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CHAPTER IX

RULES AND REGULATIONS CONCERNING THE HIRING OF FIELDS; PAYMENT OUT OF THEIR PRODUCTS OR IN MONEY; THE NEGLECT OF THE HIRER; WHAT HE MAY OR MAY NOT SOW IN THEM.

MISHNA *I.*: If one hires a field (no matter under what condition, for a half, third, or a quarter, or for so and so many kurs a year) he must do as it is customary in that country: to scythe, to turn it out, or to plough, to weed after them. (When they come to divide) the grain, they have also to divide the hay and straw. If the stipulation was made on wine, then they divide the vine and sticks. They must also prepare together the sticks needed for the vineyard for the next year.

GEMARA: There is a Boraitha: If the custom was to scythe, he must not tear out, as the owner of the estate may say it is better for me that some of the straw remains, which will serve me to prepare manure next year. Or if the custom was to tear it out, he must not scythe, although one might say I would like the garden to be clean, and the other says, I would like to have the straw of it, and the reason is because each of them has a right to prevent the other.

To weed after them he may. Is not this self-evident? The case was in such a place where the custom was not to weed, and he, however, did so while still growing, saying, I do so now in order that I shall not have to do it after the grain is taken off. It teaches us that such a stipulation is not to be considered.

All must be done according, etc. What does it mean to include in the word "all"? That what the rabbis taught: Where it was customary to let the trees with the earth he may do so, and in the places where it is not customary he must not do so. Is this not self-evident? The case was in places where it was customary to let it for a third of the products, and he let it for a quarter, lest one say that the owner may say, I have reduced the price for the purpose of saving the trees for myself. It comes to teach us that this cannot be done unless so stipulated.

Where it is customary not to let it, etc. Is this not self-evident?

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[paragraph continues] The case was in places where it was customary to let for a quarter, and he took it for a third, lest one say that the hirer may claim, I have increased the price for the purpose that you should give it to me with the trees. It comes to teach us that this cannot be done unless so stipulated.

R. Joseph said: In Babylonia there is a custom that the gardener is not given any straw. To what purpose does he say this? Because if it happened that some are doing so, it shall not be

considered as a custom, but attributed to their goodness. The same said again: The first earth upon the trench, the second, and the third, and also the sticks for the thorns must be furnished by the owner; the thorns themselves, however, by the gardener. This is the rule. All things which are considered the most necessary for preserving the garden must be furnished by the owner, but extraordinary things by the gardener. (As this benefits him only as this saves him time and trouble.) He said again: The hoe, the dung-fork, the pail, and the bag for water is to be furnished by the owner; the gardener, however, has to dig the channels for water.

As they divide the wine, etc. What have sticks to do here? In the school of R. Janai it was said, *i. e.*: The peeled sticks on which the vine is usually supported.

They must also, etc. Wherefore this addition? This corresponds to the former, and it means thus: Why should the sticks be divided? Because the preparation of them is to be done by both.

MISHNA *II*.: If one hires a field and it was a dry place (so that it has to be artificially watered), or a group of trees and thereafter the spring ceased to flow, or the trees were cut off, the hirer has no right to deduct from the price stipulated. If, however, at the time hired the hirer said to him: Rent me this dry field, or this field in which there are a group of trees, and it happened that the spring dried up or the trees were cut off, the right of deduction is granted.

GEMARA: How was the case? If the general river from which all water their fields become dry, why then shall nothing be deducted from the agreement; let him claim that this is a plague to the whole country (further on it is taught that in such a case the hirer may deduct)? Said R. Papa: *I. e.*, that the channel from the river to the field only became dry, and then the owner of the field may say, you could water it by means of pails. R. Papa said again: The statement of the two Mishnayoths

applies to both cases, either he took it in partnership for half or third of the product, or he hires for a certain amount of kurs. The statement of the following Mishnayoths of this chapter, however, are different, as the law which applies to an undertaking for half of the products does not apply to a hiring and *vice versa*, as it will be explained further on.

If the hirer said to him: Rent me this dry field, etc. But why? Let him say, I only gave you the name without any particular intention; have we not learned in the following Boraitha that if one says, I sell you the estate which contains a kur of earth, and there is no more than a half, or, I sell you a vineyard and there are no vines, or, I sell you a fruit-yard, and there are nothing but pomegranates, all these sales are valid as they are so called. And the same should be the case here. Said Samuel: This presents no difficulty, as in all cases of the Boraitha the owner says it to the buyer, therefore the name is considered. From the case stated in our Mishna, however, we see that he wanted that particular field upon which he was then standing, as he said *this*. Rabina, however, said: It does not matter who says so, the case in the Mishna is different, because in spite of the fact that he mentions *this*, of which it is to be inferred that he was standing upon, he nevertheless mentioned dry field also, which shows that only that particular dry field suits him, because of the circumstances.

MISHNA *III*.: If one has undertaken to work up a field, and he has neglected to do so, it must be

appraised at how much it would produce if worked, and the defaulter has to pay, as it is customary for an agreement to be so written, that should it be neglected, I will pay from my best estate.

