

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE EXECUTION BY STONING AND THE MANNER OF HERALDING. HOW THE CRIMINAL WAS URGED TO CONFESS BEFORE DEATH. THE STRIPPING OFF BEFORE DEATH OF THE DRESS OF A MALE AND OF A FEMALE. THE HANGING AFTER STONING, AND HOW IT WAS PERFORMED.

MISHNA I.: If the conclusion was to condemn, the guilty one was taken out immediately to be stoned. The place where he had to be executed was outside of the court, as it reads [Lev. xxiv. 13]: "Lead forth the blasphemer." One stood at the gate of the court with a flag in his hand, and one who rode on a horse stood so far distant that he could see the signal of the flag in case there were any. And then if one came before the court, saying, "I have something to say in his defence," the man raised up the flag, and he who was on horseback rushed and stopped the procession; and even if the guilty one himself says, "I have something new to say in my defence," he is to be brought back to the court, even four and five times, provided there is something in it which is worthy of consideration. And then, if the court finds that he is not guilty, he is acquitted, and if not, he is taken back to be stoned. And a herald goes before him, heralding: So and so, the son of so and so, is taken to be stoned, because he committed such and such a crime, and A and B are his witnesses. Every one who knows something in his defence may come and tell it before he is executed.

GEMARA: Was, then, the place of execution outside of the court only? Does not a Boraita state that it was outside of all the three camps (when they were in the desert), and when they were in the cities the place of execution was outside of them? Yea! it is as you say, and the expression of the Mishna, "outside of the court," means that if it happened that the court took its place outside of the three camps or outside of the towns, even then the place of execution must be outside of the court, for the purpose that it should not appear that the court itself executed him, or for the purpose that there should be a procession,

to give time to one who might have some defence for the guilty.

Whence is this deduced? From that which the rabbis taught: It reads: "Lead out the blasphemer to without the camp," meaning out of all the three camps. But perhaps only out of one camp? There is an analogy of the expression "camp" which is mentioned here, with that in the case of the burning bullocks [ibid. iv. 20]: "And he shall carry forth the bullock to without the camp, and burn him"; and as there it means outside of all three camps, as explained elsewhere, the same is the case here. R. Papa, however, maintains that this is to be inferred from the following: Let us see. Moses sat in the camp of the Levites, and the Merciful One said to him: "Lead out the blasphemer to without the camp." Hence, out of the camp of the Levites. And thereafter it reads [ibid. xxiv. 23]: "And they led forth the blasphemer to without the camp, and they stoned

him," which means out of the camp of the Israelites.

But is not the verse necessary in itself, to state that it was done as Moses commanded? This is written plainly farther on: "And the children of Israel did as the Lord had commanded Moses." But to what purpose is it written, "they have stoned him with stones?" It is already written they did it, and it is self-evident that they stoned him? It is needed, as we have learned in the following Boraitha: It reads, "they stoned him with a stone," which means him--his body--but not his garments; *i.e.*, they had to undress him before the execution. "With a stone" means that if he dies by the first stone no others are needed. In Num. xv, 35 it reads: "With stones," in the plural. And both expressions are needed, as if it were stated only in the singular, one might say that one stone should be thrown, and should it not cause death, no other stones must be thrown; and if it were mentioned in the plural only, one might say that many stones are needed to start with. Therefore both are stated. [1](#)

But how could R. Papa differ from the Boraitha mentioned above? Does not the Tana state it was said so? Hence the analogy of expression was traditional, to which an Amora had no right to object. The Tana meant to say that if there were not a verse it could be inferred from the analogy; but inasmuch as there is a verse, the analogy is not necessary. R. Ashi said

p. 128

that from the same cited verse this is inferred. Let us see! Moses was in the camp of the Levites, and the Merciful One commanded him: "Lead out the blasphemer," etc.--meaning from the camp of the Levites. "Out of the camp," means the camp of Israel.

"*One stands with flag*," etc. R. Huna said: "I am certain that the stone with which the executed was stoned, as well as the tree upon which he was hanged, the sword with which he was slain, and also the cloth with which he was choked must be at the expense of the congregation. However, I doubt who had to bear the cost of the flag and the horse mentioned in the Mishna. The defendant, as they are provided only for his sake, or the congregation, because they are obliged to do all they can to save him? I am in doubt also as to that which was said by R. Hyya to R. Ashi in the name of R. Hisda. When one was going to be killed, they used to put a grain of frankincense in a goblet of wine and gave him to drink, so that he should become dazed. As it is written [Prov. xxxi. 6]: "Give strong drink unto him that is ready to perish, and wine unto those who have an embittered soul." And there is a Boraitha that the wine and the frankincense were donated by the respectable women of Jerusalem. Now, if it happened that they were not donated, who must bear the expense? Says the Gemara concerning the latter: Common sense dictates, at the expense of the congregation, as the verse reads "give," which means the congregation.

R. Aha b. Huna questioned R. Shesheth: How would it be if one of the disciples said, "I have something to say in behalf of the defendant," and thereafter he became dumb? Gestured R. Shesheth, saying: Then we would have to consider that there was some one at the other end of the world who had some defence for him. But, after all, it was said by the disciple that he had a defence, and when he became dumb, would it not be right for the court to investigate again--perhaps they would find out what he meant? Come and hear that which was said above by R. Jose b. Hanina: If one of the disciples who defended him at the time of the discussion dies, it will be seen at the time of the conclusion whether he is still alive and defends him. Hence we see that if he has already defended, and he says: "I have something to say in his defence," and he becomes dumb before he gives his reasons, it is not to be taken into consideration. Rejoined R.

Aha: Notwithstanding that it is certain to you that R. Jose meant when his defence was already made by him, but

p. 129

not otherwise, it is still a question to me. For perhaps R. Jose said so because it is usual, if one has something to say, that he says it immediately; but if it happened that he became dumb before telling the reasons, it might be that even R. Jose would admit that the court must look the matter up again.

"*Which is worthy of consideration,*" etc. Does the Mishna mean that for the first two times it must be examined while he is yet at his place--if there is something, etc.? Have we not learned in a Boraitha, that the first two times he is to be brought back to the court, even if he does not give a good reason; and only at the third time it is to be examined if there is something in his defence before he is taken back? Said R. Papa: I interpret it that the Mishna means after the second time. But who decides whether it is a good reason or not? Said Abayi: After the second time the court appoints a pair of the rabbis to follow him, and if he has something to say, they examine him and decide if there is a good reason to take him back or not. But why should not the same rabbis be appointed previously, so that even at the first time he should not be brought back unless the rabbis found a good reason? Because he is affrighted he cannot say at the beginning all he wishes to say.

