EXODUS XXI 22-25

by

SAMUEL E. LOEWENSTAMM

Jerusalem

The time-honoured debate on Exod. xxi 22-25 has been continued in the last few years with unabated vigour. Recently, Sh. Paul’s 1) discussion of this enigmatic law has induced B. Jackson 2) to a monographic treatment combining a detailed critical survey on most of the former views with the presentation of a highly original analysis of his own.

Jackson’s treatment concludes with the reconstruction of an Urgesetz from which the actually transmitted law developed by a process of subsequent amendments.

To his mind, the final law occupies itself with two possible consequences of a blow given to a pregnant woman, viz. 1) the case of a miscarriage including perhaps that of a premature birth, and 2) the case of the woman’s death. In the first event the trespasser is liable to a fine, fixed in principle by the woman’s husband but subject to a kind of judicial assessment; in the second case there applied the death-penalty. This interpretation of the Biblical text differs from anonymous Tannaitic exegesis 3) only by the remark that the first provision of the law might have been applied even in the case of a premature birth 4). To the present writer this possibility seems remote. A miscarriage causes the loss of a life, a premature birth at the most a temporary inconvenience. It is improbable that the same ruling should have included two obviously disparate contingencies.

The main scope of Jackson’s paper is the reconstruction of the Urgesetz and of its subsequent amendments. Jackson restricts the

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4) The above-mentioned Midrash (pp. 275 f.) remarks: “If there will be no calamity (you might interpret) if no calamity befalls either the woman or the foetus? But on this supposition he (i.e. the husband) even should pay the price of a midwife (to the man who had struck the woman)”.
Urgesetz to vv. 22-23 and discerns even in them vestiges of later redaction. V. 22a describes the blow as the result of a brawl between men who hit the woman (wngpw). No indication can be found that only one man is held responsible for the blow. In contrast to this protasis the apodoses in vv. 22b, 23b prescribe the punishment as that of one single man. Jackson concludes from this inconsistency that the original law held all participants in the brawl responsible, whereas the later redactor rejected this principle of collective responsibility. Jackson further argues that the beginning of v. 22b grants to the husband an unlimited claim, whereas the subsequent words wn m hqlym subject his claim to the approval of assessors and should be regarded as an addition. These modifications, however, did not affect the legal meaning of the crucial term 'szvn translated by Jackson as 'calamity', and explained by him in the Urgesetz as the death of the foetus. Nor did the above-mentioned modification result in a change of the original meaning of the punishment npt tpt npt which intended substitution, as borne out by a comparison with Lev. xxiv 48. The Urgesetz, then, distinguished between premature birth and miscarriage. In the first case the husband was entitled to an unlimited fine, in the second to substitution.

The slightly revised Urgesetz underwent radical transformation by the insertion of the late, probably Deuteronomic, principle of talion in v. 24, enlarged in the final stage by the addition of v. 25. The direct effect of the added ruling “an eye for an eye, etc.” was a change in the meaning of the formula npt tpt npt which in its new context clearly prescribed the death penalty. But the recasting of the law was more farreaching. The words “a tooth for a tooth” failed to yield sense with respect to a foetus and were meaningful only when related to the corporeal integrity of the woman. Therefore, the term “calamity” was interpreted at this stage as a reference to the woman’s death. On this supposition, however, the punishment for causing a birth which involved no calamity could hardly be restricted to the event of a premature birth, but acquired the (additional?) meaning of a miscarriage.

Jackson then reconstructs an Urgesetz, dealing with the contingencies of a premature birth and a miscarriage and omitting the eventualinity of the woman’s death. This hypothetical law, however, is blatantly different from the corresponding old oriental laws. Two 5) deal with