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CHAPTER X.

REGULATIONS REGARDING ROBBED ARTICLES WHICH REMAIN AFTER THE DEATH OF THE ROBBER.--IF ONE RECOGNIZES HIS STOLEN ARTICLES AT THE PREMISES OF SOME ONE.--REGARDING ROBBED ESTATES, AFTERWARDS THE GOVERNMENT TOOK IT AWAY, ETC.

MISHNA *I.*: If one has robbed an edible article and used it for his family, or he left the article as it was, his heirs are free from payment. If, however, it was an article of responsibility, they are obliged to pay. (The Gemara will explain the meaning.)

GEMARA: Said R. Hisda: "If one has robbed an article of which the owner did not renounce the hope of gaining it, and another one came and took it away from him, the owner may collect it from any one of them he chooses. Why so? Because as long as the owners did not renounce their hope, it is considered as it were still under their control." [And our Mishna, which states that the heirs are free from payment, is in case that the hope of regaining was already renounced.]

"*Or he left the article*," etc. Said Rami bar Hama: "From this statement is to be inferred that the control of an heir is the same as the control of a buyer (*i.e.*, as the Mishna speaks of a case where the hope of regaining it is renounced, the change of control gives title, and the control of the heirs after the death of the robber is also considered a change as if it would be bought by somebody else)." R. Rabha, however, said: "It is not so, and our Mishna, which makes them free, treats of a case where the heirs have already consumed the article after the death of their father." But from the latter part of our Mishna, which states that "if there was a responsibility," etc., it must be said that the first part treats of the robbed article still in existence. Said Rabha: "When I will die, R. Oshiah will come to thank me, for I always try the Mishnayoths (edited by Rabh) with the Boraithas taught by him, and our Mishna also is in accordance with the following Boraitha of R. Ashiah: "If one has robbed and used the article for his family, the heirs are free from payment. If, however, the article remains, they have

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to return it; if the article is no more in existence--*i.e.*, they have consumed it--they are free, unless their father left them real estate, in which case they must pay at any rate." R. Ada bar Ahaba taught: The difference of opinion between Rami bar Hama and Rabha in connection with the following Boraitha: "If one left money made by usury for his heirs, although they know of the case, they are not obliged to return it." And the above statement of Rami bar Hama was deduced from this. But Rabha is of the opinion that nothing is to be inferred from this case, which is entirely different, as the verse reads: "*Thou* shalt not take of him any usury or increase." The Torah, advises him he shall return the usury to him for the purpose he shall stand in favor with him, and this is only said to the usurer himself, but not to his children.

One who taught the statement of Rami bar Hama and Rabha in connection with this Boraitha, the same is to apply furthermore in connection with our Mishna, and according to them who taught it in connection with our Mishna, it can be said that in the case mentioned in the Boraitha Rami bar Hama agrees with Rabha.

The rabbis taught: "If one robbed an edible article and he used it for his children, the children are free from payment; if, however, the article is yet in existence after the death of the robber, and the children are grown up, they must pay; but if they are still minors, they are free; and even when they are grown up, if they say: 'We know the accounts of our father with you, and he owes you nothing,' they are free." (This Boraitha was corrected so by Rabha.) We have learned in another Boraitha: "The children are free only when the robber used it for his family; but if a robbed edible article is in existence, his heirs, whether grown up or minors, are obliged to return it." Rabha said: "If their father left for them a cow borrowed for labor, they may use her for the time she was borrowed; if she dies even by an accident (and not while laboring), they are free. If they thought that she was the property of their father, and they slaughtered and consumed her, they have to pay the value of her meat in low prices. If, however, their father left real estate, they have to pay anyhow."

The rabbis taught: It is written [Lev. v. 23]: "He shall restore the robbed article which he has robbed." [1] Why the repetition "which he has robbed"? To teach that he shall

restore it in the same manner it was robbed; and from this the sages said: "When he has robbed an edible article, and he makes use of it for his family, they are free from payment; but if still in existence, grown up as well as minors are obliged to return it." In the name of Symmachos, however, it was said that if the heirs were still minors, they are free.

The brother-in-law of R. Jeremiah (who was a minor) shut the door in the face of R. Jeremiah (who wanted to inherit it for himself). When the case came before R. Abbin, he declared that the minor has a right to do so, because he demands *his* property. Rejoined R. Jeremiah: "But I have witnesses that I have used this room while my father-in-law was yet alive, as he had transferred it to me." Rejoined R. Abbin: "But can, then, the testimony of witnesses be taken in the absence of the other party (your opponent is yet a minor)?" And R. Jeremiah said again: "But have we not learned that minors as well as grown up, etc., must return?" And he rejoined again: "Is not Symmachos, who said that minors are free, your opponent?" R. Jeremiah objected, saying: "Are you ignoring the opinion of the sages, and agree with Symmachos only for the purpose that I shall lose my case?" This case was talked about by the people until it came to the ears of R. Abuhu, who said: Did you not hear what R. Joseph bar Hama declared in the name of R. Ashiah: "If a minor compelled his slaves to take away a field from another, claiming it belongs to him, we must not wait until he will be of age to sue him, but immediately the field must be returned, and when he will be of age he shall then bring evidence"? (Said the judge:) "What comparison is this to our case? There the minor was the plaintiff and took possession of an estate against the law, but here the minor is the defendant, and he is in the right possession of his estate which was occupied by his father."

R. Ashi the first said in the name of R. Shabathai: "The testimony of witnesses can be taken even in the absence of the parties." R. Johanan (when he heard this) was astonished, saying: "How is it possible to accept witnesses not in the presence of the parties?" R. Jose bar Hanina,

however (his disciple, who was a judge), had accepted this theory in case one of the parties or witnesses was sick, or the witnesses had to go to the sea-countries, or it was sent by the court after him and he did not appear. R. Jehudah said in the name of Samuel: "Witnesses may be accepted even not in the presence of the

parties." Said Mar Ukba: "Samuel explained it to me that this is in case issue was already joined for the hearing of the case, and he was sent for and he did not appear; but if he was only summoned by the court and his case was not yet opened, he may say: 'I will go to the Supreme Court (in Jerusalem).' But if such a claim be listened to he may claim it even when the court was opened for his case?" Said Rabbina: "It means when an order from the Supreme Court was already issued that this case should be decided by the Supreme Court."