"*Such and such a crime,*" etc. Said Abayi: "The herald must also proclaim the day, the hour, and the place, for the purpose that perhaps there will be found some people who know that the witnesses were not in that place on that day or at that hour, and they will come to make them collusive.

"*The herald goes before him,*" etc. It means only when he is already sentenced, but not before. R. Jehoshua b. Lev! said. Him who repents and mortifies his passions after they have

taken a firm hold of him, and he confesses before Heaven, the verse considers him as if he should glorify the Holy One, blessed be He, in both this world and the world to come. As it is written [Ps. l. 23]: "Whoso offereth thanksgiving, glorifieth me." ¹ The same said again: When the Temple was in existence, if one brought a burnt-offering the reward for such was with him; a meat-offering, the reward of such was with him: but him who is modest, the verse considers him as if he should sacrifice all the sacrifices mentioned in the Scripture. As it reads [ibid. li. 19]: "The sacrifices of God are a broken

p. 130

spirit." Furthermore, his praying is never despised, as it reads farther on: "A broken and a contrite heart, O God, wilt thou not despise."

MISHNA II.: When he (the guilty one) was far from the place of execution--a distance of ten ells--he was told to confess, as so is the custom, that all who are to be executed should confess, and they who do so have a share in the world to come. And so do we find with Achan, to whom Joshua said: "My son, give . . . and make confession." And [ibid., ibid. 20] Achan answered Jehoshua: "Truly, I have sinned, and thus and thus have I done." And whence do we know that

he was atoned after his confession? From [ibid., ibid. 25]: "And Joshua said, How hast thou troubled us! So shall the Lord trouble thee this day." *This day*--but not in the world to come. However, if the guilty one does not know how to confess, he is told to say. My death shall atone for all my sins. R. Jehudah said: If he knew that he was innocent of this crime, he might say. My death shall atone for all my sins, except this one. And R. Jehudah was answered.. If it were so, all those who were to be executed would say so, to the end that they should be innocent in the eyes of the people.

The rabbis taught: In the verse cited--in what Jehoshua said to Achan--the term "na" is used, and "na" means "I pray." At the time the Holy One, blessed be He, saw [Joshua, vii. ii]: "Israel hath sinned," Jehoshua said before Him: "Lord of the Universe, who has sinned?" To which He answered. "Am I a talebarer, to tell you who. Go and draw lots." And he did so, and the lot fell on Achan. And he said to him. Joshua, do you accuse me on account of a lot? Thou and Elazar, who are the greatest of this generation, if I were to draw lots between thee and him, to one of you the lot would fall. And Jehoshua rejoined: I pray thee, do not discredit the decision of the lots, as the land of Israel will be divided by lots. As it is written [Num. xxvi. 55]: "Through the lot shall the land be divided." "Give confession!" Said Rabhina: He bribes him with words. We want of you only the confession. Give the confession, and you will be free: And Achan answered Jehoshua, and said: "Truly, I have indeed sinned against the Lord the God of Israel, and thus and thus have I done." Said R. Assi in the name of R. Hanina: Infer from this that Achan had committed a similar crime trice--twice in the days of Moses and once in the day of Jehoshua. As it reads: "And thus and thus I have done."

p. 131

R. Johanan in the name of R. Elazar b. Simeon said: Five times--four in the time of Moses and once in the time of Jehoshua. As it reads. "I have sinned, and thus and thus I have done." But why was he not punished until the last crime? Said R. Johanan in the name of the same authority. Because Israel was not punished for crimes which were committed secretly until they passed the Jordan.

On this point the Tanaim differ. It is written [Deut. xxix. 28]: "The secret things belong unto the Lord our God, but those things which are publicly known belong unto us and to our children for ever, to do all the words of this law." Why are the words, "unto us and to our children" and the Ayin of the "ad" pointed? To teach that they were not punished for secret crimes until they passed the Jordan. So is the decree of R. Jehudah. Said to him R. Nehemiah. Where is the plain which it is written that they were punished for secret crimes at any time? Is it not written in the cited verse, "forever?" Say, then, as they were not punished for secret crimes, so they were not punished for crimes which were done publicly until they passed the Jordan. But why was Achan punished--his crime was in secret? Because his wife and children were aware of it. "Israel hath sinned!" Said R. Abbah b. Zabda: Although he had sinned he was still called an Israelite. And said R. Abbah: This is what people say: "A myrtle which stands between thorns is still a myrtle," and so it is named. In Joshua, vii. 11, five times is "gam" (also) written in the cited verse: Infer from this that he had transgressed all that is written in the five books of Moses.

The Exilarch said to R. Huna: It reads [ibid., ibid. 24]: "And Joshua took Achan the son of Zerach, and the silver, and the mantle, and the wedge of gold, and his sons, and his daughters, and his ox, and his ass, and his sheep, and his tent, and all that he had, and all Israel were with him, and they brought them up unto the valley of Achor." Yea! he had sinned; but wherein had

his sons and daughters sinned? And he answered: According to your theory, what had all Israel to do with this? Hence it was only to terrify them. The same was it with his sons and daughters. It reads farther on: "And all Israel burned them with fire and stoned them with stones." 1 Were they, then, punished

p. 132

with both? Said Rabhina: That which was fit for burning, *e.g.*, silver, gold, and garments, was burned, and those which were fit for stoning, *e.g.*, oxen and other cattle--were stoned. It reads [ibid., ibid. 21]: "I saw among the spoil a handsome Babylonish mantle, and two hundred shekels of silver." Rabh said: A silk mantle; and Samuel said: A *σαραβαλλα* {Greek *saraballa*}. It reads farther on [ibid., ibid. 23]: "And as they laid them out before the Lord." Said R. Na'hman: Joshua cast them down before the Lord, saying: Lord of the Universe, were these little things worth that the majority of the Sanhedrin should be killed on account of them? It reads [ibid., ibid., 5]: "And the men of Ai smote of them about thirty and six men." There is a Boraitha: Thirty-six men were slain. So said R. Jehudah. Said R. Nehemiah, to him: "Is it, then, written thirty-six? It reads, "about," and it means that only Joer b. Menasseh, who was equal to the majority of the Sanhedrin, was put to death.

