

## טבח והודה לאחד מהם מהו -

### What is the ruling if he slaughtered and admitted to one of them

#### Overview

רבא posed the following query to ר"נ; if a person stole and slaughtered an ox which belonged to two partners and he subsequently admitted to one of the partners what he did,<sup>1</sup> is he liable to pay the second partner five half-oxen (or two and a half oxen).<sup>2</sup> תוספות discusses the basis for such a query.

-----  
אליבא דמאן דאמר<sup>3</sup> (לקמן דף עה, א) מודה בקנס ואחר כך באו עדים פטור מיבעי ליה –  
רבא asked ר"נ this query (only) according to the one who maintains, that if one admits to a קנס payment and afterwards witnesses came, the rule is that he is still exempt from the קנס payment –

תוספות explains why we are sure that עדים came later:

דעל כרחך כשיש עדים בדבר מיירי דאי באין עדים בהודאה לא יתחייב בשום ענין:  
For perforce we must say that there are witnesses in this matter, for without עדים he will never be held liable by his admittance alone, under any circumstances.

#### Summary

מ"ד מודה עדים must have come later, therefore this query is only according to the מ"ד. בקנס ואח"כ באו עדים פטור.

#### Thinking it over

What would be the ruling if he admitted to one partner (and no עדים came) and the second partner claimed his חצי ד' וה' based on the admission to the first partner?

---

<sup>1</sup> He is exempt from paying the קנס of ד' וה' to the first partner, since he admitted to him, and the rule is פטור בקנס מודה.

<sup>2</sup> This other owner only owns half the ox.

<sup>3</sup> There is a dispute there in a case of עדים ואח"כ באו עדים [for instance a person admitted that he stole, where normally (if he was caught) he would be required to pay כפל (double), but since he admitted he is פטור]. The dispute is what happens if witnesses came later and testified that he stole, רב maintains he is פטור, and שמואל maintains he is חייב.

<sup>4</sup> The query was if he has to pay חצי ד' וה' to the other partner. The only way he would be liable to pay the other partner is if witnesses testify that he stole it (see תוספות shortly). However (since עדים must have come, so) according to the מ"ד that באו עדים עדים he is חייב; what is the query; obviously עדים came later (otherwise there can be no payment to the other partner), and once the עדים come, he is liable to pay the קנס to both partners, since this מ"ד maintains חייב עדים ואח"כ באו עדים. Therefore, we must conclude that this איבעיא is only according to the מ"ד that מודה בקנס ואח"כ באו עדים פטור. Therefore, he is always exempt from paying.