Rabh said: "A document may be approved even not in the presence of the party." R. Johanan, however, says: "It must not." Said R. Shesheth to R. Jose bar Abuhu: "I may explain to you the reason for R. Johanan's statement as follows: It is written [Ex. xxi.]: *And warning, has been given to his owner, and he has not kept him in*. The Scripture means that the owner of the ox must come to the court and be present when his ox will be judged." Rabha, however, says: "The Halakha prevails, that a document may be approved even in the absence of the party, and even if he is objecting, but if he asks to suspend the case for a certain time, that he should be able to bring evidence against the document, the court may allow it. If he appears in time, then it is good; if not, the court suspends it -for the three next sittings; and if he does not appear, the court shall give him ninety days' time before his estate shall be sold for this debt. The first thirty days we do not sell his estate, to give him time to get cash. The second thirty days we give him time to sell his goods himself, and the third thirty days also when he claims that he has a buyer for his estate, but the buyer is not yet ready with cash. After the above time a warrant is to be given to the plaintiff, that he may sell the estate of the defendant. All this is done only when the defendant desires time, but if he says, 'I will not go to the court any more,' a warrant is given immediately. And this is only by a creditor, but in case of a deposit, a warrant is issued immediately, but only when the debtor possesses real estate, not upon personal property; and the reason is, if the creditor would have a right to take the personal property immediately under his control, he may sell it, so that in case the defendant afterwards will bring evidence that the document was of no value, his property could not be returned to him in case the creditor does not possess real estate; but if he does, a warrant may be issued even in this case." (Says the Gemara:) "In practice it is not so; a

judgment is not issued on personal property, even when the creditor possesses real estate, as in the meantime he can sell his real estate, as it will go down in price."

It is also an obligation on the court to give notice to the defendant that his property will be sold, if he is near by; but not if he is far away and there are no relatives; but if there are, or there is a caravan by whom he can be notified, he is notified that this will occur after twelve months, until the caravan should make its tour and return. As Rabbina did in case of Mar Aha, where he postponed the selling for twelve months, the time which it takes for the caravan to tour and retour from the country of Husia. [Also this was not produced] as the above case is different; the defendant was a mighty man, and if the warrant would appear before him, it could not be

collected from him, and therefore he was only notified that a warrant would be issued (and it was issued in such a moment that he could do nothing); but in another case the warrant was to be suspended only until a messenger had time to return with the answer of the defendant, about three or four days.

Rabbina said: "A messenger of the court should be trusted as two witnesses in case of putting a man under the ban; but if he testifies, in such a case where the man must be notified that, if he will not follow the order, he will be put under the ban, he may not be listened to unless the scribe is paid for issuing it."

Rabbina said again: "If a summons was sent with a woman or with his neighbor, who are going to the city where the defendant resides, and he does not appear, he may be put under the ban (as generally the above have fulfilled their promise to bring him the summons). But this is only when he lives out of the town; but if he is in the city, he is not to be put under the ban, because the former, through whom the summons was sent, may rely upon the court that it will send its own messenger, unless he was summoned by the messenger of the court."

Rabha said: "If one was notified that he will be put under the ban if be will not appear before the court, this writing must not be destroyed until he appears (even if he says *he will do so*), and if such was issued for not obeying the order of the court, it shall not be destroyed until he follows the order." [The latter case is not practised, but it is destroyed as soon as he promises to follow the order.]

R. Hisda says: "A note concerning putting under ban is to be used only when he was summoned for the three days when

the court was sitting (Monday, Thursday, and Monday again), and only the following Thursday to be issued."

R. Asi happened to be in the court of R. Kahana, and saw, that a woman was summoned in the afternoon, and on the morrow, when she did not appear, he issued a notification that she would be put under the ban. Said the former to him: "Does not the master hold the decision of R. Hisda stated above?" And he answered: "This was said only when the man is not in the city, but for this woman, who is sure to be in the city and summoned, it is a contempt of the court and must be punished." R. Jehudah said: "One must not be summoned by the court on the eve of a Sabbath or a festival (or when he is a student), not in the days of the months Nison and Tishri (as then the college examination took place), but a summons may be issued in these days to appear after the above months. On the eves of Sabbaths and festivals, however, even to appear after Sabbath or festival is not to be issued, because he is then busy to prepare for the following day and the summons may escape his mind." R. Na'hman said: "One must not be summoned verbally to appear on Monday, on the Sabbath before it when he comes to hear the lecture, and also on the day when he comes to hear the lecture of the coming festival. (It was usually lectured thirty days before each festival.) He shall appear on some day afterwards (for fear they will restrain from coming to the lecture). When people used to come to R. Na'hman in the days mentioned above with claims against some of the assembled people, he used to say to them: "Did I assemble them for your benefit?" [Said the Gemara: "Now when the time is changed and

swindle is used, no attention may, be given to all the terms said above."]

"*If, however, it was an article of responsibility*," etc. Rabbi taught his son Simeon: "Not only real estate, but even an animal which they use for labor, they are obliged to return for the honor of their father." R. Kahana questioned Rabh. "How is it with a bed or a table which they are using?" And he answered [Prov. ix. 9]: "Give to the wise (instruction) and he will become yet wiser." (It means the same is the case with all other things.)

MISHNA *II.*: Money must not be changed from the treasury of duties, and not from the treasury of the treasurers for charity, and also charity must not be taken from them; it may, however, be done with the private money of the above treasurers, or when it is in market charity may be accepted.

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GEMARA: A Boraitha, an addition to the above statement, teaches: "He may take change from a dinar if be has to pay a part of it." "Treasury of duties." Why not? Did not Samuel say: "The law of the government must be respected as the law of the Torah." Hence the duties must not be considered robbery? Said R. Hanina bar Kahana in the name of Samuel: "The Mishna treats of a contractor who paid the government the duties of the inhabitants, and he collects from them as much as he desires, and in such a case it is considered robbery." The disciples of R. Janai say: "The Mishna treats of a duty not established by the government (but by some mighty people of the city)." According to others, the above statements of Samuel and R. Janai were delivered in connection with the following Boraitha: "Vows may be made before murderers or contractors of duty concerning the heave-offering or concerning the royal treasure (*i.e.*, if one vows it shall be forbidden to consume any fruits, if these fruits do not belong to one of the above-mentioned)." And when it was questioned: "Why the contractor of duty is counted among murderers," etc., the above explanations of Samuel and Janai were given. R. Simeon said: "R. Aqiba when he came from Zefiru lectured as follows: "Whence do we deduce that the robbery of a heathen is prohibited?" It is written [Lev. xv. 48]: "After he has sold himself, shall he have the right of redemption" (the verse treats when a Jew has sold himself for a slave to a heathen), which means that even when the Jewish court has the might to get him free without money, they must not do so unless the heathen is paid the full amount, as it is written [ibid., ibid. 50]: "And he shall reckon with him that bought him," etc.

R. Ashi happened to be on the road and saw a vineyard in which some grapes were ripe, and he said to his servant: "Go and see, if it belongs to a heathen, bring me some; and if it belongs to a Jew, do not." The owner of this vineyard, who was a heathen, heard this, and questioned him: "Are the goods of a heathen allowed to be robbed?" And he answered: "I meant, if the owner is a heathen, he will take money for it, but a Jew would not take money from me; and I do not want to have it for nothing." The text states: Samuel said: "The law of the government is to be respected," etc.

