p. 188

CHAPTER VI.

REGULATIONS CONCERNING HIRING LABORERS, CATTLE, OR TRANSFERRING GOODS, THE RESPONSIBILITIES OF THE DRIVERS, ETC.

MISHNA *I.*: He who hired servants (for the daytime), and they deceived one another, there is nothing but resentment. (The explanation is given farther on.) If one hired a driver or a carrier to bring trumpets, flutes for a wedding or funeral, or day laborers to take out flax from its steeping, or to do things which, if not done on the day of hiring, would cause damage, and they retracted: if there were no others to be hired for the same price, the employer may increase the amount of their hire, or deceive them (*i.e.*, promise an increase, but pay only according to the first agreement). If one hired servants, and they retracted, they have to suffer; if, however, the employer retracted, he has to suffer. (This is the rule:) Whoever changes or retracts his words, has to suffer for the injury caused.

GEMARA: The Mishna does not state that the servants have retracted, but that they have deceived one another, which is to be understood, the servants have deceived one another. How was the case? The employer appointed one of his servants to hire laborers for him, and he deceived them. (Let us see.) How was it? If the employer told him to hire men for four zuz a day, and he hired them for three, they have agreed for the price, and what has resentment to do here? On the other hand, if the employer told him to hire men for three zuz, and he promised four, then, if he told them that they would receive their payment from himself, let him pay the difference from his own pocket, as we have learned in the following Boraitha: "If one hires a laborer to do his work, and thereafter instructed him to do the work of another, he must pay him the full payment, and the reward for his labor he may demand from the employer?" The case was, he said to the laborer that the employer will pay, *i.e.*, he has not fixed any price. But let them see how the price for a day for laborers stands? The case was that there were some employers who paid three, and some who paid four, and the laborers may claim: "If

p. 189

we did not understand from your words that we were to get four, we would take the trouble to look for other employers who pay four." And if you wish, it may be said that the Mishna treats of servants who possess their own fields (and they do not hire themselves unless for a higher price than the ordinary), and they may claim: "If we did not understand that we were to get four, it would be a humiliation for us to hire ourselves for a lower price." It can also be explained that the Mishna treats of laborers who are doing work only for others, and nevertheless they may claim: "Because we understood that we were to get four zuz, we troubled ourselves to make a good job." But, then, their work should be examined? The case was, they were engaged in digging a trench which was filled with water, and could not be examined. And if you wish, it may be said that the employer told the servant to hire laborers for four zuz a day, and he hired them for three; and although they agreed to work for the price, they may be angry with the hirer, saying: "Do you not hold to the verse [Proverbs, iii. 27]: Withhold not a benefit . . . when it is in

the power of thy hand to do it'?" After all, it may be said that the Tana of our Mishna by the expression "deceived" means also "retracted" (and he treats of a direct agreement between the employer and the servants), as we have learned in the following Boraitha: "If one has hired laborers, and they have deceived the employer, or *vice versa*, they have nothing but resentment, provided they did not go to work at all. But if the drivers went for grain and did not find any, or field laborers went to work and found that the field was as yet wet, they get the full payment. However, the hire of a driver who loads his wagon and delivers it to the proper place is not to be the same as the hire of one who did not find any load; and the same is the case with laborers who are engaged in work all day compared with those who are idle the whole day. All this, however, relates to when they had not yet begun the labor; but if they began, their labor must be valued for what they have done. How so? If they agreed to cut stalks or to weave a garment for the price of two salas, and they left their work, having done the half of it, the work done must be appraised; if, *e.g.*, their work was worth six dinars, they may be given one sala (which is eight dinars), or they may be let finish their work, and take two alas. And if it was worth only, one sala, they get a sala. R. Dossa, however, says the *remaining* work must be appraised, and they get the difference; *e.g.*, if the *remaining* work can be done for less than six, they get only one-half a sala (although they have

done the half of the work), or they may be let finish their work, and take two; but if the remaining work could be done for a sala, the laborer who has done the half gets a full sala. However, all this is said of such things as do not become spoiled if the work is,, done later; but in cases in which the work may become spoiled, he may hire other laborers on their account, or he may deceive them. How so? He may say to them: "I made the agreement with you to work for one sala; now, however, I raise it to the amount of two." To what amount *may* he increase the hire? To the amount of forty to fifty zuz, provided there are no other laborers to hire for a lower price; but if there are, and the retracting laborers tell him to get his work done by them, he has nothing but resentment.

A disciple taught before Rabh that the full amount must be paid, but Rabh said: My uncle (R. Hyga) said: "If I were the hirer, I would pay only for the loss of time," and thou sayest that, he must pay the full amount. The Gemara questioned: Does the above Boraitha not add. The hire of a driver who loads his wagon, etc., is not to be the same as the hire of one who did not find any load? (Why, then, did not Rabh refer him to this Boraitha, and not to his uncle?) Rabh was not aware of the above addition. According to others, he was aware of it; and concerning this Boraitha he says: My uncle said: "If I were the hirer, I would pay nothing," and thou sayest that loss of time must be paid. But, if so, there is a difficulty. It might be said that R. Hyga speaks of laborers that he appointed yesterday to come to work early in the morning, and rain made the field wet at night,, so that it was unfit for work; and in such a case the laborers ought to know it, and not come to work at all. The Boraitha treats of a case where both the employer and the laborers were not aware of the fact that the field was unfit for work at that time. And so also declared Rabh. elsewhere: If one hired laborers to dig a trench, to begin their labor on the morrow, and at night rain filled the trench with water, then, if at the time he hired them he notified them of the place where the trench was to be found, the laborers have to suffer the loss (seeing the rain, they ought not to come to work); but if at the time he hired them he did not notify them of the place where the trench was to be found, be must pay for the loss of time (as they may say: How were we to know that the trench was placed where it was raining?). The same said again: If one hired laborers to wet his fields, and in the meantime rain came, the laborers suffer the damage. If, however, they become