R. Na'hman said in the name of Rabh: It reads [Prov. xviii. 23]: "The poor speaketh entreatingly, but the rich answereth roughly." "The poor speaketh," means Moses; and "the rich," etc., means Joshua: But why? Is it because he cast them down before the Lord and said: "Little things," etc.? Did not Pinchas do the same? As it reads [Ps. cvi. 30]: "Then stood up Phinehas," etc. It ought to be written, "vayitpalel," which means, "and he prayed," instead of "vayiphalel (debated). Infer from this that he had debated with his Creator. He cast them before the Lord, saying: "Lord of the Universe, were they, then, worthy that on account of them twenty-four thousand persons of Israel should fall?"--as it reads [Num. xxv. 9]. So said R. Elazar. And if because of [Joshua, vii. 7]: "Wherefore hast thou caused this people to pass over the Jordan?"--did not Moses say similar to this [Ex. v. 22]: "Wherefore hast thou let so much evil come upon this people?" Therefore it must be said, because Joshua said at the end of the above-cited verse (7): "Would that we had been content, and dwelt on the other side of the Jordan." It reads [ibid., ibid. 10]: "Get the cup," etc. R. Shilla lectured: The Holy One, blessed be He, said to him: Thou thyself hast transgressed more than Israel, as I have commanded [Deut. xxvii. 4]: "And it shall be so, as soon as ye are gone above the Jordan, that ye shall set up these stones," and ye went a distance of sixty miles before ye did this.

After Shilla went away, Rabh appointed an interpreter and lectured: It reads [Joshua, xi. 15]: "As the Lord had commanded

p. 133

[paragraph continues] Moses and his servant, so did Moses command Joshua, and so did Joshua; he left nothing undone of all that the Lord commanded Moses." But why is it written, "Get thee up?" It means that the Lord said to him: "Thou thyself hast caused all the evils, because thou didst excommunicate the goods of Jericho, and no crime would have been committed if thou hadst not done so." And this is what is written [ibid. viii. 2]: "Only its spoil and its cattle shall ye take for booty unto yourselves." It reads [ibid. v. 13, 14]: "And it came to pass, when Joshua was by Jericho . . . And he said, No; for as a captain of the host of the Lord, am I now come. And Joshua fell on his face to the earth," etc. How could Joshua do so? Did not R. Johanan say:

One must not greet a stranger, with peace in the middle of the night, as perhaps he is a demon, and so much the more must he not bow before him? There it was different, as he said: I am a captain of the Lord. But perhaps he lied? We have a tradition that even the demons do not pronounce the name of the Lord in vain. And then the angel said to him: "Yesterday you abolished the presenting of the daily eve-offering, and to-day you abolished the studying of the law." And to the question, "For which of the two transgressions hast thou come?" he answered: For that of to-day. Hence it reads [ibid. viii. 18]: "And Joshua went that night into the midst of the valley." And R. Johanan said: Infer from this that he had occupied himself the whole night with the deepness of Halakhoth. 1 Samuel b. Unya in the name of Rabh. said: The study of the Torah is greater than the sacrifices of the daily offerings, as the angel said: For that of to-day.

Abayi said to R. Dimi: It reads [Prov. xxv.]: "Do not proceed to a contest hastily, lest (thou know not) what thou wilt have to do at its end, when thy neighbor has put thee to confusion. Carry on thy cause with thy neighbor; but lay not open the secret of another." How do the people of the West explain this passage? And he answered "At the time the Holy One, blessed be He, said to Ezekiel [Ezek. xvi. 3]: "And thou shalt say . . . thy father was an Emorite and thy mother was a Hittite," the arguing spirit (Gabriel) before the Holy One, blessed be He, said: "Lord of the Universe, if Abraham and Sarah should come and stand before thee, and thou saidst to them this, they should become ashamed." "Carry on thy cause with thy

p. 134

neighbor; but lay not open the secret of another." Had he, then (Gabriel) a right to say such a thing? Yea! As R. Jose b. Hanina said: Gabriel has three names--Piskon, Aitmun, Zigoron. *Piskon* means that he argues before Heaven for Israel's sake; *Aitmun* means that he restrains the sin of Israel; *Zigoron* means that when he concludes his defence for Israel and it does not have any effect, none of the other angels would attempt any further defence, being certain that none would accomplish anything if Gabriel had not done so.

It reads [Job xxxvi. 19]: "Hast thou prepared thy prayer before thy trouble came?" 1 said R. Elazar: One should always proceed with prayer before trouble comes. As if Abraham had not proceeded with his prayer until the trouble between Bith-El and the city of Ai, not one of Israel would have remained alive when the trouble happened at the city of Ai. Resh Lakish said: He who strengthens himself with prayer on the face of the earth has no enemies on the face of Heaven. R. Johanan said: One should always pray mercy, that all shall support his strength to pray, and he should not have enemies to accuse him in Heaven.

"*Atoned after confession*," etc. The rabbis taught: Whence do we know that his confession has made atonement for him from Joshua: "How hast thou troubled us! so shall the Lord trouble thee this day." *This day*, but not in the world to come. And it is also written [I Chron. ii. 6]: "And the sons of Zerach: Zimri and Ethan, and Heman and Calcol and Dara, in all five." To what purpose is it written "in all five"? It means all five have a share in the world to come. Here it reads "Zimri," and in Joshua he is named Achan. Rabh and Samuel--according to one, his name was Akhan. And why is he named Zimri? Because his acts were according to Zimri of the Pentateuch. And according to the other his name was Zimri. And why is he named Akhan (circle)? Because he caused the sins of Israel to rest upon them like a circle.

"*To the end that they should be innocent*," etc. But what harm could he do, if he should say so?