Said Rabha: "This is proved by the fact that we pass the bridges which the government made, although they take beams of the estate belonging to private estates." Said Abayi to him:

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[paragraph continues] Perhaps we do so because the owners of the beams in question have renounced their hope to regain it." And he answered: "If the law of the government should not be respected as the law of the Torah, why should the owners of the beams renounce their hope? The officers of the government do not usually do as they are ordered. The order is, they shall cut off trees of all the *pagus* (*e.g.*, one owner shall not suffer too much and the other nothing), and the officers cut off from one *pagu* which is more prehensible to them. All beams they need, and nevertheless we pass the bridges which were made of such beams; and this is because the officers of the government are considered as the government itself, which needs not to take the trouble searching any other *pagus*, where the beams in question are to be found, and it is only the fault of the citizens, who have not prepared the necessary material for the bridges from the *pagus* where such material can be obtained, and take money for it from the government."

Rabha said again: "If there were four partners to a barn, three of them took out the grain of it, and when the collector of duties came he found only the share of the fourth partner. He may take from it for all the four partners, and it is not considered robbery, even if the collector was a contractor of the government. The case, however, is when they were partners; but if some of them were only gardeners, who took for their trouble a share of the grain, the collector has not to take the duties for them who are absent, because the gardeners only took what belonged to themselves."

The same said again: "A contractor of the government has the right to pledge a fellow-citizen for the duty of another citizen of the same city (who stands with him in business connections), as so the law of the government is in case it is a duty from the fruits of the land or from this year; if, however, it is from the last year, for which the contractor has paid already to the government, he must not do so." The same said again: "Heathens who live in the limit of a Techum [1] of the city, who possess cattle and they are hired to dung the fields, one may not buy an animal from them, for fear it may be Jewish cattle, as they usually feed the Jewish cattle together; but if they live out of the limit of the Techum, it is allowed." Said Rabbina: "If some Jews of the city are claiming that their cattle are among the cattle of the heathens, even out of the limit, is also

prohibited." Rabha, according to others R. Huna, publicly announced: "It shall be known to all who are going down to Babylon or going up to Palestine that an Israelite who is testifying for the sake of a heathen, without being invited as a witness, when the defendant is an Israelite he may be put under the ban. Why so? Because the heathen collects money by the testimony of one witness (and the Scripture requires two witnesses). This is only in case when he is the only witness; but if there are two, they must testify even when they are not called up; and this is also only when the case is brought up in a court of violence, but in the court of a *Dower* (a Persian prince) they may testify, as they also in such a case order only an oath." Said R. Ashi: "When I was in the court of R. Kahana [1] we were questioned: "A respectable man upon whom the above court would rely, as upon the testimony of two, and he is the only witness, should he not testify, because the money would be collected upon his testimony, or because he is a respectable man it would be against his conscience if he does so? This question remained unanswered.

MISHNA *III.*: If the contractors took away his ass, (and after complaining) they returned him instead of his another one, or he was robbed of a garment, and another one was returned to him instead by the robbers, he may take it, as usually in such cases the owners renounced the hope of regaining it. If one saved an estate from the stream or from robbers, if the owners of it have

renounced the hope, he may keel) it. The same is the case also with a swarm of bees. R. Johanan ben Broka, however, says: "A woman or a minor is trusted when they show the place whence this swarm was coming. One may also run through the field of his neighbor to save the above; if, however, he causes damage, he must pay; but one has no right to cut up a branch of a tree, although he pays for it." R. Ishmael his son, however, allows even this.

GEMARA: A Boraitha, however, states (that if he takes a stranger's ass from the contractor, and he is afraid it may be considered robbery, he has to return it to the first owner and not to the contractor, although the title is acquired as soon as the hope of regaining is renounced; here with a contractor it is different (and the title does not pass to the contractor).

Said R. Assi: "The statement of the Mishna applied only when the robber was a heathen, but not if he were an Israelite,

because he thinks of summoning him to the court." R. Joseph opposed: "It seems to be, on the contrary, that as the heathen courts are very powerful, they do not renounce their hope because they think of summoning him." But if the robber were an Israelite, whose courts are not so powerful, he usually renounces hope. Therefore if this statement was made by R. Assi, it was on the latter part of the Mishna: "If they renounced their hope, it is his." Upon this it was that R. Assi said: "This applies only to a heathen. But if the robber were an Israelite the same is the case even if it were not certain that they had renounced their hope."

There is a Mishna [Kelim, xxvi. 8] about skins when they were stolen or robbed. In the first case the intention of the thief is not to be considered, because in such a case usually the owners do not renounce their hope; and R. Simeon is of the opinion that in case of a theft the owners do renounce their hope, but not in the case of a robbery; and Ula said that they differ when there is a supposition only, but if it is *certain* that the owners have renounced, all agree that title is acquired.

Rabba, however, says that they differ even when it is certain. Said Abayi to Rabba: "You may not differ with Ula in this case, because the quoted Mishna which states 'that usually the owners do not renounce their hope, of which it is to be inferred that only when it is supposed so, but if it is certain that they have renounced their hope, title is acquired.'" And he answered: "We read in the above quoted Mishna not as stated, but 'because the renunciation of hope is of no avail.'" There is an objection from our Mishna if the contractor took his ass, etc., which states *he may keep it because usually the owners renounce their hope*. Now, according to whom should be our Mishna? If in accordance with the opponents of R. Simeon, then the robbery mentioned in the quoted Mishna would be a difficulty; and if in accordance with R. Simeon, the theft mentioned there would be a difficulty, too. Still it would be correct in accordance with Ula's theory, who says that when it is certain all agree, etc., then our Mishna could be explained that it means when it was certain; but according to Rabha's theory, in accordance with whom is our Mishna? Our Mishna can be explained that it treats when the robber was armed, and in accordance with R. Simeon. But is this not the same robbery as by a contractor? The Mishna mentions two cases of robbery, one who is protected by the government, and one who is

persecuted by the government. Come and hear: "A thief, a robber, and an oppressor (who takes an article and pays for it against the will of the owner), if they have consecrated the article in question, or if they have separated heave-offering from the robbed grain, it remains so. Now, according to whom would be this Boraitha: "If with the rabbis, robbery would be a difficulty," etc? This Boraitha is in accordance with Rabbai, who says elsewhere that there is no difference between a thief and a robber, and it is explained further on that Rabbai means the kind of a robber mentioned by R. Simeon, who acquires title, and not of the robbers who do not. "A swarm of bees," etc. What means the Mishna with the expression "also"? It means to say that although a swarm of bees is only an enactment of the rabbis, that one can claim he is the owner of it, to prevent quarrels, and one may say that while it belongs to him only rabbinically, he renounces his hope immediately; it comes to teach us that the same is the case here also.

