the above case of R. Papa, the reference is to the parties who committed the crime and upon whom the crime was committed, but these cannot testify, hence they cannot invalidate other testimony.

What do the judges say to the witnesses who are unfit?

According to Raba the judges ask the witnesses: have you come merely to look on or to testify? If they answer: "we have come to testify", and one of them is then found to be a relative or otherwise unfit, then the testimony of their entire set of witnesses is invalid. If, however, they answer "we have come merely to look on," then they invalidate no testimony.

The question as to what two brothers who saw a crime committed, would do, remains unanswered.

There is a report to the effect that in the opinion of R. Jehuda who quotes Samuel, the statement of R. Jose in the above Mishna is according to the law. While in the opinion of R. Nachman the statement of Rabbi is according to the law.

Mishna.

If two witnesses are looking out of one window, and two others are looking out of another, and a fifth witness who stands between warns the criminal at the same time that the other two couples of witnesses see one another, then are they all considered as one set of witnesses. But if the couples of witnesses do not see one another at the moment when the warning is given, then are they considered as two sets. Consequently if one set is convicted of perjury, only the witnesses who belong to it and the ~~witness who gave the~~ ^{criminal} warning are executed, while the second set is acquitted.

R. Jose is of the opinion that criminals are not executed unless they have been warned by two witnesses: for it is written "by two witnesses or three witnesses shall the case be decided." [Idut. 17^b]

Another explanation of the phrase "by two witnesses" is that the court shall not receive evidence thro' an interpreter.

Amara.

R. Zutra b. Tubia quoting Rab asked: How do we know from the Bible that single witnesses are unfit?

We learn this from the verse "the criminal shall not die on the testimony of one witness." [Idut 17^b]

But what does the word "one" really mean here? Does it mean a single witness? Why we know this from the first part of the verse which makes at least two witnesses necessary for the conviction of a criminal. What then is meant by the words "one witness"? Scripture refers to a case where one witness looks out of one window and another looks out of another, but neither sees each other.

We learn the same in a Baraita: the Scriptural words "the criminal shall not die on the testimony of one witness" refer to [include] a case of two witnesses one of whom sees the criminal from one window while the other sees him from another, neither of whom, however, sees each other, - to indicate that these single witnesses may not be combined.

Even in the case of two witnesses one of whom sees the crime committed thro' a window after the other witness has already left it, the witnesses may not be combined.

R. Papa said to Abaye: Since in the case of two witnesses looking out of different windows and beholding the whole crime without seeing each other, it is forbidden to combine them, why then need anything be said of a case in which two witnesses look out of the same window, one after the other, so that they do not see each other, since they can thereby see only half the crime. Is not the latter case included in the former?

Abaye replied: it was necessary to specify the second principle since you might have supposed that in a case of illicit intercourse when each witness altho' he sees only half the crime nevertheless sees sufficient to incriminate the evil-doers, the testimony of the separate witnesses may be combined. The statement of the 2nd principle precludes such a conclusion.

Raba said: if the witnesses see the man who gives the warning [even tho' he does not see them] or if he who gives the warning sees the other witnesses [even tho' they do not see him] they are all combined into one set.

Raba furthermore said the warning is valid even tho' it come from the mouth of the murdered party or from some spirit.

R. Nachman said that the testimony of individual witnesses [who do not see each other] is accepted in civil cases. For Scripture says: the criminal shall not be put to death on the testimony of one man." It, therefore, alludes only to criminal cases involving capital punishment.

R. Zutra raised a strong objection: if it were permissible to accept the testimony of witnesses who do not see each other as though they were in one set, why should this not be done in criminal cases where one set of witnesses is false, whereby the criminal might be saved? And yet the above Mishna forbids it. This remains unsolved.

R. Papa asked Abaye: Is the statement in the above Mishna that at least two witnesses are required for the warning really the opinion of R. Jose? Do we not learn later on that in the opinion of R. Jose the man who kills another whom he previously hated, needs no warning at all, since he is regarded as one who has already been warned?

Abaye replied that this latter opinion was that of R. Jose b. Jehuda who elsewhere in a Baraita said that the Scholar [who is supposed to know the law] needs no warning since this is given only to find out whether a man commits a crime thro' ignorance or thro' presumption.

On a certain occasion foreigners came in judgment before Raba, and he appointed an interpreter.

But had he the right to do so? Do we not learn that a Court may not receive evidence thro' an interpreter?

Raba really knew what they were saying, but he could not answer them.

In the case of A and B who are related to the indorser, R. Papa is of the opinion that their testimony is valid inasmuch as they are neither related to the lender or the borrower.

But objected R. Huna b. R. Joshua, would not the lender prosecute the indorser in case the borrower failed to pay? Are not, then, A and B to be considered as parties too interested to be allowed to offer testimony?

Mishna. If a culprit, after the verdict has already been pronounced, flees, and then returns to the same court which sentenced him, this court may not grant him another trial [contradict or destroy its sentence].

to the death-penalty Whenever two witnesses testify against a man that he was sentenced in this or that court on the testimony of these or those witnesses, the accused man is executed.

Courts were held both within and without Palestine.

A court which inflicted capital punishment even once in seven years is called a murderous court.

R. Eliezer b. Azariah extended the period to seventy years.

R. Tarfon and R. Akiba said: Had we been in those courts which sentenced men to death, not a single human being would ever have been executed.

In that case, said R. Simon b. Gamliel, They would have multiplied murders in Israel.

amora.

It is only the court which condemned the escaped criminal that may not revoke his sentence, another court may.

Can even another court do so? Also we not learn that whenever two witnesses accuse a certain man ~~with~~ of having been sentenced to death in some other court on the testimony of these or those witnesses, the tribunal before which this accusation is made is obliged to put the culprit to death? How then can you say that it may grant him a new trial?

There is here no contradiction. In Palestine, when a criminal has fled from a tribunal outside the land, the sentence may be revoked. But when a criminal flees from Palestine to some tribunal outside the land, his sentence may not be revoked.

We learn a similar principle in the Baraita. R. Jehuda b. Shimon in the name of R. Simon b. Shetack said: When a criminal flees from

Palestine to some point outside it, his sentence may not be revoked, but conversely it may, on account of the superior merit of the Land of Israel.

Where do we find in the Bible that tribunals were to be established both in and outside of Palestine?

In the verse: "and these shall be unto you a statute of judgment throughout your generations," [Num. 35²⁹] in all your habitations." The Rabbis interpret this verse to mean - that there shall be tribunals both within and without Palestine.

If this is so, what then does Scripture mean by the words "litigation in thy gates" [Deut. 17⁸]

This verse means to indicate that in thy gates [in Palestine] a tribunal shall be established in every district and in every city. Outside of Palestine it need be established only in every district, but not in every city.

An objection was raised against the opinion that a court which sentenced a man to death once in 70 years deserves to be called a cruel or murderous court. Why? These words "murderous court" are to be regarded not in their strict literalness but merely as a phrase which men might loosely use. This matter was not definitely decided.

hna.

Murder committed by accident is punished with banishment or exile.
example: if a man is pushing a roller [on a roof] and it falls on some one and kills him, or if a man is lowering a barrel [from a roof] and it falls on some one and kills him, or if a man is descending a ladder and he falls on some one and kills him — in all such cases the penalty is exile.

But if a man is pulling a roller and it falls on some one and kills him, or if a man is raising a vessel, and the rope tearing, it falls on some one and kills him, or if a man is ascending a ladder and he falls on some one and kills him, the penalty of exile is not inflicted.

This is the general principle. Whenever the crime that is accidentally committed is due to a descending movement of the person or object, the penalty is exile. Whenever it is not due to a downward movement, the penalty of exile is not inflicted.

What basis in the Bible is there for the law that the penalty of exile is inflicted only when the crime was accidentally committed by an object on a downward course?

Samuel says, that the basis is in the verse, "and he causes [the stone] to fall upon him so that he dies," [Num. 35²³] a falling or downward course is here specified.

The Rabbis say that the words "by accident" [in Num. 35¹⁵] are intended to exclude the case of a man who commits murder intentionally.

Similarly the words "without his knowledge" [in Levit. 19⁴] exclude the case of a man who slays another with deliberate purpose.

[The culprits in these cases may not avail themselves of the privilege of exile, but are put to death.]

Why, this is self-evident! In such cases as cited above the criminals are condemned to capital punishment.

Raba, however, says that the words "by accident" are really intended to exclude the case of a man who is of the opinion that it is permissible [to slay an Israelite]

But, says Abaye, a man who is of such an opinion is irresponsible since he did not know the law. [he is like one who committed a crime through coercion, in which case he is not guilty of death.]

I am, however, of the opinion, rejoins Raba, that a man who thinks it ~~un~~missible to slay an Israelite is in the same class as the man who ~~deliberately~~ kills one.

The words "without knowledge" are intended to exclude the case of a man who deliberately aims to commit a certain crime: thus say the Rabbis.

But why need they say it? Is it not self-evident, that in such a case the man is guilty of the death-penalty?

Raba, however, explains it thus. The words "without knowledge" are intended to exclude the case of a man whose aim it is to kill a cow, or a Samaritan, or an unborn child, but who instead kills a human being, or an Israelite, or a living child, respectively. [In all these cases the agent is liable to capital punishment.]