He could cast suspicion on the court and the witnesses. The rabbis taught: It happened with one who was going to be executed, that he said: If I am guilty of this crime, my death shall not atone for all my sins. And if I am innocent of this crime, my death shall atone for all

p. 135

my sins, and I have nothing against the court and all Israel; but to the witnesses I do not surrender my innocence, and they shall not be atoned for, for ever. When the sages heard this, they said: It is impossible to bring him back, as the sentence is already rendered; but he shall be executed, and the collar shall rest upon the neck of the witnesses. Is this not self-evident--for who could trust such a man? The case was, that the witnesses retracted from their first statement. But even then, what did it amount to? Is there not a rule that after testimony has been made and accepted no retraction can take place? The case was, that they gave a good reason for their retraction, and nevertheless they were not listened to. (So did it happen with the contractor Bar Mayon.) [1](#)

p. 136

MISHNA III.: When he came to four ells from the place of execution, he was stripped of his garments. If a male, he was covered in front; and if a female, she was covered on both sides. So said R. Jehudah. The sages, however, say: A male was stoned while naked, but not a female.

GEMARA: The rabbis taught: If it was a male, he was covered a little in front, but a female was covered in the greater part of the front and back. So said R. Jehudah. But the sages say: Only a male was stoned while naked, but not a female. And what is their reason? [Lev. xxiv. 14]: "And all the congregation shall stone him." And what does it mean? It cannot be said "him," but not "her" (a female), as it reads [Deut. xvii. 5]: "Then shalt thou bring forth that man or that woman," and therefore it must be said, it means him without his garments, but her with her garments. Hence he is to be stoned while naked, but not a female. R. Na'hman in the name of Rabba b. Abuhu said: (The reason why a woman was not stripped is because it reads [Lev. xix. 18]: "Thou shalt love thy neighbor as thyself," which means, in case he is sentenced to death, select for him a decent death, that he shall not be disgraced. [1](#))

MISHNA IV.: The stoning-place was two heights of a man. One of the witnesses pushed him on his thighs (that he should fall with the back to the surface), but if he fell face down, he had to be turned over. If he died from the effects of the first fall, nothing more was to be done. If not, the second witness took a stone and thrust it against his heart. If he died, nothing more was to be done; but if not, all who were standing by had to throw stones on him. Thus [Deut. xvii. 7]: "The hand of the witnesses shall be first upon him, to put him to death, and the hand of all the people at the last."

GEMARA: There is a Boraitha: With his own height he was

p. 137

thrown down from the height of three men. Was such a height necessary? Does not a Mishna in First Gate state that as a pit which causes death is of ten spans, so all other heights which may cause death must be no less than ten spans. Hence the height of ten spans is sufficient? Said R.

Na'hman in the name of Rabba b. Abuhu: From the above-cited verse [Lev. xix.], it is inferred that a decent death must be selected for him. If so, why not from a still higher place? Because his body would be mangled.

"*One of the witnesses pushed him,*" etc. The rabbis taught: Whence do we know that he must be pushed? From [Ex. xix. 13]: "But he shall surely be stoned, or shot through." From the term "yorauh yeyoreh," which means pushing. And whence do we know that he must be stoned? From the term "soqueul." And whence do we know with both stoning and pushing? Therefore it reads "soquoul yisoquel ayorauh yeyoreh." And whence do we know that when he died from pushing nothing more was to be done? From "au," which means "or." And because the term is future, we infer that the same shall be in later generations.

"*Took a stone,*" etc. Took! Have we not learned in a Boraitha: R. Simeon b. Elazar said: There was a heavy stone, which two men had to carry, and this he took and thrust against his heart, and if he died he fulfilled his duty. (Hence if two men had to carry it, it could not be taken by one.) He lifted it up with the support of his comrade, and then he alone threw it, that the blow should be stronger.

"*To throw stones,*" etc. Is there not a Boraitha: It never happened that he did not die from the hand of the witnesses, so that one should need to throw another stone? Does, then, the Mishna state that it was so done? It states, "should it be necessary."

The master said: "There was a stone," etc. But does not a Boraitha state that the stone with which he was stoned, as well as the tree upon which he was hanged, or the sword with which he was killed, or the muffler with which he was choked, must be buried with him? It means that before it was buried they prepared another like it, which remained. But is there not another Boraitha which states that the above things were not buried with the one executed? Said R. Papa: It does not mean that it was buried just with him, but near him, at a distance of four ells.

p. 138

Samuel said: If before the execution the hands of the witnesses were cut off, he becomes free from death, because the commandment, "the hand of the witnesses should be on him first," cannot be fulfilled. But if so, should witnesses who have no hands be disqualified? There it is different, as the verse reads, "the hand of the witnesses," which means that when they testified they had hands. An objection was raised from the following: Every one, of whom two witnesses testify that he was sentenced at such and such a court, and A and B were his witnesses, he is to be put to death. Hence we see that in any case he is executed? Samuel may explain the Boraitha that it means that the witnesses themselves testified that they were witnesses in the former court. But is it indeed needed that it should be done as the verse dictates? Is there not a Boraitha: It reads [Num. xxxv. 21]: "He that smote him shall surely be put to death; (for) he is a murderer." We know that one is to be put to death by that which applies to him; but whence do we know that if it is impossible that he should be killed by that which applies to him, he is nevertheless to be executed by any death which is possible? From the verse cited, "he shall surely die," which means in any case? That case is different, as it reads, "he shall surely die." But let all other cases be inferred from it? Because the verse cited, which speaks of a murder, and the verse which speaks of the avenger of the one murdered, are two verses which dictate one and the same thing (death), and there is a rule that from two such verses nothing is to be inferred. What verse of the avenger is meant? [Ibid., ibid., 19]: "The avenger of the blood himself shall slay." Infer from

this that it is a meritorious act for the avenger to do so himself. And whence do we know that if the murdered one had none such, that the court is obliged to appoint one? From the end of the verse, "when he meeteth him, shall he slay him?" Said Mar the elder b. R. Hisda to R. Ashi: How can one say that it is not needed as the verse dictates? Does not Mishna 5 in Chapter viii. of this tract state that it must be done just as the verse dictates, and it is deduced from the Scripture. With the verse cited in the Mishna in question it is different, as that verse is altogether superfluous, and is written only so that it should be done just as it dictates. But does not a Boraitha say in the eleventh chapter, concerning a misled town, that if there was not a main street in this city, according to R. Ismael such is not to be recognized as a misled town, as the verse dictates, "You

p. 139

shall gather all its goods in the main street," and according to R. Aqiba a main street should be made? We see, then, that they differ only if such should be made or not, but both agree that it must be done just as the verse dictates? In this case Tanaim differ, as a Mishna in Tract Negaim (xiv. 9) states. If he (referring to Lev. xiv. 25) lacked the thumbs of his right hand and foot, or the right ear, he can never be purified. R. Eliezer, however, said: It may be done at the place they are lacking. And R. Simeon said: It shall be placed on the left one.