"*Said R. Johanan ben Broka*," etc. Are, then, a woman and a minor qualified to be witnesses? Said R. Jehudah in the name of Samuel: "This case was when they ran after it, and the two in question had showed him the place whence the swarm of bees was coming, but they were not called as witnesses." R. Ashi, however, said: "One who relates a thing without intention of testifying has a value only in case of a widow, who needs evidence that her husband is dead." Said Rabbina to him: "Is it not just mentioned that such a relation is valued also in the case mentioned above?" And he answered: "A swarm of bees is different, as the owner of it is only made rabbinically." [And in case where it is biblically, is it not valid?] Did not R. Jehudah say in the name of Samuel: "It happened with a man who was talking without any intention as follows: I recollect when I was a child, upon the shoulders of my father I was taken from the school, and they dressed me and put me in a legal bath, so that I should be able to partake of heave-offering at the night meal." And R. Hanina added this tale: "My comrades reported themselves from me and called me Johanan the cater of cakes." And Rabbi established him as a priest for this tale. In the time of Rabbi (after the destruction of the temple) heave-offering was only rabbinical. And still in a biblical case such is not valid? Did not R. Dimi say in the name of R. Hana or Aha of Carthagena: "It happened in the court of R. Joshua ben Levi, according to

others in the court of Rabbi, with a child who was telling: 'It happened that my mother and I were prisoners among the heathens, and I did not turn away my eyes from my mother. When I was going to draw water, or to gather some wood, I did not stop thinking of her,' and upon this telling Rabbi married her to a priest (to whom it is prohibited to marry a suspicious woman). In the case of a woman prisoner they dealt leniently."

"*He shall not cut up a branch*," etc. We have learned in a Boraitha R. Ishmael ben R. Johanan ben Broka said: "It was decided by the court that one may descend in his neighbor's field, or cut up a branch of his neighbor's tree, for the purpose to save his or somebody else's swarm of bees, and the value of the branch shall be paid from the swarm of bees; and there was also another decision of the court, that if for the purpose of saving one's honey he must spill out his own wine, he must do so, and the value of his wine he shall collect from the honey he has saved; and the same is the case when he has wood on his wagon and he sees that one's flax is in danger, he must throw off his wood to place the flax instead, and the value of the wood be may collect from the flax, because under this condition Joshua to our ancestors inherited the land."

MISHNA IV.: If one recognizes his utensils or hooks by another, and it was announced that such things were stolen, the defendant must swear how much he has paid and collect it by

returning the articles. If, however, it was not announced that such articles were stolen, he is not trusted to say so, as it can happen that he himself sold it, and the buyer sold it again to the defendant.

GEMARA: And even when it was announced that there was a theft, what is it? There may be still a suspicion that he sold it and then he announced it was stolen. Said R. Jehudah in the name of Rabh: "The case was that in the same night, when the theft happened, visitors were coming to him and found him crying that his articles were stolen. But still (if he is a suspicious man) it can be said that seeing that men are coming to him, he began to claim of the recent theft." R. Kohana completed the above statement of Rabh, that the case was that men who were staying over night in his house, it was found afterwards they were robbers, and they took with them packages with utensils, and it was murmured that his articles were stolen. Said Rabba: "All what is said above is to be feared in

case the plaintiff was known that he used to sell his utensils, but not otherwise. But cannot it happen that even when it was not his custom to sell out when he was in need, he nevertheless did sell all his articles?" Said R. Ashi: "Therefore the Mishna states that it was known in the city that his utensils were stolen."

It was taught: "If a thief has sold out the stolen articles and after it was recognized that he is the thief, Rabh in the name of R. Hyya said that the plaintiff may deal with the thief only." And R. Johanan in the name of R. Janai said that he may deal with the buyer only (*i.e.*, he can take the stolen things without any payment). Said R. Jose. "They do not differ: the one who says that he has to do with the buyer means, in case he bought it before the owner of the article has renounced his hope of regaining it, and the one who says that he has to do with the thief only, means that the sale was after the hope was renounced, and both agree with the theory of R. Hisda"(*supra*, p. 251). Abayi, however, said: "They do differ, as we find elsewhere concerning the gifts of cattle belonging to the priest, which must be considered always that the hope of regaining is not renounced, and they differ there also." But what is the point of their difference? They differ about the statement of R. Hisda just quoted. R. Zebid, however, said: "The point of their difference is this: In case the hope of regaining was renounced when it was already in the hand of the buyer, one holds that when the hope was renounced after the control was changed it does not give title, and the other one holds that it is no difference." R. Papa says: "All agree that the articles must be returned to the owner, and they also agree with R. Hisda, that the plaintiff may summon him who is more convenient for him, and the point of their difference is, if the enactment which is made for the benefit of one who buys a thing publicly in the market, without knowing that it is a stolen article, shall come to his money if the article is found to be a stolen one. According to Rabh this enactment does not apply here, and the buyer must look for his money from the thief; and his above statement, *he has to do with the thief*, means the buyer and not the owner. And R. Johanan holds the above enactment applies here, and he may look for his money from the owner. Is Rabh, then, of the opinion that this enactment does not apply here? Did not R. Huna, who was the disciple of Rabh, say to the plaintiff who claimed the article from the buyer

who bought it from Hanan the bad, who stole it, Go and redeem it? With Hanan the bad it is

different; as he possessed nothing, it is considered as if the thief would not be recognized at all."

Rabba said: "If the thief was a notorious one, the above enactment does not apply." But was not the above Hanan the bad a known one, and nevertheless the same enactment was enforced? He was known for a bad one, but not for a thief. It was taught: "If a thief has paid his debt with a stolen article the above enactment does not apply, because the creditor did not give him the money with the intention of collecting it from such articles. When, however, he lends upon this article to the half of its value, the above enactment may apply; when, however, he lent the full value, Amemar said: "The enactment in question does not apply." Mar Zutra said: "It does." If he has sold it for the full value, the enactment applies; if for half the value, R. Shesheth maintains: "It does not"; and Rabha maintains: "It applies." And the Halakha prevails, that in all cases the same enactment is to be practised, except when the thief pays his debt with it. One man lent four zuz from Abimi bar Nazi, the father-in-law of Rabbina; afterwards he stole a garment and brought it to his creditor, and be lent him four more zuz; finally it was recognized that the garment was stolen, and Abimi came to ask the law of Rabbina, and he said: "The first four zuz he cannot collect, as you have collected it already from the stolen garment (for which no enactment is made). The latter four zuz, however, you may collect, and return the garment." R. Kahen opposed. "Why shall we not assume that the first four zuz he had collected from the garment, which are not to be returned, and the last four zuz he (Abimi) trusted the thief without any pledge as he did before?" The case was not decided until it came before R. Abuhu, and he decided that the Halakha prevails in accordance with R. Kahen. One of the city Narsha stole a book and sold it to a citizen of Pepunian for eighty zuz; the latter sold it to a citizen of Mehuza for a hundred and twenty zuz. Said Abayi: "The owner of the book shall pay eighty zuz to the Mehuzan man and shall take his book, and the forty remainder the Mehuzan man shall collect of the Pepunian." Rabha opposed: "When the enactment was made, even when he bought from the thief himself, shall it not apply to him who bought it from the buyer?" Therefore he decided that the owner shall pay to the Mehuzan one hundred

and twenty, and he shall take his book, and then he shall collect the eighty from the Narshian and forty from the Pepunian.

