

“There is none of you but will be forced to drink medicine, and I will watch you, except Al-‘Abbās, for he did not witness this act of yours.”

(22) CHAPTER. *Al-Qasāma* [the oath taken by fifty people (of the defendant) regarding a murder case when no evidence is available].

Al-Ash‘ath bin Qaiṣ said: The Prophet ﷺ said (to a plaintiff), “You should bring two witnesses, otherwise the defendant will be asked to take an oath (in case of denial).”

Ibn Abī Mulaika said: Mu‘āwiya didn’t carry out the penalty of *Al-Qiṣāṣ*⁽¹⁾ (equality in punishment) according to *Al-Qasāma*.

‘Umar bin ‘Abdul-‘Azīz wrote to ‘Adī bin Arṭāh whom he had appointed governor of Al-Baṣrah, regarding a person who has been found (murdered) near one of the houses of the oil merchants: “If the relatives of the deceased proved their claim (by presenting witnesses), (then kill the killer); otherwise, do not oppress (wrong) the people, as this case may remain pending till the Day of Resurrection.”

6898. Narrated Sahl bin Abī Ḥaṭhma (a man from the *Anṣār*) that a number of people from his tribe went to Khaibar and dispersed, and then they found one of them murdered. They said to the people with whom the corpse had been found, “You have killed our companion!” Those people said, “Neither have we killed him nor do we know his killer.” The bereaved group went to the Prophet ﷺ and said, “O Allāh’s Messenger! We went to Khaibar and found one of us murdered.” The Prophet ﷺ said, “Let the older among you come forward and speak.” Then the Prophet ﷺ said to them, “Bring

كِرَاهِيَةً لِلدَّوَاءِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَبْقَى مِنْكُمْ أَحَدٌ إِلَّا لُدًّا، وَأَنَا أَنْظُرُ إِلَّا الْعَبَّاسَ فَإِنَّهُ لَمْ يَشْهَدْكُمْ».

[راجع: ٤٤٥٨]

(٢٢) بَابُ الْقَسَامَةِ،

وَقَالَ الْأَشْعَثُ بْنُ قَيْسٍ: قَالَ النَّبِيُّ ﷺ: «شَاهِدَاكَ أَوْ يَمِينُهُ».

وَقَالَ ابْنُ أَبِي مُلَيْكَةَ: لَمْ يَقْدِرْ بِهَا مُعَاوِيَةُ.

وَكَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إِلَى عَدِيِّ بْنِ أَرْطَاةَ، وَكَانَ أَمْرُهُ عَلَى الْبَصْرَةِ، فِي قَتِيلٍ وَجَدَ عِنْدَ بَيْتٍ مِنْ بِيُوتِ السَّمَانِينَ: إِنْ وَجَدَ أَصْحَابُهُ بَيْتَهُ وَإِلَّا فَلَا تَظْلِمِ النَّاسَ، فَإِنَّ هَذَا لَا يُقْضَى فِيهِ إِلَى يَوْمِ الْقِيَامَةِ.

٦٨٩٨ - حَدَّثَنَا أَبُو نَعِيمٍ: حَدَّثَنَا

سَعِيدُ بْنُ عُبَيْدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ: رَزَعَمَ أَنَّ رَجُلًا مِنَ الْأَنْصَارِ يُقَالُ لَهُ: سَهْلُ بْنُ أَبِي حَثْمَةَ، أَخْبَرَهُ أَنَّ نَفْرًا مِنْ قَوْمِهِ انْطَلَقُوا إِلَى خَيْبَرَ فَتَفَرَّقُوا فِيهَا، فَوَجَدُوا أَحَدَهُمْ قَتِيلًا، وَقَالُوا لِلَّذِي وَجَدَ فِيهِمْ: قَدْ قَتَلْتُمْ صَاحِبَنَا، قَالُوا: مَا قَتَلْنَا وَلَا عَلِمْنَا قَاتِلًا، فَانْطَلَقُوا إِلَى رَسُولِ اللَّهِ ﷺ فَقَالُوا:

(1) (Ch.22) *Al-Qiṣāṣ*: Equality in punishment.

your proof against the killer.” They said “We have no proof.” The Prophet ﷺ said, “Then they (the defendants) will take an oath.” They said, “We do not accept the oaths of the Jews.” Allāh’s Messenger ﷺ did not like that the blood-money of the killed one be lost without compensation, so he paid one hundred camels out of the camels of *Zakāt* (to the relatives of the deceased) as *Diya* (blood-money).