MISHNA V.: All who are stoned are also hanged. So is the decree of R. Eliezer. The sages, however said: Only a blasphemer and an idolater are hanged (but no others). A male is hanged with his face toward the people, and a female with her face toward a tree. So R. Eliezer. The sages, however, say: A male is hanged, but not a female. Said R. Eliezer to them: Did not Simeon b. Shetha hang females in the city of Askalon? And he was answered: He hanged eighty women in one day, and there is a rule that even two must not be sentenced in one day, if the punishment is with the same death. (Hence Simeon's act was only temporary, because of the need of that time, and nothing is to be inferred from it.)

GEMARA: The rabbis taught: It reads [Deut. xxi. 22]: "And he be put to death, and thou hang him on a tree." And lest one say: "All who are put to death must also be hanged," therefore it is written in the second verse [ibid., ibid. 23]: "For he that is hanged is a dishonor of God" (a blasphemer), and as a blasphemer is to be stoned, the same is the case with all others who are to be stoned. So R. Eliezer. The sages, however, say: that as with a blasphemer who has denied the cardinal principle of our faith (*i.e.*, he does not believe in God), the same is the case with an idolater who denies the might of God, but all others who are stoned are not to be hanged. And what is the point of their difference? According to the rabbis, when there is a general expression and an explicit statement, we infer from the general expression and from the explicit statement which comes after it. And R. Eliezer infers from additions and exclusions. According to the rabbis, "He should be put to death and hanged," is a general expression; "The dishonor of God--hangs," is an explicit statement. And if they were in one verse it might be said, that the general expression applies only to that which is in the explicit statement; viz., only those which are mentioned in that case, but no others. But as they

p. 140

are in two verses, we infer from these an idolater, who is equal to a blasphemer in all particulars. And according to R. Eliezer, "He shall be put to death and hanged," is considered an addition; "the dishonor of God" is considered an exclusion. And if they were in one verse, we would add

an idolater only; but, seeing that they are in two verses, all the cases of stoning are to be added.

"*A male is to be hanged,*" etc. What is the reason of the rabbis? It reads, "thou hang him," which means him, but not her. And according to R. Eliezer, it means him, without his garments; and the rabbis also hold this theory, But as it reads, "And if a man has committed," etc., it means a man, but not a woman. And R. Eliezer infers from the word "man," to exclude a stubborn and rebellious son. But is there not a Boraitha which states that, according to R. Eliezer, even a stubborn and rebellious son is stoned and hanged? Therefore said R. Na'hman b. Itz'hak: R. Eliezer infers from this to include a stubborn son, and his reason is this: It reads, "If a man," meaning a man, but not a son; "committed a sin," means he is put to death, because he has already committed a sin; but a stubborn son is put to death, not because he has sinned, but because in the future he will sin. And this is an exclusion after an exclusion, of which the rule is, that it comes to add.

"*Said R. Eliezer to them,*" etc. Said R. Hisda: Two must not be judged on the same day, provided there are two kinds of death; but if there is only one kind, two may be judged. But was not the case of Simeon b. Shetha one kind of death? And nevertheless it was said to him: Two cases of capital punishment must not be judged on one day. Therefore if it was taught in the name of R. Hisda, it was thus: Provided there is one kind of death applicable to two kinds--namely, for two separate crimes; but if there was only one crime, and only one kind of death, it may. R. Ada b. Ahabah objected from the following: Two must not be judged in one day, even in the case of adultery--the two adulterers, he and she? R. Hisda explained this Boraitha, that it speaks of a daughter of a priest, and her paramour, in which case, according to the law, she is to be burned Hence there are two different kinds of and he is to be stoned. death. There is a Boraitha: R. Eliezer b. Jacob said: I have heard that the court may punish with stripes and even capital punishment, not in accordance with the biblical law--not with the intention to violate the law, but to make a safeguard for it.

p. 141

[[paragraph continues](#)] So it happened with one who rode on a horse on Sabbath, at the time Palestine was under the Greeks, and this man was brought before the court, and stoned, not because he deserved such a punishment, but because it was a necessity of that time, to warn others. And it also happened that one had connection with his wife under a fig tree, and he also was brought to the court, and was punished with stripes, not because he deserved such a punishment, but because of the necessity of that time.

MISHNA VI.: How was one hanged? The beam was put in the earth, and it was fastened at the top, and he tied the hands of the culprit one upon the other, and hung him up. R. Jose said: The beam was not put in the earth, but the top of it was supported by the wall, and he hung him up as the butchers do, and he took him off immediately. And should he leave him over night, he transgressed a negative commandment, as it reads [Deut. xxi. 23]: "Thou shalt not leave his corpse on the tree over night, but thou shalt surely bury him on that day (for he that is hanged) is a dishonor of God," etc. How so? "Why is this man hanged?" "He is a blasphemer." Hence the name of Heaven is violated. [Said R. Mair: When a man is in trouble, in what language does the Shekinah lament over him? Qalleni meiraushi, qalleni miz'raay. [1](#) Now, if the Omnipotent grieves over the blood of the wicked which was shed, so much the more about the blood of the upright!] And not only of him who was executed it was said that he should not remain over night? But even every one who leaves unburied his corpse over night transgresses the negative

commandment. However, if he left it over night for the sake of its honor, as for instance to prepare for it a coffin or shroud, he does not transgress.

The one executed was not buried in the cemetery of his parents, but two cemeteries were prepared by the court, one

p. 142

for those who were slain with a sword and choked, and one for those who were stoned and burned. After the flesh of the corpse was consumed, the relatives gathered the bones and buried them in their right place. And the relatives came, and greeted in peace the judges, as well as the witnesses, to show they had nothing in their heart against them, as the judgment was just. The relatives also did not lament for him loudly, but mourned in their heart.

GEMARA: The rabbis taught: If the verse read, "If a man committed a sin, he shall be hanged," we would say that he should be hanged until death occurs, as the government does; but it reads, "He shall be put to death and hanged," which means he shall be put to death and thereafter hanged. How was it done? They kept him till near sunset, condemned him, killed him, and then hanged him; one hangs him up, and the other immediately loosens the knot, as his hanging was only to fulfil the commandment.

