

It is satisfactory according to the – הניחא למאן דאמר פשיעה בבעלים פטור – one who maintains negligence with the owner is exempt

OVERVIEW

The גמרא relates an incident where a שומר was פושע and רב פפא held him liable. At first it seemed that this was a case of פשיעה בבעלים,¹ so רב פפא was embarrassed. The גמרא asked we can understand the embarrassment of ר"פ, if we maintain פשיעה בבעלים;² however if we maintain חייב בבעלים, why was ר"פ embarrassed? תוספות explains the question.³

וקשיא למאן דאמר חייב מעובדא דרב פפא –

And there is a difficulty, from the incident with ר"פ, on the one who maintains שמירה בבעלים חייב –

דרב אחא ורבינא איפליגו בה לקמן⁴ שהיו אחר⁵ רב פפא:

For רב אחא ורבינא, who lived after ר"פ, disputed this issue later in the גמרא.

SUMMARY

The גמרא presumes that the later אמוראים will not argue on the earlier אמוראים.

THINKING IT OVER

אלא למ"ד [פשיעה] גמרא seems to be explaining the question of the תוספות (which is, פשיעה). The תוספות of ד"ה should have been חייב אמאי איכסיף אלא למ"ד חייב אמאי.?!⁶ הניחא למ"ד פשיעה בבעלים פטור ד"ה here; איכסיף

¹ The rule is if the owner was employed by the שומר (or שואל) at the time when the שמירה (or שאלה) began, the שומר is פטור if the פקדון was lost or stolen. There is a dispute however, whether he is also פטור even if the שומר was a פושע. This is called פשיעה בבעלים.

² ר"פ ruled that he was חייב even though it seemed that it was פשיעה בבעלים, so he should be פטור.

³ The question cannot be on ר"פ, because perhaps ר"פ maintains פטור בבעלים.

⁴ רב אחא ורבינא argue on ד"ה, whether חייב בבעלים or פטור. The גמרא there did not specify who maintains what.

⁵ The question is on the פטור (either רב אחא or רבינא), how can he maintain פטור, since we know that ר"פ was embarrassed of his ruling חייב in a case of פשיעה בבעלים. תוספות assumes that these later אמוראים would not disagree with ר"פ, since he lived before them and was considered an elder sage. [This may be particularly true since it was not merely an opinion that he stated, but an actual ruling למעשה (which he was upset about).]

⁶ See מירא דכייא (and perhaps apply it here).