6899. Narrated Abū Qilāba : Once ‘Umar bin ‘Abdul-‘Azīz sat on his throne in the courtyard of his house so that the people might gather before him. Then he admitted them and (when they came in), he said, “What do you think of *Al-Qasāma*?”⁽¹⁾ They said, “We say that it is lawful to depend on *Al-Qasāma* in *Al-Qiṣāṣ*”⁽²⁾, as the previous Muslim caliphs carried out *Al-Qiṣāṣ* depending on it.” Then he said to me, “O Abū Qilāba! What do you say about it?” He let me appear before the people and I said, “O chief of the believers! You have the chiefs of the army staff and the nobles of the Arabs. If fifty of them testified that a married man had committed illegal sexual intercourse in Damascus but they had not seen him (doing so), would you stone him?” He said, “No.” I said, “If fifty of them testified that a man had committed theft in Ḥuṣṣ, would you cut off his hand, though they did not see him?” He replied, “No.” I said, “By Allāh, Allāh’s Messenger ﷺ never killed anyone except in one of the following three situations: (1) A person who killed somebody (a case of intentional murder), is to be killed (in *Al-Qiṣāṣ*), (2) a married person who committed illegal sexual intercourse, and (3) a man who

يَا رَسُولَ اللَّهِ، انْطَلَقْنَا إِلَى خَيْرِ فَوْجَدْنَا أَحَدَنَا قَتِيلًا. فَقَالَ: «الْكَبِيرُ الْكَبِيرُ»، فَقَالَ لَهُمْ: «تَأْتُونَ بِالْبَيِّنَةِ عَلَى مَنْ قَتَلْتُمْ؟» قَالُوا: مَا لَنَا بَيِّنَةٌ، قَالَ: «فَيَحْلِفُونَ»، قَالُوا: لَا نَرِضَى بِأَيْمَانِ الْيَهُودِ، فَكَرِهَ رَسُولُ اللَّهِ ﷺ أَنْ يُطْلَلَ دَمُهُ، فَوَدَّاهُ مِائَةً مِنْ إِبِلِ الصَّدَقَةِ. [راجع: ٢٧٠٢]

٦٨٩٩ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: حَدَّثَنَا أَبُو بَشِيرٍ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ الْأَسَدِيُّ: حَدَّثَنَا الْحَجَّاجُ بْنُ أَبِي عُمَانَ: حَدَّثَنِي أَبُو رَجَاءٍ مِنْ آلِ أَبِي قِلَابَةَ: حَدَّثَنِي أَبُو قِلَابَةَ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَبْرَزَ سَرِيرَهُ يَوْمًا لِلنَّاسِ ثُمَّ أَذِنَ لَهُمْ فَدَخَلُوا. فَقَالَ: مَا تَقُولُونَ فِي الْقَسَامَةِ؟ قَالُوا: نَقُولُ: الْقَسَامَةُ الْقَوْدُ بِهَا حَقٌّ، وَقَدْ أَقَادَتْ بِهَا الْخُلَفَاءُ. قَالَ لِي: مَا تَقُولُ يَا أَبَا قِلَابَةَ؟ وَتَصَبَّبِي لِلنَّاسِ، فَقُلْتُ: يَا أَمِيرَ الْمُؤْمِنِينَ، عِنْدَكَ رُؤُسُ الْأَجْنَادِ وَأَشْرَافِ الْعَرَبِ، أَرَأَيْتَ لَوْ أَنَّ خَمْسِينَ مِنْهُمْ شَهِدُوا عَلَى رَجُلٍ مُحْصَنٍ بِدِمَشْقٍ أَنَّهُ قَدْ زَنَى، لَمْ يَرَوْهُ، أَكُنْتُ تَرَجُمُهُ؟ قَالَ: لَا. قُلْتُ: أَرَأَيْتَ لَوْ أَنَّ خَمْسِينَ مِنْهُمْ شَهِدُوا عَلَى رَجُلٍ بِحِمَصٍ أَنَّهُ سَرَقَ، أَكُنْتُ تَقَطُّعُهُ وَلَمْ يَرَوْهُ؟ قَالَ: لَا.

(1) (H. 6899) *Al-Qasāma* : See the glossary.

(2) (H. 6899) *Al-Qiṣāṣ* : Equality in punishment.

fought against Allāh and His Messenger and deserted Islām and became an apostate.” Then the people said, “Didn’t Anas bin Mālīk narrate that Allāh’s Messenger ﷺ cut off the hands of the thieves, branded their eyes and then threw them in the sun (to die)?” I said, “I shall tell you the narration of Anas. Anas said: “Eight persons from the tribe of ‘Ukl came to Allāh’s Messenger ﷺ and gave the *Bai’a* (pledge) for Islām (became Muslim). The climate of the place (Al-Madīna) did not suit them, so they became sick and complained about that to Allāh’s Messenger ﷺ. He said (to them), “Won’t you go out with the shepherd of our camels and drink of the camels’ milk and urine (as medicine)?” They said, “Yes.” So they went out and drank the camels’ milk and urine, and after they became healthy, they killed the shepherd of Allāh’s Messenger ﷺ and took away all the camels. This news reached Allāh’s Messenger ﷺ, so he sent (men) to follow their traces and they were captured and brought (to the Prophet ﷺ). He then ordered to cut their hands and feet, and their eyes were branded with heated pieces of iron, and then he threw them in the sun till they died.” I said, “What can be worse than what those people did? They deserted Islām, committed murder and theft.” Then ‘Anbasa bin Sa’id said, “By Allāh, I never heard a narration like this of today.” I said, “O ‘Anbasa! You deny my narration?” ‘Anbasa said, “No, but you have related the narration in the way it should be related. By Allāh, these people are in welfare as long as this *Sheikh* (Abū Qilāba) is among them.” I added, “Indeed in this event there has been a *Sunna* (legal way) set by Allāh’s Messenger ﷺ.”