MISHNA *V.*: If one has emptied his barrel which was filled with wine, and saved in it the honey of his neighbor's broken barrel, he receives only the value of his barrel and for the labor he has done; if, however, he told the man of the honey, "I will save yours in case you will pay me for my wine," be must do so. The same is the case when a stream has overflowed two asses, one of one hundred and one of two hundred, and the owner of the one hundred saved the two hundred one, he has to be paid for his trouble only, unless he has made this condition with his neighbor before saving.

GEMARA: But why so? Let him (the man of the wine) say: "Was not your honey at the time I saved it ownerless? If I had not saved it, it all would be lost, consequently I may take at least for my wine." The case was when the owner of the honey could save it only with great trouble.

"*If, however, he told*," etc. But cannot the man of honey say, I was only jesting? Is not the case similar to the case of the following Boraitha: "If one runs away from prison and he says to the boatman, 'I will give you a dinar if you will pass me,' he shall pay him only what is due to him"; hence he can say, what I said a dinar was only jesting, why not the same in our case? Our case is

to be compared with the later part of the same Boraitha; namely, "If, however, he says: Here is a dinar, take it and pass me, he may keep the whole dinar for his job" (and so in our case when he gives him the honey for the purpose of saving it, it is considered as if he had paid him in advance). But what is the reason for this statement? Said Rami bar Hama: "The case is when the man of the boat has caught fish at the same time he was waiting for passengers, and he may claim that he could make the same money catching fish."

"*With a stream*," etc. And both cases were necessary to teach; namely, if the first only would be stated, one may say, because it was so spoken of, that he shall lose his own wine for the purpose of saving the other's honey. But in the other case, which was accidental, it is not so; and if the latter only would be stated, one may say because it was an accident he gets only for his trouble when it was not arranged otherwise; but in the first case, when he has destroyed his property for the benefit of the other he must be paid, even when it was not spoken of; therefore both are stated. R. Kahana questioned Rabh: "If

the condition was made, he shall save the two hundred one, and for his one hundred ass, which would be lost, he shall be paid; and he descended and did so, and in the meantime it happened that his own ass was saved by itself, what is the law?" And Rabh answered: "The agreement shall be fulfilled nevertheless, and the saving of his ass is heavenly favor. As it happened with R. Safra, who was going with a caravan and a lion had followed them, and every night the caravan used to throw an ass for the lion; when the time arrived that R. Safra should throw his ass he did so, but the lion did not touch it, and on the morrow he took it back and acquired title of it." R. Aha of Difti questioned Rabbina: "Why was it necessary for R. Safra to acquire title to it? It is true he renounced his ownership of it, but it was done only for the sake of the lion, but not for the sake of others." R. Safra did so to prevent murmur of those who are not thoroughly acquainted with the law.

Rabh questioned Rabbi: "What is the law when upon the above condition he descended to save the ass, but did not succeed?" And he answered: "Is this a question? Certainly his trouble only is to be paid." Rabh objected from the following Boraitha: "If one was hired to deliver some medicine to a sick one, and he finds him dead or cured, the messenger gets his full payment?" And Rabbi answered: "What comparison is this? There the messenger has fulfilled his mission, but here he did not."

The rabbis taught: "A caravan in the desert which was in danger of being destroyed by robbers, and they paid for their redemption, the sum must not be collected equally from each person, but proportionately to the amount each of them possessed. If, however, they have hired a guide, each of them should pay his share equally. At any rate, it must be done according to the custom of the caravan. The drivers are allowed to make a condition with the proprietors, that in case an ass will be lost, they shall furnish them another ass. If, however, the ass was lost by wilful negligence, they are free. But if he says: "Give me the money for the lost one and I will buy me another one myself," he is not to be listened to (because he may not buy, and will neglect to take care of the other asses). Is this not self-evident? The case is even so when he has another ass. Lest one say he will not neglect to take care of the asses of the caravan, as his own ass is among them; he comes to teach us that the taking care of one is not equal to that of two.

The rabbis taught: If a ship upon the open sea, when it was necessary to decrease the weight, the weight of the loading must be counted (*i.e.*, to throw away the same weight of the loading of each passenger without any consideration of the value); however, the law of the ship must be observed. The owners of the ship (who are sailing together) may make a condition among themselves, that if one ship will be lost another shall be furnished. If there were wilful carelessness, however, or he departed himself and sailed on a place where the other ships usually did not go, the conditions are of no avail. "Is this not self-evident?" It means even when usually in the month of Nissan they go the distance of one cord, and in the month of Tishri *on* the distance of two cords, and the ships in question did go in Nissan, when they usually go in Tishri. Lest one say that this is not to be considered wilfulness, he comes to tea h us that it is not so.

The rabbis taught: "A caravan that was attacked by robbers, and one of them succeeds in saving some goods from them, this must be divided among the passengers; if, however, he said to them, 'I will try to save for myself,' it is of avail." Let us see how was the case. If each of them could do the same, but he preceded them even if he has said, "I will save for myself," he must not do so. (It is not of avail because all of them have not renounced the hope of regaining it.) And, on the other hand, if it was impossible for them to save their goods, and the one succeeded nevertheless in saving some, why must he divide among the caravan? (They have already renounced their hope of regaining.) Said Rami bar Hama: "It means when they were partners, and in such a case a partner may separate himself against the will of his partner; therefore if he said, *I will do so*, he is separated; but not if he did it silently." R. Ashi, however, says: "The case was that they could save only with great trouble. If he did it silently, he must divide; but if he said, *I will take the trouble on myself*, it is of avail."

MISHNA *VI.*: If one has robbed a field and it was taken away from him by land robbers, when the land robbers were a plague of this country, the robber may say: The land is in the same place, and take it if you can; if, however, it was robbed because of the robbers, he must buy another field for him.