wet by the overflow of a river, the employer must pay them for the loss of time. He said again: If one hired laborers to wet his fields, and in the middle of the day the river from which the water was to be taken ceased to flow, if this was an accident the laborers have to suffer. If, however, this happens with the river frequently, the employer must suffer; provided the laborers were strangers and did not know the nature of this river. He also said: If the work for which the laborers were hired for a day was finished at the middle of the day, he may engage them with other similar or easier work, but not with harder. And if he has not such, he nevertheless must pay them the full amount. Why so? Let him pay them for the loss of time only? Rabha speaks of carriers of Mahuza (his city), who used to become weak when they had nothing to do (in the daytime).

The master said: The labor already done must be appraised, and if it was worth six dinars, they get a sala (eight dinars). Hence the rabbis hold that the laborers always have the preference.

"Or let them finish their work, and take two salas." Is this not self-evident? The case was that the labor became dearer, and the laborers and the employer became reconciled. Lest one claim that the laborers may say: "We accepted your reconciliation with the intention that you will raise our wages" (and as, according to the rabbis, the laborers always have the preference, their claim should be taken into consideration), he comes to teach us that the employer may say: "My intention in becoming reconciled was to give you a good meal."

"If the labor were worth one sala, they get it." Is this not self-evident? The case was, that at the time he hired them the labor was cheaper. He, however, promised to raise one zuz. Thereafter the labor became a zuz higher: lest one say that the laborers may claim that they were promised a zuz over the existing price, consequently they have to get two zuz more, he comes to teach us that the employer may say: "I was aware that the labor is worth a sala, and it will be increased to this extent sometime. I therefore promised to pay you the proper price, but not to add a zuz above the proper price." [1]

"R. Dossa said," etc. As he holds, the employer has the preference. But to what purpose does he add: "Or let them finish the work and take two salas"? Is this not self-evident?

[paragraph continues] He treats of a case where the labor became cheaper and the employer locked them out, and afterwards the laborers became reconciled to him: lest one say that the employer may claim that he accepted the reconciliation with the intention to lower the price, he comes to teach us that the laborers may say they have become reconciled to him with the intention of making a good job. But to what purpose does he continue, that if a sala, etc.? Is this not self-evident? Said R. Huna b. R. Nathan: He speaks of a case where the laborers have lowered the price a zuz, and thereafter the labor became a zuz cheaper: lest one say that the employer may claim: "My agreement was to give a zuz less than the current price, consequently I have now to pay two zuz less," he comes to teach us that the laborers may claim: "We were aware that the labor may become cheaper, and were willing to work for the proper price, but not lower than that."

Said Rabh: The Halakha prevails in accordance with R. Dossa. Did, indeed, Rabh say so? Has he not said that a day laborer may retract even in the middle of the day? And lest one say that R. Dossa makes a difference between a day laborer and a pieceworker, the following Boraitha shows that he makes no difference, namely: "If one hired a laborer, and in the middle of the day the latter heard that one of his relatives died, or he became ill from sunstroke, whether be was a day laborer or a piece-worker be gets the full payment." Now, according to whom is it? Shall we assume it is according to the rabbis? Why, then, need it to be said that it was accident? Even without this the rabbis hold that the laborer always has the preference. It must therefore be in accordance with R. Dossa; hence he makes no difference between the above two kinds of laborers?

Said R. Nahaman b. Itzhak: The Boraitha treats of a case where the work would be lost if not finished in the same day, and therefore only in case of an accident does he get the full payment in accordance with all of them; but in other cases there is a difference between the two kinds of laborers mentioned above (according to R. Dossa). And if you wish, it may be said that the statement of our Mishna, that "he who retracts his word must suffer the damage," is to be interpreted as we have learned in the following Boraitha: "Whoever retracts." How so? If one sold a field for a thousand zuz, and the buyer gave him a deposit of two hundred, if the seller retracts, the buyer has the preference; he may insist upon the return of his money, or he shall furnish him with the best estate for the value of his deposited money. If,

however, the buyer retracts, the seller has the preference; he may return him the money, or give him the worst estate he has for the value of his money. R. Simeon b. Gamaliel, however, says (that in case one buys an estate by instalment), an agreement must be written to prevent any retraction. How so? The seller writes: "I, so-and-so, sold such-and-such a field to so-and-so for one thousand zuz, of which two hundred were paid, and the balance of eight hundred is to be paid afterwards," then the agreement is in full force even for many years.

The master said: "Or best estates for his money." At the first sight it is to be understood the best estate the seller possesses. Why so? Let him be considered a creditor, of whom a Mishna states that he has to collect from the middle one; and, secondly, he has given the money for a certain estate which is still in existence? Said R. Nahaman b. Itzhak: The Boraitha means to say, in both cases, from the best and the worst of the field in question. R. Aha Aiga, however, says: There is no contradiction even when it means from the best estate he possesses, as usually a poor man who buys an estate for a thousand zuz has to sell out his personal property or small estates for a cheap price, so that if the seller retracts the buyer suffers damage, and there is a Mishna that all damages must be appraised from the best estate.