The narrator added: Some *Anṣārī* people came to the Prophet ﷺ and discussed some

قُلْتُ: فَوَاللَّهِ مَا قَتَلَ رَسُولُ اللَّهِ ﷺ أَحَدًا قَطُّ إِلَّا فِي إِحْدَى ثَلَاثِ حِصَالٍ: رَجُلٌ قَتَلَ بِجَرِيرَةٍ نَفْسِهِ فَقَتِلَ، أَوْ رَجُلٌ زَنَى بَعْدَ إِحْصَانٍ، أَوْ رَجُلٌ حَارَبَ اللَّهَ وَرَسُولَهُ وَارْتَدَّ عَنِ الْإِسْلَامِ. فَقَالَ الْقَوْمُ: أَوْ لَيْسَ قَدْ حَدَّثَ أَنَسُ بْنُ مَالِكٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَطَعَ فِي السَّرْقِ وَسَمَرَ الْأَعْيُنَ ثُمَّ نَبَذَهُمْ فِي الشَّمْسِ؟ فَقُلْتُ: أَنَا أُحَدِّثُكُمْ حَدِيثَ أَنَسٍ: حَدَّثَنِي أَنَسٌ أَنَّ نَفَرًا مِنْ عُكْلٍ ثَمَانِيَّةً قَدِمُوا عَلَى رَسُولِ اللَّهِ ﷺ فَبَايَعُوهُ عَلَى الْإِسْلَامِ، فَاسْتَوْحَمُوا الْأَرْضَ فَسَقِمَتْ أَجْسَامُهُمْ، فَشَكَّوْا ذَلِكَ إِلَى رَسُولِ اللَّهِ ﷺ، قَالَ: «أَفَلَا تَخْرُجُونَ مَعَ رَاعِيْنَا فِي إِبِلِهِ فَتُصَيِّبُونَ مِنَ الْبَانِيهَا وَأَبْوَالِهَا؟» قَالُوا: بَلَى، فَخَرَجُوا فَشَرَبُوا مِنَ الْبَانِيهَا وَأَبْوَالِهَا فَصَحُّوا، فَقَتَلُوا رَاعِي رَسُولِ اللَّهِ ﷺ وَأَطْرَدُوا النَّعَمَ، فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ ﷺ فَأَرْسَلَ فِي آثَارِهِمْ فَأَذْرَكُوا فَجِيءَ بِهِمْ فَأَمَرَ بِهِمْ فَقَطَعَتْ أَيْدِيَهُمْ وَأَرْجُلُهُمْ وَسَمَرَ أَعْيُنَهُمْ ثُمَّ نَبَذَهُمْ فِي الشَّمْسِ حَتَّى مَاتُوا. قُلْتُ: وَأَيُّ شَيْءٍ أَشَدُّ مِمَّا صَنَعَ هَؤُلَاءِ؟ اازْتَدُوا عَنِ الْإِسْلَامِ، وَقَتَلُوا وَسَرَقُوا. فَقَالَ عَبْسَةُ بْنُ سَعِيدٍ: وَاللَّهِ إِنْ سَمِعْتُ كَالْيَوْمِ قَطُّ. فَقُلْتُ: اازْتَدُ عَلَيَّ

matters with him, a man from amongst them went out and was murdered. Those people went out after him, and behold, their companion was lying in a pool of blood. They returned to Allāh's Messenger ﷺ and said to him, "O Allāh's Messenger, we have found our companion who had talked with us and gone out before us, swimming in blood (killed)." Allāh's Messenger ﷺ went out and asked them, "Whom do you suspect, or whom do you think has killed him?" They said, "We think that the Jews have killed him." The Prophet ﷺ sent for the Jews and asked them, "Did you kill this (person)?" They replied, "No." He asked the *Al-Anṣār*, "Do you agree that I let fifty Jews take an oath that they have not killed him?" They said, "It matters little for the Jews to kill us all and then take false oaths." He said, "Then would you like to receive the *Diya* after fifty of you have taken an oath (that the Jews have killed your man)?" They said, "We will not take the oath." Then the Prophet ﷺ himself paid them the *Diya* (blood-money)."

The narrator added, "The tribe of *Hudhail* repudiated one of their men (for his evil conduct) in the Pre-Islāmic Period of Ignorance. Then at a place called *Al-Baḥā'* (near Makkah), the man attacked a Yemenite family at night to steal from them, but a man from the family noticed him and struck him with his sword and killed him. The tribe of *Hudhail* came and captured the Yemenite and brought him to 'Umar, during the *Hajj* season and said, "He has killed our companion." The Yemenite said, "But these people had repudiated him (i.e., their companion)." 'Umar said, "Let fifty persons of *Hudhail* (tribe) swear that they had not repudiated him." So forty-nine of them took the oath and then a person belonging to them came from *Shām* and

حَدِيثِي يَا عَبَسَةَ؟ قَالَ: لَا، وَلَكِنْ جِئْتُ بِالْحَدِيثِ عَلَى وَجْهِهِ، وَاللَّهِ لَا يَزَالُ هَذَا الْجُنْدُ بِخَيْرٍ مَا عَاشَ هَذَا الشَّيْخُ بَيْنَ أَظْهَرِهِمْ.