Our Rabbis teach that in the verse "But if he thrust him suddenly without enmity, or have cast upon him anything without lying in wait." [Num. 35] the words have the following implications.

"if suddenly" exclude the case of a murder that is accidentally committed in a corner. [A man goes out from one door and is about to enter another by turning either to the right or the left, and he has a knife in his hand. Suddenly another man appears before him in some corner, and not being seen by the first party, is slain.]

"without enmity" exclude the case of a murder that was committed by a former enemy.

"he thrust him," imply pushing with the body.

"he cast upon him anything" include the case of a man who commits murder unwittingly by a downward movement that was necessary to whatever act he was then performing.

"without lying in wait" [The Talmud translates here "without aiming"] exclude the case of an object which was aimed in one direction but which went in another and slew some one.

The words "and if a man lie not in wait [aim not] in Ex. 21¹³ are intended to exclude the case of a man who aimed to throw an object a certain number of yards, say two, but instead threw it further, say four, and killed some one.

The words "and if a man go with his companion into a wood" [Lev. 24] are used as the basis of an a fortiori argument. Since it is permitted both to him who is injured and to, ~~whom~~ who commits the injury to enter the wood, Therefore, a man is held responsible for any act of violence [accident] only when it is committed in a place which is permissible both to him and to the party injured.

R. Abbahu asked R. Jochanan the following question. Suppose a man is ascending a ladder and a ring is loosened from its place and, in falling, kills some one — is the accident in this case due to an ascending, or to a descending, movement?

Have you not already learned, replied R. Jochanan, that a man is exiled even when he accidentally slays another by a descending object or blow which could not be avoided in the act which he was performing?

But, objected Abbahu, we read in the Mishna that in all cases of accidental homicide the general principle is as follows: Whenever the crime is committed by a descending object or blow, the penalty is exile; when the object or blow is not on a downward course, the penalty of exile is not applied. Now, the words "when the object or blow is not on a downward course", seem to be superfluous. What are they intended to add? Are they not intended to include such a case as I have just mentioned?

On the same reasoning, replied R. Jochanan, it could be maintained that the words "when the object or blow is on a downward course", are superfluous. What, in your opinion, do they add or include?

In my opinion, said Abbahu, they include the case of a butcher.

Well then, rejoined R. Jochanan, let the seemingly superfluous words "when the object or blow is not on a downward course", include the same case, [instead of the case you mention]. For in this connection we have a reference to such a case in the Baraita. We learn there that with regard to a butcher who, while flying his instrument,

accidentally slays some one - there is a difference of opinion among the Rabbis as to whether he is liable to exile or not. One teacher thinks that if the deed is committed by a stroke in front, he is guilty, if by a stroke behind, he is acquitted. Another teacher thinks just the reverse. A third thinks that he is guilty both when the stroke is in front or behind. and a fourth is of the opinion that he is acquitted both when the stroke is in front or behind. There is, however, no contradiction here. In the first case the reference is to a downward stroke in front and an upward stroke behind; in the 2nd, it is to an upward stroke in front and a downward ~~and~~ downward stroke behind; in the third, it is to a downward stroke both before and behind; in the 4th it is to an upward stroke both before and behind. [Hence we see that a downward stroke, even tho' it be necessary, renders one liable to exile.]

The above dispute between Abbaahu and R. Johanan is similar to one which took place among the teachers of the Mishna. The case was thus: Suppose a man while going up a ladder, loosens a rung from its place and thus kills some one - is the man guilty of exile or not? Rabbi A thot that he was guilty; Rabbi B thot that he was not.

Is it not to be supposed that the difference between them lies in the fact that one regards the above case as homicide due to a downward movement, while the other thinks it is due to an upward movement?

No. all are agreed that it is a case of upward movement.

And, yet, there is here no difficulty.

One teacher A has reference, not to exile, but to indemnification, while B has reference to exile.

You might even say that both refer to exile, and still there would be no contradiction.

A refers to a rung that is wormeaten [hence as the man steps on it, it bends downward, thus making the homicide due to a downward movement] while B does not.

You might even say that both allude to a rung that is not wormeaten, and still there would be no contradiction. A has reference to a rung that is fixed in its place; B to one that is not.

hna.

When the iron of an ax slips from its handle and kills some one, the penalty is exile. This is the opinion of the Rabbis. But according to the R. Jehuda there is no penalty at all.

When [as a man is chopping wood] a splint of the wood flies off in some direction and kills some one, — R. Jehuda maintains that the man should be exiled, while the Rabbis think that he should not.

anasa.

Thus we learn in a Baraita: R. Jehuda said to the Rabbis; as it written, "And if the iron slip from its wood?" as it not written: "And if the iron slip from the wood?" [Lev. 19⁵] Furthermore the word "wood" is used below [in the quotation just given] and also above [in the same verse: "to hew the wood"] as in the case of the one above the reference is to wood that is being hewn, so in this case is the reference, not to the handle of an ax, but to the wood that is hewn with it.

R. Hija b. Ashi said in the name of Rab that both R. Jehuda and the Rabbis derive their opinions from the same verse, "and if the iron slippeth from the wood." R. Jehuda, however, goes according to the writing and would read $\text{וְאִם הָיְתָה הַחֲבִירָה נִפְלְטָה מִן הָעֵץ}$ "and the iron causes a splint to slip from the wood." while the Rabbis go according to the reading, and read $\text{וְאִם הָיְתָה הַחֲבִירָה נִפְלְטָה מִן הָעֵץ}$ "and the iron slippeth from the wood."

But does R. Jehuda really go according to the writing? do we not learn [Sanhedrin 4^a] from R. Isaac b. R. Joseph that R. Jochanan, R. Jehuda, R. Jehuda b. Rosh, the followers of Shammai, R. Simon, R. Akiba — all of them think that the source of the law is in the reading?

This is the reason why R. Jehuda really bases his opinion on the inference above cited.

R. Papa said: Suppose a man throws a stone at a date tree and it strikes a spot where there are dates, and these dates fall and kill some one — in such a case R. Jehuda and the Rabbis would differ. [for the falling dates are analogous to a splint chipped off a tree.]

Why this is self-evident!

No, it is not. You might suppose that the above case is similar to one in which the crime was committed indirectly or thro' the mediation of some other object or force [in which case no penalty is inflicted] Therefore R. Papa wishes to inform you that in the opinion of R. Jehuda the above case is not one of indirect homicide but is analogous to a case in which the accident is due to a splint chipped off a tree. [The stone is the crime of the ax and the dates are the splint.]

But what, in the opinion of R. Jehuda, would be a case of indirect injury?

For example: a man throws a stone and it hits a pole that is used to support dates; then the pole hits the dates and the dates fall and kill some one — this, in the opinion of R. Jehuda, would be a case of indirect homicide.

Mishna.

a man who throws a stone into a public place and accidentally kills some one, is sentenced to exile.

R. Eliezer b. Jacob said that if after the stone had already been thrown a certain party put his head out and was struck with it, no penalty is inflicted.

a man who throws a stone into his own courtyard and accidentally kills some one, is sentenced to exile, if the damaged party had the right to enter the yard, if not, the man is acquitted. This law is based on an inference. In the words "if one go with his neighbor into the woods," the Bible implies that the woods were permitted to him who was injured as well as to him who committed the injury. Consequently it is only such places wherein both parties are permitted to enter, that involve the penalty of exile. This, of course, excludes the case of a private courtyard which, it is not permitted to the injured party to enter.

Abba Saul advanced the argument that just as the hewing of wood mentioned in Deut. 19⁵ is a matter of option, so is the penalty of exile inflicted only when the deed [which resulted in the murder] was optional. This excludes the case of a father whipping his son, or a teacher punishing his pupil, or the messenger of the court. [With these it is not optional to perform their duties, therefore should they accidentally commit homicide, as when the father in whipping his son, kills him, they are acquitted.]

emare.

a man who throws a stone into a public place! Why, this is deliberate murder! [The sentence should be the death-penalty not exile.]

R. Samuel b. Isaac thinks that the Mishna refers to a man tearing down his wall, and thereby accidentally kills some one.

Even then he is still guilty of deliberate murder for he should have been careful.

But suppose he tore his wall down during the night?

Even in the night he should have been careful.

Then the Mishna must refer to the case of a man tearing down a wall near a dung-hill.

Well, how about this dung hill? If many are found to frequent it, the man is a deliberate criminal [transgressor]; if many are not found there, then he is irresponsible [conceded, i.e. a pure accident.] In either case the penalty is not exile.

According to R. Papa, however, the Mishna found it necessary to say this only with reference to a dung-hill which men used by night but not by day. Should some one happen to come along and seat himself and be killed - since the hill was not supposed to be used for any such purpose by day, the agent of the deed is certainly not a criminal and, therefore, should not be sentenced to death. Nor is he irresponsible since he should have known that some one might come to the hill now and then, and he should have been more careful. Consequently he should be condemned to exile.

We learn in a well-known Baraita that the words "if he find," [Lev. 19] are intended to exclude the case of a man who causes himself to be found.

In accordance with this teaching R. Eliezer b. Jacob said that if, after the stone had already left a man's hand, some one put his head out and was struck - in such a case the agent is pardoned.