GEMARA: R. Mair, R. Jehuda, Hillel the first, R. Jehoshua b. Kar'ha, and R. Jose, all these considered the language of the common people legal (although it was not in accordance with the enactment of the sages); R. Mair, in the last sentence in our Mishna, which is stated in his name elsewhere, R. Jehudah in the following Boraitha: One has to bring the offer that is prescribed for the present of a rich man to his wife. (The difference between the offering of rich and poor is explained in Lev. xiv. 21.) Because in the marriage contract he writes: I will take upon myself all the responsibility you have had before our marriage--*i.e.*, from the time he marries her he takes upon himself to make good all her obligations to

the sanctuary, even those contracted before marriage. [1] Hillel the first in the following Boraitha: The inhabitants of Alexandria used to betroth their wives, but at the time they were prepared to go under the canopy (Chupha) other people used to come and take them away; and the sages were about to proclaim their children bastards. Said Hillel the first to them: Bring me the marriage contract; and finding that it is written there: You shall be my wife when you enter the canopy, therefore the children were not proclaimed such. R. Jehoshua b. Kar'ha in the following Boraitha: If one lends money to some one, he has no right to pledge him through the court for more than he owes him, as is written in the agreement: You may pledge me for all I owe you. [Was this, indeed, because of the written agreement? Did not R. Johanan say: If one has pledged his debtor, and thereafter he has returned him his pledge for a short time, and meanwhile the debtor dies, the lender has a right to take it away from his heirs? (Hence we see that even without an agreement the lender acquires title to the pledge.) The agreement benefited the lender, in case the debtor has used the pledge and diminished its value, to collect it from their other estate.] R. Jose in the following Boraitha: In the places where it was customary to consider the dowery prescribed by the father of the bride, as a loan, the husband has a right, in case the marriage contract was not fulfilled to collect it from his father-in-law as a creditor. In the places, however, where it was customary to write in the marriage contract to double the amount, the husband collects the half. The inhabitants of Nahardai used to collect only the third of the amount written. Maremar, however, used to collect the whole amount. Said Rabina to him: Have you not learned where it is customary to write double he collects the half only? This presents no difficulty, as the cited Boraitha treats when it was not made with the ceremony of a sudarium, and Maremar treats when it was.

Rabina used to double the amount in the marriage contract, and when asked to strengthen this with the ceremony sudarium, he would say: One of the two, either a sudarium or

the double amount. There was one who said when on his dying bed: Give four hundred zuz to my daughter in her marriage contract, and R. A'ha b. R. Ivia questioned R. Ash,: Does he mean to give four hundred in cash, so that the marriage contract should be written eight hundred; or does he mean that it should be so written in the contract, which in reality means only two hundred? It must be investigated how he expressed himself. If he said, Give her four hundred too her marriage, then it is evident that he meant cash, and it must be written eight hundred; but

if he said, Give her in the *marriage* contract four hundred, it means only two hundred. (Said the Gemara:) In reality it is not so. There is no difference if he said to her marriage, or in her marriage contract, it must be considered that he intended two hundred, unless he said give her four hundred without any addition.

There was one who undertook to work up a field, and he said: Should I neglect I will give you one thousand zuz. Finally he neglected to work up a third of it, and the sage of Nahardai decided he shall pay him 333 1/3 zuz. Rabha, however, said the whole thing was only an asmakhta, which gives no title. But why should this be different from that which is stated in our Mishna: If it will be neglected I shall pay with my best estate? In the Mishna there was no exaggeration; here, however, when he said he will give a thousand it was merely an exaggeration.

There was another man who undertook to work up a field for poppy and had sowed it with wheat. The wheat, however, became dear, so that the price was equal to poppy (so that the owner of the estate suffered no loss). R. Kahna, nevertheless, was about to deduct from the agreement the value of the fertility which was used less for wheat than it should have needed for poppy. Said R. Ashi to R. Kahna: People say it is better for one that his earth should become meagre than he himself.

There was a man who undertook a field for poppy, sowing with wheat, and finally the wheat was worth more than poppy, and Rabina was about to say that the hirer shall take the value of the increase. Said R. A'ha of Difti to him: Was the increase from the grain only; was it not also from the fertility of the earth? The sages of the Nahardai said: If one takes an article to sell in places where it is dearer, for the half profit, the enactment of the sages was that half shall be considered a loan and the other half a deposit; and they did so to benefit both. The borrower is benefited, as he has the right to use the half for his

own expenses, and the lender, because the half, which is considered a deposit, collects it from his heirs in case he dies, as it becomes no personal property of theirs. This is in accordance with R. Ida bar Rabin.

Rabha, however, said: It is therefore called business that first one must not use it for himself; and, secondly, that if he dies it should not be considered personal property of his heirs.

Rabha said: If one has given articles for business without any stipulation (the law of which is that the owner takes three-quarters of the profit, and suffers half if damage occurs), and took from him two notes, *e.g.*, if he sold him two bundles of goods for two hundred zuz, and took a note for each of them for a hundred zuz, and the borrower had sold out one bundle for one hundred and thirty zuz and the other for seventy, then if there were only one note, it would be considered no profit nor loss. But now, as there are two, to one there is a profit of thirty zuz, of which the lender takes two-thirds or twenty, and the other one is considered thirty zuz loss, of which the lender suffers half. If, however, it is the reverse (*i.e.*, he took two loans in two days on one note), then in such a case as stated above, the borrower suffers (five zuz), not the lender. He said again: If one took money for business, and has had a loss, and thereafter he exerts himself and regains the loss, but failed to notify the lender both of the gain and the loss, he cannot claim that the lender shall suffer any loss, because the lender may say to him: You have exerted

yourself for your own benefit to regain it, that people shall not say that you are a poor business man. The same said again: If two persons took money from one lender for business, they shall do it together, and one of them profits and wants to separate himself from his partner, he has no right to do so if his partner protests and says: Let us be partners until the time appointed for returning the money. And if one claims: I would take half the profit for my share, the other may prevent him, saying he cannot take out the profit because of the possibility of future loss. And even if one of the partners claims the half profit and half of the principal amount, the other can prevent him by saying: We cannot divide, as the whole money belongs to the business. And if he promised his partner that in case of loss he shall suffer his share, his partner can prevent him by saying that the fate of two is better than of one.

MISHNA *IV.*: If the gardener did not want to weed the field, saying: I will give you your due, he must not be listened

to, as the owner may claim, To-morrow you will leave this field, and I will have to weed it myself.

