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CHAPTER IX

THE LAWS RELATING TO THE CHANGE OF THE NAME AND NATURE OF STOLEN ARTICLES, AND WHEN AN ARTICLE BECOMES USELESS. ABOUT SKILFUL MECHANICS WHO SPOIL WORK INTRUSTED TO THEM, AND AS TO THE PLACE TO WHICH A STOLEN ARTICLE MUST BE RETURNED.

MISHNA *I.*: If one has stolen wood and made utensils of it, or wool and made garments of it, he must pay only for the cost of the material at the time it was stolen. If one stole a gravid cow and it brought forth young, or a sheep with its wool and he sheared it, he must pay the value of a gravid cow in its last month, or the value of a sheep ready to be sheared; if, however, the cow became gravid or the sheep grew its wool after the robbery, their value at the time they were stolen is to be paid. This is the rule: All robbers must repay the value of the article as it was at the time of the robbery.

GEMARA: The Mishna states: *Utensils* of wood or garments of wool, from which it is to be inferred that when the utensils were not as yet made, but only planned, or the garments not yet bleached, the law is otherwise. Then there is a contradiction in the following Boraitha: "If one has stolen wood and planed it, stones and cut them, wool and bleached it, flax and cleansed it, the payment for it is to be taxed, as when stolen"? Said, Abayi: "The Tana of our Mishna states that not only an irremediable change makes the robber the owner of it so that he must not return the same, but the value of the material when it was stolen, which is biblical; but even a removable change, *e.g.*, planed wood of which he made utensils that can be taken apart in such a way that the wood may remain in the same condition as when stolen, or spun wool, which can also be taken apart, etc., which change is only rabbinical. The Mishna comes to teach us, that even in such a case the robber acquires title by the change and must pay only the value of the material." R. Ashi, however, said: "The Tana of our Mishna speaks also of a change that is biblical. For instance, by utensils

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is meant even a planer with which he has only planed the wood, and by garments is meant unbleached felt-spreadings (which he has only bleached) which change is irremediable." If bleaching is considered an irremediable change, it would be contradictory of the following Mishna, which states: "If one had no time to give it to the priest until it was dyed, then he is free; but when it was only bleached, he must give it to the priest"? Said Abayi: "This presents no difficulty, as our Mishna is in accord with R. Simeon, and the other with the rabbis of the following Boraitha: If he has the wool from five sheep, a quantity of about a pound and a half, a part of it would go to the priests. If some of this quantity was already woven, it does not count. If, however, some of it was only bleached, according to the sages it counts, and according to R. Simeon it does not." Rabha said: "Both statements may be explained in accordance with R. Simeon, and there is no difficulty, as one of them speaks of it when it was only scattered, and the other one speaks of it when it was combed before bleaching." R. Hyya bar Abin said: "The

one speaks when it was only bleached and the other when it was sulphurated." Now, then, how can bleaching be considered a biblical change, when even dyeing is not considered a change, according to R. Simeon; as is stated in the Boraitha concerning the gift of the first shearing to the priest, in the case mentioned above: "Do not exclude from the quantity even wool that was already dyed"? Said Abayi: "This presents no difficulty. The statement of R. Simeon, given by R. Simeon ben Jehudah in his name, that dyeing wool counts, is opposed to the rabbis, who declare that R. Simeon said it does not count (consequently, one Boraitha is in accord with R. Simeon ben Jehudah's statement and the other is in accord with the declaration of the rabbis)." Rabha, however, said: "It is not necessary to say that the rabbis oppose R. Simeon ben Jehudah, for dyeing is different, because it can be removed by οαπων, and the above statement, that when it was dyed he is free, speaks when it was dyed by σαπωγ, which is not irremediable."

Said Abayi: All the following Tanaim agree with R. Simeon's statement explained above, that a change does not give title: Namely, Beth Shammai, as stated above (Ch. VII. p. 150). R. Eliezer ben Jacob of the following Boraitha: R. Eliezer ben Jacob said: If one had stolen a saah of wheat and had ground, kneaded, and baked it, and separated the heave of it, how can

he make a benediction; it would be not a benediction but a blasphemy, as it is written [Psalm, x. 3]: "The robber blesses . . . despises the Lord." Simeon b. Eliezer, of the following Boraitha, declares the following rule: Every increase that was made by the robber is subject to his disposal: He may keep it for himself, or return it to its owner, saying: Here is your property. How is this to be understood? (If he may say to the one robbed, "Here is yours," then it belongs to the owner-how, then, is it at the robber's disposal?) Said R. Shesheth: He means to say, if there is an increase the robber may retain it; but if there is a decrease, he can say to the one robbed, "It is yours," because a change in the property does not give title. If so, why not the same when there is an increase? This is only an enactment of the sages for the benefit of those who repent. R. Ishmael, of the following Boraitha: The positive commandment to separate the corner tithe is to be performed by putting aside from the standing corn; if that has not been done, he may put aside from the sheaves; if he had neglected also from this, he may do it in the granary before the corn was threshed; but afterwards he separates first the Levitical tithe and then the corner tithe. In the name of R. Ishmael, however, it was said: "He may separate the corner tithe and give it to the poor even from the dough."

Said R. Papa to Abayi: "Would all the above-mentioned Tanaim trouble themselves to teach us a Halakha of the Beth Shammai (which does not prevail?)," and he answered: "All they mean to say, is that Beth Shammai and Beth Hillel do not differ in this regard." Said Rabha: Why, then, (what compels you to teach that all the Tanaim hold that a change is of no avail)? Perhaps R. Simeon ben Jehudah's statement has reference only to a case of dyeing, as the color can be removed as stated above; and the Beth Shammai, because it is not clean enough for the altar, and R. Eliezer ben Jacob could not accept it to pronounce a benediction upon it, as such a meritorious act should not be caused by a transgression; and R. Simeon ben Elazar also, because it can again become fat; and, finally, R. Ishmael's statement was made only on the corner tithe as there is a superfluous word in the expression "Thou shalt leave it" (but in any other case they all may agree that a change is of value). And lest one say, that it can be inferred from this for all the other cases, it would not be correct, because charity affairs are different, as R. Jonathan questioned: "What is the

reason of it?" Shall we assume that R. Ishmael's theory is correct, because he holds that a change does not give title, or perhaps he holds it here only to be in accord with the superfluous word stated above, which must be only for the purpose that this rule applies only here as there is not known any other purpose for it? And he questioned also, What will the rabbis who opposed R. Ishmael say in regard to the superfluous expression in question? It can be said, It is needed; for we have learned in the following Boraitha: If one has renounced his ownership of a vineyard, and then in the morning he plucked the grapes, he is exempt from cleaning the vineyard and gathering every grape, forgotten sheaf, and corner tithe (because of the above-mentioned expression or something similar to it being applicable to all these gifts). It is, however, exempt from tithe. Said R. Jehudah in the name of Samuel: "The Halakha prevails in accord with R. Simeon ben Elazar." Abayi taught the same as follows: R. Jehudah said in the name of Samuel: It was said that the Halakha prevails according to R. Simeon b. Elazar, but he did not accept it.

R. Hyya bar Abba said in the name of R. Johanan: According to the Scripture a stolen thing is to be returned whatever its condition (although it is changed), as it is written [Lev. v. 23]: "He shall restore what he has taken away violently," no matter how it is now; and there is no wonder at the statement of our Mishna, for it is only for the benefit of those who repent. The rabbis taught: Robbers and usurers, if they make restitution of their own accord, it should not be accepted; and be who does accept it, acts contrary to the sages. Said R. Johanan: This Mishna was taught in the time of Rabbi, as we have learned in the following Boraitha: It happened that one intended to repent, but his wife told him, "If thou wilt do so, then even thy girdle will not belong to thee," and so he was kept back from repenting. At this time the statement of the above Mishna was made. Come and hear: "The repentance of shepherds, commissioners, and the contractors of duties is hard (because they do not know to whom to return the stolen goods); and when they nevertheless do repent, they have to return to those whom they know. (Hence we see that they must return?) We can say: Yea, they must return, but it should not be accepted. Then what is the use of their returning? To satisfy the Heavenly Will. If so, in what point is the difficulty of their repentance? And also, how would the last part of this

[paragraph continues] Boraitha be understood: "And the remainder, which they do not know to whom to return, shall be used by them in providing for the needs of the community"? And R. Hisda explained it that it means, *e.g.*, wells, excavations, etc. Hence we see that it should be accepted? Therefore we must say: The above Boraitha was taught before the above-mentioned enactment of the sages was made. According to R. Na'hman, however, who said that this enactment was made in reference to stolen articles which no longer exist, it may be explained that both Boraithas were taught after the enactment, and there is no contradiction, as one speaks of stolen articles that exist, and the other of such stolen articles as no longer exist. But was, then, not the above-mentioned enactment made in reference to the statement about the girdle, although it was in existence? Nay, it must not be taken literally. It means the value of the girdle. But was not the enactment made even in reference to an article that exists; for there is a Mishna that when a stolen beam was used for the building of a house, the one robbed could collect its value only, for the benefit of him who repented, although the beam still exists? This case is different, as the robber would suffer great damage by taking it out, and therefore the rabbis consider it as if it did not exist at all.