Is this to say that the words "if he find" imply ~~always~~ priority in time? [i.e. the stone must have been thrown before the injured party put forth his head: and similar instances.] This cannot be, since [in Arachin 30] we read that the words "if he find," are intended to exclude priority in time. They exclude, for example, the case of a man who from the very start has sufficient money to redeem his possessions but sells them at a high price in order that he might redeem them, during the sabbatical year at a low price; or he sells them at an advantage to himself, with the intention of redeeming them in the sabbatical year at a disadvantage to the buyer [altho he had sufficient money to redeem them from the very start].

Raba, however, reconciles these opinions. In both cases, he says, the words are to be understood from their context. In the one case the words "if he find" are to be likened to the words "if he attain unto the power" [Lev. 25²⁶] just as he attains the power to redeem only in the process of time, so he finds himself able to do so only in the process of time. Hence the words "if he find," imply the future. In the other case "if he find" are to be likened to the word "forest" in the context. [Lev. 19⁵] just as the forest is prior to action of those who come to her wood, so must the throwing of the stone above referred to be prior to the act of the injured party in putting forth his head.

A certain Rabbi asked Raba: How do you know that the hewing of wood referred to in Lev. 19⁵ is a matter of option. Might it not refer to wood that is to be used for booths or for the altar, and still if one committed accidental homicide while hewing it, Scripture would have him punished with exile. [This is opposed to the opinion of Abba Saul in the above Mishna].

But, replied Raba, suppose that Scripture does refer to wood that is to be used for booths or for the altar. If he finds the wood already hewn it is not at all required of him to hew other wood. He may gather that which he finds already hewn. Even so, when he ~~finds~~ ^{finds} the wood, it is not at all commendable in him or obligatory upon him to have done so.

Rabbinia, however, raised an objection. In your own reasoning I might prove to you that you contradict the Mishna. The Mishna says that the principle of option excludes the case of a father whipping his son, or a teacher punishing his pupil, or a messenger of the court performing his duties. Now, since if the child is brought it is not at all required of the father to punish him, so even when he does punish him, he was not at all required to have done so.

No, replied Raba, this conclusion does not at all follow. For a father is bidden to chastise his child even if he be brought, by the verse. "Correct thy son, and he shall give thee peace; yea, he shall give delight unto thy soul." [Prov. 29'7]

Raba later gave a better answer: The question is not whether it is, or is not commendable, to hew the wood that is to be used for booths or for the altar. I maintain that the Bible refers to a hewing of wood that is optional because it uses the word "וּחַ", in the verse "and if a man go into a wood with his companion" [Lev. 19'5] that is, if he wishes he may go, if not, he need not go. For were the case one of obligatory force, he could not refuse to go.

R. Ada b. Ahaba objected. Is the case always an optional one whenever the word "וּחַ" [who] is used? Do we not read in Num. 19'20, "and the man who is unclean and does not purify himself shall be cut off." Do you mean to say that in this case, too, the matter is optional, i.e. if the man wishes he may become unclean, if he does not wish it, he need not? How about a case when some of his own family die and he is obliged to attend to them. Can he keep from uncleanness, then? This is certainly not optional with him. He ought, therefore, according to your reasoning be exempt from the bath and the offering. And yet Scripture says that he is guilty of excision.

Here, replied Raba, the case is different. For Scripture expressly says: "he shall be unclean." [Num. 19²] But I might still maintain that wherever no express provision is made to the contrary the word וְהוּא [who] implies an act that is optional.

But how can Raba use these words "he shall be unclean," to prove his particular point? do we not need these words for that passage in a Baraita where we learn that the words "he shall be unclean" are intended to include the case of a man who has already taken the prescribed bath, but who is still obliged to wait until the sun sets: the words "his uncleanness is yet upon him," include the case of a man who has taken his bath and has fulfilled the requirement of the setting of the sun, but has not yet made his offering.

I do not use the words "he shall be unclean" for this purpose, replied Raba. I derive both of the above cases of inclusion from the word "yet" in the phrase "his uncleanness is yet upon him." [Num. 19³] Consequently my argument has not yet been refuted.

Some however, apply this whole dispute between Raba and the Rabbi to the following case. [shebi'ith 81] Scripture says: "with plowing and with reaping thou shalt rest on the seventh day." [Ex. 34²¹] R. Akiba makes the verse refer to the 7th or Sabbatical year and says that it was entirely superfluous for Scripture to forbid plowing and reaping in the Sabbatical year, for it has already done so in the verse "thou shalt not sow thy field nor prune thy vineyard in the Sabbatical year." [Lev. 25⁴] By this seemingly superfluous verse, however, Scripture intends to say that it is forbidden to plow in the sixth year for the purpose of deriving benefit from it in the 7th year. Similarly is it forbidden to harvest in the 8th year for one's own use such produce as was really ripe for harvesting in the 7th.

R. Ishmael makes the following use of the above verse [Ex. 34²¹]. Ploughing is under all circumstances an optional [private] act, since it is nowhere commanded to be done for a religious purpose. Hence, also, the prohibition of reaping on a Sabbath day refers only to the optional reaping for private purposes, but not where it is to be done in fulfillment of a religious duty, as, for instance, the sheaf of the first fruits for the purpose of a wave offering. [Lev. 23¹⁰]

A certain Rabbi asked Raba: how do we know that in the above mentioned verse the ploughing referred to is optional. Perhaps it refers to ploughing for the purpose of the sheaf-offering which is a religious duty, and still Scripture prohibits it on the Sabbath.

Raba replied that the ploughing is not in any case obligatory. For if he finds the field already plowed he is not obliged to plow himself, so even when he does plow, he does not fulfill a religious duty.

Rabbina, however, raised an objection. On your own reasoning I might prove to you that you contradict the Mishna. The Mishna says that the principle of option excludes the case of a father whipping his son, or a teacher punishing his pupil, or a messenger of the court performing his duties. Now, since if the child is bright it is not a religious duty for the father to whip him, even so when the father does whip him, he is not fulfilling a religious duty.

No, replied Raba, this conclusion does not at all follow. For a father is bidden to chastise his child even if he be bright, by the verse, "Correct thy son, and he shall give thee peace; yea, he shall give delight unto thy soul."

Raba later gave a better answer. It is not to the point, he said, to argue whether ploughing is a religious duty or not. I maintain that only optional harvesting is forbidden on the Sabbath on the basis of an argument from analogy. The harvesting referred to is to be likened to the plowing. Just as in the case of plowing - if he find the ground already plowed, he is not obliged to plow it, so is it with the harvesting. ~~You~~ Should you maintain that the harvesting referred to is obligatory, then if he find the produce already harvested, can it be that he need do no harvesting himself! It certainly would be obligatory upon him to fulfill the religious injunction by an act of his own. [Hence the above verse can refer only to harvesting that is optional.]

Mishna.

If a father slay his son; if a son slay his father; if any one slay an Israelite if an Israelite slay any one else; — in all these cases, if the crime is accidental the perpetrator is sentenced to exile. The following, however, are exceptions to the rule. If an Israelite accidentally kill a proselyte [one who has renounced idolatry but accepts only the seven commandments given to Noah] he is acquitted. If a proselyte accidentally kill an Israelite he is sentenced to death. Only when one proselyte kills another, is he punished with exile.

Sema.

How can you say that a father may be committed to exile because of violence done to his son? Did you not say that a father who chastises his child that he might become learned, is excluded from the category of those who are liable to exile? Nay, it is even a religious duty to punish him, even tho' he be learned.

The Mishna refers to a case when a father smites a son not that he might learn Torah, but that he might learn a trade.

Should a father be exiled for this? Is it not a religious duty for a father to teach his son a trade since this is his livelihood.

The Mishna refers to a father who chastises his son that he might learn a trade, altho' the son is already skilled in some other trade.

The following objection was raised against the statement that a son who strikes his father and accidentally kills him is sentenced to exile. When the Bible says "he killed a human being accidentally" [Num. 35th] does it not intend to exclude the case of a son who kills his own father? [is the son in this case, not to be put to death?]

R. Kahana said that there is here no difficulty. One is the opinion of R. Simeon, the other is the opinion of the Rabbin.

R. Simeon thinks that death by hanging is more rigorous than death by the sword. A crime which when it is deliberate receives the penalty of death by the sword, is, when it is accidental, punished only with exile, in order that atonement might be made. But a crime that deserves hanging is not punished with exile, when it is accidental, in order not to give the culprit an opportunity to make atonement. In his opinion a son who accidentally kills his father is liable to death by hanging, therefore he is not sentenced to exile.

The Rabbis, however, maintain that death by the sword is more rigorous than death by hanging. A son who kills his father deserves death by the sword. But if the crime be accidental he is merely sentenced to exile in order that he might have the opportunity to make atonement.

Raba maintains that the verse "he killed a human being accidentally" is intended to exclude the case of a son who wounds his father by accident. You might say that if he committed the wound intentionally, he should be sentenced to death, but since he did it by accident, therefore, he should be merely exiled. This, however, we are told, is not so. The son in this case may not be exiled.

When the Mishna says that all men are punished with exile for the accidental murder of an Israelite, whom besides Israelites does it wish to add?

It includes servants and Samaritans.

The same principle which is taught by this mishna is also taught in the Baraita. Servants and Samaritans are punished both with exile and stripes for crimes committed against an Israelite, and vice versa.