GEMARA: And even if the gardener says: I will weed it afterwards, the owner may say: I want good wheat, and if it is not weeded the wheat cannot be as good as when weeded. And if he says: I will buy you good wheat from the market, he may say: No, I want the wheat from my estate, and even if he claim: I will weed out that share of it which belongs to you only, he may say that by doing so you will spoil the reputation of my field. But did not the Mishna give only one reason, *that I will have to weed it, etc*.? All these claims are included in the one reason given by the Mishna, that finally he will have to weed it. (The statements of this Mishna apply only to a hirer, but not to one who took it in partnership.)

MISHNA *V.*: If one took a field in partnership, and it was not productive, he must not leave it as long as there is hope of bearing even only one heap. R. Jehudah says that there is no appraisement as to the contents of a heap, he therefore maintains that he must not leave it if there is hope of the products being at least as much as was sowed.

GEMARA: The rabbis taught: If one took a field in partnership and it was not productive, if there is grain sufficient to make one heap, he is obliged to work it up; as the usual written agreement of such a partnership is as follows: I will plough, sow, weed, make sheaves, thresh, blow, and will make a heap of it for you, and then you will take half and I for my labor the other half. What should be the quantity of the heap? To cover the winnow--*i.e.*, that if put in it should be completely covered.

The schoolmen propounded a question: How is it if both edges of the winnow are still visible? Come and hear. R. Abuhu said: R. Jose bar Hanini explained to me, when the right side of the winnow cannot see the sun. It was taught: That quantity of the heap is three saahs according to Levi, and according to the disciples of R. Janai two. Said Resh Lakish the saahs in question must remain after it was cleaned out.

But how much is it? Said R. Ami in the name of R. Johanan, four saahs for one kur, and R. Ami himself maintains eight for a kur. There was a certain old man who said to R. Huna b. Rabba bar

Abuhu: I will explain to you the reason of their statements. In the year of R. Johanan the earth was fertile, and four for a kur was sufficient, but in years of R. Ami

the earth was already meagre. There is a Mishna (Peah XV.): If the wind has spread the sheaves it must be appraised how much gathering for the poor there would be if this had not occurred. R. Simeon b. Gamaliel said: He may give to the poor as much as was sowed, and what a quantity does he mean? When R. Dimi came from Palestine he said: In the name of R. Eliezar or R. Johanan four kabs to a kur.

R. Jeremiah questioned, Is it meant for a kur seed (*i.e.*, for a kur sown in the field), or for the field where a kur grain can be gathered; and if you should mean for a kur seed, there is still a question whether it means for sowing by hand or with oxen? (As to the last one the quantity is larger.) Come and hear. When Rabin came he said in the name of R. Abuhu, quoting R. Eliezar or R. Johanan, four kabs for a kur seed; the question, however, whether with bands or oxen remains undecided.

MISHNA *VI.*: If one hires a field, and the locusts destroyed it or it was burned, if this was a general plague in the country he may deduct from the agreement, but not otherwise. R. Jehuda, however, maintains that if he has hired it for money, he must deduct under any circumstances.

GEMARA: What is to be understood by a plague of the country? Said R. Jehudah as, *e.g.*, the majority of the valley, where there were many fields, was destroyed. Ulah, however, said: If four fields, on all its sides.

If the owner had told him to sow it with wheat, and he had sowed it with barley, and the fields of the majority of the valley were destroyed and also his barley, may the owner of the field claim that if he had sowed it with wheat, according to the agreement, it would not have been destroyed, as I have prayed that I should succeed in wheat, not in barley? Common sense dictates that his claim is right. If it happened that all the fields of the landlord were destroyed, and which was hired included, but the majority of the valley was not destroyed, may the hirer claim that since all your estate was destroyed, it is your fate that this field was also destroyed? The landlord, however, claims that if you hadn't hired it some of my field should have been left to me, consequently it is your fate. Common sense dictates that the claim of the landlord is right. If all the estates of the hirer were destroyed, and also the majority of the valley, may the hirer claim that because the majority of the valley was destroyed he has not to pay, or the landlord may

say: As all your estate was destroyed, it was your fate that this was also destroyed? Common sense dictates the claim of the landlord is right. But why should not the hirer claim that if it were my fate something would be left to me, as it is said above concerning above? As the landlord may say that if Providence would favor you, some of your own fields would have been left to you. An objection was raised from the following: If that year was a year of destruction, or a year which was like the years of Elijah (without rain), it must not be counted among the years of redeeming. We see then that he compares a year of destruction to the years of Elijah, when there

was no grain at all, but where grain is to be found it is not to be considered a plague of the country.

Said R. Na'hman bar Itz'hak: There it is different, as it is written [Lev. xxv. 15]: "According unto the number of harvest years," etc., which signifies that as long as there is some grain in the country it is called a harvest year.

Said R. Ashi to R. Kahana: According to your theory, let the Sabbatic year be counted, as there is grain out of Palestine where the Sabbatic year is not observed, and he answered: The Sabbatic year is a decree of the king, and must not be considered at all.

Samuel said: The statement of our Mishna applies only when he has sowed it and it was grown, and then the locusts have destroyed it. But if he has not sowed it at all because of the locusts, the hirer is responsible, as the landlord may claim that if you would sow it the verse of Psalm, xxxvii. 19 would apply to me.

There is one Boraitha which states that if this happened once, he has to sow it the second time and also the third, but not if it happened the third time also. And another Boraitha states that he has to sow it even after the third time, but not after the fourth. This presents no difficulty. As one Boraitha is in accordance with Rabbi, who holds that two times is to be considered a hazaka, and the other Boraitha is in accordance with R. Simeon b. Gamaliel, who holds that it must not be considered so unless it happened three times. Resh Lakish said: The Mishna treats: In case it was sown, grown, and then was destroyed by the locusts; but if he has sown and it didn't grow, the owner of the estate may claim he shall sow it again and again, until the sowing time is past. But when is it considered past? Said R. Papa: When the gardeners come from the field in the month Adar.