قُلْتُ: وَقَدْ كَانَ فِي هَذَا سُنَّةٌ مِنْ رَسُولِ اللَّهِ ﷺ، دَخَلَ عَلَيْهِ نَفَرٌ مِنَ الْأَنْصَارِ فَتَحَدَّثُوا عِنْدَهُ. فَخَرَجَ رَجُلٌ مِنْهُمْ بَيْنَ أَيْدِيهِمْ فَقَتِلَ، فَخَرَجُوا بَعْدَهُ، فَإِذَا هُمْ بِصَاحِبِهِمْ يَتَسَحَّطُ فِي دَمِهِ، فَرَجَعُوا إِلَى رَسُولِ اللَّهِ ﷺ فَقَالُوا: يَا رَسُولَ اللَّهِ، صَاحِبُنَا كَانَ يَتَحَدَّثُ مَعَنَا، فَخَرَجَ بَيْنَ أَيْدِينَا فَإِذَا نَحْنُ بِهِ يَتَسَحَّطُ فِي الدَّمِ، فَخَرَجَ رَسُولُ اللَّهِ ﷺ فَقَالَ: «بِمَنْ تَطْتُونَ أَوْ تَرُونَ قَتْلَهُ؟» قَالُوا: نَرَى أَنَّ الْيَهُودَ قَتَلْتَهُ، فَأَرْسَلْنَا إِلَى الْيَهُودِ فَدَعَاهُمْ، فَقَالَ: «أَنْتُمْ قَتَلْتُمْ هَذَا؟» قَالُوا: لَا، قَالَ: «أَتَرْضَوْنَ نَفْلَ خَمْسِينَ مِنَ الْيَهُودِ مَا قَتَلُوهُ؟» فَقَالُوا: مَا يُبَالُونَ أَنْ يَقْتُلُونَا أَجْمَعِينَ، ثُمَّ يُبْفِلُونَ قَالَ: أَفَتَسْتَحِقُّونَ الدِّيَةَ بِإِيمَانِ خَمْسِينَ مِنْكُمْ؟ قَالُوا: مَا كُنَّا لِنَحْلِفَ، فَوَدَّاهُ مِنْ عِنْدِهِ.

قُلْتُ: وَقَدْ كَانَتْ هَذِيلٌ حَلَعُوا خَلِيعًا لَهُمْ فِي الْجَاهِلِيَّةِ، فَطَرَّقَ أَهْلَ بَيْتٍ مِنَ الْيَمَنِ بِالْبَطْحَاءِ فَانْتَبَهَ لَهُ رَجُلٌ مِنْهُمْ، فَحَدَفَهُ بِالسَّيْفِ فَقَتَلَهُ، فَجَاءَتْ هَذِيلٌ، فَأَخَذُوا الْيَمَانِيَّ

they requested him to swear similarly, but he paid one thousand Dirhams instead of taking the oath. They called another man instead of him and the new man shook hands with the brother of the deceased. Some people said, "We and those fifty men who had taken false oaths (*Al-Qasāma*) set out, and when they reached a place called *Nakhlah*, it started raining so they entered a cave in the mountain, and the cave collapsed on those fifty men who took the false oath, and all of them died except the two persons who had shaken hands with each other. They escaped death but a stone fell on the leg of the brother of the deceased and broke it, whereupon he survived for one year and then died."

(The narrator) further said, " 'Abdul Mālik bin Marwān sentenced a man to death in *Al-Qiṣāṣ* (equality in punishment) for murder, basing his judgement on *Al-Qasāma*, but later on he regretted that judgement and ordered that the names of the fifty persons who had taken the oath (*Al-Qasāma*), be erased from the register, and he exiled them in *Shām*."

(23) CHAPTER. If somebody peeps into the house of some people whereupon they poked his eye; he has no right to claim blood-money.

6900. Narrated Anas رضي الله عنه: A man peeped into one of the dwelling places of the Prophet ﷺ. The Prophet ﷺ got up and aimed a sharp-edged arrow head (or wooden stick) at him to poke him stealthily.

فَرَفَعُوهُ إِلَى عُمَرَ بِالْمَوْسِمِ وَقَالُوا: قَتَلَ صَاحِبَنَا. فَقَالَ: إِنَّهُمْ قَدْ خَلَعُوهُ، فَقَالَ: يُقْسِمُ خَمْسُونَ مِنْ هَذَا مَا خَلَعُوهُ، قَالَ: فَأَقْسَمَ مِنْهُمْ تِسْعَةً وَأَرْبَعُونَ رَجُلًا. وَقَدِمَ رَجُلٌ مِنْهُمْ مِنَ الشَّامِ، فَسَأَلُوهُ أَنْ يُقْسِمَ، فَافْتَدَى يَمِينَهُ مِنْهُمْ بِأَلْفِ دِرْهَمٍ، فَأَدْخَلُوا مَكَانَهُ رَجُلًا آخَرَ، فَدَفَعَهُ إِلَى أُخِي الْمَقْتُولِ، فَقَرَنْتَ يَدَهُ بِيَدِهِ، قَالُوا: فَأَنْظَلْنَا وَالْخَمْسُونَ الَّذِينَ أَقْسَمُوا، حَتَّى إِذَا كَانُوا بِنَخْلَةَ، أَخَذَتْهُمْ السَّمَاءُ، فَدَخَلُوا فِي غَارٍ فِي الْجَبَلِ فَأَنْهَجَمَ الْغَارُ عَلَى الْخَمْسِينَ الَّذِينَ أَقْسَمُوا فَمَاتُوا جَمِيعًا وَأُفْلِتَ الْقَرِينَانِ وَاتَّبَعَهُمَا حَجَرٌ فَكَسَرَ رَجُلًا أُخِي الْمَقْتُولِ، فَعَاشَ حَوْلًا ثُمَّ مَاتَ.