It is admissible that servants and Samaritans should be punished with exile or stripes for the sake of an Israelite — with exile, when they accidentally kill one, with stripes, when they curse one. But should an Israelite be whipped or exiled for a Samaritan? It might be granted that when an Israelite accidentally kills a Samaritan, he should be exiled. But why should he be whipped? Because he has cursed a Samaritan? But this prohibition against cursing refers only to curses that are made against Israelites, since it is written, "and a prince among thy people, thou shalt not curse." [Ex. 22²⁷]

R. Acha b. Jacob said, however, that an Israelite is whipped for a Samaritan in the following instance. If he testified falsely against a Samaritan, then he is to be punished in the same way a servant would be punished if he gave false testimony against him. Is then a servant permitted to give testimony?

R. Acha b. R. Jha explained it as follows: if an Israelite smite a Samaritan and the damage does not amount to 2 Peruta, then he is whipped. For R. Ami in the name of R. Johanan said that when one injures another and the injury is not worth a Peruta, he is whipped.

We may, however, make no analogy between such an injury and cursing.

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If when an Israelite slays a proselyte he is not exiled, nor is a proselyte when he accidentally slays an Israelite, exiled [but killed] then the proselyte must be regarded like an idolater?

But this cannot be since the Mishna goes on to say that if one proselyte accidentally kill another, he is committed to exile [and this could not be said of an idolater].

R. Nahana, however, said that there is here no contradiction. In the one case the reference is to a proselyte who accidentally kills another proselyte [when he is exiled]; in the other case the reference is to a proselyte who accidentally kills an Israelite [when he is killed].

Certain Rabbis attempt to prove that the following passages contradict each other. On the one hand it is written: and these six cities of refuge shall be for the children of Israel and for the proselyte. [Num. 35¹⁵] and on the other hand it is written "and the cities shall be to you for a refuge. [Num. 35¹²], that is, to you but not to proselytes.

Again R. Nahana showed that there is here no contradiction. In the one case the passage refers to a proselyte who accidentally slays another proselyte, in the other passage the reference is to a proselyte who accidentally kills an Israelite.

An objection was raised to the above statement: we learn in a Baraita that proselytes and idolaters who commit murder even by accident are condemned to death. a proselyte is thus compared to an idolater: just as an idolater, whether he accidentally kill one of his own sect or one of some other sect, is himself condemned to death, so is a proselyte, whether he accidentally kill one of his own people or ^{an Israelite} not, condemned to death.

There is here no difficulty, said R. Chisda. In the one case we refer to a proselyte who commits accidental murder by a downward stroke, in the other case, by an upward stroke. In the case of a downward stroke when an Israelite who committed a similar crime would be exiled, the proselyte himself is also exiled. In the case, however, of an upward stroke when an Israelite would be acquitted, the proselyte is sentenced to death.

But, objected Raba, by an argument from inference we come to an entirely different conclusion. Since in the case of a downward stroke when an Israelite would be exiled, the proselyte is also exiled, then in the case of an upward stroke when the Israelite would go free, should the proselyte be killed! This latter really holds when the proselyte is of the opinion that it is permissible to kill another, explained Raba.

Then, rejoined Abaye, he is not to be held responsible.

But, in my opinion, answered Raba, ^{he} who holds that it is permissible to kill another, is like one who commits a crime intentionally.

And both go according to their respective opinions.

For we learn that if a man intends to kill a cow [which he thinks is permissible] and accidentally kills a human being, or if he aims at a heathen and accidentally kills a proselyte, according to Raba who is of the opinion that ~~the~~ who commits a crime while thinking the act permissible is in the same class as the intentional criminal, he should be killed, while according to R. Chisda who holds that such a man is irresponsible, he should go free.

Raba, then, brought the following argument against R. Chisda.

We read: and God said to Abimelech, Behold thou wilt die, on account of the woman which thou hast taken. [Abimelech is considered guilty of death altho' he tho't it permissible to take the woman, since he tho't she was Abraham's sister]. Gen. 20

But, said R. Chisda, he is really not to die by the hand of man, but by the hand of God. This may be concluded also from the words "and I have withheld thee from sinning against me." [Gen. 22⁶] that is, against God.

Then, in your opinion, rejoined Raba, when Joseph said "I would sin against God" [Gen. 39⁹] ~~since~~ he would have sinned only against God and not against man, and yet his judgment was handed over to man, so is it in the case of Abimelech. His judgment, too, was handed over to man.

But, objected Abaye, did not Abimelech regard himself as innocent when he said to God: would you slay even a righteous nation? [Gen. 20]

But, said Raba, God really regarded him as guilty when he replied to his words: and now, return the wife of this man, for he is a prophet! [Gen. 20]

Is it only the wife of a prophet that is to be returned, while the wife of one who is not a prophet, need not be returned?

But, said R. Samuel b. Nachmani in the name of R. Jonathan, God really said to Abimelech as follows: return the wife of this man whatever he is, and inasmuch as you try to justify yourself on the ground that Abraham told you that Sarah was his sister, then I say to you that he is a prophet and learned from you to dissemble. For he is a guest, and when a guest comes into a city it is permitted to ask him concerning food and drink, but is it right to ask him: is thy wife thy sister!

Therefore, is it to be concluded that when a descendant of Noah commits a crime when he should have known better, he is killed.

Mishna: a blind man is not sentenced to exile for accidental homicide [he is acquitted] this is the opinion of R. Jehuda.

R. Meir, however, is of the contrary opinion.

a man who accidentally kills another whom he formerly hated is not sentenced to exile. [he is killed].

R. Jose thinks that an enemy who commits accidental homicide should be sentenced to death, since he is as one who had already been previously warned.

There are times, said R. Simon, when an enemy is exiled for accidental homicide and there are times when he is not.

This is the general principle: when it can be proved against any man that he committed murder deliberately, he is sentenced to death. Whenever it can be proved that he did so unwittingly, he is sentenced to exile.

Gumara.

We learn in a Baraita that in the opinion of R. Jehuda the words "without seeing" [Lev. 24²³] exclude the case of a blind man. R. Meir thinks that these words include the case of a blind man.

What reason has R. Jehuda for his opinion?

Scripture says: "if one go with his companion into a forest" [Lev. 19⁵] "you might infer from this that even a blind man is included. Therefore Scripture adds "without seeing" to indicate that it means only those who have full sight but on this occasion happened by accident not to see.

R. Meir, however, objected. If the words "without seeing" are used for purpose of exclusion, then, since the words "without knowledge" [Lev. 19⁴] are used for the same purpose, there is a case of exclusion after exclusion, which is not permissible according to the hermeneutics of the Talmud. Therefore "without seeing" must evidently include the case of a blind man.

R. Jehuda, however, avoids this difficulty by using the words "without knowledge" for another purpose. He uses them to exclude the case of a man who commits a crime intentionally.

How can R. Jose say that an enemy who commits accidental homicide should ~~not~~ be sentenced to death? Why, suppose he has not been given the necessary warning?

The Mishna above quoted is the opinion of R. Jose b. Jehuda, who maintains elsewhere that it is unnecessary to give warning to an educated man [who is supposed to know the law] since the warning is given merely to ascertain whether a crime is committed thru' ignorance or with presumption.

We read in a Baraita: In what case of accidental homicide would R. Simon say that an enemy is exiled, and in what case would he say that he is not?

The Rabbis answered: if the accident occurred thru a rope breaking, he is, according to R. Simon exiled. But if it occurs thru an instrument slipping from his hand, he is not exiled.

How can this be? Also we not learn elsewhere in the Baraita that in the opinion of R. Simon an enemy is exiled only when the accident occurs thru an instrument slipping from his hand!

There seems to be a double contradiction both with regard to a rope breaking and an instrument slipping.

[Rashi's version]
follows.

With regard to an instrument slipping there is no contradiction. In the one case it refers to an instrument slipping from the hand of a friend [in which case exile is not inflicted] in the other case it refers to an instrument slipping from the hand of an enemy [in which case he is exiled.]

Now is there a contradiction with regard to the breaking of a rope. It is simply a difference of opinion. One is the opinion of the Rabbis the other is the opinion of Rabbi.

Whither are those sentenced to exile to go?

To the cities of refuge: to the three which are on the other side of the Jordan and to the three which are in Canaan. For it is written: "ye shall appoint three cities on the other side of the Jordan and three cities shall ye appoint in the land of Canaan." [Num. 35:14]

Until the three cities in Palestine were chosen, the three cities beyond the Jordan afforded no refuge: for it is written "the cities of refuge shall be six" [Num. 35:13], that is the six must exist altogether before the law of refuge is operative.

Roads must be constructed from one city of refuge to another, for it is written: "thou shalt prepare thee a way and divide the boundary of thy land into three parts." [Levit. 19:3]

Two scholars must accompany the culprit that they might intercede with the arranger if he should try to kill the culprit on the way.