GEMARA: "*Because of the robber*." How was the case? If it was taken only from him and not from others, this is already stated in the first part. "If it was a plague of the

country," etc. The case was that the government compelled him to show such land of which they could take possession, and he was going and showed it to them, it is considered as if it was robbed by himself. There was a man that in such a case showed to the contractor a heap of wheat belonging to the Exilarch, and when the case came before R. Na'hman, he made him pay for the same. At the same time R. Joseph was sitting behind ' R. Huna bar Hyya, and the latter behind R. Na'hman and, questioned him: "If the decision was in accordance with the law, or is it only a fine?" And he answered: "This is in accordance with our Mishna, which states: *If because of the robbers*, etc., and it was explained that it means that he has showed," etc. When R. Na'hman went out, said R. Joseph to the above R. Huna: "What difference was it to you if it is, law or fine?" And he answered: "If it is a law, then we will take the same for practice; and if a fine, we will not." R. Huna bar Jehudah happened to be in the house of Ebioni (the debate house of the apostate Jews), when after he came to tell Rabba of his misfortune, he asked him: "Do you feel some wrong action you have done?" And he said: "There was a case when one Israelite

compelled by the heathen showed them the property of his neighbor and I made him responsible." And he said to him: "Go and fix your wrong act, as we have learned in the following Boraitha: An Israelite who was compelled by heathens and showed the property of his neighbor, he is not responsible, unless he took it with his own hands and gave it to the heathens." Said Rabba: "If, however, he showed it to them without having been compelled to this, it is to be considered as if he took it with his own hands." There was a man whom the heathens compelled, and he showed them the ass of R. Mary ben R. Pinchas ben R. Hisda. The heathens said to him, Take the ass and follow us, and he did so. Afterwards he was summoned before R. Ashi, and he acquitted him. Said the rabbis to R. Ashi: "Have we not learned in the above Boraitha: 'That when he took it with his hands he is responsible'?" And he answered: "The Boraitha means when he was not told to take it with his hand, but here he was compelled to do so by their command." R. Abuhu objected to R. Ashi from the following: "If a mighty man (of whom one is in fear) says to one, 'See that this branch of grapes or a bunch of grain shall reach me,' and he did so, he is responsible for it." And he answered: "It means that they were standing on either side of a stream."

[paragraph continues] [And it seems to be so, as the Boraitha states: See it shall reach me, and not Give it to me.] There were two men who had quarrelled about a net, each of them saying, "It belongs to me." One of them then took it and delivered it to an officer of the government. Said Abayi: "He may say, 'It was mine' and I could do with it what I pleased.` Said Rabha to him: Must he then be trusted? he ought to be put under the ban until he gets it back, and then to leave it to the court to decide to whom it belongs. It happened that a man showed to the government the μεταξα of R. Aba. R. Abuhu, R. Hanina bar Papi, and R. Itz'hak of Naf'ha were discussing what should be done with him. R. Ilai, who was sitting among them, said to them: "So said Rabh, that he is responsible only when he himself took it and gave it to the government." They said to him: "Go to R. Simeon ben Elyakim and R. Elazar ben Pdoth, in whose courts cases of germon are tried." He did so, and they made the man responsible on the basis stated in our Mishna: "If because of the robber and it was explained when he showed it."

There was a man by whom a silver goblet was deposited, then when robbers attacked him he presented them with the goblet, and they left him alone. When the case came before Rabha, he made him free. Said Abayi to him: "Has not the man saved himself with the property of his neighbor?" Therefore said R. Ashi: "Such a case must be investigated. If he is a wealthy man, the robbers were coming to rob him because of his own wealth; and if he is not wealthy, they came only because of the deposited silver." It happened also with a man to whom the treasury for redeeming prisoners was deposited, and when robbers attacked him he presented it to them. When the case came before Rabha, he made him free; when Abayi remarked to him the same as he has remarked before to Rabha, Rabha answered: "There is not a greater redeeming of prisoners than this case itself. There was a man who led his ass to a boat before men came in; after it was crowded, it was too heavy and it was dangerous, lest the boat sink, and one of the passengers pushed the ass into the river, and it was drowned; after which Rabba made him also free." Abayi remarked to him as above, and he said: "It was only self-defence, then if not for the ass he himself would drown." This decision of Rabba is according to his theory, elsewhere, that one who runs after a man to kill him, and on the way he breaks vessels, no difference if they belong to the

persecuted man or to others, he is free from payment, because he is guilty of a capital crime; and the persecuted one, if he breaks the vessels of the persecutor, is free, because the property of his persecutor must not be dearer to him than his own body. And if, however, they belong to others, he is responsible, as it is not allowed to save himself with the goods of his neighbor. But if one was going after the persecutor to save the persecuted man, and while running he breaks vessels, he is free no matter to whom they belong. This is not because the law is so, but if he should be responsible, no one would be willing to save a man from persecution.

MISHNA *VII.*: If a stream has overflowed the robbed field, he may say to him: "Yours is before you."

GEMARA: The rabbis taught: "One who robbed a field and it overflowed, must deliver up another. So is the decree of R. Elazar." The sages, however, maintain: "He may say to him: 'Yours is before you.'" What is the point of their difference? R. Elazar based his theory upon the exclusions and inclusions of the verse [Lev. v. 21]: "If he namely lie unto his neighbor," which includes everything. "That which was delivered to him to keep," it excludes other things; and further on [ibid., ibid.]: "Or any one thing about which he may have sworn falsely." It is again an inclusion of everything, and there is a rule that when the Scripture includes, excludes, and again includes, everything is included. The rabbis, however, do not consider this as inclusions and exclusions, but as a general and special. "If he namely lie" is general; "Which was trusted to him" is special; and "Or any one thing" is again general, and there is a rule that when there is a special between two generals, it must be judged similar to the special only; namely, as the special is a movable thing and it has a value in money, so all articles which are movable and have a value, excluding real estate, which is immovable, and bondsmen, who are compared to real estate, and also documents, although they are movable, they themselves have no value of money. But have we not learned in another Boraitha: "The very same is the case with the robbed cow, which was overflooded (which is a movable thing, and has a value of money)? He must furnish him with another cow, so is the decree of Elazar; the sages, however, say: He may say: 'Yours is before you.' In what is the point of their difference then?" Said R. Papa: "It means in a case where the robbed cow was lying on the robbed field,

and it was overflooded with the field, (and the robber did not yet acquire title) on the robbed cow." R. Eliezar is so in accord with his theory and the rabbis with their theory.

MISHNA *VIII.*: If one robbed, borrowed, or deposited an article when they were in an inhabited land, he must not return it when he is in a desert, unless he took it for the purpose of going into a desert.

GEMARA: There is a contradiction: "A loan is payable everywhere, a bailment and a lost article are not to be delivered only in their right places (hence a loan may be returned at any place?)." Said Abayi: "The quoted one means this: A loan may be demanded at any place, but a lost thing and deposit are to be demanded at the right places only."