R. Simeon b. Gamaliel said: "The seller writes," etc. We see, then, that the buyer acquired title only because of the agreement, and not otherwise; but did not a Boraitha state: "If one gave a deposit to his neighbor, and said: Should I retract, my deposit shall be relinquished to you, and the seller said: Should I retract, I shall return you the deposit in double, the stipulations are of avail; so is the decree of R. Jose." [R. Jose is in accordance with his theory that an *asmakhta* gives title.] R. Jehuda, however, said: It is sufficient that the buyer should acquire title to the amount of his deposit. Said R. Simeon b. Gamaliel: All this is only in case the buyer said: My deposit shall give me title. If, however, there was sold to him a field for a thousand zuz, and in

payment thereon he gives him five hundred zuz, title is given to the buyer to the whole field, and he has to give him the remainder even during many years (hence we see that according to him title is acquired even if it was not so written as stated above). This presents no difficulty. The Boraitha speaks of when the seller agrees to wait for the remainder, and the Mishna speaks of when the seller was in need of money, and insisted upon immediate payment (which shows that he sold him the article only because he

was in need of money, and would not like to give him title until the whole amount was paid; as Rabha said elsewhere: If one has sold an article, when he was in need of money, and received a deposit from the buyer, title is not acquired unless the whole amount is paid; but when the seller was not in need of money, and did not insist upon immediate payment of the remainder, title is acquired).

Rabha said again If one lends a hundred zuz to his neighbor, and he returns the sum in instalments by single zuzes, although it was not so stipulated, the payment is valid, and the lender has nothing but resentment, as he may say that the borrower had harmed him, for he could have done business with the money if it were paid to him in one payment.

There was a man who sold an ass while he was in need of money, and the buyer paid him the whole amount less one zuz. R. Ashi was deliberating if in such a case title is acquired or not. Said R. Mordechai to him: So said Abimi of Hagrunia in the name of Rabha, that one zuz is considered the same as many, and title is not acquired. Said R. A'ha b. R. Joseph to R. Ashi . But we have heard in the name of Rabha that title is acquired; and he answered: The Halakha you have heard in the name of Rabha must be interpreted, in case it was certain that he has sold his field on account of its infertility, and the insisting upon the payment of the remainder was only because he was afraid he shall retract.

It is certain that if one was in need of a hundred zuz, and could not find any one to buy an estate for this amount, and sold out for two hundred (and received a deposit of one hundred zuz), and insisted upon the immediate payment of the remainder, then title is not acquired. But how is it when, if the same would trouble himself to find a buyer for one hundred zuz, he could get one, but he did not, and sold out for two hundred zuz, and was insisting upon the immediate payment of the remainder? Shall we assume that this case should be considered as the case of selling a field on account of infertility, stated above; or is it not because, after all, he sold out this field unwillingly, owing to the need of money? This question remained undecided.

If one hired a driver . . . or he may deceive them. But to what amount may he hire others on their account? Said R. Na'hman: To that amount which the employer owes them for the labor done already. Rabha objected to this statement from

the Boraitha stated above (p. 190), that he may hire on their account to the sum of from forty to fifty zuz; and R. Na'hman answered: The above Boraitha speaks of a case where the laborers place their instruments to such an amount in the house of the employer.

MISHNA *II*.: If one hired an ass for use on a mountain, and he used it in a valley, or *vice versa*, although the distance for which it was hired was equal in both ways (as, *e.g.*, ten miles), and the ass dies, the hirer is responsible. If he hired it to use it on the mountain, and he used it in a valley instead, and the ass slipped, he is free (because this could surely occur on the mountain, upon which such a case is more frequent); if, however, it was overheated, he is responsible. The reverse is the case when he used it on the mountain instead of in the valley: if it slipped, he is responsible; and if it is overheated, he is free. If, however, it was overheated because of the ascending to the top of the mountain, he is responsible. If one hired an ass and it became blind, or it was taken for an *angaria* (*i.e.*, taken by the Government for labor), the owner may say: "Yours (which you have hired) is before you." If, however, it dies, or broke a foot, he must furnish him with another ass.

GEMARA: Why does the Mishna make a difference in the second part between slipping and overheating, and does not do so in the first part? In the school of R. Yanai was said: Because in the first part the plaintiff may claim the animal dies owing to the air of the mountain; (if it was hired for a valley,) he may say that it was not used to the air of a mountain, and if for a mountain, he may claim it was not used to the air of a valley. R. Jose b. Hanina, however, said: The Mishna treats of when it dies owing to overwork, and Rabba says: The Mishna treats of when it dies from the bite of a snake (so the plaintiff may claim: If you had used it for the place hired, such would not have occurred). R. Hyya b. Abba, in the name of R. Johanan, said: The Mishna is in accordance with R. Meier, who holds that one who has done contrary to the agreement with the owner is considered a robber, and is responsible. Where is to be found such a statement by R. Meier? In the following Boraitha: "If one has given a dinar to a poor man for the purpose of buying himself a shirt, he must not buy a garment, and if for the purpose of a garment, he must not buy a shirt, because this would be contrary to the intention of the donor."

But perhaps there is another reason; namely, people shall not say: "So-and-so has promised to furnish a garment for the poor so-and-so," and did not keep his promise? Then R. Meier should state: Because of suspicion. Why, then, his reason, "because it is contrary to the intention," etc.? Hence he holds that every change of the intention of the owner is considered robbery. Infer from this that so it is.