R. Meir thinks that the culprit is entitled to speak for himself, since it is written "and this is the word of the murderer." [Levit. 19:4]

R. Jose b. Jehuda said: In the beginning both the deliberate and the irresponsible murderer fled to the cities of refuge. Then the court sent and brought them thence and tried them. Him who was guilty of death, they executed. Him who was innocent they acquitted. Him who deserved exile, they returned to the city of refuge: for it is written: "and the Court returned him to the city of refuge" [Num. 35:25]

Our Rabbis tell us that Moses set aside for refuge three cities beyond the Jordan, and Joshua set aside an equal number in Canaan; and they were laid out like two rows in a vineyard. Hebron in Judah in line with Bezer in the wilderness, Shechem in the Mt. of Ephraim in line with Ramoth in Gilead, Kedesh in the Mt. of Naphtali in line with Golan in Bashan. [Jos. 20:7,8]

"and thou shalt divide thy land into three parts" [Levit. 19:3], that is the distance from the south to Hebron should be equal to that between Hebron and Shechem; and from Hebron to Shechem should be just as far as from Shechem to Kedesh; and Shechem should be the same distance from Kedesh as Kedesh is from the north.

Should there be as many cities of refuge [three] to the two tribes beyond the Jordan as there are to the ten tribes on the land of Israel!

Abaye said: this is because in Gilead [beyond the Jordan] many murderers are found; as it is written "Gilead is a city of them that work iniquity, it is a kubah middam." [Hos. 6⁸]

What is the meaning of "a kubah middam"?

R. Elazar said it means that "they are running to kill." [lie in wait]

Why should there be cities on this side and on that side, for refuge?

For those who live at a distance.

Why should there be cities in the middle?

For those who live near by.

But, objected Abaye [to Abaye's answer] in Shechem also [in the land of Israel], there are many murderers found, for it is written "and as troops of robbers wait for a man, so the company of priests murder in the way toward Shechem." [Hos. 6⁹]

What is the meaning of the words "the company of priests"?

R. Elazar said that they imply a union of men for violent purposes just as priests unite to share the offerings in threshing houses.

Are there to be only six cities of refuge? Is it not written "and unto them [the Levites] shall ye appoint 42 cities." [Num. 35⁶]

Abaye answered: These 42 cities afford refuge to a culprit whether he knows that they are cities of refuge or not. The six above mentioned afford refuge only to those who come there for that very purpose with full understanding.

Is then Hebron a city of refuge? Why it is written "and they gave Hebron to Caleb as Moses had commanded." [Jud. 1²⁰]

The Bible refers to the environs of Hebron, for we read "and the field of the city and its yards, they gave to Caleb the son of Jephunna" [Josh. 21¹²]

Was then Kedesh a city of refuge? Why, it is written: "And the fenced cities are Ziddim, Zer, and Hammath, Rakhath, and Chinnereth and Kedesh etc [Josh. 19¹⁵]. And do we not learn in a Baraita

—hat we do not make cities of refuge either out of small places [farms] or large cities, but only out of medium sized places.²

R. Joseph said there were two cities by the name of Kedesh.

For example, said R. Ashi, there is a fortified city called Selikun and there is a moderate sized city near by called by the same name.

We will now discuss at further length the matter hinted at above as to what kinds of places are fit to be cities of refuge.

Neither very small places nor very large cities are fit to be cities of refuge; only cities of medium size. We do not establish them in any place where there is no water, and whenever there is no water [as in the case of some of the cities which were chosen by lot in the time of Joshua], it must be fetched there. We establish them in places only where there are markets, and abundance of population. Should the population decrease, the deficiency must be made up. [this refers to places round about and near by] of the inhabitants become too few, we must bring to the cities priests and Levites, and Israelites. In the opinion of R. Nehemiah neither weapons nor articles for nets or traps may be sold in these cities. The Rabbis, however, permit the sale of these things. We must, however, see to it, that no nets are spread out or ropes loosed in these cities, for fear that these things might be some inducement to the stranger to enter.

R. Isaac asked: why does Scripture say "and the culprit shall flee to one of these cities, that he might live," [Lev. 4⁴²] did he do anything that life should be guaranteed to him?

Sometimes the same question is raised in the Baraita: whenever a pupil is exiled, his teacher goes with him into exile, for it is written "that he might live." [the teacher should guard the pupil from further crime that he might live] But did the pupil do any deed that would entitle him to life!

Hence, we learn, said R. Zeviah, that no man who is unfit should be made into a student.

R. Jochanan said: whenever a teacher is exiled, his school goes with him into exile.

Is that so? Is a teacher ever exiled? Did not R. Jochanan prove that because the study of the Law [Ident. 4⁴⁴] is mentioned in connection with the enumeration of the cities of refuge [Ident. 4⁴³] that, therefore, the study of the Law affords in itself refuge?

There is here no difficulty. The above statement refers to a time when the teacher ~~was~~ not engaged in the study of the Law [and so he fell into mischief and crime] while in the latter case he was busy in the study of the Law [and this kept him from all sin].

If you wish I might say that what the study of the Law really saves a man from, is the power of death.

R. Chida was once sitting and talking on points of the Law at the School of Rab, and as long as his mouth was not silent in the discussion, the angel of death could not approach him. Then he arose and seated himself under a cedar near the school. Suddenly the cedar split, and he became for a moment silent. In that moment, the angel of death overpowered him.

R. Tanchum b. Hanilai asked: Why was Reuben the first of the tribes to be enumerated for the cities of refuge?

Because he was the first of the brothers to run to the rescue [of Joseph] for it is written "and Reuben heard and saved him from their hands." [Gen. 37]

R. Simlai gave the following homily: why is it written, "Then Moses selected [divided] three cities on this side of the Jordan toward the rising of the sun." [Ident. 4⁴¹] Because God said to Moses "the sun will shine upon the murderers" [and give them life].

Others say that God said to Moses: [by selecting these cities of refuge] you have been like a rising sun to the murderers.

R. Simai gave the following homily: what does it mean that it is written: "he that loveth silver shall not be satisfied with silver, nor he that loveth abundance with increase; this, too, is vanity." [Ecc. 5⁹]

"He that loveth silver shall not be satisfied with silver," refers to Moses for altho' he knew that the three cities on this side of the Jordan could afford no rest until those on the other side were chosen, he said: whatever good deed is in my power I will perform.

"Nor he that loveth abundance with ~~without~~ increase", that is: unto whom is it fitting to teach many? unto him who has learned much. [15 = 15]

To the same effect R. Elazar interpreted the verse, "who can utter the mighty acts of the Lord? who can show forth all his praise?" [Ps. 106²] Unto whom is it fitting to utter the mighty acts of the Lord? unto him who can sound forth all his praise.

Our Rabbis, and according to some, Rabba b. Mari, said: "he that loveth abundance shall have no increase," implies that he who loveth to learn from many will have great offspring. The Rabbis thought that Raba the son of Rabba was referred to here.

R. Ashi said: whosoever loveth to learn among many, unto him shall be increase.

Similarly R. Jose b. R. Hanina interpreted the verse: "a sword is upon the thorns and they shall be made to loathe themselves." [Jer. 50³⁶] v.e. a sword is upon the necks of those students who sit and study the Law by themselves; nay, they even become foolish. [וְיָזְנוּ in the verse is by the Talmud taken as "single ones"]

The word "they shall loathe themselves" is written here, and a similar word is written in Num. 32². Nay, they who study alone even commit sin as we learn in Num. 32². If you wish it, we can derive our thought also from the verse "the princes of Zidon are made to loathe themselves." [Ps. 19³]

Rabina said: whosoever loveth to learn from many, unto him shall be increase.

Similarly Rabbi said: Much have I learned from my teachers, still more from my associates, but most from my pupils.

R. Joshua b. Levi asked: What is the meaning of the verse: "Our feet stood in thy gates, O Jerusalem" [Ps. 122²] What gave us the power to stand in battle? - The gates of Jerusalem where men were engaged in the Law.

Furthermore R. Joshua b. Levi asked: why is it written concerning David. "I was glad when they said unto me, let us go into the house of the Lord." [Ps. 122]

David said to God: O master of the universe, I have heard men say, - when will this old man die! that Solomon his son may come and build the Temple, and we may come thither during festival seasons and rejoice.

Then God said to David: "for a day in thy courts is better than a thousand." [Ps. 84] that is, I am more satisfied with the single day which you devote to the study of the Law. than the thousand offerings which Solomon thy son will offer up to me upon the altar.

A Baraita informs us that in the opinion of R. Eliezer b. Jacob, the word "refuge" had to be posted up at cross roads [in order to guide the fleeing criminal].

R. Kahana similarly interpreted the verse "thou shalt establish a way" [Lev. 19³] to mean: thou shalt post signs of direction upon the way.

R. Hama b. Hanina as he was about to preach on the Biblical section treating of cases of accidental homicide, began as follows: We read in Psalms 25⁸ "the Lord is good and righteous, therefore will he instruct the wicked in the right way." If God will instruct even the wicked, how much the more will he instruct the righteous!

R. Simon b. Lakish as he was about to preach on the same Biblical section began as follows: The Bible says, "if a man lie not in wait [to kill another] but the Lord delivereth him into his hand." [Ex. 21¹³] and furthermore it says, "as saith the proverb of the ancients 'from the wicked cometh forth wickedness'" [Sam. I. 24¹⁴] Now, what does Scripture mean when it says "but the Lord delivereth him?" It has reference to the following case: two men commit murder, one, by accident, the other, with purpose; there are, however, no witnesses to either of these crimes. In such a case the Lord brings both of the murderers together at an inn: he then prompts the deliberate murderer to sit down at the foot of the ladder, while the accidental murderer he prompts to ascend it; then he causes the one to fall and to kill the other. Thus is the real criminal killed, and while the other culprit is exiled for the second accidental murder, and thus is justice vindicated.