"*If one has stolen a gravid cow*," etc. The rabbis taught: If one had stolen a sheep and he had shorn it, or a cow and she brought forth, he must pay for the animal itself, and also for the wool or the young. This is the decree of R. Meir. R. Jehudah said: "A stolen thing must be returned as it is" (and the value of the wool or the young as they were, at the time of the robbery, but not the increase during the time they were under his control). R. Simeon, however, said. The value of the stolen article in money when it was robbed must always be considered. The schoolmen propounded a question: What is R. Meir's reason? Does he hold that a change is never of any avail, or, in other cases, agree that a change gives title, but here it is only a fine which should be inflicted on the robber, and the difference (between the two suppositions would be) when the cow becomes thin (in the house of the robber)? Come and hear: If one has given wool to dye it red, and it was dyed black, or *vice versa*, said R. Meir: He must pay him the value of the wool. Hence only the "value of the wool," but not for the increase? Now, if R. Meir is of the opinion that a change does not give title, the value of the wool and the increase

should be paid? Hence it is to be inferred that he holds that everywhere a change acquires title, and here is only a fine for the robber. According to others, the schoolmen did not propound the above question, because Rabh has changed the names in the following Mishna. If one has stolen a cow or slaves, and they become old while under his control, he must pay according to their value when they were stolen. This is the decree of R. Meir. The sages, however, say as to slaves, he may say: "Yours is before you." Hence we see that, according to R. Meir, a change gives title, and here is only a fine, and if there was any question by the schoolmen it was this: Is the fine only for an intentional act or only for an unintentional? Come and hear the Mishna mentioned above concerning the dyeing of wool, that he must pay only for the wool and not for the increase, because there was no intention, from which it is to be inferred that without intention there is no fine. "R Jehudah said the stolen property," etc. What is the difference between R. Jehudah's and R. Simeon's statement? Said R. Zbid: They differ when the increase is still in the stolen thing. According to R. Jehudah, it belongs to the one robbed, and according to R. Simeon to the robber. R. Papa said: Both agree that such an increase belongs to the robber (as even R. Jehudah meant only it should be returned as it was at the time it was stolen), and the case here held when it was customary in the country to take cattle for improvement for the reward of half, third, or a quarter. According to R. Simeon, the robber gets only the customary reward, but according to R. Jehudah the whole improvement belongs to him. There is a Boraitha which states plainly as R. Papa explained. Said R. Ashi: When we were in the college of R. Kahana, we were in doubt regarding R. Simeon's theory as to the payment of half, etc., for improvement, whether he shall be paid in money or with its meat? Afterwards we concluded from R. Na'hman's statement in the name of Samuel that it means in money: There are three cases in which the increase is appraised and the payment is with money, and they are: A first-born pays the increase after the death of his father to the other brothers; the same the creditor to the buyer, or to the heirs (for the increase after the time the estates were bought or after the death of the lender). Said Rabbina to R. Ashi: How could Samuel here state that the creditor must pay to the buyer for the increase? Did he not say that the creditor collects even the increase? And he answered:

[paragraph continues] This presents no difficulty, when we take into consideration that there is a difference between an increase which is not yet ripe (that in such a case a creditor collects it)

and an increase which is already ripe for harvest (which a creditor cannot collect). He objected: But was it not a fact that Samuel's court collected every day even from crops that were ripe for harvest? He answered: This also presents no difficulty when the claim is equal to the amount of the field together with the increase (then the creditor collects the increase also). When the claim is, however, only for the value of the estate (then the creditor must pay for the increase). Rejoined the former: This is right according to him who holds that even when the buyer has money he cannot pay the creditor with money; but according to him who holds that when the buyer has money, he can pay the creditor with money (why is it stated that the creditor pays with money for the increase?) why should not the buyer (have the right to) say: If I had money, I would make you leave the estate entirely. Now, when you take it for your debt, you have the right to take it for your debt only; but as for the increase, would it not be right to leave for me a part of the estate? And he answered: The case was when the field was hypothecated to the creditor, *i.e.*, when the loan was issued, he told him: You have to collect your debt from this estate only.

Rabha said: If one has stolen an article, and after improving it sells or bequeaths it, the sale or the bequest is valid for the improvement. He questioned, however, in case it was improved by the buyer, How is the law? After he questioned it, he decided: What else, then, had the first sold to the other, if not every right that he might have in this estate (so that the buyer has the same share of the improvement as the seller himself).

R. Papa said: He who stole a date tree and cut it down, did not acquire title, although he removed it to his own field. Why so? Because it has even then the same name as before--date tree. It is the same if he cut it in pieces, for they are still called pieces of a date tree. If, however, he has stolen pieces and made beams of them, title is acquired; if he has stolen beams and made short ones of them, title is not acquired; but if he has made boards of them, title is acquired.

Rabha said: If one stole a palm branch and has torn it in single leaves, title is acquired, because it is no more called palm,

but leaves; for the same reason, title is acquired when he has stolen leaves and made a broom of them. If, however, he has stolen a broom and made a rope, title is not acquired, because it can be taken apart and a broom again made of it. R. Papa questioned: If the double leaf of the same was divided (so that it cannot be restored), how is the law? Come and hear: R. Mathun said in the name of R. Jehoshua ben Levi: If the double leaf is divided, it is considered as if taken away, and it is invalid (for use of that day). Infer from this that such a change gives title.

R. Papa said: "If one has stolen clay and made bricks of it, title is not acquired, because it can be reduced again to clay; conversely, however, title is acquired, because, even if he will again convert it into bricks, it will have another appearance and will be no more the same as it was before. The same is the case if he has robbed bullion and coined it into money. If. however, he stole old coins and had cleaned them that they look like new ones, title is not acquired; but conversely it is, because, even should he clean them again, they will still be recognized as the old ones.

"*This is the rule*," etc. What does it mean to add? Such a case as that of which R. Ilai said:

"When one has stolen a sheep and it becomes a ram, or a calf and it becomes an ox, the change is considered as being made while in the possession of the thief, and title is acquired so that, if he has slaughtered or sold it, it is considered he has done it with his own. It happened that one had stolen a pair of oxen, and he ploughed and sowed his field with them. Finally, he returned them. When the case came before R. Na'hman, he said: Go and appraise the increase he has made with them. Said Rabha to him: Is the increase of the field caused only by the oxen, and not by the field also? And he answered: Did I say the whole increase shall be collected? I mean half of it only. And he rejoined: After all, it is no more than a robbery of which the rule is, "It shall be returned as it is." He answered again: Did I not tell you that when I am sitting in the court you shall say nothing to me; for Huna, my colleague, has said that I and the King Sabura are brothers in regard to court cases. 1 This man is known as an old robber and I want to fine him.

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MISHNA *II.*: If one has stolen cattle or slaves, and they become old, he must pay their value at the time stolen. R. Meir, however, says: Concerning slaves he may say: "Yours are before you." If he has stolen a coin and it broke, fruits and they became rotten, wine and it became sour, it is to be paid as at the time robbed; a coin which afterward became invalid, heave-offering and it became unclean, 1 or leaven which was in the hand of the one robbed during Passover, a cow and it was used for sodomy, or it: became invalid for the altar or it was condemned to be stoned, he may say: "Yours is before you."

GEMARA: Said R. Papa: It means not only when it became old, but even when it becomes thin. But is it not stated plainly old? This expression is used to teach that only when it is incurable, as in the weakness of old age. Said Mar, the older son of R. Hisda, to, R. Ashi: It was said in the name of R. Johanan that when one steals a sheep and it becomes a ram, or a calf and it becomes an ox, such a change gives title; and if he slaughters or sells it, it is considered as his own. And he answered: Did not I tell you, you shall not change names? This was said not in the name of R. Johanan, but of R. Ilai. "*R. Meir said*," etc. R. Hanina bar Abdimi said in the name of Rabh: The Halakha prevails according to R. Meir. But why did Rabh desert the majority in this decision? The reason is because in the Boraitha the names are changed. Why, then, has Rabh given preference to the Boraitha, and not to the Mishna, which ought to be better authority? Yea, when there is one Mishna against one Boraitha; but there are two Boraithas against one Mishna (and therefore he prefers to change the names in our Mishna, that it shall correspond with them). The other Boraitha is as follows: If one has exchanged a cow for an ass, and the cow has brought forth young; or if one has sold a female slave and she has given birth (to a child), and one of the parties said it was born when it was in his control, and the other keeps silent, the first acquired title to it; when each of them says he does not know, then the value is to be divided.

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[paragraph continues] But if each of them claims that it occurred when it his control, then the seller has to take an oath that it while under his control (and not the buyer, as there that all those to whom a biblical oath is applied, they s do not pay). So is the decree of R. Meir. The sages, however, say: There is no oath, as an oath is not to be ordered in cases of slaves or real estate. Hence, here also, is the opinion, of R. Meir that slaves are not considered real estate. But if he changes the names in the Mishna, his statement ought to be, that the Halakha prevails according to the rabbis? He meant to say so: According to you who have changed the names, the Halakha prevails as R. Meir. But how could Rabh state that a slave is considered real estate? Did not R.

Daniel bar R. Ktina say in his name: If one has compelled a slave of his neighbor to do labor for him, he is free from charges? Now, if you bear in mind that a slave is considered real estate, why shall he not be charged? Is not the slave yet under the control of his owner? The case was when not in time of labor (that one has the benefit when the other loses nothing, and there is a decision above that in such a case he is free from charges). But would the owner of the slave be satisfied that his slave should become tired, so that it would do harm to his usual work? It can be explained (that his owner has no work for his slave), and so it is agreeable for him that his slave shall not become used to idleness. R. Joseph bar Hama used to compel slaves of his debtors to labor for him. Said Rabha, his son, to him: Why does the Master so? And he answered him: Because R. Na'hman said that the labor of a slave is not worth even the food he consumes. Said Rabha: R. Na'hman said so because of his slave Daru, who was dallying about the shops and doing nothing, but not of slaves who are working. And he answered: I hold with the statement made by R. Daniel, who in the name of Rabh stated above. And his son said again: This is said in case the compeller has not any claims against the owners of the slaves; but you, Master, who claim money from their owners, it looks like usury, as R. Joseph bar Miniumi said in the name of R. Na'hman: Although it is said of one who lives on the property of another without his knowledge is not obliged to pay rent therefor, but when he has lent money to the owner of the property he must pay him rent (that it shall not be considered as usury). Rejoined his father: (You are right.) I will not do it again.