قُلْتُ: وَقَدْ كَانَ عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ أَقَادَ رَجُلًا بِالْقَسَامَةِ ثُمَّ نَدِمَ بَعْدَمَا صَنَعَ، فَأَمَرَ بِالْخَمْسِينَ الَّذِينَ أَقْسَمُوا فَمُحُوا مِنَ الدِّيَوَانِ وَسَيَّرَهُمْ إِلَى الشَّامِ. [راجع: ٢٣٣]

(٢٣) بَابُ مَنْ أَطْلَعَ فِي بَيْتِ قَوْمٍ فَفَقَّوُوا عَيْنَهُ فَلَا دِيَّةَ لَهُ

٦٩٠٠ - حَدَّثَنَا أَبُو الْيَمَانِ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ، عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرٍ بْنِ أَنَسٍ، عَنْ أَنَسِ بْنِ رَضِيَ اللَّهُ عَنْهُ: أَنَّ رَجُلًا أَطْلَعَ مِنْ حُجْرٍ فِي

بَعْضِ حُجَرِ النَّبِيِّ ﷺ فَقَامَ إِلَيْهِ
بِمَشْقَصٍ أَوْ مَشَاقِصٍ وَجَعَلَ يَخْتَلُهُ
لِيُطْعَمَهُ. [راجع: ٦٢٤٢]

6901. Narrated Sahl bin Sa'd As-Sā'idī: A man peeped through a hole in the door of Allāh's Messenger's house, and at that time Allāh's Messenger ﷺ had a *Midrā* (an iron comb or bar) with which he was rubbing his head. So when Allāh's Messenger ﷺ saw him, he said (to him), "If I had been sure that you were looking at me (through the door), I would have poked your eye with this (sharp iron bar)." Allāh's Messenger ﷺ added, "The asking for permission to enter has been enjoined so that one may not look unlawfully (at what there is in the house without the permission of its people)."

٦٩٠١ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ:
حَدَّثَنَا لَيْثٌ، عَنِ ابْنِ شِهَابٍ: أَنَّ
سَهْلَ بْنَ سَعْدِ السَّاعِدِيِّ أَخْبَرَهُ أَنَّ
رَجُلًا أَطْلَعَ فِي حُجْرٍ فِي بَابِ رَسُولِ
اللَّهِ ﷺ وَمَعَ رَسُولِ اللَّهِ ﷺ مِدْرَى
يُحْكُ بِهَا رَأْسَهُ، فَلَمَّا رَأَى رَسُولُ اللَّهِ
ﷺ قَالَ: «لَوْ أَعْلَمْتُ أَنَّكَ تَنْتَظِرُنِي
لَطَعْتُ بِهَا فِي عَيْنِكَ». قَالَ رَسُولُ اللَّهِ
ﷺ: «إِنَّمَا جُعِلَ الْإِذْنُ مِنْ قِبَلِ
الْبَصْرِ». [راجع: ٥٩٢٤]

6902. Narrated Abū Hurairah رَضِيَ اللَّهُ عَنْهُ: Abūl-Qāsim (the Prophet ﷺ) said, "If any person peeps at you without your permission and you poke him with a stick and injure his eye, there will be no sin on you."

٦٩٠٢ - حَدَّثَنَا عَلِيُّ بْنُ عَبْدِ
اللَّهِ: حَدَّثَنَا سُفْيَانٌ: حَدَّثَنَا أَبُو
الزَّنَادِ، عَنِ الْأَعْرَجِ، عَنِ أَبِي هُرَيْرَةَ
قَالَ: قَالَ أَبُو الْقَاسِمِ ﷺ: «لَوْ أَنَّ
امْرَأًا أَطْلَعَ عَلَيْكَ بِغَيْرِ إِذْنٍ فَحَدَفْتَهُ
بِحِصَاةٍ فَفَقَاتَ عَيْنَهُ لَمْ يَكُنْ عَلَيْكَ
جُنَاحٌ». [راجع: ٦٨٨٨]

(24) CHAPTER. *Al-Āqila* (the relatives from the father's side) who pay the *Diya* (blood-money).