An objection was raised from the following: R. Simeon b. Gamaliel in the name of R. Mair and also R. Simon b. Mnasia said: That the latter half of Tishri Mar Cheshvan and the first half of Kislev is the time for saving, the latter half of Kislev Tabeth and the half of Shbat is winter; the latter half of Shbat, Adar, and the half of Nisan is cold; the half of Nisan, Iyar, and the half of Sivan is harvest; the latter half of Sivan, Thamuz, and the half of Ab is summer, and the half of Ab, Ellul, and the half of Tishri is heat. (Hence we see that the time of sowing is only until the half of Kislev.) R. Jehudah counts from Tishri. R. Simeon, however, counts from Cheshvan. But even then, who is more lenient? R. Simeon, who counts from Cheshvan, does not even count the sowing-time until Adar. This presents no difficulty. The one speaks of a case when he took the fields for sowing wheat and corn, which are usually sown in the beginning of the winter, and the other speaks of barley and peas, which are usually sown in Adar.

If he hired for money, etc. There was one who undertook an estate to sow garlic on the shore of the river of the old king; and it happened that the river was stopped. When the case came before Rabha, he said that it is not usual for this river to be stopped up, and consequently it is therefore considered a plague of the country, and you may deduct. Said the rabbis to him: Have we not learned in our Mishna that R. Jehuda said if he took it for money, he must pay under all circumstances, and he answered: There is no one who cares for his decision.

MISHNA *VII*.: If one hires a field for ten kur wheat per annum, and the products are poor, he may pay him with the same. The same is the case if the wheat was good, he cannot say: I will pay you with the best of the market, but must furnish him with the same.

GEMARA: There was a man who took an estate for pastio (pasture; such a field is usually sown many times a year) for one kur of barley. First he used it for pasture, and afterward he sowed barley in it, and the barley was bad. R. Habiba of the city of Sura, on the shores of the Euphrates, then sent a message to Rabina, asking: How should such a case be decided? Is it equal to the statement of our Mishna, which says that he must pay with the products of the estate, or as he hires it for pasture, and uses it for barley, it is different? And Rabina answered: What comparison is this? In the case of the Mishna the earth was sown according to the agreement, and the payment

has to be with its products; but here he has not conformed to the agreement, hence he has to pay him with the good barley of the market.

There was a man who hired a vineyard for ten barrels of wine, and thereafter the wine became sour. R. Kahana was about to say that this case is equal to the case stated in the Mishna, that if the field becomes stricken and produces bad barley, he may pay him with its products. Said R. Ashi to him: What comparison is this? In the case of our Mishna the earth failed to give what was expected of it; here, however, the earth did fulfil the expectation, and the *wine* became sour thereafter. However, R. Ashi admits that when the grapes become wormy, and also in case the sheaves of the field became spoilt, that he has to repay him with the same.

MISHNA *VIII*.: If one takes a field for sowing barley, he must not sow wheat in it; but if for wheat, he may sow barley. R. Simeon b. Gamaliel forbids this: he must not sow peas in that which was taken for grain, but he may sow grain in that taken for peas. R. Simeon b. Gamaliel forbids this also.

GEMARA: Said R. Hisda: The reason of R. Simeon's statement is, because it is written [Zephaniah, iii. 13]: "The remnant of Israel shall not do injustice or speak lies, and there shall not be found in their mouth a deceitful tongue."

An objection was raised from the following: That which was collected for the poor on Purim must be distributed at the same time without any particulars. However, the poor must not buy with the donation a strap for the shoes, unless it was so stipulated by the elders of the city. So is the decree of R. Jacob in the name of R. Mair. R. Simeon b. Gamaliel, however, was lenient (permitting this). Hence we see then that he was lenient in his decision, and in our Mishna, however, he is rigorous. Said Abye: R. Simeon's reason is as my master (Rabba) said: He who likes his earth to bring forth good fruit, should sow in it one year wheat and the other barley; one year in the length and the second in the width. This, however, is the case if he does not sow in time, but if in time it does not matter.

He must not sow peas, etc. R. Jehudah taught to Rabin: If for grain, he may sow peas. Said Rabin to him: But did not the Mishna state he must not? And he answered: My statement is not contradictory, as the Mishna speaks of Palestine, which is mountainous, and the leanness of the

earth is taken into consideration; and I talk of Babylon, which is

situated in a valley, and there is no fear of this. Said R. Jehudah to Rabin b. Na'hman, Rabin, my brother: Cresses growing among flax may be used without fear that there is robbery (because the owner is benefited by their removal, as they do more harm than good). If, however, they are placed outside of the flax-beds, then it is robbery, and the same is the case even if they grow among the flax, but are already grown up as much as the flax, and so do no more harm. The same said again: Rabin, my brother, in our fields, which are closely attached, there are some among my trees, the branches of which are bent toward yours, and *vice versa*. In such cases, however, the custom is that the fruit belongs to the side to which the branches incline. As it was taught: A tree which stands on the boundary of two estates belonging to two different persons, where the branches are inclined there should the fruit be used. So said Rabh. But Samuel maintains that it is to be divided. An objection was raised from the following: A tree which is placed on the boundary is to be divided, and this contradicts Rabh. In order that the cited Boraitha should not contradict Rabh, Samuel explains that it speaks of a case in which the tree in question occupies the whole boundary; but, then, it is self-evident? It means even when all the branches are inclined to one side. However, even then it is self-evident? Lest one say that then one's neighbor has a right to say. You may take of the fruit of those branches which are inclined to your field, and I will take the remainder, it comes to teach us that our neighbor may say, We must share equally.