It was taught: If one takes possession of another's ship and makes use of it. Said Rabh: The owner may collect either the usual price of loaning it, or, if it was damaged and the amount of repairing surpasses the amount of hiring, he may collect even this. Samuel, however, said: If the amount of the hiring surpasses the amount of the repairing, he takes only the latter. Said R. Papa: They do not differ. Rabh speaks of a case where the intention of the sailor was to pay the value of the ship, and Samuel speaks of a case where the intention was to steal (and a stolen article is to be returned as it was when stolen, without any increase, for the benefit of those who repent). "If one has stolen a coin," etc. Said R. Huna: The expression "broke" is to be taken literally; the expression "it became invalid" means that the government abolished it. R. Jehudah, however, said: It would be the same as if broken, but the expression "invalid" means that it became invalid in *this country*, but has still a value in another one. Said R. Hisda to R. Huna: According to your theory, it was abolished by the government. Is that not equivalent to those who stole fruits which became rotten or wine which became sour, for which the value at the time it was stolen is to be paid? And he answered: There is a change in taste and smell, which is not the case here. Said Rabba to R. Jehudah: According to your theory abolished by the government is the same as broken. Is that not equivalent to the case of heave-offering, of which it is stated that he may say: "Yours is before you"? And he answered: Nay, it cannot be equivalent; for in the case of the heave-offering, it remains the same as it was before, and no one can recognize any change in it; but here every one can recognize that the coin is of no value. It was taught: If one has given credit, to be repaid with coin which had the full value at that time, and afterwards this coin was abolished? Rabh said: He must pay him with coin of the time of payment. Samuel, however, said: The debtor can say, "I give you the coin according to our agreement, and you must take the trouble to use it in the city of Mishon, where it has a value. Said R. Na'hman: It seems that Samuel's theory can be applied in the case of a creditor, who intends to go to that place, but not otherwise. Rabha objected to R. Na'hman, from the following Boraitha: The second tithe cannot be changed with coins which are not circulating in the market, as the coins of Cachba, or of the government of Jerusalem, or of the kings of the ancient times. As

the expression, "kings of the ancient times," does not imply the coins of the later kings, which have not any value here, but still have a value in other countries, they may be changed (although the changer has not any intention to go there, as he has to take this money for use in Jerusalem)? And he rejoined: The case was when the governments were not particular when foreign coins were used. According to you (said Rabha again), Samuel means to say that even when the governments are particular; but if they are, how can he bring the coins there? It can be explained that they can be smuggled in, as the government does not search for them, but if found they confiscate them.

The rabbis taught: What were the coins of Jerusalem? David and Solomon were engraved on one side, and Jerusalem the holy city on the other side; and what were the coins of Abraham the patriarch? An old man and woman on one side and a young man and woman on the other side. Rabha questioned R. Hisda: If one has given credit, to be paid with a certain coin, and in the mean time the coins increased in weight, what is the law? And he answered: He must give him coins which are used at the time of payment. And he questioned again: Even if there is a large increase in size and weight? 1 And he said: Yea. But on account of the larger coins, the fruits become cheaper (as we get more produce for a larger coin than a smaller one, and so it would look like usury). Said R. Ashi: It must be discovered whether the fruits become cheaper on account of increase of the coins in question, then the payment is to be reduced accordingly. But if the fruits become cheap on account of great production, then no reduction is to be made. But (even in the latter case), at any rate, is there not then an increase in the metal of the coin which looks like usury? Therefore the question must be decided in accordance with the following act of Papa and R. Huna the son of R. Joshua, who have in such a case examined the different coins of the merchant Argdimus, and have found that eight of the new

ones are equal to ten of the old ones (and then they decided that the borrower must pay accordingly). Rabha said: If it happened that one had pushed another's hand, and a coin fell down from his hand into the sea, he is free, as he may say: I did it unintentionally, and the coin is before you; you may take it. This is the case only when the water is so clear that the coin is to be seen, but not otherwise. 1 Rabha objected from the following Mishna: The second tithe cannot be charged upon money which is not under one's control at the time, *e.g.*, when he placed his money in custody or in the king's treasury (which he cannot reach without great difficulty), or when the purse with money fell into the sea, so that the tithe cannot be charged on such money. (Hence we see that such money is not considered under his control.) And Rabha answered: This case is different, as the verse plainly states "and bind up the money in thy hand." And Rabha said again: If one has defaced coins belonging to others, he is free, because he did not take away anything, and it is considered as if he had done nothing. This is only by striking with a mortar upon the effigy (so that it disappears), but not when he has filed it, as then the weight of it is lessened. And Rabha said again: If one cuts off the ear of his neighbor's cow, which by such an act becomes unfit for the altar, he is free, because the cow is afterwards as good as before and he has done nothing, as not all cattle are prepared for the altar. Rabha objected from the following Boraitha: "If one has labored with the red cow or with its ashes, he is free from the lower court, but he is nevertheless responsible in the divine court." We see then that labor which cannot be recognized on the body of the animal as damaging, the civil court

cannot make him liable for; but by taking off the car, which is recognized on the body, he should be responsible even before the civil court? Nay, the case is the same, and the above Boraitha comes to teach us that even in a case where the change is not to be recognized on the body, he is nevertheless responsible before the divine court. The same said again: Ii one has burnt a note of his neighbor, he is free, because he can say, "I have only burned a piece of paper." Rami bar Hama opposed: Let us see. If there are witnesses who know what

was written in the note, let them draw another good note for him (and there would be no damage at all); and if there are no witnesses, how can we know the amount of the note? Said Rabha: The rabbis' decision may hold even when the burner trusts the owner of the note as to its amount. R. Dimi bar Hanina said: The above statement of Rabha is discussed by R. Simeon and the rabbis, namely: According to R. Simeon, who holds that a germon is considered a direct pecuniary loss, then in the case of Rabha there is a liability; but to the rabbis, who hold that a germon is not considered such, then in the case of Rabha there is no liability. R. Huna, the son of R. Joshua, however, opposed: You have heard R. Simeon so declaring only in a case where the origin was money, in the following case stated by Rabha: If one has stolen leavened bread before passover, and another has burned it in the middle days of the feast, he is free, because there is an obligation on every Israelite to destroy it. If the case occurs after passover, there is a difference of opinion; according to R. Simeon, by whom it is held a germon for a direct pecuniary damage, there is liability, and according to his opponents there is not; but in a case where the origin is not money, did you hear them differ? Said Amemar: In the courts where they summon for causing damage by germon, the full value of the note is to be collected from the destroyer. In the courts, however, where they do not, in such cases there is to be collected only the value of the piece of paper. Such a case happened, and Raphram compelled R. Ashi to pay from his best estates.

"*Leavened bread*," etc., "*he can say, 'Yours is before you*.'" Who is the Tana who holds that in prohibited things, from which no benefit is to be derived, one may nevertheless say: "Yours is before you." Said R. Hisda: It is R. Jacob of the Boraitha stated above (p. 103). R. Jacob said: Even when it is already decided that the ox shall be killed, and the bailee has returned it to its owner, the act is valid, and we must assume the point of their difference is this: R. Jacob holds that of things from which no benefit is to be derived he may nevertheless say: "Yours is before you," and the rabbis hold that such is not the case? Said Rabha to him: Nay, all agree, in the case stated above, that one may say, "Yours is before you." For if such is not the case, let them differ also in case of leaven on passover (stated above). The point of their difference here, however, is this: Whether the court may decide the

case of the goring ox in its absence. The rabbis hold that the decision must be in the presence of the ox, and therefore the owner can claim that if it should be returned to him before the decision of the court, he could drive it away to a meadow, but after the decision he could do nothing; so that no decision could be rendered; and R. Jacob holds that the presence of the ox is not necessary, and the bailee can say to the owner: "What is the difference, when the ox would be returned to you; the court would decide the case in any event, and as the ox is yours, I have nothing to do with it."

"*Fruits, and they became rotten*," etc. But we have learned in a Mishna that in such a case one

must pay their value at the time they were stolen? Said R. Papa: The Mishna just quoted speaks of a case when all the fruit had become rotten, and our Mishna speaks when only a part of them had become so.

MISHNA *III*: If a specialist took a thing to repair it and he spoiled it, he must pay. The same is the case if a carpenter took a box, a trunk, or a cage to repair and he has spoiled it--he must pay. A builder who undertook to take apart a wall, and he broke the stones or bricks, or spoiled them, he must pay. If, however, by taking it apart from one side, it fell down from another side, he is free; provided, however, it did not fall down by reason of the stroke.

GEMARA: Said R. Asi: The Mishna speaks only when the things were given solely for repairing, *e.g..*, to put nails on it; but if wood were given to one to make the above articles new ones and he broke them, he has to pay only for the wood, and not for the vessels, because the carpenter acquires title in the increase of the wood by having made a vessel of it. There is an objection from our Mishna: If a specialist took something to repair it, he is liable. Shall we not assume that he took wood? Nay, it means when he took vessels. But does not the second part speak of vessels, of which it is to be inferred that the first part speaks of wood? Nay, the Mishna itself explains in the latter part the meaning of the first part, and it is to be read thus: If he has spoiled. How so? If he has given it to specialists for repairing, and they have spoiled it, they are responsible; *e.g.*, if he gives to a carpenter a trunk, etc. And it seems also that the latter part is only an explanation. Then (if such is not the case) the latter case would be entirely superfluous, as it is stated already in the first part that, even if he took wood he must pay; it is self-evident, when he took vessels

and spoiled them? (Says the Gemara:) This conclusion is not strong enough, as it can be said that the statement of the second part was necessary to declare the meaning of the first part, lest one say that the first part treats of vessels, but with wood the case would be different, it expresses in the second part the different vessels, to infer from it that the first part treats of wood, and, nevertheless, he is responsible. There is another objection from the following Mishna: Come and hear: If a specialist took a garment and made it ready, and informed the owner he should take it and the owner did not care to do so, the negative commandment of Lev. xix. 13, "There shall not abide," etc., does not apply here. If, however, he has delivered it to him in the middle of the day, and it is not paid by sunset, the above commandment is applied. Now, if some would bear in mind that the master acquires title on the increase, then why should the above commandment be applied? Must not the garment be considered as the property of the master? Said R. Mori the son of R. Kahana: This Mishna speaks of an old garment that was given to be cleaned and to comb the wool, where there is no increase. But, finally, if given to him to put in order, *e.g.*, to make it soft, or to clean it so that it shall look like a new one--is this not to be considered an increase? The case was that he hired him on time, then he must pay him for his time and not for the garment, and, therefore, if he had not paid him, the above passage applies. Samuel said: A butcher (even), a specialist, if he has spoiled the meat (by slaughtering the cattle not in accordance with the law) he must pay, he is a tort-feasor, and is also considered wilful in doing this damage, as he has slaughtered it not in the place where it ought to have been done, and his mission of slaughtering is not fulfilled. Why so many reasons? If it stated a tort-feasor only, one may say that the case is only when he was hired to slaughter, but if he has done it gratuitously he should be free; therefore the addition.