"*For the purpose to go*," etc. If so was the condition, is it not self-evident? The case is, if he said, let be this bailment with you as I go to the desert, and the bailee said to him, I also intend to go there, and if my wishes will be to return it to you there, I may do so.

MISHNA *IX*.: If one says, I have robbed you, or borrowed from you, or you have deposited with me, and I don't know if I have returned it to you, he must pay; however, if he says, I am in doubt whether I have robbed, etc., he is free.

GEMARA: It was taught: If the plaintiff claims a mana (100 zuz), and the defendant says, I don't know; R. Huna and R. Jehudah say, "He must pay," because certainty has preference to uncertainty. R. Na'hman and R. Johanan say, "He is free," because they hold that the money in possession of the defendant must be considered his until evidence is brought. An objection was raised from our Mishna, which states that if he says, "I am in doubt if you have borrowed it to me, he is free." Now let us see how was the case. If there is no plaintiff, then even the first part in the case, "I am certain I have borrowed, but doubtful if it was returned," must also speak when there is no plaintiff; why, then, must he pay? We must, therefore, say that the whole Mishna treats when there IS a plaintiff, and nevertheless in the second part it states he is free from payment. (And this is an objection to Huna and Jehudah.) Nay, the Mishna treats when there was no plaintiff, but the man likes to satisfy the heavenly will. (If he is certain that he has borrowed, it is the heavenly will he shall pay; but if he is in doubt whether he has borrowed, he is free at any rate.) It was taught also by R. Hyya bar Aba in the name of R. Johanan:

"If one claims a mana and the defendant says, 'I don't know,' he is obliged to pay if he would satisfy the heavenly will.

MISHNA *X*.: If one steals a sheep from the flock and returns it, and it dies or it was stolen again, he is responsible; if, however, the owner did not know either of the theft or of its returning, and when they came to number the flock they found it right (and after it died or was stolen), he is free.

GEMARA: Rabh said: "If the theft was known, the returning must also be announced (and if he did not so, he is still responsible for it, even after the owner had numbered the flock), and the numbering makes him free only when he did not have any knowledge of the theft." Samuel, however, said: "The numbering makes him free at any rate." As he explains it, the last sentence of the Mishna applies to the whole of it. R. Johanan said: "If they have knowledge of the theft, the numbering after it was returned makes him free; but if they have not any knowledge of the theft, the numbering does not matter at all, as he is free even without it." And he explains that the last sentence of the Mishna applies only to the first part of it. R. Hisda, however, said: "Only when they have knowledge does the numbering make him free; but if not, he is responsible even after the numbering. And the statement of our Mishna. holds good only when they had knowledge of the theft also, and Rabha explained the reason of R. Hisda's statement thus: The theft accustomed the sheep to separate themselves from the flock, and it may do so again; but if he has notified the owner, he will take care of them. Did Rabha, indeed, say so? Has he not said: "If one has seen that a thief had picked up sheep of the flock with the intention of stealing them, and he alarmed him and the thief threw them away, and the man was not certain if the sheep were returned, and the sheep then died or are stolen, he is responsible. Is it not to assume that the thief is responsible even when the owner has numbered them? Nay, it means when it was not numbered. But did Rabh say as it is stated above? Did he not state: 'If he has returned it to another flock, which the same owner has on another place, he is free (and there was neither knowledge nor numbering)'?" Said R. Hanan bar Aba: Rabh agrees when the sheep were

speckled, and in such a case the owner knows that it was stolen in his absence, and the shepherd recognizes it by the speckle. Shall we assume that the following Tanaim differ in this case: "If one has stolen a sheep from the flock or a coin from the

pocket, he has to return it to the same place he took it from"? So is the decree of Ishmael. R. Aqiba, however, says: "It is necessary that the owner know the facts in the case." The schoolmen thought that usually a man knows the amount in his pocket, and he counts it whenever he takes a coin out, so he has knowledge of the theft; and R. Ishmael holds that the numbering makes him free, and R. Aqiba that the numbering does not make him free, unless he was notified of the returning. (Hence R. Ishmael and R. Aqiba differ in both, a sheep when it was not notified, in which Rabh and Samuel differ, and also in the case in which R. Johanan and R. Hisda differ.) Said R. Zebid in the name of Rabha: "If a bailee has stolen from the premises of the owner, all agree with R. Hisda; but here they speak of a case where the bailee has stolen it from his own premises." R. Aqiba holds that his function as a bailee has ceased (and he must notify the owner of the theft and returning). R. Ishmael, however, holds: "He is still a bailee, and when he returns it to the place he took it from his own knowledge suffices."

MISHNA *XI.*: One must not buy from the shepherds kids of goats, wool, or milk, and not from fruit watchmen wood and fruits. One may, however, buy from the women of Jehudah woollen garments (which usually were manufactured by them), and flax garments from those of Galilee, and also calves from the women of the city of Sharon. If, however, the sailors like to do it secretly, it is prohibited. Eggs and poultry are allowed to be bought at any place.

GEMARA: The rabbis taught: "One must not buy from the shepherds goats, kids, sheared or plucked off; garments of wool, however, are excluded, because it belongs to them; milk and cheese may be bought in deserts, but not in inhabited places. Four or five sheep or fleeces of wool together may be bought, but not two." R. Jehudah said: "Domestic sheep (which are brought home at night-time) may be bought, but not of deserts." This is the rule concerning buying of shepherds, an article which the owner of it perceives may be bought, but not articles which are not.

"*The Master says, 'Four or five sheep,*'" etc. If four may be bought, so much the more five? Said R. Hisda: "Four from a small flock and five from a large one." But is not this text contradicting itself? It states four or five, from which it is to be inferred but not three; and immediately it states but not

two, from which one may infer that three is allowed. This presents no difficulty. If the three are of the best sheep, they may; and if from the lean ones, they *may not be bought*. The schoolmen propounded a question: "R. Jehudah, who says that domestic ones," etc., made his condition of the first part; namely, that for the four or five in question, and he is more rigorous than the first Tana of the above Boraitha, or his condition is for the second negative part, which states but not two sheep, and he, R. Jehudah, comes to teach that only from outside, but domestic, even two may be bought, and he is lenient. Come and hear the following Boraitha: R. Jehudah said: "Domestic ones may be bought of them, but not others; in any place, however, four or five sheep together may be bought." Hence his decision was lenient.

"*And not from the fruits watchmen*," etc. Rabha bought a bunch of branches from an ο•ρος (a laborer who gets for his labor a part of the products). Said Abayi to him: "Did not our Mishna state 'Not from the fruit watchmen, wood or fruits.'" And he answered: "It means of a watchman who is hired for money, but of such who takes for his labor a part of the products, may be bought, as he usually sells his own part."