Or it was taken, etc. Said Rabh: The case is only when it is an angaria which is to be afterwards returned; but if it is an angaria which is not to be returned, he must furnish him with another ass. Samuel, however, maintains: There is no difference what kind of an angaria it was; if it was taken for using to the same place where the hirer intends to go, the owner may say to him: "Yours is before you." If, however, it was taken in a contrary direction, then the owner must furnish him with another ass. An objection was raised from the following: If one hired an ass, and it became blind or mad, the owner may say: "Yours which you have hired is before you." If, however, it dies, or it was subject to an angaria, he must furnish him with another ass. This would be correct in accordance with Rabh's theory, as the Boraitha may treat of an angaria which is not to be returned; but Samuel's statement it contradicts. And lest one say that the Boraitha speaks of when it was taken away in a contrary direction, so that it could agree with Samuel's statement also, it cannot hold good, because of the latter part of the same Boraitha, which states: R. Simeon b. Elazar said that if it was taken away for use in the same direction, the owner may say: "Yours is before you"; and if in a contrary direction, he must furnish him with another ass. Now, from the statement of the latter it is to be inferred that it makes no difference

to the first Tana in what direction it was taken? Samuel may say: Is there not a Tana who is in accordance with my theory? I hold with R. Simeon b. Elazar, and if you wish, it may be said that the whole Boraitha is in accordance with R. Simeon b. Elazar, but it is not complete, and should read thus: If one hires an ass, which becomes blind or mad, the owner may say: "Yours which you hired is before you." If, however, it dies or becomes subject to an angaria, he must furnish him with another ass. This, however, was said if it was taken away in another direction; but if it was taken away in the same direction be intended to go, the owner may say: "Yours is before you" (you may accompany this one until the officers of the

[paragraph continues] Government will meet another ass, and yours will be returned to you). So is the decree of R. Simeon b. Elazar, as he used to say that only if it was taken in another direction must he furnish him with another ass, and not: otherwise. But how can you interpret the Boraitha in accordance with him? Have we not heard him stating that if one has hired an ass for the purpose of riding upon it, and it becomes blind or mad, the owner must furnish him with another one, which contradicts the statement of the Boraitha in question? Said Rabba b. R. Huna: For the purpose of riding, it is different (as he cannot ride upon a blind or mad animal, but as for carrying burdens, he can do so even with the same). Said R. Papa: If he had hired the ass for the purpose of carrying glassware, the case is the same as if he hired it for riding.

Rabba b. Huna, in the name of Rabh, said: "If one has hired an ass for the purpose of riding, and it dies while in the middle of the way, he has to pay the half of the agreed price, and he has nothing but resentment." Let us see. How was the case? If the carcass of this ass would pay for delivering the burden to the place to which it was hired, what had resentment to do here? Let him sell the carcass, and deliver the goods, and if this is not the case, why should not the owner deliver the goods to the place? The case was such that one could not be found, to be hired for delivery; and the owner may claim payment from the place from which it was taken, to the place directed. But let us see. How was the agreement? If it was for any ass to carry the goods, then certainly he must furnish him with another one, and if for this ass, then let him sell the carcass for the purpose of carrying his goods. This was when the sale of the carcass would not yield the amount needed. But even if the carcass would pay, may he do so? (Did, then, the owner *sell* him this ass? The decision of the Mishna is that he shall furnish him with another ass; consequently he has not given him any title for this one?) Rabh is in accordance with his theory who said elsewhere that the principal amount must not be totally consumed, as it was taught: "If one has hired an ass, and it dies while in the middle of the way," Rabh said, that if the carcass would pay to buy another one instead, he may do so; but if it would pay only to hire another one, he must not. Samuel, however, maintains he may, and the point of their differing is the total consumption of the principal amount of the thing hired. According to Rabh, it must not be consumed

[paragraph continues] (and the statement of the Mishna, that he must furnish him with another ass, is in case it dies while yet under the control of the owner, so that if he sells the carcass he adds to this amount and buys another ass, and so the principal amount is not wholly consumed as in case of selling the carcass for the purpose of hiring another one); and according to Samuel, even the total consuming of the principal amount is allowed.

The rabbis taught: "If one hires a boat, and it sinks in the middle of the way, R. Nathan said: If

he has paid, the money remains with the same owner; but if he has not paid, he has nothing to pay." Let us see. How is the case? If the agreement was "for this boat in which I shall carry wine to a certain place," why, then, should he not collect what he paid for? He should claim for another boat for delivering wine, and if it was for any boat, for delivering *this* wine, why should he not pay, even if he has not done so until now? Let the owner claim for the wine he has agreed to deliver, and he will furnish another boat; and if the wine is lost, and the hirer cannot keep his agreement, let him pay. Said R. Papa: R. Nathan's decision can be explained only in case the agreement was "for this boat and this wine," but if the agreement was "or *any* boat and *any* wine," the loss must be divided.

The rabbis taught: "If one hires a boat for a certain place, and has unloaded it while in the middle of the way, he has to pay for the half way, and the owner has nothing but resentment." How is the case? If the owner has the opportunity to let it, why then resentment? And if not, why should he not get pay for the whole way? The case was, the owner had an opportunity to let it. He claims, however, that the loading and unloading, which must be done twice, damages the boat. But if so, the claim is a just one, and he has to be paid. Read in the Boraitha thus: In the middle of the way he loads more, and the agreement was that he may load as much as he likes, and shall be paid according to the weight of the load; and if he adds more in the middle of the way, he has to pay him for this loading for the half way only. But, then, what is the resentment for? For the losing of time.

The rabbis taught If one hires an ass for the purpose of riding, the hirer may place on it his garment, his bottles with beverages, and food for himself for that day. More than this, however, the driver may prevent. The driver may also place hay and barley and food for himself for this day only.

p. 199

[paragraph continues] More than this, the hirer may prevent." How is it? If on the way, food can be bought, why should not the driver prevent the hirer from placing more food than for one day? And if it could not be bought, why should the driver be prevented from taking food for more than one day? Said R. Papa: The case was, that food could be obtained at the inn only, and for a driver it is customary to trouble himself, in the city, to find out who is selling food for the ass and himself, which is not the case with the hirer.