The same said again: Rabin, my brother, see that you do not buy an estate close to the city, as R. Abuhu in the name of R. Huna quoting Rabh said: One is not allowed to stand and consider his neighbor's field when the fruit is nearly ripe because of an evil eye. Is that so? Did not R. Abba meet the disciples of Rabh, asking them what has Rabh to say to the following verses [Deut. xxviii. 3-6]? And they answered: Rabh said thus: "Blessed shalt thou be in the city," means your house shall be near the synagogue; and "Blessed shalt thou be in the field," means that your estate should be nearer to thy city; "Blessed shalt thou be at thy coming in," means you shall find your wife and family ready to please you; and "Blessed shalt thou be at thy going out," means that your offsprings shall be equal to you. And R. Abuhu answered: R. Johanan interpreted them differently-namely: "Blessed thou

shalt be in the city," means that the closet of man's necessity shall be near his house [but not a synagogue, as the one who goes further is rewarded for his walk]; "Blessed shalt thou be in the field," means that thy estate shall be thirded, one third in grain, one in olives, and the other in wine; and "Blessed shalt thou be in thy coming in and in thy going out," means that your departing from this world shall be equal to your entering, as your entering was without any sin, so shall be your departing. (Hence we see that it is a blessing if the estate is near the city?) This presents no difficulties. When it is fenced it is a blessing, but not when it is not.

It is written [Deut. vii. 15]: "And the Lord will take away from thee all sickness." Said Rabh: It means an evil eye. And Rabh is in accordance with his theory, as it happened once that Rabh was at the cemetery, and he did what he did, and said thereafter: I see that ninety-nine of the dead were killed by an evil eye, and only one died a natural death. But Samuel said: All sickness is from the air, and as he said elsewhere, that every sickness and death came from the air. But

are there not some who were killed by the government? Also these, if not the air, a medicine could be prepared that would restore them. R. Hanina, however, says that the verse means cold, as it is written [Proverbs, xxii. 5]: "Thorns and snares," etc., [1] from which we infer that everything is in the hands of Heaven but cold. R. Eliezar said, *i.e.*, the gall; and so also have we learned in the following Boraitha: The word ma'hlah [2]means the gall. And why is it called ma'hlah? Because it makes sick the whole body of the man. According to others it is called ma'hlah, because there are eighty-three kinds of sicknesses to which the cause is only the gall (and the letters of the word ma'hlah number eighty-three), and all these sicknesses are abolished by consuming bread with salt and a pitcher of water early in the morning.

The rabbis taught: Thirteen advantages can be gained by taking the early morning meal--namely: prevention from heat, cold, winds, evil spirits, and also the brightening of the fool, the winning of a law-suit (Rashi explains this, that the early meal brightens his mind so that he can explain his case clearly to the court), to learn, to teach, his words are listened to, his

learning is retained, his flesh does not give too much heat, and he does not lust for a strange woman, and the meal also kills the parasites in the intestines, and according to others it removes jealousy and brings love.

Said Rabba to Rabha bar Mari: Where is it from that people say, Sixty racers cannot reach the man who takes his meal early in the morning; and also the rabbis say, Get up early in the morning and eat, in the summer because of the heat and in the winter because of the cold? And he answered: Because it is written [Isaiah, xlix. 10]: "They shall not be hungry nor thirsty, and neither heat nor sun shall smite them," etc., which is to be explained that they shall not be smitten by heat and cold, because they were not hungry in the morning. And he rejoined: You infer this from this; I, however, from the following [Ex. xxiii. 25]: "And ye shall serve the Lord your God," means the reading of shemah and praying; "and he will bless thy bread and thy water," means the bread and salt and the pitcher of water taken in the morning; (and this will do that:) "I will remove sickness from the midst of thee."

R. Jehudah said to R. Ada, the land-surveyor: You should be very particular in your business. Bear in mind that every inch of the earth is fit for sowing saffron. And he said again to the same: When you are measuring the trench from the river to the fields, you should not be particular with the four ells near the trench which the owners are forbidden to sow. However, that which remains on the shore for anchoring, do not measure at all, but leave it so that it should be conspicuous enough; and this advice is in accordance with his theory, that the four ells of the trench belong only to those who are benefited by them, but that of the shore belongs to every one.

R. Ami proclaimed: A forest or any other group of trees placed on the shore must be cut off at the width of a shoulder (*i.e.*, to leave space for the towmen of the boats on both sides of the river). R. Nathan b. Hoshea had cut off sixteen ells, and the inhabitants of Mashrunia beat him bloody. He thought sixteen ells were needed for a public thoroughfare. For the towmen, however, is only required sufficient space for the managing of ropes bound to the boat.

Rabba b. R. Huna possessed a forest on the shore of the river, and when he was asked to cut it

off, he answered: Let the forests which are before and behind mine be cut off, and then I will cut off mine. But how could he answer so? Is it

not written [Zephaniah, ii. 1]: "Gather yourselves together." And Resh Lakish said: That is, Correct thyself first, and then others? The forests before and behind him belonged to a governor of the Persians, Parzak, and Rabba was aware that he would not care to cut off his, and no one can compel him, consequently the carriers of the boats could not pass anyhow; what, then, would be the use of his cutting? Rabba bar R. Na'hman was sailing in a boat, and had seen a forest on a shore, and to the question, Whose is it? he was told that it was Rabba b. R. Huna's, and he applied to him the verse [Ezra, ix. 2]: "And the hand of the princes and the rulers hath been the first in this trespass," and he then commanded his people to cut it off. (He was not aware of that which was said above.) Rabba b. R. Huna came and found them cutting, and said: Who has cut this, his branches shall be cut off; and it was said that all the years of the existence of Rabba b. R. Huna the children of Rabba b. Na'hman were not preserved.

R. Jehudah said: All the inhabitants, even orphans, of the city must contribute to the repairing of the wall of the city if it is destroyed, but not scholars, as they need no guard (Rashi explains that their wisdom guards them); but if the spring was spoiled the scholars must also contribute (as they also require water). This applies only in the case of contribution of money, but when the contribution means to dig themselves, then the rabbis are to be freed, as it would be a humiliation for them to do this work. He said again: When there is a stop in the river, the people behind it have to contribute to the repairing of it, but not those who live before it; with rain-water, however, it is the reverse. The illustration is in the following Boraitha: If five gardens, one behind the other, which are watered from one spring, and the spring becomes spoiled, all of them are obliged to support the people of the highest one. Hence the very lowest one has to support all those above it; and if it happens that only the entrance of the lowest is spoiled, then the above are not obliged to support it. Reverse is the case with five courtyards which pour their unclean waters to one sewer, and if the channel was spoiled at the last one, all of them must support it (and also all that are above the yard have to support the lower ones, but the highest has to shift for itself).