The rabbis taught: It is written, "on a tree," from which ought to be inferred that it makes no difference if the tree was still attached to the ground or not. Therefore is it written, "Thou shalt surely bury him," from which it is to be understood that everything should be already prepared for the burying. And if the tree were still attached to the ground, it could not be considered prepared, as the tree was not as yet cut off. R. Jose, however, maintains that this verse excludes also a beam which is put in the ground, as it is not considered prepared, for the tree was not as yet taken out from the ground. But the sages say that the taking out is not to be considered.

"*Why is he hanged? Because he is a blasphemer.*" There is a Boraitha: R. Mair used to say: There is a parable. To what can this be compared? To two twin brothers, one of whom was selected for a king and the other became a robber, and was hanged at the command of the king. Now, people who saw him hanged would say that the king was hanged, and therefore the king commanded the corpse to be taken off (*i.e.*, as man was created in the image of God).

"*And not only for him who was executed,*" etc. R. Johanan in the name of R. Simeon b. Jochi said: Where is to be found an allusion to this in the Torah? In "thou shalt surely bury him." King Sabur questioned R. Hama: Whence do you deduce from the Torah that one must be buried? And the latter remained silent--without answer. Said R. Aha b. Jacob: The

p. 143

world is transferred into the hands of fools. Why did he not answer from the above-cited verse? Because the above is to be explained that it means a coffin and shroud are to be prepared for him. But let him say: Because all the upright were buried. This is only a custom, and not a command of the Torah. And why not say: Because the Holy One, blessed be He, buried Moses? It may be said that this also was not to change the custom. Come and hear [I Kings, xiv. 13]: "And all Israel shall mourn for him, and bury him." This, also, was not to change the custom.

But is it not written [Jer. xvi. 4]: "They shall not be lamented for; nor shall they be buried"? Them Jeremiah cautioned, that with them should be a change of custom.

The schoolmen propounded a question: Is the burying because the corpse shall become disgraced if not buried, or is it because of atonement? And what is the difference? If one says, "I do not wish to be buried," if it is because of the disgrace, he must not be listened to; but if it is for atonement, he should be listened to, as he says, "I don't want any atonement." Come and hear! "Because all the upright were buried." And if the reason should be for atonement, do, then, the upright need atonement? Yea, as it reads [Eccl. vii. 20]: "For no man is so righteous upon earth that he should do always good, and never sin." Come and hear the above-cited verse about Jeroboam, in which it reads that only he should be buried. Now, if the reason is atonement, why should not the others also be buried and atoned? He who was upright ought to be buried and atoned, the others who were wicked were not worthy to be atoned. The same is the case with them who were cautioned by Jeremiah that they should not be buried, because they were not worthy of atonement.

The schoolmen propounded another question: Is the lamentation an honor for the living or for the deceased? And what is the difference? If, *e.g.*, one says, "I do not wish to be lamented," if it is an honor for the deceased only, he may be listened to; and if for the living, he may not. Or, on the other hand, if his heirs do not want to pay the mourner, if it is an honor for the deceased, they may be compelled to pay; and if it is for the living, they may not. Come and hear [Gen. xxiii. 2]: "And Abraham came to mourn for Sarah, and to weep for her." Now, if this were only an honor for the living, should the body of Sarah have been kept till Abraham came, for his

p. 144

honor? Nay! Sarah herself was pleased that Abraham should be honored because of her. Come and hear! "All Israel shall mourn for him." Now, if it is for the honor of the living, were, then, the people of Jeroboam worthy to be honored? The upright are pleased that any human being should be honored on their account. But is it not written that they shall not be mourned for and buried? The righteous do not wish that they shall be honored because of the wicked. Come and hear Jeremiah [xxiv. 5]: "In peace shalt thou die; and as burnings were made for thy fathers, the former kings who were before thee so shall they make burnings for thee; and, 'Ah Lord,' shall they lament for thee." Now, if it is to the honor of the living, what good can this do to Zedekiah? The prophet said to him thus: Israel shall be honored because of thee as they were honored because of thy parents. Come and hear! It is said elsewhere [Ps. xv. 4]: "The despicable is despised," meaning King Hezekiah, who bore the remains of his father on a bed of ropes. Now, if it is for the honor of the living, why did Hezekiah do so? For the purpose that his father should have an atonement. But has he a right to invalidate the honor of Israel because of the atonement of his father? The people themselves were pleased to relinquish their honor, because of the atonement of Achaz. Come and hear what was said by Rabbi in his will: "Ye shall not lament me in the small cities, but in the large ones." Now, if it is for the honor of the living, why such a will? He thought: Let the people be more honored because of me. Come and hear the statement in our Mishna: If he left it over night for its honor, to prepare for it a coffin and shroud, he does not transgress. Hence we see it is to the honor of the dead? Nay, "for his honor" means for the honor of the living. But has one the right to leave the corpse over night, for the sake of his own honor? Yea, as the commandment not to let the corpse hang was because of the disgrace; but if it is not disgraced, the honor of the living is to be considered. Come and hear another Boraitha: If he left him over night for his honor, that his friends in other cities should hear of his death or

bring for him the lamenting-women, or prepare for him a coffin and a shroud, he does not transgress the negative commandment: for all he does is for the honor of the dead? It means to say that all he does for the sake of his own honor is not considered a disgrace for the dead. Come and hear another Boraitha: R. Nathan said: It is a good sign for one deceased if he was punished after his

p. 145

death; namely, if he was not lamented, not buried properly, or a wild beast seized upon his corpse, or if, while carrying him to burial, rain wet the corpse. All these are good signs that it was done for his atonement. Hence we see that all these are to be done for the honor of the dead. Infer from this that so it is.