The rabbis taught: "If one hires an ass for the riding of a male, the same must not be used for a female; if for a female, a male may ride on it. There is, however, no difference whether the female was tall or short, pregnant or nursing." If you say that a woman nursing a child, which are two bodies, may, is it not self-evident that a pregnant woman, which is only one body, may? Said R. Papa: It means even when she was both pregnant and nursing.

MISHNA *III*. If one hires a cow for the purpose of ploughing on the mountain, with all the implements belonging to it, and he plough in a valley, if the plough-handle breaks he is free; if *vice versa*, and it breaks, he is responsible. If to thresh pulse, and he threshes grain, he is free; but if to thresh grain, and he threshes pulse, he is responsible, because pulse becomes slippery (and thus the plough-handles can easily break).

GEMARA: But how is it if the plough-handle breaks without any change of the agreement: who

has to pay for it? Said R. Papa: He who holds the handle of the plough (because it breaks owing to his carelessness); and R. Shesha b. R. Idi says: He who manages the handle in such a manner that the plough digs deeper in the ground than it ought to, and so the Halakha prevails. In a place, however, which was known to them as strong ground, etc., both the holder of the plough-handle and the manager are responsible.

R. Johanan said: If one sells a cow to his neighbor, saying: "This cow is a gorer, a biter, a kicker, lying down while laboring," and in reality it was afflicted with only one of these defects, the sale is invalid (as the buyer, on examining it, may not find one or two of the defects he was told of, and thinks the seller is only jesting, and the cow has no defects at all). If, however, he says: It is afflicted with one of the defects mentioned above, and it has also some other defects, although it was afflicted with only this one, the sale is valid (because it was the buyer's duty

to search for such defects as were mentioned to him). So, also, we have learned in the following Boraitha: "If one sells a female slave, telling the buyer that she is an idiot, epileptic, and becomes confounded, and she was afflicted with only one of these, the sale is invalid (for the reason stated above). If, however, he says she is afflicted with one of the defects mentioned above, and she has also other defects, the sale is valid." R. A'ha b. Rabha questioned R. Ashi: How is it, if she has indeed all those defects (and the buyer claims that because the seller mentioned all the defects separately, he thought he was jesting, but if he had been aware that she was afflicted, he would not have bought her)? Said R. Mordechai to R. Ashi: So was it said in the name of Rabha, that in such a case the sale is valid.

MISHNA *IV.*: If one hired an ass for carrying wheat, and he used it for barley (of the same weight as the wheat he had spoken of, and the ass becomes injured), he is responsible. For grain, and he used it for straw, he is responsible, because an increase of volume makes the load harder for the animal. If for half a kur of wheat, and he used it for half a kur of barley, there is no responsibility. If, however, he has increased the size (although it was equal in weight to the half kur of wheat), he is responsible. How much must the load be increased to make him responsible? Symmachos, in the name of R. Meier, said: One saah for a camel, and three kabs for an ass.

GEMARA: It was taught: Abayi said: We read in the Mishna: "The volume of the load is *like* the weight (*i.e.*, loads of the same volume are considered of the same weight as regards the stress on the animal, and if he added these kab to the volume bargained for, he is responsible for any injury to the ass). Rabha, however, said: We read in the Mishna: It is as hard *for* loading--*i. e.*, weight is weight, and the volume is an addition, and if he changed the load for a more voluminous one, although of the same weight, he is responsible for the additional volume.

There is an objection from our Mishna if it were hired to carry half a kur of wheat, and he used it for half a kur of barley: "If he has increased the size, etc., is it not meant three kabs" (as the explanation of Abayi)? Nay; it means a saah (and the Mishna is interpreted thus: If for carrying a half kur of wheat, and he used it for a half kur of barley, he is free, although he changed the article, as the change was lighter; if, however, he had increased the barley to the weight of wheat, he is responsible,

owing to the increase of size). But does not the Mishna state further on: "How much must the load be increased . . . a saah for a camel," etc.? This is not a continuation of the former, but a separate statement; thus, when there was no change in the article, and weight was added to the usual load, how much should be added in order to make him responsible? Symmachos says, etc.: Come and hear (another objection): "If it were for carrying a half kur of wheat, and he used it for sixteen saahs of barley, he is responsible." From which is to be inferred that if he added only three kabs he is free? Abayi explained that this Boraitha speaks of a load counted by stricken measures; according to others, reduced in weight by being worm-eaten. 1

The rabbis taught: "An addition of one kab makes one responsible when he has hired one to carry a burden on his shoulders. A *lethakh* (a half kur) is an addition to a skiff, one kur for a larger boat, and three kurs are an addition for a ship (*i.e.*, if the above were added to the usual loading of the vessels named, the one who hires is responsible for damage)."

The master says: One kab for him who carries on his shoulders: but if he is a man with sense let him throw it off if it is too heavy? Said Abayi: For example, when he became sick soon after he was loaded with his burden. And Rabha said: Even if it has not occurred so, as the Mishna's statement is for the purpose of an additional payment also--*i.e.*, for this addition he has to pay him separately. R. Ashi maintains that the carrier need not throw it off, because he may have thought: "I am too weak now, but I will become stronger, and able to carry the usual weight for which I am hired," as he was not aware that the size of a kab was added. It was said above: "One kur for a larger boat," etc. Said R. Papa: Infer from this that the usual weight for a large boat is thirty kurs. To what purpose is it stated? For the purpose of business--*i.e.*, if one has hired a boat for carrying without any stipulation, thirty kurs is the usual load.