6903. Narrated Ash-Sha'bī: I heard Abū Juhaifa saying, "I asked 'Alī رَضِيَ اللَّهُ عَنْهُ 'Have you got any Divine literature apart from the Qur'ān?' (Once he said '... apart from what the people have?') 'Alī replied, 'By Him Who made the grain split (germinate) and created the soul, we have nothing except what is in the Qur'ān and the ability (gift) of understanding Allāh's Book which He may

(٢٤) بَابُ الْعَاقِلَةِ

٦٩٠٣ - حَدَّثَنَا صَدَقَةُ بْنُ
الْفَضْلِ: أَخْبَرَنَا ابْنُ عُيَيْنَةَ: حَدَّثَنَا
مُطَرِّفٌ قَالَ: سَمِعْتُ الشَّعْبِيَّ قَالَ:
سَمِعْتُ أَبَا جُحَيْفَةَ قَالَ: «سَأَلْتُ عَلِيًّا
رَضِيَ اللَّهُ عَنْهُ: هَلْ عِنْدَكُمْ شَيْءٌ مَا
لَيْسَ فِي الْقُرْآنِ؟ وَقَالَ مَرَّةً: مَا لَيْسَ

endow a man with, and we have what is written in this sheet of paper.' I asked, 'What is written in this paper?' He replied, 'Al-'Aql (the legal rules and regulations about *Diya*), about the ransom of captives, and the judgement that a Muslim should not be killed in *Qisās* (equality in punishment) for killing a disbeliever.' [See Vol. 4, *Hadith* No.3047.]

(25) CHAPTER. The foetus (that is inside the uterus) of a (pregnant) woman.

6904. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ: Two women from the tribe of Hudhail (fought with each other) and one of them threw (a stone at) the other, causing her to have a miscarriage; and Allāh's Messenger ﷺ gave his verdict that the killer (of the foetus) should give a male or female slave (as a *Diya*).

6905. Narrated Hishām's father: Al-Mughīra bin Shu'ba said: 'Umar رَضِيَ اللهُ عَنْهُ consulted the companions about the case of a woman's abortion (caused by somebody else). Al-Mughīra said, "The Prophet ﷺ gave the verdict that a male or female slave should be given (as a *Diya*)."

6906. [H. 6905 contd.] Umar said, "Present a witness to testify your statement, then Muḥammad bin Maslama testified that he had witnessed the Prophet ﷺ giving such a verdict."

عِنْدَ النَّاسِ؟ فَقَالَ: وَالَّذِي فَلَقَ الْحَبَّ وَبَرَأَ النَّسَمَةَ مَا عِنْدَنَا إِلَّا مَا فِي الْفُرْآنِ إِلَّا فَهَمَا يُعْطَى رَجُلٌ فِي كِتَابِهِ وَمَا فِي الصَّحِيفَةِ، قُلْتُ: وَمَا فِي الصَّحِيفَةِ؟ قَالَ: الْعَقْلُ وَفِكَائُ الْأَسِيرِ، وَأَنْ لَا يُقْتَلَ مُسْلِمٌ بِكَافِرٍ. [راجع: ١١١]

(٢٥) بَابُ جَنِينِ الْمَرْأَةِ

٦٩٠٤ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: أَخْبَرَنَا مَالِكُ ح. وَحَدَّثَنَا إِسْمَاعِيلُ: حَدَّثَنَا مَالِكٌ، عَنِ ابْنِ شِهَابٍ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ: أَنَّ امْرَأَتَيْنِ مِنْ هَذِيلٍ رَمَتْ إِحْدَاهُمَا الْأُخْرَى فَطَرَحَتْ جَنِينَهَا فَقَضَى رَسُولُ اللهِ ﷺ فِيهَا بَعْرَةَ عَبْدٍ أَوْ أَمَةٍ. [راجع: ٥٧٥٨]

٦٩٠٥ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا وَهَيْبٌ: حَدَّثَنَا هِشَامٌ، عَنْ أَبِيهِ، عَنِ الْمُغِيرَةَ بْنِ شُعْبَةَ، عَنْ عُمَرَ رَضِيَ اللهُ عَنْهُ: أَنَّهُ اسْتَشَارَهُمْ فِي إِمْلَاصِ الْمَرْأَةِ فَقَالَ الْمُغِيرَةُ: قَضَى النَّبِيُّ ﷺ بِالْبَعْرَةِ عَبْدٌ أَوْ أَمَةٍ. [انظر: ٦٩٠٧، ٦٩٠٨، ٧٣١٧]

٦٩٠٦ - قَالَ: ائْتِ مَنْ يَشْهَدُ مَعَكَ، فَشَهِدَ مُحَمَّدُ بْنُ مَسْلَمَةَ أَنَّهُ شَهِدَ النَّبِيَّ ﷺ قَضَى بِهِ. [انظر:

6907. Narrated Hishām's father: 'Umar asked the people, "Who heard the Prophet ﷺ giving his verdict regarding abortions?" Al-Mughīra said, "I heard him judging that a male or female slave should be given (as a *Diya*)."

٦٩٠٧ - حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى، عَنْ هِشَامٍ، عَنْ أَبِيهِ: أَنَّ عُمَرَ نَشَدَ النَّاسَ: مَنْ سَمِعَ النَّبِيَّ ﷺ قَضَى فِي السَّقَطِ؟ فَقَالَ الْمُغِيرَةُ: أَنَا سَمِعْتُهُ قَضَى فِيهِ بِعُرَّةٍ عَبْدٍ أَوْ أَمَةٍ.