"*But two cemeteries,*" etc. And why so? Because a wicked person must not be buried with an upright one. As R. Ahha b. Hanina said: "Whence do we know that a wicked person must not be buried with an upright? From [II Kings, xiii. 22]: "And it came to pass, as they were burying a man, that, behold, they saw the hand; and they cast down the man into the sepulchre of Elisha; and as the man came and touched the bones of Elisha, he revived, and rose up on his feet." Said R. Papa to him: But perhaps this was done to fulfil what is mentioned [ibid. ii. 9]: "Let there be, I pray thee, a double portion of thy spirit upon me." And as Elijah restored only one man, so did Elisha also restore one while he was alive; and the second was restored after his death. And he answered: If it were so, why, then, does a Boraitha state that the restored only stood upon his feet, but did not go home? And if it were for the purpose said above, he would remain alive. But if, as you say, Elijah's promise was not fulfilled? As it was said by R. Johanan: This was fulfilled with the cure of Na'hman from his leprosy, for leprosy is equal to death. As it reads [Num. xii. 12.]: "Let her not be as a dead-born child." And as it is prohibited to bury an upright person with a wicked, so also it is not allowed to bury a lesser wicked with a greater one. But if so, there should have been four cemeteries. The two cemeteries were traditional. [1](#)

The rabbis taught: They who are put to death by the government,

p. 146

their estates belong to the government; and they who, are killed by the court, their estates belong to their heirs. R. Jehudah, however, maintains that their estates belong to the heirs even when they are killed by the government. Said the sages to him: Is it not written [I Kings, xxi. 16]: "And it came to pass, when Achab heard that Naboth was dead, that Achab rose up to go down to the vineyard of Naboth, the Yizreelite, to inherit it"? And he answered: Achab was his brother's son. and was a legal heir. But had not Naboth many sons? Rejoined R. Jehudah: He slew him and his sons. As it reads [II Kings, ix. 26]: "Surely I have seen yesterday the blood of Naboth, and the blood of his sons." The rabbis, however, maintain that the expression "sons" means those who would come out from him had he remained alive. It is correct for him who says that the estates belong to the government, as it reads [I Kings, xxi. 13]: Naboth hath blasphemed God and the king." But to him who says the estates belong to the heirs, why was it necessary to add "and the king"? But according to your theory that they belong to the heirs, why was God mentioned? You may say it was done to increase the anger of the people. For the same reason, it was also mentioned, "and the king." It is correct to him that it belongs to the government, as it is written [ibid. ii. 30]: "No; but here will I die"--which means: I do not wish to be counted among those who were killed by the government, so that my estate should belong

to it. But according to him who says that it belongs to the heirs, what difference did it make to Joab. The simple one of remaining, alive one hour longer. It reads [ibid., ibid. 30]: "And Benayahu brought the king word again, saying, Thus hath Joab spoken, and thus hath he answered me." Joab said to Benayahu thus: Go and tell the king: You cannot do two things with me. If you wish to slay me, you must accept for yourself the curses with which your father cursed me. And if you will not accept them, you will have to leave me alive. Farther on it is said: "Then said the king unto him, Do as he hath spoken, and fall upon him, and bury him." Said R. Jehudah in the name of Rabh: All the curses with which David cursed Joab fell on the descendants of David. They were [II Sam. iii. 29]: "And may there not fail from the house of Joab one that hath an issue, or that is a leper, or that leaneth on a crutch, or that falleth by the sword, or that lacketh bread." The first fell on Rehoboam (this is inferred from an analogy of expression which

p. 147

we do not deem it necessary to translate); the second--"leper"--on Uzziyahu. As it reads [II Chr. xxvi. 9]: "The leprosy even broke out on his forehead." "Leaneth on a crutch"--Azza, of whom it reads [I Kings, xv. 23]: "Nevertheless, in the time of his old age he became diseased in his feet." And R. Jehudah in the name of Rabh said: Podagra caught him. Said Mar Zutra b. Na'hman to R. Na'hman: What kind of a sickness is this? And he answered: It pains like a needle in raw flesh. (Asked the Gemara: Wherefrom did he know this? He himself suffered from this sickness. And if you wish, he had it as a tradition from his master; and also, if you wish, from [Ps. xxv. 14]: "The secret counsel of the Lord is for those that fear him; and his covenant, to make it known to them.") Falleth by a sword--on Josiah, as it reads [II Chr. xxxv. 23]: "And the archers shot at king Josiah; and the king said to his servants, Carry me away, for I am sorely wounded." And R. Jehudah said in the name of Rabh: They made his body like a sieve. "Lacketh bread"--fell on Jechonyah [II Kings, xxv. 30]: "And his allowance was a continual allowance," etc. Said R. Jehudah in the name of Rabh: This is what people say: It is better for one to be cursed than to curse, as usually a curse in vain falls upon the invoker--Rashi. Joab was brought before the court to justify himself for the killing of Abner; and he answered that he was the revenger of the blood of Asahel. But did not Asahel prosecute Abner? And he said: Then he could save himself by striking on one of the members of his body. And to the question: Perhaps he could not do so? he answered: Did he not strike him [II Sam. ii. 231 "On the fifth rib"? to which (according to R. Johanan) the bile and the liver are attached. Now, if he could aim at the fifth rib, could he not do so at some other member? The court then said: Let us leave out Abner. But why did you kill Amassa? And he answered: He was a rebel to the king. As it reads [ibid. xx. 5]: "So Amassa . . . he remained longer than the set time." And he was answered: Amassa was not a rebel, as he had a good reason for his delay. ¹ But you are indeed a rebel, as you were inclined to Adoniyahu against David's will. It reads [I Kings, ii. 28]: "And the report came to Joab; for Joab had turned after Adoniyahu, though he had not turned after Abshalom." Why is it mentioned here that he had not turned after Abshalom? Said R.

p. 148

[paragraph continues] Jehudah: He was inclined to turn, but did not. And why? Said R. Elazar: Because the "moisture of David" was still in a good condition. And R. Jose b. Hanina said: Because the active force of David were still in their strength. As it is said above (p. 55) in the name of Rabh: "Four hundred children," etc. All the Amoraim mentioned above differ with R. Abbah b. Kahana, who said: "If not for Joab, David would not have been able to occupy himself

with the law; and if not for David, Joab would not have been able to wage the war. As it is written [II Sam. viii. 16 and 17]: "And David did what is just and right unto all his people. And Joab the son of Jeruyah was over the army." It means that, because Joab was over the army, David was able to do justice, etc.; and also *vice versa*. It reads [ibid. iii. 26]: "Who brought him back from the well of Sirah." What does "well of Sirah" mean? Said R. Abbah b. Kahana: The well means the pitcher of water which David took from under the head of Saul; and Sirah--literally "a thorn"--means the piece of cloth which David cut off from the garment of Saul, which were good reasons for Abner to reconcile Saul with David, if he should care to do so; but he did not. It reads farther on [ibid., ibid. 27]: "Joab took him aside in the gate, to speak with him in private." Said R. Johanan: He brought him before the Sanhedrin to try him for having killed his brother Asahel. And to his answer that Ashael was his persecutor, he was told as said above. It reads [I Kings, ii. 32]: "And may the Lord bring back his bloodguiltiness upon his own head, because he fell upon two men more righteous and better than he." Better than he? Because they were commanded verbally (to kill the priests of Nob) and did not listen, and Joab was commanded in a letter to kill Uriah, and he listened. It reads farther on [ibid., ibid. 34]: "And he was buried in his own house in the wilderness." Was, then, his house in the wilderness? Said R. Jehudah in the name of Rabh: It was like a wilderness. As a desert is ownerless, and every one who wishes can derive a benefit from it, so was the house of Joab. And also as a desert is free of robbery and adultery, so was the house of Joab. It reads [I Chr. xi. 8]: "And Joab repaired the rest of the city." Said R. Jehudah: Joab supplied to the poor of that city everything to which they were accustomed, even little things and fishes.