MISHNA *V.*: All specialists are considered bailees for hire. If, however, they have notified the owners that the work is ready and they may take it, and the payment should be made thereafter, they are considered from that time gratuitous bailees. If one

says: "Guard for me this article, and I will guard yours," the depositary is considered a bailee for hire. If one says: "Guard for me this article," and the depositary answers: "Leave it with me," he is a gratuitous bailee. If one has lent money on a pledge, he is considered a bailee for hire. R. Jehudah, however, said that if he has lent him money on a pledge (without interest)he is considered a gratuitous bailee; if, however, he has lent fruit on the pledge, he is considered a bailee for hire. Aba Saul said: "One may let out a pledge of a poor man, and the money he takes for it he shall deduct from the debt of the pledger, because this is considered as if he would return a lost thing."

GEMARA: Shall we assume that our Mishna is not in accordance with R. Meier 1 of the following Boraitha: If one hired a cow, how shall he pay in case it is lost? (The question is asked because the law of a gratuitous bailee, a bailee for hire, and a borrower is to be found in the Scripture. A hirer, however, is not mentioned; hence the question: To whom of the above named shall he be compared?) R. Meier says: To a gratuitous bailee (as he pays for the labor done by the animal, and takes no compensation for guarding it). R. Jehudah, however,. says: To a bailee for hire. (As he hired the animal for his benefit, although he pays for the labor, he is considered

a bailee for hire. Now, a specialist who takes the article for his own benefit is compared to a hirer, and R. Meier considers him a gratuitous bailee.) It can be said as Rabba b. Abuhu, who has changed the names in the above Boraitha and taught: R. Meier said, To a bailee for hire; and R. Jehudah said, To a gratuitous bailee.

If, however, they have notified, etc. There is a Mishna (in Chapter VIII. of this tract): "If the borrower told the lender to send through a messenger, and he did so, he is responsible for an accident; and the same is the case when he returns it in that way." Said R. Na'h'man b. Papa: We have learned the same in our Mishna; if they all said: "Take yours, and the money you may pay afterwards," it is considered a gratuitous bailment. Is it not to be assumed that the same is the case if he has notified the owner that the work is ready (without adding something to it)? Nay; "Take yours" is different.

Huna Mar b. Mrimar, in the presence of Rabina, raised a contradiction between the two Mishnayoth mentioned above,

and afterwards explained them as follows: In our Mishna it is stated: If they said, "Take yours," etc., they are considered from that time bailees for hire; and the same is the case if they have notified the owners that the work is ready for them. Is it not a contradiction from the above-cited Mishna that if the borrower told him to send, etc., he is responsible? (Hence we see that it is considered under the control of the borrower even when he returned it, and this contradicts the statement in our Mishna, which is, that as soon as the specialist has notified the owner of the article that it is ready for delivery it is considered under the control of the owner.) And he himself answered that Raphram b. Papa said, in the name of R. Hisda, that the cited Mishna treats of when the borrower has returned the loan through his messenger before the agreed time has elapsed (consequently it was under his control unquestionably); but if he did so after the elapse of the agreed time, he is free.

The schoolmen propounded a question: What is meant by the expression "free"? Is it meant free of the responsibility of a borrower (who is responsible for an accident also), but that he is still responsible as a bailee for hire (who must pay for theft and loss), or does it mean entirely free from any charge? Said Amimar: It seems that he is free only from the responsibility of a borrower, but not from the responsibility of a bailee for hire; as he has derived benefit from it, he is considered such.

There is a Boraitha supporting Amimar as follows: "If one bought utensils from a specialist to send to the house of his father-in-law, with the understanding that if they are accepted he will pay their value, if not, he will pay according to the benefit he shall derive from the pleasure they will give to the house of his father-in-law because of their being sent as presents: if an accident happens to the utensils while on the road thither, the buyer is responsible. If, however, the accident occurred while the utensils are being returned, he is free, for he is considered a bailee for hire (for he derives them from the benefit mentioned above), who is not responsible for an accident (and this is in accordance with the theory of Amimar).

There was a man who sold wine to his neighbor, and the buyer said: "I shall carry it to such a place: if I sell it there, you will be paid; if not, it will be returned to you"; and an accident

occurred while returning it. When the case came before R. Na'hman, he made him responsible. Rabha objected from the above-cited Boraitha, which states that if an

accident occurred while on the road thither, he is responsible, and while returning, he is free; and R. Na'hman answered: "This returning is to be considered as if it were on the road still for sale, because common sense says that if he could sell it while returning he would certainly do so."

Guard for me, etc. Why so? Is this not to be considered a guard in the presence of the owner (as at the: same time the article guarded was stolen, the owner of it was caring for the article entrusted to him in return, and the Scripture plainly reads [Ex. xxii. 14]: "But if the owner thereof be with it," etc.; and this is explained further on to mean, if the owner is with him in the same labor)? Said R. Papa: The Mishna means to say You guard for me to-day, and I will do so for you tomorrow.

The rabbis taught: If one say: "Guard for me this article, and I will guard yours to-morrow; or, lend me, and I will lend you"; "guard for me, and I will lend you," or *vice versa*, all are considered bailees for hire, one to the other.