Raba b. R. Huna said in the name of R. Huna [and some say that R. Huna said it in the name of R. Elazar] that it may be proved from the Pentateuch, the prophets, and the Hagiographa, that in whatsoever way a man wishes to go, he is free to do so.

This is proved from the Pentateuch by the verses "thou shalt not go with them" [Num. 22¹²] and "rise, go with them" [Num. 22²⁰] [altho' God at first forbade Bilam to go with the emissaries of Balak, still after Bilam felt the temptation to go, God permitted him to do so.]

The prophets indicate this in the verse "I am the Lord Thy God who teach thee to profit and lead thee in the way thou [choosest] to go." [Is. 48¹⁷]

We learn this from the Hagiographa in the verse "to the scorners God acteth scornfully [he does not restrain them in their evil ways] but to the lowly he is gracious." [Prov. 3³⁴]

R. Huna said: if the avenger find the manslayer while he is on his way to the City of refuge, and slay him, he is acquitted. R. Huna is of the opinion that the words "he is not guilty of death" [Lev. 19⁶] refer to the avenger.

Some one, however, raised an objection: Why, these words "and he is not guilty of death" are said with regard to the manslayer!

You say that these words refer to the manslayer. I can just as well say that they refer to the avenger.

But you cannot say so, since the verse concludes with the words "for he did not hate him formerly". [Lev. 19⁶]. This can refer only to the manslayer.

R. Huna, however, bases his statement on a line of argument similar to that found in the Baraita, where we read: When Scripture says "and he is not guilty of death," it refers to the avenger.

You say that it refers to the avenger. Why may it not refer to the manslayer, since it goes on to say "for he did not hate

him formerly"; which words can refer only to the manslayer.

Granted that these latter words refer to the manslayer, — to whom, however, shall we apply the words "and he is not guilty of death?" To the avenger.

[Hence R. Huna establishes his point that the avenger who kills the manslayer while he is still on the way to a city of refuge is acquitted.]

We read in the Mishna that the court assign two learned men to accompany the manslayer to a city of refuge so as to prevent the avenger from killing him. It is the business of these learned men to speak to the avenger.

What do they say to him? Do they not warn him that if he kill the manslayer he himself will be killed?

No, for we learn in a Baraita that they simply say some appropriate words to him, such as: do not act like a murderer against this man. It was merely by accident that he committed the crime.

R. Meir was of the opinion that the manslayer should speak for himself, according to the words: "and this is the word of the manslayer." [Lev. 19*]

The Rabbis, however, thought that what the avenger might not do for one man, he would do for many.
[therefore two men were to accompany the manslayer.]

a certain Rabbi objected to the use of the above words "it merely by accident that he committed the crime." Why, it is self-evident that had the culprit ~~not~~ committed the crime with purpose, would he, then, be sentenced merely to exile?

Yes. For we learn in a Baraita that, according to R. Jose b. Juda, at first, both accidental and intentional murderers were committed to exile and were fetched thence by the court for trial. Whosoever was, then, pronounced guilty, was executed; for it is written "and the elders of the city shall send and take them thence and hand them over to the avenger that he might kill them." [Lev. 19¹²]
Whosoever was not found guilty was acquitted; for it is written "And the court shall save the manslayer from the avenger" [Num. 35²⁵]
Whosoever was found guilty of exile was returned to the city of refuge; for it is written "And the court shall return him unto the city of refuge whither he had flown." [Num. 35²⁵]

Rabbi, however, said that these criminals fled to exile not by right of Scripture but on their own assumption. They thought that whether a man commit murder by mistake or with purpose, he is entitled to refuge in one of the cities set aside for that purpose; but they did not know that only he who commits murder by accident is entitled to refuge, while he who commits the crime deliberately is not.

R. Elazar said that a city in which there are many murderers may not be appointed as a city of refuge, for it is written, "and he [the manslayer] shall speak his words into the ears of the elders of the city." [Jos. 20⁴]

Furthermore, R. Elazar said: a city in which there are no elders may not become a city of refuge, for if we should need the elders of the city there would be none.

Another report has it that with regard to a city in which there are no elders there is a difference of opinion between R. Ami and R. Asi — one says that it may give refuge, the other says that it may not. He who says that it may ^{not} give refuge ~~to~~ assigns as his reason the absence of elders if they should be needed. He who says that it may give refuge maintains that it is merely commendable but not necessary for a city of refuge to contain elders.

With regard to a city which has no elders R. Ami & R. Asi again differ as to whether a son ~~may~~ who is rebellious may be condemned in it; since it is written "and they shall bring him forth to the elders of the city." [Lev. 24¹⁴] One says that it is not permitted and gives as his reason the absence of elders enjoined by the Bible [Lev. 24¹⁴]

while the other says that it is permitted on the ground that it is merely commendable but not necessary for a city to contain elders.

R. Ami & R. Asi again differ as to whether a city without elders may lead forth the calf that is to have its neck broken [as an atonement for a corpse found in a field ~~when~~ no one knows who killed him]. One says that it may and gives as his reason that it is merely commendable but not necessary for a city to have elders. The other says that it may not because according to Scripture there must be elders [Lev. 24³] but there are none.

R. Hama b. Hanina asked: why in the chapter dealing with cases of accidental homicide, is the more rigorous word "dabber", used? as it is written, "and the Lord said unto Joshua as follows: Speak [dabber] unto the children of Israel and say unto them, appoint for yourselves cities of refuge as I have commanded you." [Jos. 20^{1,2}]

Because these words refer to a law already laid down in the Pentateuch, [therefore severer language is used in adjuring the children of Israel to obey it.]

Is this to say that wherever some form of the stem "dabar" is used, there is always an implication of severity?

yes. For it is written: "the man who is the lord of the land spoke [dibber] to us roughly." [Gen. 42³⁰]

But do we not read "and they that feared the Lord spoke one to another." [Mal. 3¹⁶] and is the form of "dabar" employed here used in ^{any other than} a mild sense? Similarly it is written [Ps. 47] "He shall subdue [yadber] the people under us."

This is granted. the word "dabber" is used for severity while the other forms of it such as "yadber," are used for lenient discourse.

R. Jehuda and the Rabbis differ as to the reason why the more rigorous language was used in the above quoted verse. One says that the reason consists in the fact that the cities of refuge were to be established in the future, and there was danger that the Jews might neglect to do so, therefore was the command phrased in severe language. But the Rabbis say that the reason is the reference of this command to a similar one enjoined in the Pentateuch.

We read: "And Joshua wrote these words in the book of the law of God" [Jos. 24²⁶]

R. Jehuda and R. Nechemia differ as to what this verse refers to.

One says that it refers to the last eight verses of Deuteronomy; while the other says that it refers to the chapter dealing with cities of refuge. [Jos. 20]

It may be granted that this verse refers to the last eight verses of Deuteronomy since these are really written in the book of the Law of God. But why should it be said of the chapter dealing with cities of refuge that it is found in the book of the Law of God since it is really found in the book of Joshua?

He should however read the verse as follows: "and Joshua wrote in his book these words which are written in the book of the Law of God."

A book of the Law which is bound or sowed with flax is fit according to R. Jehuda but unfit according to R. Meir.

R. Jehuda justifies himself as follows: it is written "in order that the Law of the Lord may be in thy mouth."

[Ex. 139]

But why not make an analogy between the Law and phylacteries? just as according to tradition the latter may be sowed with sinews [or anything resembling sinews such as flaxen cords] so may the Torah be sowed with sinews.

R. Meir however will make no analogy with traditional laws. He makes his analogy with things that are permitted to be taken into the mouth. Only on such things may the Torah be written and only with such

things may it be sowed.]

Rab said that he saw a set of phylacteries at the house of R. Hiya which were sowed with linen or flax thread.

But the Law is not according to R. Hiya.

Mishna.

Whether the High priest be anointed with the oil of anointment [as was the practice before the time of king Josiah] or whether he be inaugurated by the symbol of many garments [as was the practice after the time of Josiah] or whether he be suspended from his office [because he was found in some way unfit] — at his death the culprits who were committed to cities of refuge are permitted to return to their homes.

R. Jehuda said that even when a priest dies who was anointed because of the exigencies of warfare, the culprits may return.

Hence the mothers of the priests supply the culprits with food and clothing in order that they might not pray for the death of their sons.

Gemara:

What Biblical basis have we for the above Mishna?

R. Kahana finds the basis in the verses: "And he shall dwell therein until the death of the high priest" [Num. 35²⁵]; "For in the his city of refuge shall he dwell until the death of the high priest." [Num. 35²⁶]; "and after the death of the high priest the culprit may return to the land of his possession." [Num. 35²⁸]

R. Jehudah adduces another verse as a support: "And ye shall take no bribe for him that is fled to a city of refuge, that he should come again to dwell in the land, until the death of the priest." [Num. 35:32] And the reason why this verse speaks only of a priest and not a High priest is that it is really regarded as one of the three verses just cited.

The reason why mothers of priests supply the criminals with food and clothing is that they should not pray for the death of their sons.

And suppose they did pray - would then the priests die? Is it not written: "as the bird by wandering, as the swallow by flying, so the curse that is without cause shall not come." [Prov. 26:2]

[line omitted: see star]

Some, however, interpret the Mishna to mean that the culprits should pray for their sons that they might not die.