"His act is considered wilful." R. Hama bar Guria objects from the following Boraitha: If one has given his cattle for slaughter and they are spoiled so that they become (unfit for eating), if the butcher was a specialist, there is no liability; but if he was a layman, there is. Both, however, if they were hired, then are they liable. Samuel's answer was: I think your brain is not in regular order. The same objection was raised to it by another of the rabbis, and Samuel said to him: (Stop objecting,)

as thou wilt receive the same answer as thy colleague. I taught this in accord with R. Meir, and you questioned me in accordance with his opponents. Why did not you give a careful consideration to my statement? Did I not say he is a tort-feasor, and considered wilful, etc., and whose theory is it that such a consideration should apply in such cases? There is only R. Meir. [Where did R. Meir state this?] In the following Mishna: If one's jug was broken (in the public street), and he did not remove it, or his camel fell down and he did not raise it (and damage was caused), R. Meir said: He must pay. The rabbis, however, say: This damage cannot be collected by the civil court; the divine court, however, makes him responsible for it. And it is declared that they differ in the case of stumbling, whether it is considered wilfulness or not. Rabba bar Hana in the name of R. Johanan said: A professional slaughterer is always responsible for his act, and even if he were expert as they of Ziphrus. Did R. Johanan, indeed, say so? Did not Rabba bar bar Hana himself say that such a case happened for R. Johanan in the congregation of Moun, and R. Johanan said to him: "Go and bring witnesses that you are a specialist in slaughtering cocks, and I will take off the responsibility from you"? This presents no difficulty. The latter was a gratuitous act, and the first case speaks of hire. As R. Sera used to say: One who likes to be sure of the responsibility of his slaughterer, he shall advance him a dinar. It happened that a case of *egressum* (in slaughtering) came before Rabh, and he declared it unlawful for use, and at the same time he absolved the slaughterer from payment. When R. Kahana and R. Asi met the owner of the cattle, they said to him: Rabh did two good things regarding you. He prevented you from using a doubtful thing, and also restrained you from possible robbery (as, if he had made the butcher pay, it would have been a robbery). It was taught: Suppose one gave a coin to a banker for examination, which was approved by him, and afterwards it was found to be of no value? If he was a specialist, he is free; but if a layman, he is responsible. So is the statement of one Boraitha. Another one, however, states that in any case the banker is responsible. Said R. Papa: The statement that he is free speaks of experts like Danki and Esau, who do not need any more experience, but they erred in the picture of the coin, which was a new one in this country, and they took it for an old one of another country, and they did not know that in this

country such a coin was just made. There was a woman who showed a coin to R. Hyya, and he told her: It is a good one. The next day she came and told him that when she showed it to other people she was told it was of no value, and she could not give it out. Then R. Hyya said to Rabh: Give her a good dinar, and write in my account book that this was a bad business (to lose money for nothing, as I should not have given a decision upon it). But why--was not R. Hyya an expert in such cases, as Danki and Esau mentioned above, of whom it was said they had not to pay for their error? R. Hyya did not go to the extreme of the law, but acted on the teaching that a generous man should always moderate the law when it is against poor people (as will be explained in the Second Gate (Chap. II.) by R. Joseph). Resh Lakish showed a dinar to R. Elazar, and he told him: It is a good one. He said then: I rely upon you. And the former rejoined:

What do you mean by relying upon me--that if it will be found of no value I should change it? Are not you he who said that the decision of this Halakha is in accordance with R. Meir, who decided that laws of germon (damages which are done indirectly) shall be put in practice? Consequently the Halakha does not so prevail. "Nay, rejoined Resh Lakish, "I meant that it is according to him and so the Halakha prevails." [And where did R. Meir stated it? In the following Boraitha. The name of R. Meir is not mentioned here, and Tosphatt declares that it was known to the Gemara that this is his decision.] "If the partition which was placed between the vineyard and corn was broken, the court has to order him twice to repair it. If he, however, did not care to fulfil the order, then the products are prohibited, and the owner of the partition has to suffer the damage."

MISHNA *IV.*: If one gave wool to the dyer, and it was spoiled in the kettle, the value of the wool is to be paid. If it was poorly dyed, by reason of the kettle not being clean, if the increase in value of the wool is more than the expense, then he pays the expense only; and conversely, the increase only. If one has given wool to be dyed red, and it is dyed black, or conversely, R. Meir says: The value of the wool is to be paid. R. Jehudah says: It must be seen which was greater, the increase or the expense.

GEMARA: The rabbis taught: If one has given wood to the carpenter to make a chair of it, and he has made a bench, or conversely, the value of the wood is to be paid. So is the

decree of R. Meir. R. Jehudah says: "If the increase is more than the expense," etc. (as stated in the Mishna). R. Meir, however, agrees that such a decision applies if the agreement was to make a nice one and he made it unsightly. The schoolmen propounded a question: Is the color of the dyes to be considered . as existing upon the wool, or not? How is it to be understood if one has stolen the wool and the dyes of the same man, and has dyed the wool with the same, and then returns the wool? Now, if it is considered as existing, then he has returned all he has stolen from him; and if not, he has returned him only the wool? But even suppose not, is not the price of the wool increased by that? Nay! The case was that the dyed wool became cheaper after it was stolen. Rabbina said: The question is in case the wool belongs to one and the dyes to another, and a monkey came and dyed this wool with these dyes. Shall we then assume that the dyes are considered as existing upon the wool, and the owner of the dyes can say: "Pay me for my dyes which are upon your wool"? Or, perhaps can the other say: "There is nothing that belongs to you, as the color of your dyes is not taken into consideration." Come and hear: A garment which is dyed with the rinds of fruits grown in the sabbatic year must be burned. Hence it is to be inferred that the color of dyes is considered as existing? There is a difference, as the Scripture uses the expression, "It shall be," which means: It shall always be considered as existing.

"*R. Jehudah says*," etc. R. Joseph was sitting behind R. Abba, before R. Huna, and R. Huna said: The Halakha prevails in accord with R. Joshua ben Karcha and also with R. Jehudah. R. Joseph then turned his face, and said: It is necessary to say that the Halakha prevails in accord with R. Joshua ben Karcha, lest one say that, as there is a rule where an individual and the majority differ, the Halakha prevails as the majority; therefore he comes to teach us that here the Halakha prevails according to the individual. [What is the case of R. Joshua ben Karcha? The case of the following Boraitha, where it is said that before the pagans' holidays there should be collected from them only such debts as are not known by any writing; but if there is a note, it must not be collected.] But for what purpose was it necessary to state: The Halakha prevails

according to R. Jehudah? Is this not self-evident? Is there not an anonymous Mishna after the Mishna in which they differ,

and there is a rule that in such a case the Halakha prevails in accordance with the anonymous Mishna--namely, in this First Gate, R. Meir and R. Jehudah differ in our Mishna stated above, and in the Second Gate there is an anonymous Mishna that he who has changed the order must suffer the damages, which is certainly in accordance with R. Jehudah's theory? [Said the Gemara:] R. Huna holds that his statement was necessary, because at a first glance one may say that the order of the Mishnayoth is not to be taken into consideration; and, consequently, there is not an anonymous Mishna after the Mishna which was discussed. If so, what, then, is the rule? R. Joseph may say: We can say to every anonymous Mishna which comes after a discussion that there is no order in the Mishnayoth. And what would R. Huna say to this? He might say that only in one tract is the order of the Mishna not to be taken into consideration, but in two different tracts it must be considered. And R. Joseph? He maintains that the whole of Section Damages is considered as one tract. And if you prefer, it may be said that, even to him who does not consider the whole section as one tract, the anonymous Mishna in the Second Gate, which is placed among decided Halakhas without any change, prevails.

The rabbis taught: If one has given money to his messenger to buy wheat and he buys barley, or *vice versa*, there was taught in one Boraitha that the decrease as well as increase is accounted to the messenger; and in another one, the decrease only, but the increase must be divided. Said R. Johanan: The different opinions of the Boraithas present no difficulty: one is in accordance with R. Meir, who holds that change gives title, and the other one is in accord with R. Jehudah, who holds it does not. R. Elazar opposed: How can we infer that according to R. Meir even the increase belongs to the messenger? Perhaps R. Meir spoke only of an article that one needs for his own use, but not for the market (as there is a difference which article he buys as soon as there is profit on it). And, therefore, said R. Elazar, both Boraithas are in accord with R. Meir, and present, nevertheless, no difficulty. The first means when it was bought for eating, and the other for the market. In the West they ridiculed Johanan's explanation according to R. Jehudah, for who had informed the man of the wheat that he shall pass title to the man of the money (and why should the sender get a share of the increase)? R. Samuel bar Sasarti thus opposed this: If it is so, then even when the messenger has bought the same

article he was ordered to buy, then the profit should not belong to the sender? Said R. Abuhi: Then there is a difference, because the messenger fulfilled what he was ordered, and he is considered as the owner himself.