The rabbis taught: It may be bought from the fruit watch. men when they sell publicly and the scale is before them; if however, they try to do it secretly, it is prohibited. It may be bought from them at the gate of the garden, but not at a place which is behind it.

It was taught: "When is allowed to buy from a robber?" Rabh holds: "When it is known that the greater part of the goods is his own." Samuel, however, maintains that even when the smaller part only is known to be his own. R. Jehudah's decision to Ada Daila was in accordance with Samuel's theory.

Property which belongs to a denouncer, R. Huna and R. Jehudah differ; one says, "It may be destroyed intentionally," and the other says, "It may not." The one who says, "It may," speaks thus because his money must not be dearer than his body. And the one who says, "It may not," speaks thus because, perhaps, he will have good children, and it is written [Job, xxvii. 17]: "He may prepare, but the righteous will clothe himself (therewith)." R. Hisda had an ο•ρος who used to take exactly the half of the products for himself. Thereupon R. Hisda discharged him, and read with reference to himself the

verse [Prov. xiii. 22]: "But the wealth of the sinner is treasured up for the righteous."

R. Johanan said: One who robs his neighbor even the value of a *parutha* (half a cent) is considered as if he would take away his life; as it is written [Prov. i. 19]: "So is the path of every one that is greedy after (unlawful) gain; it takes away the life of those that own it." And also [Jeremiah, v. 17]: "And they shall consume thy harvest and thy bread; they shall consume thy sons and thy daughters." And also [Joel, iv. 19]: "Because of the violence against the children of Judah." And also [II Samuel, xxi. 1]: "On account of Saul and on account of the house of blood, this because he has slain the Gibeonites." To what purpose is the second verse cited? One may say that it speaks only of his life, but not of the life of his children; hence the other verse. And still one may say that it treats only of a robber who does not pay for the robbery, but not if he does; hence the third verse, which treats of violence, which is even when he gives money. And, finally, one may say: It is only when he did it with his hands, but not when he was only a germon; hence the last verse, which reads, "Who has slain the Gibeonites"; and where is it to be found that Saul had slain them? We must say, therefore, that he was a germon because he had slain Nob the city of the priests, the supporters of the Gibeonites, who lost their lives by the death of their supporters. And the Scripture considers Saul as he himself had slain them.

"*But it may be bought from the women*," etc. The rabbis taught: "It may be bought from woman (the articles mentioned in the Mishna), but not wine, oil, or fine meal, and also not from slaves and not from minors." Aba Saul, however, said: "A woman may sell for four, five dinars for the purpose of buying a cap for herself." They all mentioned if they told the buyers to be careful

about the bargain, then it is prohibited. Charity may be taken from them by the treasurers only a small quantity, but not a large one. From the women of the men who are engaged in the oil press may be bought a measure of olives or oil, but not small quantities. R. Simeon ben Gamaliel, however, said that in the upper Galilee even a small quantity may be bought (as this article is very dear there), and it may be the men are ashamed to sell small quantities in his house, and they give it to their wives to do so. Rabbina, who was a treasurer of charity, happened to be in the city of Mehuza, and the women gave him for charity golden chains and rings, and

he accepted. Said Rabba Tosphah to him: "Did not the Boraitha state that a large quantity must not be accepted from the women by the treasurers of charity?" And he answered: "For the Mezuzath this is considered a small quantity."

MISHNA *XII*.: Flocks of wool which came out by washing belong to the washman, but what came out by the carder belongs to the owner. If three threads only come out by the washing, the washman may keep it; if more, be must not; if, however, there were black threads in a whole piece, he may keep all of them for himself. The remaining threads of sewing, and stuff of the size of three fingers square, belong to the owner, not to the tailor. The splinters which fall off from the carpenter's bench with the plane belong to him, but what with the hatchet are the owner's; if, however, he labored at the owner's house, even of the plane belongs to the owner.

GEMARA: The rabbis taught: "One may buy flocks from! the washman, because it is his. The washman may take the two upper threads for himself. By stretching the garment out for combing he can stitch the loops on the garment only by three stitches. One shall not comb the garment to its shoot, but to its warp, and he shall cut up the fringes to its length but not to its width; if by completing it be has to cut up in the width also, he may do so, the size of a span." [1]

The rabbis taught: "One shall not buy from the carder flocks, because they are not his property, unless in such places where it is customary that the carder keeps it for himself. A cushion, however, or a pillow filled with this stuff may be bought from him at any place." Why so? Because the change gives title to him.

The rabbis taught: "One must not buy from a weaver (who is laboring for others) all the stuff in connection with the weaving; he may, however, buy from him a garment even made of different colors (although it is to be presumed that the different colors were the remainder of threads given to him for garments, and did not previously belong to him, as the weaving it to a garment is considered a change and title is acquired). The same is the case with a dyer: one must not buy from him stuffs in connection with dyeing, but a whole dyed garment, for the reason stated before."

The rabbis taught: "If a tanner takes skins to prepare them, the rubbish belongs to the owner; the wool, however, of the skins which was taken out from the water belongs to the tanner."

"*If they were black*," etc. Said R. Jehudah: "If such was taken off by the washman, it counts for the size which is needed for putting zithzoths in it; however, my son Itzchak is particular with it

and cuts it up."

"*But not the tailor*." How much, however, may the tailor keep for himself? Said R. Assi: The size of a needle's square.

"*The splinter which fall out by the carpenter*," etc. Is there not a contradiction from the following: "What the carpenter takes off with the hatchet and what is cut up with the saw belongs to the owner, but what falls off from the bore or plane or the splinter by the saw belongs to the carpenter"? Said Rabha: "There is no contradiction. At the place of our Tana there were two kinds of planes, a big one and a small one. The big one is called •ξινη, and the small one is called plane. The Tana of the Boraitha, however, had knowledge of the big one only, and named it also plane."

"*If, however, he was working at the owner's house*," etc. The rabbis taught: The stone-cutters may keep the rubbish; branches, however, which fall off from the trees by fixing them, or of wineyards or other plants and herbs, if the owner is particular with them, it is considered a robbery when taken without permission, but not if they are not particular. Not any robbery applies to onycha and grass, unless the places where they are particular. So said R. Jehudah. Said Rabba: "The city of Sirian in Babylon is one of the places where they are particular with it."

END OF TRACT BABA KAMA.

Footnotes

252:1 Leeser translates the sense of it. The Talmud, however, takes it literally.

258:1 Sabbath limit. See Erubin, page 100.

259:1 The text reads Huna, but by the correction of Asher it is Kahana.

276:1 Here in the text comes a discussion, how many threads the laborer takes for himself, and then some Boraithas contradicting each other in this respect, questions which are not decided, and terms of laboring which cannot be understood now without the knowledge of the machinery of that time, and therefore we have omitted it.