Samuel said: If one takes possession of a dock he is a rascal, but he cannot be removed by law (Rashi explains this to mean that at the time of the Persians the estate was ownerless, and

he who paid the duty to the government acquired title, as he who took possession of the dock is given title, but this act is considered rascality, as the dock is for loading). Now, however, as the Persians write in their deed: "You may acquire title on this estate as far as the measure of a neck of a horse from the water," if any one takes possession of a dock, he is to be removed.

R. Jehudah in the name of Rabh said: If one takes possession of a field which was placed between two brothers or partners, it is considered a piece of assurance, but he cannot be removed by law. R. Na'hman, however, Pays that he may be removed also. But if there is no other right than preëmption, he is not to be removed. The N'hardais, however, maintain that even for this he is to be removed, as it is written [Deut. vi. 18]: "And thou shalt do that which is right and good in the eyes of the Lord."

In case the buyer asked advice from the preëmptor, and the latter advised him to buy, is his word sufficient, or must it be done with the ceremony of a sudarium? Rabbina says the sudarium is not necessary, and the N'hardais say it is; and so the Halakha prevails.

Now, as it was concluded that the sudarium is necessary, if it was not done, and the land became greater or less in value, it is considered under the control of the preëmptor, so that the buyer has to pay the prevailing price. If, *e.g.*, he bought it for one hundred and it was worth two hundred, it must be investigated. If the owner has lowered the price for every one, then the preëmptor has to pay him only one hundred, as he could buy it from the owner at the same price; if, however, the price was lowered only for him, then he has to pay the two hundred. If, however, he had bought for two hundred, and it was worth only one hundred, the schoolmen were about to say that the preëmptor may say to the buyer: My message to you was for my benefit not for my loss. [1] Said Mar the elder b. R. Hisda to R. Ashi: The N'hardais have declared in the name of R. Na'hman that there is no cheating concerning estates. If one bought a field which was placed in the centre of others

it is to be investigated; if this field is distinguished to be the best or the worst of all his other estates then the sale is valid; and if not, it is to be feared that that was craftiness on his part, as he may have bought it for the purpose of claiming the preemption to all fields around him.

To a presented estate the right of preëmption does not apply. Amemar, however, maintains that if the donor obliged himself in writing to be responsible for it, this law applies.

If one had sold out all his estate to one buyer preëmption cannot be claimed, and the same is the case if be returns his estate to its first owner from whom he bought it. The same is the case with an idolater. If bought, the buyer can say: Am I worse than your first neighbor? You ought to be grateful to me that I have driven a lion out from your neighborhood. If sold, the law of preëmption does not exist, as it applies only to the buyer, and he, the idolater, is not under the obligation of the above-cited verse ("do right and good"). To the seller, however, this does not apply, as he may say: No one can compel me to sell my estate. However, the seller is to be put under ban until he obliges himself to be responsible for any harm done by this buyer to the preëmptor.

To a pledged estate the law of preëmption does not apply, as R. Ashi declared that he had heard from the elders of the city of Suria that therefore is a pledge called Mashkhantha, because the one to whom it is pledged is a neighbor. (See above.)

If one wishes to sell out his estate because it is placed at too great a distance, and to buy one near him, preëmption cannot be claimed; and the same is the case if he wishes to sell out the estate near him because it is bad and to buy good ones. (The above-cited verse means to "do right and good" to one as long as he does no harm to another.) If it is sold for taxes or for the support of a widow or for burial, this law does not apply. The N'hardais said that in such cases the estate may be sold out without any proclamation; the same is the case if he sold it to a woman, to orphans, or to his partners. If he has neighbors in the city and neighbors in the field which are not considered preemptors, the former have the preference. A scholar has the

preference to a neighbor and even to a relative. The schoolmen questioned: How is it if he was both a neighbor and a relative? Come and hear what is written [Proverbs, xxvii. 10]: "Better is a near neighbor than a distant brother."

If the buyer is about to pay with current money, and the preëmptor wishes to pay with money which is of greater value but is not current, he loses his right. If the preëmptor sends money sealed (and the owner of the estate fears to open it, as it, may not be the full value), and the buyer sends it open, he also loses his right. If the preëmptor says: I am going to try to get money, it is not to be taken into consideration; if, however, he says: I have money, and I am going to bring it, if he is a wealthy man the same may be postponed, but not otherwise. If the lots belong to one and the houses to another, the former has a right to prevent the sale of the latter, but not *vice versa*. The same is the case if the field belongs to one and the trees thereon to another.

If the preëmptor wants the lots for sowing, and the buyer wants it for houses, the latter has the preference. If there was a stone or a group of trees separating the two fields, if the preemptor can in spite of this make one bed for sowing, attaching the two estates, preëmption may be claimed, but not otherwise.

If there were four preëmptors, one on each side, and one of them hastened and bought it, the sale is valid, but if all four appear at the same time, the estate must be divided diagonally.

MISHNA *IX*.: If one hires a field for a few years (less than seven) he must not sow flax in it; and he has also no right to cut branches off the sycamore tree for building purposes. If, however, he took it for seven years, he has a right in the first year to sow flax, and also to cut from the above-mentioned branches.