The rabbis taught: One who buys a field in the name of his neighbor, he for whom it was bought, is not to be compelled to sell it; but if he bought it under this condition, then he may be compelled. How is this to be understood? Said R. Shesheth: It means to say the following: If, *e. g.*, one has bought a field in the name of the Exilarch, the Exilarch cannot be compelled to sell it again; but if he bought it under this condition that the Exilarch shall transfer it, he may be. Now we see that he acquires title in any case. Shall we assume that this Boraitha differs with those of the West, which said above, that title without information cannot be acquired? This question could be answered that the buyer has informed the seller, and the witnesses also, that he buys it

for himself; but the latter part, which stated that the Exilarch may be compelled to sell it again, presents a difficulty. Why should not the Exilarch say: I do not want to be honored (by you in buying things in my name), and to be despised afterwards (in making me a seller of property). Therefore, said Abayi, it means thus: If one buys a field in the name of his neighbor, the seller is not compelled to write him another bill of sale upon his own name unless he bought it under this condition; but is it, then, necessary for the Boraitha to state that the seller has not to give two bills of sale in two different names--is it not self-evident? Lest one say, the buyer could claim that the seller was well informed that the bill of sale in the other's name was only a πινακος ("for fear that my creditors shall not claim this estate); and certainly, as I would not give money for nothing, it was with the intention I should get another bill of sale in my name." He comes, therefore, to teach us that the seller can say to the buyer: "Go and get your bill of sale from him in whose name you have bought." But where is the need of the latter part, "if he bought it under this condition," etc.? Is this not self-evident! The case was when the buyer said to the witnesses in the presence of the seller: "Observe that I want to get another bill of sale." Lest one say, the seller could claim: "I meant another bill of sale from him in whose name it was, bought"; he comes, therefore, to teach us that the buyer may claim that, only for the purpose of getting another bill of sale from the seller, he

informed him in the presence of witnesses; as if not, there would not be any necessity for the seller to know this. R., Kahana paid money for flax. In the meantime the flax became dearer and the seller sold it (for R. Kahana's benefit). Then R. Kahana questioned Rabh if he had a right to take the money. And he answered: If in selling the flax it was said that it is Kahana's flax, go and take it; but not otherwise. Now, Rabh's decision is in accordance with the theory of the rabbis of the West, stated above. But did, then, R. Kahana give four (with the intention to get) eight? The flax was his, and it became dearer by itself, so that the seller who had sold it without the knowledge of R. Kahana is to be considered as a robber, of whom it is stated in the Mishna: He must pay the value when it was stolen, and the flax was already dearer. The case was that R. Kahana had not given to the man flax at all, but money to buy it at the lowest price, and he had confidence in him; and when the seller did not mention that he sold the flax of R. Kahana, the increased price of the flax, which was not as yet the property of Kahana, if he had taken it, was to be considered as usury. Rabh, however, in his decision is in accord with his theory that a trust may be made for fruit, to pay for it now and to get it when it will be dearer. He must, however, take the fruit itself, but not the money for it (as it would be like usury).

MISHNA *V.*: One who has stolen the value of a coin, even the smallest in the country, and he swears falsely that he did y not take it, and afterwards confesses, he shall return it to the owner where he is to be found, even when he is in Madai. He cannot return it to his son or a messenger. He may, however, return it to the messenger of the court. In case the one robbed is dead, he may return it to his heirs. If he has returned the principal amount, but not the fifth part (that he must add) [see Lev. v.], or if the one robbed had renounced the principal amount but not the fifth part, or he had renounced both except the value of less than a *parutha* of the principal. amount, he is no more obliged to go to him (for the sake of returning the part he still owes him). If, however, the fifth part only is paid or renounced, or even when both are renounced less than a *parutha* of the principal amount itself, he must go to him to return it. If he has paid the principal amount, and he took an oath that he had returned him the fifth part also, and then he confesses, he must then add a fifth part to the fifth, etc., till the part sworn off will be less than a *parutha*. The same is the case in

a deposit, as it is said [Lev. v. 21-24]: "If any person sin and commits a trespass against the Lord; if he, namely, lie unto his neighbor in that which was delivered to him to keep, or in a loan, or in a thing taken away by violence, or if he has withheld the wages of his neighbor, or if he has found something which was lost and lies concerning it and swears falsely in any one of all these which a man can do to sin thereby. Then shall it be when he has sinned and is conscious of his guilt, that he shall restore what has been violently taken away, or the wages which he has withheld, or that which was delivered to him to keep, or the lost thing which he has found, or any one thing about which he may have sworn falsely, and he shall restore it, in its principal, and the fifth part thereof shall be added thereto: unto him to whom it appertains shall he give it on the day when he confesses his trespass."

GEMARA: (If he has sworn) but how is it when he has not sworn--he must not pay? then the Mishna is not in accord with R. Tarphon nor with R. Aqiba of the following Mishna: "If one has robbed one of five persons, and he does not know which of them, and each of them says he was robbed, he shall place the robbed amount among them and he is free, so is the decree of R. Tarphon." R. Aqiba, however, says: "Such is not the way to prevent one from sinning, and he is not free unless he pays the amount to each of them." Now, according to R. Tarphon, even when he swears, he may nevertheless get free by placing the robbed amount among them; and according to R. Aqiba, even when there was no oath he must pay to each of them? Our Mishna can be explained in accord with R. Aqiba and his statement, he shall pay to each of them is only in case he has sworn, because it is said [Lev. v.]: ["Unto him to whom it appertains shall he give it on the day when he confesses his trespass."] R. Tarphon, however, maintains: "The rabbis have made an enactment even in case there was an oath, as stated in the following Boraitha: R. Elazar b. Zadok says: There was a great enactment by the rabbis that in case the travelling expenses for returning it should exceed the robbed amount, he may pay the principal amount and a fifth part of it to the court, and he may bring the trespass offering and an atonement will be made for him. Concerning this statement R. Aqiba may say that such enactment applies only when he knows whom he has robbed; but in our case, where he does not know who of the five was robbed by him (so that he cannot

return the robbed article to the right owner), the above enactment does not apply." Rabha objected from the following: "It happened with one pious man who bought of one of two persons, and he did not know from which of them, when he then came before R. Tarphon, he told him to place among them the value of the goods bought and he will then be free. When he came to R. Aqiba he told him: 'You cannot make good this act unless you will pay to each of them the full amount.'" Now if you bear in mind that R. Aqiba's statement is only when he has sworn falsely--would then a pious man swear falsely? And if one may say, that this person has become pious after he has sworn falsely--is there not a rule that everywhere the expression, "It happened with a pious one," etc., is used, it means always R. Jehudah ben Rabba or Jehudah b. Ilai, and both were always pious? Therefore said Rabha: The case in our Mishna is entirely different, it was known to him whom he has robbed, and he has confessed to him, and because at the time of the confession the robbed one did not demand he shall return him the robbed articles immediately, it is considered as if he would say, "Keep it for me," and this can only be when he has not sworn and did not need any atonement; but when he has sworn, although the robbed one would say to him plainly, "Keep it for me," he still needs an atonement, and this cannot take

place until the robbed articles are returned in the hands of the robbed one.

"*He cannot give it,*" etc. It was taught, a messenger who was instructed by the creditor in the presence of witnesses. R. Hisda said: "He is considered a good messenger, so that if an accident happens to him after he received the money, it is to be charged on account of the creditor and not of the debtor, for the reason that the creditor took the trouble to appoint this messenger in the presence of witnesses, so that as soon as the messenger receives the money the debtor shall be acquitted." Rabba, however, said: "The creditor has only introduced the messenger as a man who is worthy to be trusted, and if you wish, you can send with him, but I am not responsible until the money reaches me." An objection was raised from our Mishna: "He shall not give it to his messenger." What kind of a messenger is meant? If he was not instructed before witnesses, how do we know that he is a messenger? Hence, we must say that he was nominated in the presence of witnesses (and nevertheless it is said he shall not give it to him)? R. Hisda explained that

the Mishna speaks of the robbed one's employee. But how, if the same would be appointed to receive this thing in the presence of witnesses--may then the robber give it to him? Then why does not the Mishna make this distinction, instead of the statement that he can give it to the messenger of the court? It may be said that the Mishna prefers to speak of a messenger who is to be respected at any rate, no matter through whose influence appointed, whether of the robbed one or of the robber, which is not the case with a private messenger. And with this statement the Mishna also intends to contradict R. Simeon ben Elazar of the following Boraitha, who said: A messenger of the court when nominated by the robbed one without the consent of the robber, or when even by the robber, and the robbed one has sent another messenger and took the robbed article, and before it was returned to the robbed one an accident happened, the robber has done his duty. R. Johanan and R. Elazar both said that a messenger appointed in the presence of witnesses is a good messenger, and regarding the above stated objection from our Mishna, we may say: Our Mishna speaks of a case where the robbed one has only advised a man to tell the robber that he can give him the articles robbed to deliver; for he thought that the robber had nobody to send him.

R. Jehudah, in the name of Samuel, said: "A messenger must not be made in his absence, namely: If the creditor writes to the debtor, 'Send me the money through so and so, and I take the responsibility for it'--even when he had signed this letter with his signature and with witnesses it is of no value." R. Johanan, however, said: "If it was signed and witnessed, the order may be executed."

But what is to be done according to Samuel's theory? The creditor shall pass the title of the money to the messenger, and the messenger shall be able to give a receipt in his own name; as it happened with R. Abba, who was the creditor of R. Joseph bar Hama, and the former asked R. Safra to bring it when he returned. And when R. Safra demanded the money, said Rabha the son of R. Joseph to him: "Did R. Abba give you a receipt for the amount?" and he answered, "No." Then he said: "Go and take from him a receipt first." Finally, after reconsidering, he said to him: "Even if you would have a receipt, I would not give you the money, for the reason that perhaps until you will reach him, he will be dead, and this money will belong to his orphans, so that the receipt of R. Abba would be

of no value." And when R. Safra questioned what then should be done, he replied: "Let him rather assign the amount to you with real estate, and you will give us a receipt," in your own name; as it happened that R. Papa had to collect twelve thousand zuz from one in the city of Husai, and he assigned them to R. Samuel bar Abba with the threshold of his house, and when the latter returned, R. Papa went forth to meet him even to the city of Toach.