[راجع: ٦٩٠٥]

6908. [H. 6907 contd.] 'Umar said, "Present a witness to testify your statement." Muḥammad bin Maslama said, "I testify that the Prophet ﷺ gave such a judgement."

٦٩٠٨ - قَالَ: اثْبِتْ مَنْ يَشْهَدُ مَعَكَ عَلَى هَذَا. فَقَالَ مُحَمَّدُ بْنُ مُسْلِمَةَ: أَنَا أَشْهَدُ عَلَى النَّبِيِّ ﷺ بِمِثْلِ هَذَا. [راجع: ٦٩٠٦]

6908 (R). Narrated 'Urwa: I heard Al-Mughīra bin Shu'ba narrating that 'Umar had consulted them about the case of abortion (similarly as narrated in *Hadīth* No.6905, 6906, 6907).

٦٩٠٨ م - حَدَّثَنِي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا مُحَمَّدُ بْنُ سَابِقٍ: حَدَّثَنَا زَائِدَةُ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ، عَنْ أَبِيهِ أَنَّهُ سَمِعَ الْمُغِيرَةَ بْنَ شُعْبَةَ يُحَدِّثُ عَنْ عُمَرَ أَنَّهُ اسْتَشَارَهُمْ فِي إِمْلَاصِ الْمَرْأَةِ، مِثْلَهُ. [راجع: ٦٩٠٥]

(26) CHAPTER. The foetus of a woman. The *Diya* for the killed one is to be collected from the father of the killer, and his *'Aṣaba* (near relatives from the father's side) but not from the killer's children.

(٢٦) بَابُ جَنِينِ الْمَرْأَةِ، وَأَنَّ الْعَقْلَ عَلَى الْوَالِدِ وَعَصَبَةِ الْوَالِدِ لَا عَلَى الْوَالِدِ

6909. Narrated Abū Hurairah رَضِيَ اللَّهُ عَنْهُ: Allāh's Messenger ﷺ gave a verdict regarding an aborted foetus of a woman from Banī Liḥyān that the killer (of the foetus) should give a male or female slave (as a *Diya*). But the woman who was required to give the slave, died, so Allāh's Messenger ﷺ gave the verdict that her inheritance be given to her children and her husband and the *Diya* be paid by her *'Aṣaba*⁽¹⁾.

٦٩٠٩ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: حَدَّثَنَا اللَّيْثُ، عَنْ ابْنِ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ بِعُرَّةٍ عَبْدٍ أَوْ أَمَةٍ. ثُمَّ إِنَّ الْمَرْأَةَ الَّتِي قَضَى عَلَيْهَا بِالْعُرَّةِ تُوُفِّيَتْ فَقَضَى رَسُولُ اللَّهِ

(1) (H.6909) *'Aṣaba*: Relatives from the father's side.

ﷺ أَنَّ مِيرَآئَهَا لِنَيْهَا وَزَوْجِهَا، وَأَنَّ
العَقْلَ عَلَى عَصَبَتَيْهَا. [راجع: ٥٧٥٨]

6910. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ: Two women from Hudhail fought with each other and one of them hit the other with a stone that killed her and what was in her womb (the foetus). The relatives of the killer and the relatives of the victim submitted their case to the Prophet ﷺ who judged that the *Diya* for the foetus was a male or female slave, and the *Diya* for the killed woman was to be paid by the *Aṣaba* of the killer.

٦٩١٠ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ:
حَدَّثَنَا ابْنُ وَهْبٍ: حَدَّثَنَا يُونُسُ عَنْ
ابْنِ شِهَابٍ، عَنِ ابْنِ الْمُسَبِّبِ وَأَبِي
سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ أَبَا هُرَيْرَةَ
رَضِيَ اللهُ عَنْهُ قَالَ: أَقْتَلَتِ امْرَأَتَانِ مِنْ
هُذَيْلٍ فَرَمَتِ إِحْدَاهُمَا الْأُخْرَى بِحَجَرٍ
فَقَتَلَتْهَا وَمَا فِي بَطْنِهَا. فَاخْتَصَمُوا إِلَى
النَّبِيِّ ﷺ فَقَضَى أَنَّ دِيَةَ جَنِينِهَا غُرَّةٌ
عَبْدٌ أَوْ وَلِيدَةٌ، وَقَضَى أَنَّ دِيَةَ الْمَرْأَةِ
عَلَى عَاقِلَتَيْهَا. [راجع: ٥٧٥٨]

(27) CHAPTER. Whoever sought the help of a slave or a boy.

(٢٧) بَابُ مَنْ اسْتَعَانَ عَبْدًا أَوْ
صَبِيًّا،

It is said that Umm Salama sent (a message) to the teacher of the school (saying), "Send me some boys to brush the wool, but do not send me a free boy."

وَيُذَكَّرُ أَنَّ أُمَّ سُلَيْمٍ بَعَثَتْ إِلَى
مُعَلِّمِ الْكُتَّابِ: ابْعَثْ إِلَيَّ غِلْمَانًا
يُنْمِشُونَ صُوفًا وَلَا تَبْعَثْ إِلَيَّ حُرًّا.

