

## יביא עדים שנטרפה באונס – He should bring witnesses that it was killed by an unpreventable accident

### OVERVIEW

The תורה writes the דין of a שומר שכר that he is חייב for (ואבידה) and פטור from פטור. The פסוקים read as follows:

כִּי יִתֵּן אִישׁ אֶל רֵעֵהוּ חֲמֹר או שור או שה וכל בהמה לשמר ומת או נשבר או נשבה אין ראה ב שבעת יהוה תהיה בין שניהם אם לא שלח ידו במלאכת רעהו ולקח בעליו ולא ישלם א ואם גנב יגנב מעמו ישלם לבעליו ב אם טרף יטרף יבאהו עד הטרפה לא ישלם.

The פסוק יב does not have to pay if he can prove that it was an אונס as in (which is also indicated in our ברייתא, cited by this תוספות) or if he takes an oath that it was an אונס as in 'י פסוק. There are limitations as to when the ש"ש can be exempt from paying by (merely) taking an oath, and not providing witnesses. Our ברייתא will clarify the position of our ברייתא with regards to this matter.

-----  
ואיסי דורש בפרק האומנין (בבא מציעא פג,א.) אין רואה <sup>1</sup> -

And איסי who interprets the words אין רואה (there is no seer; there are no עדים who saw what happened), to mean -

הא יש רואה יביא עדים שנטרפה <sup>2</sup> ופטור -

That if there was a רואה (if frequent the alleged place of the accident), the שומר should bring witnesses that it was killed and only then will he be פטור; is not in conflict with our ברייתא <sup>3</sup>, but rather -

דמשמעות דורשין איכא בינייהו:

The difference between איסי and our ברייתא is (merely) the inference of the interpretation.<sup>4</sup> איסי is of the opinion that the פסוק of אין רואה lends itself easier to be interpreted that if יש רואה then עדים are required; while the ברייתא of our תנא prefers to derive this same ruling from the פסוק of אם טרף יטרף יביאהו עד פסוק.

<sup>1</sup> שומר of a פרשה are both written in the פסוק as well as the (כב,יב) This פסוק as well as the (כב,ט) שמוות [משפטים] כב,ט.

<sup>2</sup> If the place, where the ש"ש claimed the accident took place, is frequented by people and it is assumed that people saw the incident, then the ש"ש is not believed with a שבועה that it was an אונס, but rather he must provide עדים that indeed it was an אונס.

<sup>3</sup> Our ברייתא merely mentions that if the ש"ש brings שנטרפה, he is פטור; it does not say that he is not believed with a שבועה if we presume that עדים saw it. One may assume that איסי and our ברייתא are in dispute in this matter. Our תוספות negates this assumption. See following footnote # 4.

<sup>4</sup> It is difficult to assume that our ברייתא is merely teaching us that if he brings עדים he is פטור (see previous footnote # 3); for that is obvious (since he is פטור even if he only swears that it was נאנסו, then certainly he will be פטור if there are שנאנסו). [See however, 'Thinking it over'.] We must rather assume that our ברייתא concurs with איסי, and the תורה is teaching us that if there is an עד, then he must bring עדים, and a שבועה will not suffice.

## **SUMMARY**

Our ברייתא and איסי concur that if there were עדים, the ש"ש is not believed with a שבועה, but must rather bring the עדים.

## **THINKING IT OVER**

One of the שבועות of a (שכר) שומר is שלא שלחתי בה יד<sup>5</sup>; for if he was שולח יד in the פקדון, then even if it was נאנס later, the שומר is still חייב. It is possible that our ברייתא is teaching us that if the ש"ש bought שנאנסו עדים he is פטור (even) from the שבועה of איסי? How can תוספות be certain that our ברייתא concurs with איסי? Perhaps our ברייתא maintains that he is always נאמן בשבועה even if there are עדים, and the חידוש of עד יביאה עד is that he is יד שלא שלחתי בה יד<sup>6</sup>.<sup>7</sup>?!<sup>8</sup>

---

<sup>5</sup> This means that he did not use the פקדון for his own benefit.

<sup>6</sup> Without the פסוק (or ברייתא), we may have thought that even if there are שנאנסו עדים, he is still required to swear שבועה. This is the חידוש of this פסוק (as interpreted by our ברייתא), that he is פטור משבועה.

<sup>7</sup> Others explain that the reason he is פטור from the יד שלא שלחתי בה יד שבועה is because this שבועה is only a גלגול שבועה; the main שבועה is that he was not פשע (or that it was an אונס). Therefore since in this case there is no need for the עיקר שבועה, for there are שנאנסו עדים, therefore there is no גלגול שבועה of יד שלא שלחתי בה יד.

<sup>8</sup> See אמ"ה.