"*If he has paid*," etc. From this is to be inferred that the fifth part is not considered a fine, but an addition to the principal; and if the robbed one dies, it must be paid to his heirs; and so it seems from the latter part of our Mishna: "He has to add a fifth part to the fifth part." And so also it is plainly stated in the following Boraitha: "If one has robbed and has sworn falsely and then he dies, the heir must pay the principal amount and the fifth part, but they are free from the trespass offering." So we see, then, that the heirs are subject to the payment of the fifth part for their father. Is there not a contradiction from the following Boraitha: "It is written 'which *he* robbed,' which signifies that only of *his* robbery a fifth must be added, but not of that of his father's"? And in addition to this, the Boraitha states: "Still one may say that so it is when neither the father nor the son has sworn falsely; but if both or one of them has sworn, the fifth must be paid. Therefore it is written [Lev. v. 23]: 'What he has taken violently away, or the wages which he has withheld'; and here the son did nothing of the kind." (Hence we see that the fifth part is considered a fine for the false oath, and not an addition to the amount? Said R. Na'hman: "This presents no difficulty. Our Mishna speaks of a father who confessed the robbery, and the Boraitha speaks when he did not." If he did not confess, then the principal amount also should not be paid? And lest one say it is indeed so, why then speak about the fifth part only? from which it is to be inferred that the principal part is to be paid, and aside of this the Boraitha cited above states: "And still one may say, the son has to pay the principal amount for the father's robbery only when both the son and father have sworn. Where we know, however, that the same is the case, when both or one of them did not swear? From the four distinct expressions of robbery, wages, lost things, and deposit from which we deduce it?" [When R. Huna had repeated this Halakha in the presence of his son Rabba, the latter

questioned: "My master, do you mean to deduce from this scripture that it must be paid, or you say is it common?" And he answered: "I said it is to be deduced from the above expressions mentioned in the scripture.] But let us see what did R. Na'hman mean by his expression, "he has not confessed"?" That the father had not confessed, but the son did; then that the son pay the fifth part for his own guilt." It may be said that the robbed article is no more in existence, and in such a case the son is no more obliged to pay even the principal amount (explained further on in Chap. X.). If so, even the principal amount should not be paid? The case was there one of real estate left by the father.) But even then this is only a loan without a note, which is not to be collected, either from the buyers or heirs? It may be said that the case was after it was already in the court. If so, even the fifth part should be paid? Said R. Huna, the son of R. Joshua: "It is because the money in question is not to be paid upon a disavowal which is to be collected from real estate only." Rabha said: "The case was that the robbed article was deposited somewhere of which the son had no knowledge when he swore. The principal is to be paid because it is still in existence; the fifth part, however, he must not pay, because the oath was not false, as he was not aware of it."

"*Except less than the value of a parutha*." Said R. Papa: "There is no difference if the robbed article exists or not; he is not obliged to travel after him for the purpose of returning, as the fear that it may become dearer is not to be taken into consideration." Rabha said: If one has robbed three bunches of the value of three *paruthas*, and then the bunches became cheaper, three for two, even when he had returned two bunches to him, he must return the third also; and this can be proved from our Mishna where it is stated, that when he robbed leavened bread before passover, etc., he may say: "Yours is before you." From which it is to be inferred that it is so only when the robbed article exists still in the same form as it was before; but if it does not exist, he would be obliged to pay him the full amount, although it is now of no value at all. The same is the case here; although it has now no more the value of a parutha, he must nevertheless pay for it because it had this value before. He was in doubt, however, in the following case: If one has robbed two bunches of the value of a *parutha*, and had returned one of them, how is the

law? Shall we say: There it is no robbery, or perhaps because he has not returned all he has robbed, he must return it? Afterwards he decided that although it is not considered robbery any more, the commandment to return it is not yet fulfilled. (He must therefore return it.) Rabha was still in doubt in the following case: Where one robbing leaven before passover, etc., our Mishna states that he may say: "Yours is before you." How is now the law, when the robber, after the leaven became prohibited, has sworn that he does not possess it, and that he did not rob it; and after he confesses? Shall we assume that in case the leaven should be stolen, he would be obliged to pay for it, although in that time it was of no value? Consequently he has denied a case of money, and therefore he must repay. Or as the article is still in existence and of no value whatever, his denial is not to be considered a false one. (Said the Gemara:) This Halakha in which Rabha was doubtful to Rabba was certain, for he said elsewhere: If the plaintiff claims the defendant has stolen an ox from him and he denies it, and on the question, how then is the ox in your house, he answers: "I am a gratuitous bailee of it," and afterwards he confessed he is liable because this oath would make him free in case it would be stolen or lost; the same is the case when he swore that he was a bailee for hire, because it would make him free in case the ox should break a leg or die; and, finally, the same is the case when he swore that he had borrowed it to do labor with it, as this oath would make him free in case it should die while laboring. Hence we see that, although the article is before us, it is considered as if he had denied money, because so would be the case should it be stolen. The same is also here with the leaven. Although it is now only dust, it is nevertheless considered as money for the reason stated above. When Rabha was repeating the above stated Halakha, Amram objected from the following Boraitha: It is written [Lev. v. 22]: "And he lies concerning it," it meant to exclude, if he confesses the principal amount. How so? If the plaintiff claims you have stolen my ox, and the defendant denies, and on the question, "How, then, is my ox on your premises?" he answered: "You sold it, you have given it to me as a present, or your father sold or gave it to me as a present, or the ox ran after my cow, came by itself, or I found it wandering on the way, or I am a gratuitous, or bailee for hire, or I have borrowed it;" and he swore so, and after confessed; lest one say he

is liable for a trespass offering; therefore the above-cited verse. Hence the Boraitha contradicts Rabba's statement, and he answered: *Tardus*. This Boraitha speaks of a case that he said, "Here it is, take it." It had reference to a case that the ox was still in the meadow. The Boraitha states: "Thou hast sold it." What confession of the principal claim is then to be found in such an answer

or in the answer of the defendant, "You or your father gave it to me as a present"? In case of selling he told him at the same time that he bought it and did not yet pay, or "that you or your father gave it to me under the condition I should do something for him, which I did not do, and therefore take your ox and go." But what answer is this to "I have found it wandering on the way"? should not the plaintiff claim, "If so, was not your obligation to return it to me?" Said the father of Samuel: "The answer was, I swear that I have found it as a lost thing, and I did not know it is yours."

We have learned in a Boraitha: Ben Azai said: "There are three different oaths concerning the testimony of a witness regarding a lost thing; namely, (*a*) I knew that it was a lost thing, but I do not know who found it; He knew the finder; (*b*) I know the finder some, but I do not know what he found; and (*c*) I know the finder and the article lost." To what purpose did Ben Azai state it? R. Ami in the name of R. Hanina said: "He said it to make the witness free from a trespass offering." Samuel, however, said: "To make him liable." And these two Amoraim differ in the same as the Tanaim of a Boraitha elsewhere differ, and the point of their difference is whether a germon is to be considered as pecuniary damage or not. (Explained above, p. 224.)

R. Shesheth says: "One who denies a deposit trusted to him is considered as a robber of it, and is liable even for an accident." And this can be proved from the following Boraitha: "And lie concerning," etc. In that passage we read of the punishment of telling a lie, but where is the warning against it? Therefore it is written [ibid., ibid. xx. 21]. "Neither shall he deny." Is it not to be assumed that the punishment is for the denying, even without an oath? Nay, the punishment is for false swearing. But if so, how is it to be understood the later part of the same Boraitha? It is written [ibid. v. 21]: "And swear falsely." In this passage we read the punishment, but where is the warning? Therefore it is written [v. 22]: "Nor

lie." Now as the later part speaks of swearing, is it not to be inferred that the first part speaks without swearing? It may be said in the first part also, an oath is meant which was found false by witnesses, and in such a case he is liable even for an accident; the later part, however, speaks when it was found to be false by his own confession, and in such a case he must add the fifth part to the principal amount and a trespass offering.

R. Huna said in the name of Rabh: "If the plaintiff claims a hundred zuz, and the defendant denies and takes an oath, he is free even when witnesses testify against him, because it is written [Ex. xxii. 20]: "And the owner of it shall accept this, and he shall not make it good." From this it is deduced that as soon as the owner has taken an oath, he has not to pay any more money. Said Rabha: "Rabh's theory seems to be correct in the case of a loan, as the money was taken for spending; but in the case of a deposit which ought to be returned as it was, it is still considered under the control of the owner, wherever it is." In reality, however, Rabh had said this even in case of a deposit, as the verse of the Scripture refers to such a case. R. Na'hman was sitting and repeating this Halakha. R. A'ha bar Minyumi, from R. Na'hman, objected to it from the following Boraitha: "Where is my deposit?" and the other answered: "It is lost," and the first said: "Do you swear (and so may God help you)?" And he answered: "Amen." Witnesses testified, however, that he had consumed it, he must pay its value only; but if he himself confessed, he must add a fifth part and a trespass offering. (Hence there is a payment after swearing?) And R. Na'hman answered; "The case was when the oath was taken out of court, which is not considered legal." Said the former again: "If it is so, how is the later part of the

same Boraitha to be understood: 'Where is my deposit?'" And he answered: "It is stolen; do you swear," etc., and he said "Amen." And witnesses testified that he himself had stolen it, he must pay double; if, however, he confessed, he must add only a fifth part, etc., to the principal and a trespass offering. Now if it is as you say that the oath took place out of the court, can there be a double payment without the court? And R. Na'hman rejoined: "I could explain to you that the first part speaks of an oath without and the later in the presence of the court. I don't like, however, to give you an incomprehensible explanation. It may be explained that the oath was taken in the court, and it presents

nevertheless no difficulty, as the Boraitha speaks of a case when the defendant took the oath of his own volition (before he was ordered by the court to do so, in which case the oath does not make him free from payment). And Rabh speaks when the defendant took the oath by the order of the court." Said Rami bar Hama to R. Na'hman: "Let us see; the theory of Rabh seems to be not acceptable to you, why then the trouble to explain the Boraitha in accord with his theory?" And he answered: "It is only to interpret Rabh as he would explain the Boraitha." But did not Rabh deduce his theory from the above verse? It may be said, this verse is needed, that all those who must take an oath biblically swear and do not pay; and the verse is to be interpreted thus: He who has to pay, must swear, and the plaintiff must accept it. Rabha objected from the following Boraitha. "If one declares that the deposit confined to his care was stolen, and he had sworn falsely, and then he confessed and witnesses testified also against him; if his confession was before the testimony of the witnesses, he must add a fifth part and a trespass offering, but if the witnesses testified first, the double amount must be paid and an offering. Now, either explanations of an oath out of the court or without the order of it, cannot apply here because of a double payment which cannot be paid without a legal oath, and yet he must pay." Rabha therefore said: "In case of a confession, no matter if he claims it was lost or stolen, he must always add the fifth part and trespass offering, even in accord with Rabh, for he cannot deny the verse. 'And he confessed [1] what he has sinned' [Lev. v. 5]; and also if he claims it was stolen, and witnesses are against him, he must pay the double amount even in accord with Rabh, as this is also written plainly in the Scripture. His theory, then, is only when he claims 'lost' and swears, and witnesses testify against him without a confession on his part."