There were sellers of spices who agreed that each one of them should be engaged one day in each week in preparing food for the whole company. One day they said to one of their number: "Go and bake bread for us," and he replied: "Then guard for me my garment." They, however, neglected to do so, and the garment was stolen; and when the case came before R. Papa, he made them responsible. Said the rabbis to R. Papa: Why should they be responsible? Was not the neglect in the presence of the owner? And he was embarrassed. Finally it was learned that, at the time the garment was stolen its owner was not occupied in baking, but was drinking beer (consequently the decision of R. Papa was a just one). But why was R. Papa embarrassed? There is a different opinion between the Tanaim in such a case. According to one, he is free; and according to the other, he is not. Could not R. Papa say that he agreed with the latter? The case was, the day on which he was told to bake for the company was not the day appointed for him, and he was asked to do this as a favor. He, however, says: "For this favor you will favor me by guarding my garment," and it was not owing to wilful neglect that it was stolen. And R. Papa made them responsible according to the law of a bailee for hire; and the rabbis told him that the company ought not to be held responsible, because of the law concerning a guard in the presence of the owner, to which all agree that there

is no responsibility, and therefore he was embarrassed; but finally it was learned that his decision was correct as stated above.

There were two men on the road; one was tall and the other was short. The tall man was riding an ass, and had with him an ironed sheet for a covering, and the short one was covered with a cloak (a woollen one). When they came to cross a stream, the short man placed his cloak upon the ass, and instead of it took the sheet of the tall man and wrapped himself up in it, and the water carried it away. When the case came before Rabha he made him responsible. Said the

rabbis to Rabha: Why should he be responsible? Was it not in the presence of his owner (*i.e.*, at the same time the sheet was lost, the lender was crossing the stream with the borrower's cloak; is this not equal to the case, "guard my article, and I will do so with yours," of which it is said above that if it was at the same time there is no responsibility)? And Rabha was embarrassed. Finally, it was learned that the short man took it without the consent of his comrade, and he also placed his cloak upon the ass without consent.

There was a man who let his ass to his neighbor, and told him: "See that you do not take the way by the river of Paqud, owing to its marshy road; take the way of the city of Narsh, which is dry." The man, however, took the way by the river of Paqud, and the ass died; when he returned he said: "It is true I took the way by the river mentioned, but there was no marsh." And when the case came before Rabba he said: This man may be trusted, as, if he were to tell a lie, he would say, "I took the way of Narsh." Said Abayi to him: Such a supposition cannot hold good when there are witnesses (*i.e.*, it is known to all that the way by the mentioned river is marshy).

Guard this, etc. Said R. Huna: If the depositary said: "Leave it here for you," he is not a gratuitous bailee and not a bailee for hire (*i.e.*, he has no responsibility whatever, as it can be understood to mean: "You, yourself can guard it in this place"). The schoolmen propounded a question: If he said: "Leave it anonymously," how is the law? Come and hear: "Guard it for me," and he answered, "Leave it here for me," he is considered a gratuitous bailee; from which is to be inferred that, if an anonym, he is not considered a bailee at all. On the other hand, from the above decision of R. Huna, that

the one who said "Leave it for you" is not considered as any bailee, it is to be inferred that if he said "Leave it" only, he is considered a gratuitous bailee. Therefore, nothing is to be inferred from the cited Boraitha. But shall we assume that on this point the Tanaim of the following Mishna differ? If he has brought him his things with the permission of the owner of this court, the owner is responsible. Rabbi, however, maintains that in all mentioned cases the owner is not responsible unless he accepted it for the purpose of guarding. Nay, perhaps the reason for the decision of the rabbis is because a court is usually a place where things are safe, and when the owner gave the permission to bring in the things, he did so with the intention of guarding them but in our case, which concerns a public place, the expression "Leave it" may be understood to mean, "Leave it and guard it yourself." On the other hand, the reason for the rabbis' decision may be because usually one must have permission to enter a court belonging to a private person, and when he asked leave to place his things in the court, he answered, "Enter"--*i.e.*, "enter and guard your things yourself"; but in a public place the expression "Leave it" may be understood to mean, "Leave it and I will take care of it," as, otherwise, does the man have to ask permission from him to leave it there?

On a pledge, he is a bailee for hire, etc. Our Mishna is not in accordance with R. Eliezer of the following Boraitha: "If one lends money on a pledge, and the pledge was lost, he may take an oath that there was no wilful neglect in guarding it, and collect his money from the borrower; so is the decree of R. Eliezer." R. Aqiba, however, maintains the defendant may claim, "You have lent me the money only on this pledge, and as the pledge is lost, so is your money." But if he lends a thousand zuz on a note, and also added a pledge, then all agree that he loses his money in case the pledge is lost (as then the pledge is not for any other purpose than to collect the money *from it* in case of default; otherwise the note would be sufficient even from an

encumbered estate. Hence we see that R. Eliezer considers the possessor of the pledge a gratuitous bailee, contrary to our Mishna).

Shall we assume that the above-mentioned Tanaim speak of a case in which the pledge was not worth the amount lent upon it, and their point of differing is in a case which is similar to Samuel's following theory: "If one lends to his neighbor a

thousand zuz, and pledges for them the handle of a scythe only, if the handle is lost, the thousand zuz are lost (as he accepted it as a pledge for his money, he intends to collect his money only from it)? Nay, when the pledge was not worth the amount lent, none of them agrees with Samuel, as they speak of a pledge worth the amount lent, and the point of their differing is R. Itzhak's following decision: Whence do we deduce that a creditor acquires title to the pledge? From [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God." Now, if the lender does not acquire title to the pledge, what righteousness is there? But how can you understand it in this way? Was, then, R. Itzhak's decision in a case where the article was pledged at the time the money was lent? The above verse cited by him treats of a pledge taken by the court (as explained elsewhere). Have you ever heard that he said the same when it was pledged at the receipt of the money? Therefore, we must say, that all agree with R. Itzhak, and they speak of a case where it was pledged at the time of receiving the money, and the point of their differing is in regard to a guardian of a lost thing , of which R. Joseph's decision was that he is a bailee for hire.

