

Where he said; guard for me today, etc.

דאמר שמור לי היום כולי -

Overview¹

The גמרא explained the reason the two partners are considered שומרי שכר for each other, and it is not considered שמירה בבעלים, since they watched it on consecutive days, and they did not watch it at the same time.² תוספות clarifies the rules of שמירה בבעלים and שומרי שכר.

תוספות asks:

ואם תאמר אכתי שמירה בבעלים היא דאמרינן בריש השואל³ -

And if you will say; but it is still considered שמירה בבעלים, for the גמרא states in the beginning of השואל -

דבעלים באמירה⁴ גבי שואל את הפרה ובעלה עמה -

Regarding what the משנה stated; 'one who borrowed a cow together with its owner', that the owner is considered to be in the employ of the שואל by merely saying, 'I am employed by you' –

תוספות answers by distinguishing between the two cases:

ויש לומר שאני התם דבאמירה משעבדי עצמן ליכנס במלאכתם מיד⁵ -

And one can say; there (by the שואל) it is different, for the owner is obligating himself with his statement to immediately begin working -

אבל הכא לא משתעבד עד למחר -

However here (by the שותפין) he is not committing himself to begin work only until tomorrow, but not immediately, therefore he is not in the employ of his partner as of yet, and it is not שמירה בבעלים.

תוספות asks:

ואם תאמר ומאי קא משמע לן שמואל דנעשין שומרי שכר זה לזה -

¹ See 'Overview' to previous תוס' ד"ה אמאי.

² They said to each other you watch for me today and (in return) I will watch for you tomorrow.

³ בבא מציעא צד, ב.

⁴ [The גמרא there questioned how is it possible that both the cow and the owner are borrowed by the שואל simultaneously (as it seems from the expression ובעלה עמה), since the owner is employed as soon as he says and agrees to be employed, while the cow is not considered borrowed, until the שואל makes a משיכה in the cow.] In any event it is obvious that the owner is considered in the employ of the שומר by merely saying that he will work for him, so here too, since the שותפין agree that they will watch for each other; they should be considered in the employ of the other שותף and it should be considered שמירה בבעלים even if they said מחר לך מחר ואני אשמור לך מחר!

⁵ Therefore since he is committing himself to begin working immediately he is considered in the employ of the שואל now!

And if you will say; what is שמואל coming to teach us; that they become ש"ש one to another -

מתניתין היא בהשוכר את האומנים (בבא מציעא דף פ,ב) שמור לי ואשמור לך שומר שכר -

But **this is a משנה in האומנים את השוכר את האומנים**; if one says to another ‘guard for me and I will guard for you’, they each become a ש"ש to the other, so why was it necessary for שמואל to repeat a ruling that is stated explicitly in the משנה?⁶

answers and distinguishes between the two cases:

ויש לומר דאי מהתם הוה אמינא לפי שהם אינן שותפין⁷ -

And one can say that if all we had was the משנה there in 'השוכר וכו', I would have said that only there, are they considered to be ש"ש, since they are not partners -

אבל הכא שהם שותפין כל אחד ואחד כששומר חלק חבירו שומר גם⁸ בשביל עצמו:

However here where they are partners, so each one while he is watching his friend's portion he is also watching for his portion.

Summary

If the owner commits himself verbally to be in the employ of the שומר immediately it is considered שמירה בבעלים, but not if his commitment will begin after the שמירה. It is more reasonable that שומר לי ואשמור לך is considered ש"ש where they are not partners than when they are guarding items which are owned in partnership.

Thinking it over

Why did תוספות not ask his question⁹ on שמואל (what is his חידוש) previously when שמואל stated his ruling; why did he wait to ask it now (after the first question and answer in this תוספות)?!

⁶ See ‘Thinking it over’.

⁷ שמואל said to ר' אבהו if you will watch my cow today, I will watch your cow tomorrow, the cows belong exclusively to their respective owner's only, therefore when ר' אבהו watches the cow of שמואל for free. it is as if שמואל is receiving payment for him watching ר' אבהו's cow the next day and vice versa. The service of watching is a bona fide payment.

⁸ When ר' אבהו (the partner) is watching the entire stock of which half belongs to him and half to שמואל, one may argue that he is not giving something to שמואל, but rather he is watching his own (share of the) stock. Therefore perhaps they are not considered ש"ש. Therefore שמואל informs us that indeed they are ש"ש. See רשב"ם ד"ה אמר where he writes, דס"ד אמינא דשומר חנם הוא דבלאו חלק חבירו היה צריך לשומר את שלו ושמירה אחת היא בין הכל ולא ליהוי שומר שכר קמ"ל.

⁹ See footnote # 6.