R. Hyya bar Abba, in the name of R. Johanan, said: "One who claims 'stolen' on a deposit, or of a lost article he has found, must pay double, and if he has slaughtered or sold must pay four and five fold; because he is considered as if he himself had stolen." He himself, however, objected to it from the following Boraitha: "Where is my ox?" and he answered, "Stolen." "Do you swear by God?" and he said, "Amen." Witnesses, however, testified that he consumed it; then he pays double. Now, could he then eat meat without

previous slaughtering it and nevertheless he pays only double, but not four and five fold only." It may be said that he had eaten it when it was a carcass (*i.e.*, it was killed by another one). The same said again in the name of the same authority: "If one claims stolen of a lost article which he found, he must pay double. Why so? Because it is written [Ex. xxii. 8]: 'Or for any manner of lost things, of which he can say,' etc." He said again in the name of R. Johanan: That he who claims "stolen" on a deposit is not liable for a biblical oath until he admits a part of it. Why so? Because it is written [ibid., ibid.]: "This it is," which means that a part of it is admitted; and he

differs with R. Hyya bar Joseph, who says that the verse applies to the case of a creditor, and was inserted here through an error. Rami bar Hama taught: The four bailees--a gratuitous, a borrower, a bailee for hire, and a hirer--are not liable to a biblical oath until they admit a part. Said Rabha: "His reason is because in the case of a gratuitous bailee, it is plainly written [ibid.]: 'Thus it is,' and for a bailee for hire there is an analogy of expression, 'giving,' which reads in both cases. A borrower is also included in the word [ibid., ibid. 13] 'and,' which means that this case shall be equal to the former. And concerning a hirer, according to him who declares him equal to a gratuitous bailee, then the law of latter applies to him also, and the same is the case with him who declares him a bailee for hire." Said R. Abbin, in the name of R. Elia, quoting R. Johanan: "If one has claimed that a bailment is lost and swears afterwards he claimed it was stolen, and swears again, he is free from the amount, even when witnesses testify against him; because the first oath makes him free towards the owner (and the second oath, which would not be ordered by the court, must not be taken into consideration)." R. Shesheth said: If one claims of a bailment "stolen," as soon as he has made use of it, he is free; and the reason is because the Scripture reads [Ex. xxii. 2]: "Then shall the master of the house be brought unto the judges (to swear) that he had not stretched out his hand"; from which it is to be deduced that if he *had made* use of it, he is free (from the double amount). [1] Said R. Na'hman to him: "Is not the three oaths: first, that I have done all my duty in taking care of it; second, that I did not make use of it; and third, that it is not under my control? Now, is it not to be assumed

that the second oath is equal to the third? As by the third, when thereafter it was known that it is under his control he must pay, the same is the case when it was known that he had made use of it?" And he answered: "Nay, the second is equal to the first, as by the first he is free from the double amount, when it was found that he was careless with it; so is the same in the case when he had made use of it."

Rami bar Hama questioned: "Is it the payment of the double amount that makes him free from the fifth part, or is it the oath which makes hi, m liable for the double amount that frees from the same payment?" What should be the difference (between both suppositions) thus, *e.g.*, if one claims "stolen," and swears falsely, and thereafter he claims on the same "lost," and swears again and witnesses testify regarding the theft and he himself confesses regarding it, "lost"? Now, if the claim "theft," which causes the double amount, makes him free from the fifth part, in that case he was already liable for the double amount; and if the oath that causes the double amount absolves him from the fifth part, then the second oath, which did not cause the double payment, should make him liable for the fifth part? Said Rabha: Come and hear: "If one said to somebody in the market: 'Where is my ox which you have stolen?' and he says: 'I have not'; 'Do you swear,' etc., and he says, 'Amen,' and witnesses testify that he did steal, he must pay the double amount; if, however, he has confessed without witnesses, he pays the principal and the fifth part and an offering. Now, in this case the witnesses are the cause of the double amount, and if he should confess after the witnesses appear, he would not be absolved from the double payment, but from the fifth part. Now, if the oath which causes the double payment absolves him from the fifth part, why is he absolved from it even if he has confessed after the witnesses appear? Let us see. The last oath was not the cause of double payment; let it make him liable for the fifth part; we must therefore say that the money which causes the double amount makes him free from the fifth part." Infer from this.

Rabbina questioned: "If there is a case of the fifth part and the double amount with two different

persons in the very same case, *e.g.*, one has given his ox for care to two persons and both claimed 'stolen,' one has sworn and thereafter confessed; and one has sworn and was denied by witnesses. How is it? Shall we assume that with one person is the Scripture

particular that both the fifth part and the double amount shall not come together; but with two persons one shall pay the double amount and one the fifth part, or the law is particular that in one and the same case the above both fines shall not occur?" This question remains unanswered. R. Papa questioned: "If there is a case of two-fifths part or two double amounts with one man, how is it?" *E.g.*, if the claim was "lost," and he swore and confessed and then he repeated again the claim "*lost*," and swore and confessed again, in which case, according to the law, he should be liable for two fifth parts and one principal amount, and the same question is, if the claim was "stolen"; he was denied by witnesses after he swore and this was done twice. Shall we assume that the Scripture is particular only that two different kinds of fines should not be paid in one and the same case, and here it is only one kind; or perhaps the Scripture is particular that no two fines shall take place in the case? Come and hear. Rabha said [Lev. v.]: "And the fifth parts thereof." [1] Hence we see that the Scripture has added many fifth parts to one principal. Infer from this.

"If a gratuitous bailee swore it was 'stolen,' and nevertheless he paid the full amount and then the thief was found, to whom is the double amount to be paid?" Abayi said: "To the owner, because, as the bailee did not pay until he was summoned and ordered by the court to pay or swear, although he did both, the owner did not pass the title of the double amount to him." Rabha, however, says, "To the bailee who has paid the amount, no matter before or after swearing." [2] If the bailee was summoned, and he has sworn and then thief was found, and when he was asked by the bailee he confessed; when, however, the thief was summoned by the owner he denied, but witnesses testified to the theft. Should the thief be absolved from the double payment on account of his confession to the bailee or not (because at that time the bailee had nothing more to do with this)? Said Rabha: "If the bailee has sworn to the truth, it is to believe that the owner has confidence in him still, and it is considered that the ox is still under his control, and therefore the confession of the thief to the bailee is to be taken in

consideration. But if he has sworn falsely (the consequence of which is that the owner loses confidence in him), then the confession of the thief to the bailee is of no value." It was taught: "If the bailee claims the article was stolen by accident and then the thief was found." Said Abayi: "If he was a gratuitous bailee, the chance is given to him either to swear or to pay. If it was accidentally and the owner collects the double amount from the thief, or he (the bailee) pays the principal, the double amount shall belong to him, and if he is a bailee for hire, he must pay to the owner, and the trouble with the thief he must take upon himself." Rabha, however, says: "There is no difference what kind of a bailee he was. The prosecution of the thief is always upon the bailee (and for his trouble he collects the double amount, but no oath is to be ordered)."

Rabba Zuti [1] questioned thus: "If it was stolen by accident and the thief had returned it to the bailee, and then it dies in his house by negligence, what is the law? Shall we assume that from the moment it was stolen by accident he ceased to be the bailee of it (and so he is no more responsible), or perhaps he became its bailee again as soon as it is returned to him." This

question remains unanswered.

MISHNA *VI.*: "Where is my bailment?" And he answers *lost*! Do you swear by God? etc., and he says "Amen." Witnesses testified that he had consumed it, and he must pay the amount. [If, however, he has confessed without witnesses, he must add a fifth part and an offering.] Where is my bailment? "It was stolen." "Do you swear?" and he says "Amen." Witnesses testified that he himself had stolen it, he pays the double amount. By self-confession, however, he must add a fifth part to the principal amount, and bring a trespass offering. If one robbed his father and swore falsely, and after his death he confessed and desired to return the robbed articles, he pays the principal and the fifth part to his brothers or to his father's brothers. If he does not want to pay his share, or he has not with what he may borrow from his friends, and the creditors will collect it from his part of the estate; *e.g.*, if there are three brothers, they collect from the estate a third

part of the robbed articles and the remainder from himself. If one says to his son: "I swear you shall not have any benefit from my estate"; if he dies, he may inherit; if the oath was neither in his lifetime nor after his death, then he does not inherit. He may, however, transfer his part to his sons or brothers, but if he has nothing to eat, he may borrow from his friends, and they will collect it from the inheritance.

GEMARA: 1 Whence do we deduce all this? From what the rabbis taught. It is written [Ex. xxii. 6]: "If the thief be found." The verse here treats of one who claims that it was stolen from him. Thou sayest so, but perhaps the verse treats of the thief himself? From the fact that the verse states further [ibid. 7]: "If the thief be *not* found," it is to be inferred that that verse treats of one who claims that it was stolen. We have learned in another Boraitha: It is written: "If the thief be found," the verse treats of the thief himself. Thou sayest so, but perhaps it treats of one who claims that it was stolen? If it states further on, "If the thief be not found," which plainly means one who claims that it was stolen, how then is the verse, "If the thief be found," to be construed? hence it refers to the thief himself.