6911. Narrated 'Abdul-'Azīz: Anas said, "When Allāh's Messenger ﷺ arrived at Al-Madīna, Abū Ṭalḥa took hold of my hand and brought me to Allāh's Messenger ﷺ and said, "O Allāh's Messenger! Anas is an intelligent boy, so let him serve you." Anas added, "So I served the Prophet ﷺ at home and on journeys; by Allāh, he never said to me for anything which I did: 'Why have you done this like this?' or, for anything which I did not do: 'Why have you not done this like this?'"

٦٩١١ - حَدَّثَنِي عَمْرُو بْنُ
زُرَّارَةَ: أَخْبَرَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ،
عَنْ عَبْدِ الْعَزِيزِ، عَنْ أَنَسِ قَالَ: لَمَّا
قَدِمَ رَسُولُ اللَّهِ ﷺ الْمَدِينَةَ أَخَذَ أَبُو
طَلْحَةَ بِيَدِي فَاذْطَلَقَ بِي إِلَى رَسُولِ اللَّهِ
ﷺ فَقَالَ: يَا رَسُولَ اللَّهِ، إِنَّ أَنَسًا
غُلَامٌ كَيْسٌ فَلْيَخْدَمْكَ. قَالَ: فَخَدَمْتُهُ
فِي الْحَضَرِ وَالسَّفَرِ، فَوَاللَّهِ مَا قَالَ لِي
لِشَيْءٍ صَنَعْتُهُ: لِمَ صَنَعْتَ هَذَا هَكَذَا؟
وَلَا لِشَيْءٍ لَمْ أَصْنَعْهُ: لِمَ لَمْ تَصْنَعْ
هَذَا هَكَذَا؟. [راجع: ٢٧٦٨]

(28) CHAPTER. No *Diya* (blood-money) is to be paid in cases of mines and wells.

6912. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ : Allāh's Messenger ﷺ said, "There is no *Diya* for persons killed by animals or for the one who has been killed accidentally by falling into a well ; or for the one killed in a mine. And one-fifth of *Ar-Rikāz* (treasures buried before the Islāmic era) is to be given to the state."

(29) CHAPTER. There is no *Diya* (blood-money) for the one killed by an animal unaccompanied by somebody to control it.

Ibn Sirīn said: They used not to guarantee any compensation for any damage caused by an animal's kick, but if the rider of the animal pulled the rein (causing the animal to turn and damage something with its feet), the rider is responsible.

Hammād said: There is no compensation for the damage caused by an animal's kick, unless somebody has kicked (and startled) the animal.

Shuraih said: There is no compensation for damage or injury inflicted by an animal on somebody who hits it whereupon it kicks him.

And Al-Hakam and Hammād said: If a hirer of mounts drives a donkey mounted by a woman, and the woman falls down, then he is not charged any compensation.

And Ash-Sha'bī said: If someone drives an animal and makes it tired by driving it fast, then he is responsible for any damage it might cause ; and if he drives it slowly, he is not responsible.

6913. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ : The Prophet ﷺ said, "There is no *Diya* for a

(٢٨) بَابُ: الْمَعْدِنُ جُبَارٌ وَالْبِئْرُ جُبَارٌ

٦٩١٢ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: حَدَّثَنَا اللَّيْثُ: حَدَّثَنَا ابْنُ شِهَابٍ، عَنْ سَعِيدِ ابْنِ الْمُسَيَّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ، وَالْبِئْرُ جُبَارٌ، وَالْمَعْدِنُ جُبَارٌ، وَفِي الرَّكَازِ الْخُمْسُ». [راجع: ١٤٩٩]

(٢٩) بَابُ: الْعَجْمَاءُ جُبَارٌ،

وَقَالَ ابْنُ سِيرِينَ: كَانُوا لَا يُضْمَنُونَ مِنَ التَّفْحَةِ، وَيُضْمَنُونَ مِنْ رَدِّ الْعِنَانِ. وَقَالَ حَمَّادٌ: لَا تُضْمَنُ التَّفْحَةُ إِلَّا أَنْ يُنْحَسَ إِنْسَانٌ الدَّابَّةَ. وَقَالَ شُرَيْحٌ: لَا يُضْمَنُ، مَا عَاقَبَتْ أَنْ يَضْرِبَهَا فَتَضْرِبَ بِرِجْلِهَا. وَقَالَ الْحَكَمُ وَحَمَّادٌ: إِذَا سَاقَ الْمُكَارِي حِمَارًا، عَلَيْهِ امْرَأَةٌ فَتَحْرُجُ: لَا شَيْءَ عَلَيْهِ. وَقَالَ الشَّعْبِيُّ: إِذَا سَاقَ دَابَّةً فَاتَّعَبَهَا فَهُوَ ضَامِنٌ لِمَا أَصَابَتْ، وَإِنْ كَانَ خَلْفَهَا مُتْرَسَلًا لَمْ يُضْمَنُ.

٦٩١٣ - حَدَّثَنَا مُسْلِمٌ: حَدَّثَنَا