The reason, then, is that they should pray. But suppose they did not pray, would the priests die? What could the priest have done [to prevent the criminal from committing his crime]? In Babylonia we express this in the proverb: "Tubia has sinned, shall then Zigud be punished for it?" In Palestine the proverb runs thus: "Shechem has had the pleasure and Mingai must suffer pain for it!"

✧ a certain old man, however, said that according to a certain lecture of Raba's it appeared to him that the priests really were to some extent responsible for they should have prayed in behalf of their generation but failed to do so.

Here for example is a case in point: a certain man was devoured by a lion at a distance of three Parasangs

from the home of R. Joshua b. Levi, and on this account Elijah would not speak to him for three days.

Rab Jehuda said in the name of Rab that the curse of a ~~man~~ learned man even though it is without cause, nevertheless, has its effect. How do we know this? From the case of Ahitophel. When David dug the foundations for the Temple, the sea arose and threatened to submerge all things. Then David asked whether it was permissible to write the name of God on a piece of earthenware and to throw it into the sea that it might be stilled. No one, however, could tell him anything. Then David said: May he who can throw light on this matter and refuses to do so, be hung! Ahitophel then conceived an argument based on an inference: if to restore peace between husband and wife the Bible says that God's name which has been written in holiness may be erased by water [Num. 5²³] how much the more may this be done for the sake of the whole world! So he said to David, "it is permissible to do so." Then David wrote the name of God upon a piece of earthenware and threw it into the sea which was at once quieted and stood still in its place. And yet it is written: "And Ahitophel saw that his counsel was not accepted so he saddled his ass and went unto his house in his city and he gave orders unto his household and he had himself hung and he died." [2 Sam. 17²³] Hence we see that the curse of David did descend upon the head of Ahitophel although it was without cause.

R. Abahu said that the curse of a learned man even though it be made conditionally will have its effect. We know this from the case of Eli. He said to Samuel: "May God do thus unto you and more of it, if you hide from me a single thing" [1 Sam. 3¹⁷]

And although it is written that "Samuel told Eli all things and concealed nothing from him" [I Sam. 3¹⁸] nevertheless the curse did have effect, for it is written: And the sons of Samuel did not walk in his ways." [I Sam. 8³]

R. Yehuda furthermore said in the name of Rab that a vow which is made even conditionally must be absolved. We learn this from the case of Jendah who said to his father: "If I do not return him to you, then will I have sinned against you forever." [Gen. 43⁹]

R. Samuel b. Nachmani asked in the name of R. Jonathan: why is it written: "Let Reuben live and not die." [Lev. 33⁶], and in the very next verse we read: "and this is for Jehudah." [Lev. 33⁷]?

During the whole forty years that the Israelites wandered in the wilderness, the bones of Jehudah rolled and tossed in their coffin until Moses arose and prayed and said: who caused Reuben to confess? was it not Jehudah? "this then should be for Jehudah; hear O Lord, the voice of Jehudah!" [Lev. 33⁷] at once his bones went into their places [joints]. But they could not bring Jehudah unto the heavenly academy. Then Moses prayed again: "Bring thou him unto his people" [Lev. 33⁷] Jehudah, however, could not participate in the discussions of the Rabbis. So Moses prayed again: "let his hands be sufficient for him," [Lev. 33⁷]. Still, Jehudah could not answer a certain difficult question. Again Moses interceded for him and said: "be thou a help to him against his opponents." [Lev. 33⁷]

A question was raised with regard to the above Mishna. Does the culprit return to his own land only when all of the high-priests mentioned die, or does it require the death of only one of them?

If the high priest dies at the same time that the sentence of exile is pronounced, the culprit is exempt from the penalty.

If while the case is still before the court and sentence has not yet been pronounced, the high priest dies and another is appointed in his place, and then the sentence is pronounced — under these conditions the culprit must wait in exile until the death of the second high priest.

If sentence is pronounced at a time when the office of high priest is not filled, or if a man accidentally kill the high priest, or if the high priest himself accidentally kill some one — in such cases the culprits are not permitted to go forth from exile at any time, neither to give testimony in a case involving the performance of a Biblical statute, nor in one involving money nor in one involving life. Even if Israel is in need of them, even if they be a great general like Joab b. Zeruiah, they are never permitted to go forth; for it is written "whither he had fled," [Num. 35:25] that is, there shall be his dwelling, there shall be his death, there shall be his burial.

As the city affords refuge so does its boundary.

If a murderer go outside of the boundary and the avenger find him — R. Jose Hagalili said that it is commendable for the avenger to kill him and permissible for anybody else to do so. R. Akiba, however, said that it is merely permissible for the avenger to kill the murderer but is forbidden, under the penalty of death, for anybody else to do so.

What reason is there for the statement of our Mishna that a culprit is not sent into exile if his sentence is pronounced at the same time that the high priest dies?

Abaye finds the reason in an inference: since one who is already in exile goes forth at the death of the high priest, shall not one who has not even been exiled as yet, go free? that is, shall he not be exempt from exile?

But perhaps the culprit who has already been in exile has thereby made atonement, while he who is exempt from the penalty is thereby not given the opportunity to do so.

Is it then anything pertaining to exile that makes the atonement? It is the death of the high priest that atones for the culprits.

What Biblical basis is there for the second statement in our Mishna that the culprit must wait for the death of the second high priest?

R. Kahana finds the support in the verse "and he shall abide in the city of refuge until the death of the high priest who was anointed [whom he had anointed] with holy oil." [Num. 35-25] Now, did he really anoint him? What the verse really means is the priest who was anointed before he was pronounced guilty of accidental homicide. [in his days]

But is the priest really responsible? What could he have done?

He should have prayed for the acquittal of the prisoner but did not do so.

Abaye said: we have it on tradition that if a culprit die just after his sentence is pronounced, his bones are carried into exile; for it is written "and ye shall take no bribe from him who has fled into exile, that he should return to dwell in the land before the death of the high priest." [Num. 35 32] Now, what kind of dwelling can be referred to in this verse. It must refer to burial. [therefore can the culprit not be buried anywhere but in a city of refuge.]

We learn in a Baraita that if a culprit die before the high priest, his bones, upon the death of the latter, are deposited in the sepulchres of his fathers; for it is written, "the murderer shall return unto the land of his possession" [Num. 35 28] What does the verse mean by returning unto the land of his possession? It means burial.

If after a criminal's decision is pronounced it is proved that the high priest is unfit either because he is the son of a divorced woman or of a woman refused in Levirate marriage, - R. Ami said: that is considered as tho' the priest had died [and therefore the criminal is exempt from the penalty of exile] while R. Isaac Nafacha regards the whole term of the priest's service as invalidated [and therefore there being no high priest in office, the criminal is never permitted to leave the city of refuge.]

We might say that this dispute is similar to the dispute of R. Eliezer and R. Joshua. We learn in the Mishna that if a priest offers up sacrifices and it is found

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out that he is the son of a divorced woman or of a woman refused in Levirate marriage and therefore unfit — according to R. Eliezer all the sacrifices that he offered up are unfit, while according to R. Joshua they are fit. Consequently R. Ami would agree with R. Joshua while R. Isaac b. Nafacha would agree with R. Eliezer.

With regard to R. Eliezer, there is no dispute at all. The dispute is concerning R. Joshua. R. Ami who said that it is regarded as though the Priest had died, certainly agrees with R. Joshua. But so might R. Isaac b. Nafacha whose opinion it is that the whole term of the priest's service is invalid. R. Joshua's view simply does not go so far as to be applicable here. In the case mentioned by R. Joshua, we may apply the verse "Bless, Lord, his substance and accept the work of his hands" [Lev. 33] that is, even if there be unfitness in it. But in the case mentioned by R. Isaac b. Nafacha, even R. Joshua would agree that the doings of the priest are invalid.

R. Jehuda said in the name of Rab that Joab at the time referred to made two mistakes. It is written "And Joab fled unto the tabernacle of God and seized hold of the horns of the altar" [Kings. 2²⁸] He erred, first, in not knowing that only the roof or top of the altar afforded refuge while he seized upon its horns. He erred again in not knowing that only the altar at Jerusalem could give refuge while he took hold of the altar at Shiloh. [Rashi has it that Shiloh's altar could not have existed at the time of David & Solomon, and that Joab really took hold of the altar which David had placed before the ark in the tabernacle of the city of David.]

Abaye said that Joab also erred in this: he did not know that the altar affords refuge only to a priest who is in the act of service, while Joab was a layman.

R. Simon b. Lakish said that Sammael [the prince of the Romans] is destined to make three mistakes; for it is written "Who is this that cometh from Edom, with dyed garments from Bozrah?" [Is. 63'] He will not know that only Bazar can afford refuge while he will flee to Bozrah. He will not know that only the unintentional murderer is entitled to refuge while he is wicked and presumptuous. He will not know that only human beings are afforded refuge while he is an angel.

R. Abbahu said that it is not permitted to bury [Levites] within the cities of refuge; for it is written "and the suburbs of them shall be for their cattle and for their goods and for their beasts" [Num. 35³] The Talmud reads "for all their living ones" instead of "for all their beasts"; and deduces the conclusion that the cities of refuge are only for the living but not for burial.