Now, then, all agree that the verse, "If the thief be not found," refers to one who claims that it was stolen. Whence is this deduced? Said Rabha: The verse is to be interpreted thus: "If it should be found out that it is not as he claimed (that it was stolen by somebody else), but that he himself stole it, then he shall pay double."

Whence do we deduce that it is so only when he was put under oath? From what we learned in the following Boraitha. It is written [ibid., ibid. 7]: "Then shall the master of the house be brought to the judges"; that means, to put him under oath. Thou sayest so, but perhaps it means only for payment? It states further on [ibid. 10] "that he have not stretched out his hand," and it states the same thing above [ibid. 7], as there it means under oath (for it states so plainly), so also here it means under oath. It would be right according to the Tana who says that one verse treats of the thief himself and the other one treats of one who claims that it was stolen; therefore it is necessary to have two verses; but according to the Tana who holds that both verses treat of one who claimed

that it was stolen, why *two* verses? It may be said that one is to exclude, when he claimed that it was lost. But according to the Tana who says that one treats of the thief himself and the other of one who claims that it was stolen; and therefore both verses were necessary. Whence does he deduce as to the claim of having been lost? From the fact that it states "*the* thief" instead of "thief."

"*If one robs his father*," etc. Said R. Joseph: "In case there are no heirs but him, he must give it for charity." Said R. Papa: "He must mention (in returning it) that this is the money he robbed from his father." Let us see (in case there are no heirs but him) why he shall not be allowed to relinquish the property to himself. Did not we learn in the Mishna stated above: "If he has relinquished the principal amount, but not the fifth part," of which it is to be inferred that it can be relinquished? Said R. Johanan: "This presents no difficulty, as the cited Mishna is in accord with R. Jose the Galilean, and our Mishna is in accord with R. Aqiba of the following Boraitha: 'It is written [Numb. v.]: But if the man has no kinsmen to whom restitution could be made for the trespass.' Could there be an Israelite that has no relatives or kinsmen? We must therefore say that the Scripture speaks of a proselyte who was robbed by an Israelite. If one robbed a proselyte and swore falsely and afterwards he repented, having heard that the proselyte was dead, he was about to bring the money and trespass offering to Jerusalem (according to the law), where he met the proselyte, who was still alive, and settled with him to keep the robbery as a loan, and afterwards the proselyte died, he acquires title on what he holds in his hands." This is the decree of R. Jose the Galilean. R. Aqiba, however, says: "There is no remedy for him (until the robbed article is out of his hand)." According to R. Jose the Galilean, he may relinquish to others as well as to himself; and according to R. Aqiba, however, neither to others nor to himself. And in the above illustration, where the robber had settled with the proselyte to count it as a loan is used only to make known the strength of R. Aqiba's theory, that even if the robbed one himself permits the robber to keep it as a loan, nevertheless he has no remedy until the robbery is out of his hand. Rabha, however, maintains that both Boraithas are in accordance with R. Aqiba's statement, that a relinquishment cannot be made when it concerns only himself, as illustrated above, but to others he may. [Said the

[paragraph continues] Gemara:] "Let us see: in accordance to both R. Johanan and Rabba, the theory of R. Jose the Galilean is that he may relinquish even for himself. If so, how would be the case in the robbery of a proselyte [Numb. v. 8] (which, as explained above, means of a proselyte), which must be returned to the priest? How can it be found?" Said Rabha: "It may be that the confession was after the proselyte's death, and this confession passes title of the robbery to the priest (when he confesses, however, when the proselyte is still alive, the robbery remains a loan as long as the proselyte is alive, and therefore after his death he may excuse it to himself)." Rabbina questioned: "If a female proselyte was robbed, how is it? It is written 'a man'; should a woman be excluded, or is it only the custom of the verse to mention a man, and the same is the case with a woman?" Said R. Aaron to Rabbina: "Come and hear the following Boraitha: It is written a man, where do we know that the same is with a woman? As it is written further (to whom restitution . . . which is restored, etc.) there are two restitutions, to include a woman (or a minor). Why, then, is mentioned a man? to teach that if it was a man one must investigate if he has some kinsman, but if a minor the investigation is not necessary (because it is self-evident that a minor, who is a proselyte, has no kinsman)."

MISHNA *VII.*: If one robbed a proselyte and swore, and afterward the proselyte died, he must

add a fifth part to the principal for the priest, and a trespass offering to the altar, as it is written: (But if the man have no kinsman, etc., as quoted above [Numb. v. 8]). If, however, while bringing the money and the trespass offering to Jerusalem the robber dies, the money may be transferred to his children, and the trespass offering shall be fed until it gets a blemish, and then it shall be sold, and the money shall be used for a voluntary offering. If, however, he dies after the money was transferred to the priest of that week, his heirs cannot collect it from them, as it is written [ibid., ibid. 10]: "Whatsoever any man gives to the priest shall belong to him." If he has given the money to the department of Jehayary, and the offering to that of Jadaiah in the next week, he has fulfilled his duty. If, however, he has transferred the trespass offering first, and the next week he has given the money to the other department, if the consecrated animal is still in existence the priest of the second week may offer it; and if not, he has to bring another trespass offering, as the law

is that if he had returned the robbery before the trespass offering he has done his duty, but not otherwise. If he has returned the principal only without the fifth part, the latter does not prevent the offering of the trespass offering (but he must afterwards add the fifth part).

GEMARA: The rabbis taught: It is written "Asham" (the debt), it means the principal amount; "which is restored" means the fifth part. (But perhaps the word "Asham" means the ram [What is the difference? To exclude Rabha's theory, who said elsewhere: The robbery of a proselyte, when it was restored in the night-time or it was returned in halves, the duty is not fulfilled. Why so? Because the Scripture names it "*Asham*," and as an Asham cannot be brought during night-time, or in halves, for the same is the case with the returned robbery.] of the offering, as it is frequently so called. As at the end of the same verse it is written: "Beside the ram of the atonement," etc., hence the former word must be explained (the amount) as stated above.)

Rabha said again: "The robbery of a proselyte which contains not the value of a *parutha* to every priest who is in divine service at that week, the duty is not fulfilled." Why so? Because it is written [ibid., ibid.]: "The Asham which is restored," of which is to be inferred that a restore of any value may be made to each priest. He said again: (If there were two robberies of two proselytes, which were restored to the priests) they have no right to say: "A part of us will take the one restored robbery against the other restored robbery. *You* may take." Because in the Scripture it is called *Asham*, it cannot be divided.

Rabha questioned: "The priests who receive the robbery of the proselyte, are they considered heirs or only receivers of a donation?" What is the difference? If one has robbed leaven of which the passover was passed (which has no legal value), if they are considered heirs, then they must take it as their inheritance; but if they are only receivers of a donation, this cannot be called a donation, as it has no value and they must not receive it. Come and hear: "There are twenty-four gifts of the priesthood given to Aaron and his sons (this Mishna will be translated in Tract Hulin), and then the robbery of a proselyte is mentioned, hence it is considered a donation."

"*If, however, he dies after the money was delivered*," etc. Said Abayi: "Infer from this that the robbed money when returned atones for the half, because if this would not be the

case, it would state that the money must be returned to the heirs. Why so? Because when he has returned the money, he has not had in mind to leave it there without offering the trespass offering." "If so, let a sin-offering, which remains after its owner is dead, be considered as a common animal, because when he has separated it for a sin-offering, he did not bear in mind that he will die before offering it." (This is no question) as there is a tradition that when the owner dies after separating a sin-offering, the animal is to be put to death; and the same tradition is in case of a trespass offering, that when a sin-offering is put to death, the trespass offering is to be fed until it becomes a blemish.

APPENDIX TO PAGE 253.

"*R. Ashi the first*." There is a mark in the text by Boaz: "Perhaps R. Ashi the first or the expression 'R. Johanan was astonished' was said by R. Ashi himself." The second supposition, however, does not hold good, as farther on the Gemara adds: "R. Jose b. Hanina accepted," etc.; and the latter, who was a Tana, was certainly many generations before author of this paragraph, unless this also would be the continuation of the author's declaration; but then he would add: "and R. Jose," etc. Hence the first is correct.

Footnotes

218:1 Rashi says: "It means Samuel, who was the greatest authority in court cases." Abraham Krochmal, however, maintains that R. Na'hman meant to say that Huna the Exilarch had granted him the power to impose fines as he thought necessary, p. 219 just as could be done by the king; and it seems to be so, because R. Na'hman did not claim that he had done it according to the law, but only as a fine; and if this Seburmalka meant Samuel, then it shows nothing. See Krochmal's remarks on the Talmud (p. 263).

219:1 Which according to the law, has no more any value. See Appendix to Tract Sabbath.

222:1 The text reads "Khi Naphia" and "Khi Tratia." The dictionaries translate the former expression as "a sieve" and the second as "a third of the weight or size." It seems to us, however, that the translation of the former is not correct, as the spelling of Nopha (a sieve) is always with an *h* and not with an *i*; and aside from this, the text shows that "tratia" was still larger than Naphia, and according to the dictionaries the first would be larger than the second. We have therefore given the real meaning, omitting the Chaldean expressions, which are not known to us.

223:1 All this applies when the coin was dropped from the owner's hand by one unintentionally pushing the same; but if he took it out of his own hand and dropped it, it is a robbery, and must be returned.

241:1 Leeser translates "he shall confess"; the Talmud, however, takes it literally.

242:1 Because he is guilty of a falsehood.

244:1 In the Bible it is written in the plural, which the Talmud takes literally.

244:2 The Gemara explains that both Amaraim made their conclusion from a Mishna in the Middle Gate, which each of them explains according to his theory, one of the first part of the Mishna and one of the second part, and as it is both too complicated and not of great importance, we have omitted it.

245:1 He was a contemporary of R. Ashi, many generations after Abba bar Na'hmany, who is generally named "Rabba." The name, however, of the former is unknown. Some maintain that his name was Zuti, and Rabba was only his title, and some say that Zuti means "little," and he was so named to distinguish him from the former.

246:1 Transferred from the seventh chapter of this tract from the Gemara belonging to the First Mishna there. The proper place is, however, here.

Next: Chapter X