Footnotes

[127:1](#) Leeser translates all the verses in the plural; in the text, however, in Leviticus it is in the singular and in Numbers in the plural.

[129:1](#) The term in Hebrew is "zobeach touhda yichabdon'ni"--literally, "He who slaughters thanks-offering, glorifieth me"; and as the last word is written with a double Nun instead of one, he infers both worlds.

[131:1](#) Leeser has translated this improperly. The real translation is thus: "And all Israel stoned him with a stone, and they burnt them with fire and stoned them with stones. Hence the supposition of Rabhina.

[133:1](#) The term in Hebrew, "emek," has two meanings--"valley" and "deep." Hence the explanation of R. Johanan.

[134:1](#) We translate according to the Talmud. Leeser's translation, among others, does not correspond.

[135:1](#) Rashi thus explains this: It happened with a contractor, who was wicked, that he died and was to be buried on the same day as a great man in Israel. And all the inhabitants of the city came to take part in the funeral of the latter, and the relatives of the contractor were also occupied in bearing the coffin of the contractor in the same street, following after the coffin of

the great man. Suddenly, however, enemies fell upon them, and all of them left the coffins and ran away, except one disciple, who did not leave the coffin of his master. Thereafter, when they returned, people exchanged the coffin of the contractor for that of the great man, notwithstanding the disciple's cry that it was an error, and buried the contractor with great honor instead of the great man; and the relatives of the contractor buried the scholar. And the disciple was much grieved because his master was buried in such disgrace and the contractor with such honor. Finally his master appeared to him in a dream, and counselled him not to grieve, saying: Come with me and I will show you my glory in the garden of Eden, and also the place of that wicked man in Gehenna. And the reason why I was punished was because I was present when a scholar was disgraced, and I did not protest. And the contractor prepared a banquet for the governor of his country, and as the governor did not appear he donated the banquet to the poor of the city, and this was his reward. And to the question of the disciple: Till when shall this man be in Gehenna? The answer: Until Simeon b. Shetha shall die and take his place. And what is the sin of b. Shetha? There are many Israelitish women who occupy themselves with witchcraft in the city of Askalon, and Simeon b. Shetha, who is the head of the court, does not seize them. On the morrow this disciple told this to Simeon b. Shetha. And he selected eighty tall young men, gave to every one a big pitcher which contained a mantle, to the end that it should be kept dry, as that day was a rainy day, and told them that they should be careful to complete the task, as there were eighty witches, and every one of them had to lift up one woman, as then they could not employ any more witchcraft. He then visited the witches at their palace, leaving the young men outside. And to the question who he was and what he wanted, he answered: I am a witch, and am come to try how far you are skilled in it, And they said to him: What can you do? To which he answered: To-day is a rainy day, but nevertheless I can bring you eighty young men, all of whom are wrapped in dry mantles. And they said to him. Bring them in. He went out, and at his hint they took out the mantles from the pitchers, wrapped themselves in them, and entered. Each of them lifted up a woman; and so they overcame them, took them out, and all of them were hanged. Their relatives, however, [p. 136](#) who grieved over them, plotted against Simeon's son, and two of them plotted together that their false testimony concerning a crime which results in capital punishment should correspond, and so testified before the court, and he was condemned. And when he was brought to be executed, he said; If I am guilty of this crime, etc. After the witnesses heard this they retracted, and gave the execution of the women as a reason for their false testimony; and nevertheless he was executed. This legend is to be found in the Palestine Talmud--Tract Hagigah, Chapter II.--with many changes; and according to the Aruch, the name of this contractor mentioned was Bar Mayon.

[136:1](#) In the text there is repeated here a contradiction from Tract Souteh, its proper place, which we therefore omit.

[141:1](#) We cannot find in the English idiom any equivalent for this. In the German translation of the Mishna (Berlin, 1823) it is translated in accordance with Rashi. "Wie lässt sich gleichsam die Gottheit bei solcher Gelegenheit aus? Mein Kopf ist mir zu schwer! Meine Arme sind mir zu schwer!" notwithstanding that such is objected to by Rabha in the Gemara farther on, and his explanation is: As one who is in trouble says, "The world is ignominious to me." And all this is taken from the term "qillelath elohim" [Deut. xx. 23], (translated by Leeser "dishonor of God"), which one reads, "qal leth," literally, "not easy," and the other "qollal-eth," literally, "an ignominy" (according to Thosphath and Hananel). And therefore it seems to us better to give the original expression of the Mishna, without any explanation, leaving the matter to the reader, as we could not omit it, according to our method.

[145:1](#) Here are omitted two pages of the text, as their contents are repeated in different places. Much of it is already translated, and the rest will appear in the proper place. However, the following difference of Abayi and Rabha is important--namely, according to Abayi, if one dies a usual death, while he is still wicked, without repentance, his death does not make atonement for him. And the same is the case even if he is executed by the court, if he did not repent. But if one were slain by the government, his death atones. And his reason is, because the government does not always act justly in its decisions, while the court does. But according to Rabha, even if he is executed by the court, death atones; as, according to him, there is no comparison between a death from a usual sickness and that by an execution; and therefore in the latter case he is atoned, but not in the former. And Ameimar said that the Halakha prevails in accordance with Abayi, but the rabbis said that the Halakha prevails with Rabha, with which the Gemara agrees.

[147:1](#) In the text the reason is given, but if translated it would not sound well in English; and, besides, it is unimportant, and therefore omitted.

[Next: Chapter VII](#)