GEMARA: Said Abye: He has no right to the branches of the sycamore, but he has a right to the improvement of it. Rabha, however, maintains that he has no right even to this. An objection was raised from the following: When the term of his agreement to this field is at an end, the contents of the field must be appraised. Is it not as, *e.g.*, the improvement of the sycamore? Nay; it is meant the vegetables and herbs. If so, why then the appraisement? Let him take it out and go. If it happens before the market-day arrived? Come and hear. If the sabbatical year arrived, when the term of this field was not yet up, it must be appraised. [Does, then, the sabbatical year abolish the agreement? Read then the jubilee year; but even then the jubilee year abolishes only sales, but not hirings.] Read then: If the jubilee year arrived while the agreement is not yet up, it must be appraised. Now that the vegetables

should be appraised, does not apply here as in the jubilee year they are ownerless? You must therefore say that, *i.e.*, the improvement of the sycamore. Hence it is contrary to the statement of Rabha. Abye, in order that this shall not contradict Rabha, explains it thus: A jubilee year is different, as it is written [Lev. xxv. 33]: "Then shall the house that was sold," etc. The "house" which is sold . . . to be free, which signifies that a sale is to be returned, but not an improvement. Then let this law be inferred as a standard. Nay, there was a right sale, and the jubilee year is a

command of the Lord, of which a hired article cannot be inferred.

R. Papa hired fields for pasture, and some trees sprouted in them, and when his term ended he demanded the improvement of them. Said R. Shesheth b. R. Idi to him: Would you also demand for the increase in thickness of a tree if there should be one? And he answered: Then it would be altogether different, as it is not usual to hire a field for this purpose, but I have hired this estate with this intention.

(Says the Gemara:) Is this in accordance with Abye, who said above that he has a right to the improvement of the sycamore? Nay, this may be explained also in accordance with Rabha, as there the hirer suffered no damage from the improvement of the sycamore. Here, however, there is damage, as the place where the tree grows he could not use for pasture. Said R. Shesheth to him: Then I have damaged you this little space, here is the value of it and go. And he answered: Nay, I would sow saffron in this place. Rejoined R. Shesheth: With your claim that you would sow saffron, you have made clear your intention that you did not wish to improve this estate with plants which should remain forever, but with such as you could take off at will; consequently your claim is for the value of the trees for fuel; then take this value and go.

R. Bibi bar Abye hired a field, and they surrounded this field with an embankment, and some trees grew up from it, and when his term was at an end he asked for this improvement. Said R. Papa to him: Because you are descendants of frail people you speak frail words; even R. Papa demands it (in the above) only because he has had damage, but here, what damage have you had?

R. Joseph had a planter who planted all his trees for half product, and he died and left five sons-in-law, all planters. Said R. Joseph: Hitherto I have had only one to rely upon,

and now I have five; each of them may rely upon the other, and my gardens may be neglected. Therefore he said to them: If you want to take the improvement of this year and resign, it is all right; if not, I will discharge you without any reward, as R. Jehudah--according to others R. Huna or R. Na'hman--said: If a planter dies his heirs may be discharged without reward. (Says the Gemara:) In reality it is not so.

There was a planter who said: If I do any damage I will be discharged. Finally he did. Said R. Jehudah: He may be discharged without any reward. R. Kahana., however, maintains he may be discharged, but he must be rewarded for what he has done. R. Kahana, however, admits that if it was so stipulated, then he is not to be rewarded. Rabha, however, says: Even then his saying was only an asmakhta, which gives no title. But why is this different from what we have learned above: If I neglect, etc. . . . I will pay with my best estate? There is no difference, as in both cases only the amount of the damage is paid; there he pays cash for the damage done, and here is deducted the amount of the damage, and the remainder must be paid to him for his reward.

Runia, the planter of Rabbina, did damage and was discharged; and he came to complain to Rabha, who answered him: He has done right; you have so deserved. And he rejoined: But he has not given me any notice. And Rabha said: That was not necessary at all. This decision is in accordance with his theory elsewhere, that an infant, teachers, planters, butchers, barbers, and

the scribes of a city may be discharged without any notice; as there is the rule that damage which cannot be repaired annuls the agreement; and damage done by such people is counted under that category.

There was a planter who said: Give me what I am entitled to of the improvements, as I want to go to 'Palestine. When the case came before R. Papa b. Samuel, he decided that so should be done. Said Rabha to him: Was this improvement wholly due to his effort; did not the earth do its share? And the planter, said, I don't ask for the whole improvement, but only for half; and Rabha rejoined: Until now the gardener took the half for his labor, but now when he leaves, the owner is compelled to hire another man and to pay him from his pocket. And R. Papa answered: I mean he shall take a quarter of the improvement and a quarter shall remain for future labor.

R. Ashi taught that the above decision that he shall take a

quarter means a quarter from the two-thirds profit that the owner of the vineyard takes for himself, which makes a sixth of the entire improvement (*e.g.*, if the improvement was worth six dinars, two of them are for the gardener, three for the owner, and one for the planter--as Minyumi bar R. Nehumi said: In the places where the planter takes half and the gardener a third, the planter who wishes to leave the work, his reward must be appraised, so that the owner shall not suffer damage; and therefore if the quarter in question means a sixth, as explained above, it is correct, but if it should be explained literally, a quarter of the whole improvement, then the owner would suffer a half-dankha damage. Said R. Aha b. R. Joseph to R. Ashi: Let the planter say to the owner: You give your share to the gardener, and with my share I will do as I please (*i. e.*, I will sell out to some one my share, and he will do his work without paying the gardener). And R. Ashi answered him: Leave thy objections for the section Holiness, which is so complicated that your objections will best fit there. Said R. Minyumi b. R. Nehumi: If an old group of vines, which do not bear fruit, remains in the vineyard, the planter has to receive half of it, as it is considered equal to those branches of the vineyard of which the planter takes half. If, however, a vineyard was flooded, and the vines were taken out or planted in another place, the planter gets only a quarter of it.