But is it to be assumed that as to the above decision of R. Joseph the Tanaim differ? Nay; all agree with his decision. Here, however, they differ in case the lender uses this pledge for the purpose of deducting from the debt. According to one, a meritorious deed was done by him by lending the money (for which he will be rewarded), and he is therefore considered a bailee for hire; and according to the other, the using of the pledge is for his own sake, and there is no meritorious deed, and therefore he is considered a gratuitous bailee.

Aba Saul said, etc. Said R. Hannan b. Ami in the name of Samuel: The Halakha prevails in accordance with Aba Saul; and he also decided so only for a hoe; a stone-cutter's chisel and a hatchet, which are frequently used, pay, the wearing off of them being very little.

MISHNA *VI*.: If one carries a barrel from one place to another, and breaks it, whether he was a gratuitous bailee or for hire, he must swear (that there was no neglect), and is free. Said R. Eliezar: I have also heard that in both cases he has to take an oath, but was wondering how such a decision could hold good.

GEMARA: The rabbis taught: If one carries a barrel from

one place to another for his neighbor and breaks it, whether he was a gratuitous bailee or for hire, he must swear; so is the decree of R. Meier. R. Jehudah, however, says: If he was a hired man, he must pay.

R. Eliezar said, etc. Shall we assume that R. Meier holds that stumbling is not considered wilful neglect? Have we not learned (First Gate, p. 62) that if one has not removed his broken pitcher or his fallen camel from a public thoroughfare, and upon it some one is injured, R. Meier makes him responsible. And the sages, however, maintain that he is free in civil court, but responsible in heavenly court, and we are aware that the point of their differing is whether stumbling is considered a wilful neglect? Said R. Hyya b. Aba in the name of R. Johanan: This oath is an enactment of the sages, as, if it would not be made, no one could find a man to carry a barrel for him.

What shall he swear? Said Rabha: "I swear that I broke it unintentionally"; and R. Jehudah comes to teach us that the oath is only for a gratuitous bailee, but that a bailee for hire must pay, each according to the law applicable to them (as in my opinion stumbling is not considered a wilful neglect, but between a neglect and an accident, therefore it must be compared with the law of stolen or lost, and there was no enactment of the sages at all); and R. Eliezar (of our Mishna) comes to teach that he has a tradition that R. Meier is right in his decision, but I do not understand how an oath could be given to both kind of bailees, as an oath is correct only concerning a gratuitous bailee, who has to swear that he has not neglected (as I also agree with R. Jehudah that stumbling is not considered neglect). But what should a bailee for hire swear? That he has not neglected? He must pay even then. And also concerning a gratuitous bailee, an oath would do if in the place where he had to pass was a declivity in the middle of the alley; but if not, how can he swear that he has not neglected, when he was stumbling on an even way? (and this, as said above, "is considered between neglect and accident"). And finally, in case of a declivity also, an oath should be given only when there are no witnesses that such was in the way; but if there are witnesses, why an oath? Have we not learned in the following Boraitha: Aissi b. Jehudah said, The Scripture reads [Ex. xxii. 10, 11]: "No man seeing it, then shall an oath of the Lord be between them both." But if there was a man who had seen it, then he must testify, and the defendant is acquitted.

There was a man who carried a barrel of wine on the main street of the city of Mahuza, and broke it on a beam projecting from a wall. When he came before Rabha he said: In the main street many people are passing; go and bring witness that there was no neglect on your part and you will be acquitted. Said R. Joseph, his son, to him: Is your decision in accordance with Aissi (mentioned above)? And he answered: Yea; as I hold with him.

There was a man who sent a messenger to buy for him four hundred barrels of wine, and he did so, but thereafter he informed the sender that the contents of all of them became sour. When the case came before Rabha, he said: If such a considerable quantity of wine became sour, people would talk about it, and become aware of where the barrels were placed, and what was the reason the wine became sour. You are therefore responsible, unless you bring witnesses to show that at the time you bought it the wine was good, and was spoiled by an accident. Said R. Joseph, his son, to him: Is your decision in accordance with Aissi? And he answered: Yea; as so the Halakha prevails.

R. Hyya b. Joseph enacted in the city of Sikhra that the carrier who carries his burden by means of carrying poles, if he carries barrels of wine, and they break, he has to pay half damages only. Why so? Because with a burden which is too heavy for one and too light for two, it is to be considered between neglect and accident. They, however, who carry by means of trimmer

beams must pay the whole (because taking such a heavy burden, which needed the strength of two, is considered a wilful neglect).

There were carriers who broke a barrel of wine belonging to Rabba b. b. Hana, while in his service, and he took their garments for the damage caused; and they came to complain before Rabh, who commanded Rabba b. b. Hana to return their garments. And when the latter questioned him: Does the law prescribe so? He answered: Yea; as it is written [Prov. ii. 20]: "In order that thou mayest walk in the way of good men." Rabba b. b. Hana did so. The carriers, however, complained again: "We are poor, we were working the whole day, we are hungry and have nothing to eat." And Rabh told Rabba he must pay them for their labor. And he asked again: Is so the law? And he answered: Yea; as it is written [*ibid*., *ibid*.]: "And observe the path of the righteous."

Footnotes

191:1 Rashi explains this passage in another manner, which is somewhat complicated. Our translation seems to us to be the right one.

201:1 This is the explanation of the Goanim, but Rashi does not agree, because it does not lessen the increase of size; he therefore interprets this in the first explanation; both, however, are too complicated, and it is difficult to understand the real meaning without a correct knowledge of the custom, weight, and measure used at that time.

202:1 Elsewhere it is explained that all anonymous Mishnayoth are in accordance with R. Meier, and this Mishna being anonymous, hence the question.

Next: Chapter VII