Some one raised an objection to this reasoning of R. Abbahu. Shid we not deduce from the word "thither" in Num. 35 "that there shall be his dwelling - there shall be his death, and there shall be his burial?" [Hence we see that burial is permitted in cities of refuge.]

It is different with regard to a murderer. He may be buried in a city of refuge for Scripture plainly permits it. But a Levite may not.

An objection was raised against the statement of the Mishna that the boundary of a city of refuge affords protection as well as the city itself. We read "and the manslayer shall abide therein" [Num. 35:25] that is, within the city itself, but not within its boundary.

There is here no difficulty, said Abaye. The city itself affords refuge from the avenger, but the boundary may be used for dwelling purposes.

The Mishna teaches as follows: We read "and the avenger shall kill" [read the imperative. וְהָרָצָח] the murderer" [Num. 35:37] that is, it is even obligatory upon the avenger to do so in case the murderer ventures outside the prescribed limits, but it is merely permissible for anybody else to do so. This is the opinion of R. Jose Hagelili. R. Akiba, however, said that it is merely permissible to the avenger and prohibited to anybody else.

What reason has R. Jose Hagelili for his opinion?

He says that if Scripture had merely permitted the avenger to take vengeance it would have read "and if he kill etc."

But said R. Akiba, is it then written "he shall kill"?

Mar Zutra b. Tubia said in the name of Rab that if a murderer go outside the prescribed limits and the avenger find him and kill him, the avenger is punished with death.

Whose opinion is this? It cannot be that of R. Jose Hagelili nor that of R. Akiba.

It is probably the opinion of R. Eliezer who says in a Baraita that the verse "and the murderer shall not die until he has stood before a court for trial" [Num. 35:12] altho it seems superfluous since we know that a criminal cannot be killed without previous trial, is really necessary to supplement and explain the verse "and should the avenger kill the murderer" [Num. 35:21] It might be supposed that the avenger might kill him at once, therefore Scripture says "until he has stood before a court for trial." [Consequently if the avenger does kill him he is punished with death.]

But what use do R. Jose & R. Akiba make of this verse "until he has stood before a court for trial"?

They make use of it according to the following Baraita: R. Akiba asked, whence in the Bible do we learn that if one court sees a certain man commit

Murder they may not inflict capital punishment upon him until he has been condemned in some other court? We learn this from the verse "until he has stood before a court for trial," that is, until he has stood before some other court.

The Bible says: "if the murderer should go outside the boundary of refuge" [Num. 35:26] This verse seems to refer only to a transgression that is intentional - how is it with one that is accidental?

Scripture provides for this in the words "if he go forth," that is, go forth in any way whether by accident or with purpose.

But do we not learn that when murder is intentional the penalty is death, while when accidental, it is exile?

There is here no difficulty. One is the opinion of a Rabbi who holds that the Torah speaks in the language of man, while the other is the opinion of a Rabbi who holds that the Torah does not do so.

Abaye said that the opinion of the Rabbi who holds that the Torah speaks in the language of man, is reasonable, since it is not fair that his punishment in the end should be more severe than it was in the beginning. Since in the beginning he was to be killed only when the crime was deliberate, while when accidental he was to be exiled, so should it be in the end.

Some Rabbi was of the opinion that when a father killed his son, it is the duty of the second son to be the blood-avenger, while another Rabbi held the contrary opinion.

We might say that the former is the opinion of R. Jose Hagelili, while the latter opinion belongs to R. Akiba.

Mishna:

In the case of a tree which stands within the boundary [of a city of refuge] but whose branches project outside of it, or in the case of one which stands outside the boundary but whose branches incline within — the law considers only the position of the branches. [the position of the whole tree depends on the position of its branches]

Amara:

Some one raised an objection to the above Mishna. We learn [in connection with the second tithe] that in the case of a tree whose trunk is within but whose branches incline without, or in the case of one whose trunk is without but which inclines within, then whatever part of it is this side of the wall of the city [from the wall inwards] is regarded as being in the city, whatever part of it is on the other side of the wall [from the wall outwards] is regarded as outside the city. [Hence everything seems to depend on the position of the tree with respect to the wall and not to the branches.]

But how can you use the case of tithes as an objection against the case of cities of refuge? Scripture, with regard to tithes, expressly states that the wall shall be the dividing or limiting line [Lev. 12¹⁸] but in the case of the cities of refuge, it makes the point of division or limitation depend on dwelling or habitation and branches are more fit for such purpose than the trunk. [Num. 35²⁸]

An objection was now raised against the statement about tithes made above, based on a seemingly contradictory statement made elsewhere. We learn in a Mishna that in Jerusalem the deciding factor with regard to tithes is the position of the branches, and that the like holds with regard to cities of refuge.

R. Kahana said that there is here no difficulty or contradiction. It is simply a difference of opinion between R. Jehuda and the Rabbis. For we learn in a Baraita that in the opinion of R. Jehuda the position of a case is decided by its mouth, and that of a tree by its branches.

Why! R. Jehuda entertained this opinion only with regard to tithes in order to throw the balance always to the more rigorous side. If the trunk was without and the branches within, then just as he could not redeem what was on the branches [since it had to be eaten in the city of Jerusalem to which R. Jehuda has reference] neither could he redeem what was on the trunk. If the trunk was within and the branches without, then since he was not permitted to eat what was on the branches without redeeming it, neither could he eat " " " " trunk

" " " . But in the case of cities of refuge, it is alright to say that when the trunk is without and the branches within, since the avenger might not kill the culprit under the branches, therefore he was not permitted to kill him near the trunk. If however the trunk is within and the branches without, then since the avenger is permitted to slay the culprit if the latter be found under the branches, ~~the~~ he should also be permitted to slay him if he be found near the trunk. But the trunk is within the boundary!

Raba said: in the case of the trunk being within the boundary, there is no disagreement at all as to the avenger being forbidden to slay the culprit. Nor is it at all disputed that if the avenger may kill the culprit who is standing under the branches, by means of arrows or stones. What

R. Jehuda and the Rabbin do differ upon is this: the former says that if the avenger use the trunk as a means of ascent to the branches in order to kill the culprit, he may do so. The Rabbin hold that he may not do so.

R. Ashi said: what is the meaning of "

Mishna:

If a man who has been committed to a city of refuge again commits accidental homicide, he is exiled from one district of the city to another. a Levite, however, must flee to another city.

Gemara:

We learn from our Rabbin that the verse "and I will make for thee a place to which the man who commits accidental homicide shall flee," is to be interpreted as follows: "And I will make for thee", that is, during thy life-time, "a place", i.e. among or of thy places, "to which he shall flee". This indicates that Israelites were committed to places of refuge even when they were in the wilderness.

Whither were they committed?

To the camp of the Levites.

Consequently it was said that when a Levite commits accidental murder he is exiled from one district to another. Even if he be exiled in his own district, he is afforded refuge.

Thus R. Aha asked: why is it written: "for he shall dwell in the city of his refuge"? [Num. 35] that is, in the city which had given him refuge before.

ishna:

If the men of a city of refuge wish to honor a murderer who has been committed to that city, he is obliged to say to them, "I am a murderer." If despite his confession they insist in conferring honor upon him, he may accept it from them, for it is written "and this is the word [or case] of the murderer." [Lev. 24:17]

The murderers were obliged to pay the Levites in the cities of refuge for shelter. This is the opinion of R. Jehuda. R. Meir contends that they need offer no pay.

When the murderer is freed from the city of refuge and returns to his own city, he is restored to his former dignity. This is the opinion of R. Meir. R. Jehuda, however, maintains that he is not

Gemara:

R. Kahana said that the above dispute as to pay refers only to the six cities of refuge, for R. Jehuda maintains that the word "to you," [Num. 35:11] implies only refuge, while R. Meir interprets it to mean all the needs of the murderers. With regard to the forty-two cities assigned to the Levites there is no dispute. The murderers must pay for what they get.

Why, objected Raba, it is certain that the word "to you," implies all the needs of the murderers: but the above dispute refers really to the forty-two cities. For one contends that when Scripture says: "and unto them shall ye give" [Num. 35:11] it implies only refuge; while the other argues from these very words that just as the six cities of refuge were to supply all the needs of the murderers so should these forty-two cities. With regard to the six cities, however, all are agreed that the murderers need not give any pay to the Levites.

Our Rabbis taught: It is written "and he shall return to his family and to the possession of his father shall he return" [Lev. 25:41] [this is said of a Hebrew slave] R. Jehuda interprets The word "to his family," to imply that the slave shall not be restored to whatever dignity his father may have

secured, merely to his family he shall return.

R. Meir says, however, that he shall be restored to the dignity which his ancestors had acquired, for the words "into the possession of his fathers," imply that he is to be like his fathers.

The same dispute holds also with regard to a man who commits accidental homicide, since the seemingly superfluous word "he shall return" in the above quoted verse, [Lev. 24¹¹] is intended to include the case of the murderer.

Why use this roundabout way to prove a similarity in the dispute with regard to the above cases. Is it not plainly written, "and the murderer shall return to the land of his possession" [Num. 35-28] that is, to the land of his possession and not to his former dignity. This is the interpretation of R. Jehuda. R. Meir says that he does return to his former dignity, and he bases his statement on an analogy of expressions.

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