There was one who pledged his vineyard for ten years, and it became old in eight years. Abye said: The old vines are considered improvement, so that it belongs to the lender, and Rabha said: This is to be considered the principal amount which is to be sold, and for the amount to buy another vineyard with improvement, so that the lender shall use the fruit. (Come and hear an objection:) If a married woman inherits old vines and olives, they are to be sold for fuel and for the value estate is bought, and the husband loses the fruit. (Hence we see that it is considered principal amount, and this is an objection to Abye.) This Boraitha treats of a case, that where the woman inherited trees without estate, and if it would be allowed for the husband to consume them all, then nothing would remain from the principal amount, and this is against the law, as the principal amount of the woman must always remain to her benefit; so was it explained in Tract Khthubet.

There was a note in which was written years without a number. The landlord claims it means three, and the lender

claims it means only two; meanwhile the lender hastened and took the fruit from the third year also. Now the court has to decide who should be trusted. According to R. Jehudah the estate must be considered under the hazakah of its present possessor, and he should be trusted. According to R. Kahana, as the fruit there was already consumed by the lender, they must be considered under his hazakah, so that he must not pay for it, and so the Halakha prevails. But is it not decided elsewhere that the Halakha prevails in accordance with R. Na'hman, who holds that the estate must always be considered under the hazakah of its possessor? There was a case which could not be proved which of them was right; but here it can be proved by the witnesses who signed the note, and we do not care to trouble the court twice, *i.e.*, that if the court would now compel the lender to pay, and after he will bring witnesses that he was right, they would have to replevin from the borrower. If in case the broker claims for five years and the borrower claims three, and the note was lost, according to R. Jehudah the lender is trusted, *because* should he intend to make a wrong claim, he would say, I bought it, and as there is no note he could do so. Said R. Papa to R. Ashi: R. Zebid and R. Avira do not agree with the theory of R. Jehudah. Why so? Because this note, which was for collection, was undoubtedly taken good care of, and he has only concealed it, thinking, I will meanwhile use the fruit two years more.

Said Rabbina to R. Ashi: According to this theory the pledges of Sura, to which they usually write as follows: At the elapse of the time for which it is pledged this estate should become free without any payment. Now, if the lender should conceal the document and say, I bought it, should he also be trusted according to R. Jehudah's above theory? Is it possible that the rabbis should make such enactments by which the borrower should easily suffer? And he answered: There was the enactment of the sages, where the owner of the land should pay taxes and dig a trench around it. Now if this land was bought without a trench, and the taxes were unpaid, what could the buyer do? And he answered: He has to protest, in order that people shall know that it is a pledge only, and by not doing so he has done harm to himself.

If the gardener claims: For the half I worked, and the owner says for a third, who should be trusted? According to R. Jehudah, the owner; according to R. Na'hman, however, the custom

of the country must be considered. The schoolmen were about to say that the above do not differ, as R. Jehudah speaks of a place where the gardener takes only a third. Said R. Mari, the son of Samuel's daughter, to them: So said Abye, Even at the place where the gardener takes half they differ, as according to R. Jehudah, even then the owner is trusted, as, should he like to make a wrong claim, he could say the gardener was hired for money for a certain time.

If orphans claim: *We* have made the improvements of this estate (and so no creditor has anything to do with it), and the creditor claims: It was improved by your deceased father, for whom is it to bring evidence? R. Hanina was about to say that the estate is to be considered under the hazakah of the orphans, consequently the creditor has to bring evidence. Said a certain old man to him: So said R. Johanan, that the orphans must bring evidence, because an estate which is to be taken away for debt is to be considered as if already done, and therefore *they* are considered the plaintiffs.

Said Abye: We have also learned the same in the Third Gate concerning a tree which was placed

within fifty ells of the city, and it was doubted whether the city was built first or the tree was planted first. It was decided that the tree must be cut off at any rate. Hence, we see that because the tree is to be cut off it is considered as if already cut, and the evidence is only for the money (this will be explained in Third Gate in this case). The same is the case here; the note upon the estate is for collection, and it must be considered as if already collected, and the plaintiffs are the orphans. But how is it if the orphans have brought evidence? Again R. Hanina was about to say, that we give them estate for their claim. In reality, however, it is not so, as they get money, not estate for their claim; and this is to be inferred from the statement of R. Na'hman in the name of Samuel, who declares in the First Gate, page 216, that there are three to whom the improvement must be appraised, and they take money not estate for their claim. (See there.)

MISHNA *X*.: If one hires a field for the whole sabbatic season (*i.e.*, seven years, from the first year until the sabbatic year is past) for seven hundred zuz, the sabbatic year is included; but if for seven *years* the sabbatic year is to be excluded. A day-laborer has to collect his money the whole night after that day; for a night-laborer the whole day after it; if he was hired for a few hours, the night and day after. For a week,

month, year, or for the whole sabbatic season, if his term expired during the day, collects in the same day, and if at night, that night, and the whole day after.

GEMARA: The rabbis taught: Whence do we deduce that a day-laborer has to collect the whole night after? From Lev. xix. 13: "There shall not abide with thee the wages of him that is hired, through the night until morning." And whence that a night-laborer collects the whole day after? From Deut. xxiv. 15: "On the same day shalt thou give him his wages," etc.; but perhaps it means the reverse? Wages are paid only at the end.

The rabbis taught: As it is written: "There shall not abide with thee . . . through the night" it is self-evident that, *i.e.*, until morning. Why, then, is it repeated? To teach the transgression of this commandment comes and ceases with the first morning. But what does he transgress after that time? Said Rabh: He transgresses, You shall not keep wages. Said R. Joseph: Where is such a verse to be found? [Proverbs, iii. 28]: "Say not unto thy neighbor . . . when thou hast it by thee," etc.

The rabbis taught: If one told his neighbor to hire laborers for him, neither of them transgresses the above-cited verses. The owner, because he *himself* has not hired them; and the hirer, because they have not worked with him. However, this is only in case the hirer told the laborer: You shall get your payment from the owner. But if he told him: I will pay you, the transgression rests upon him. Jehudah b. Maramar told his servant: Go and hire laborers for me, and tell them that they will get their payment from the owner. Maramar and Mar Zutra, when they required laborers, hired one for the other, with the stipulation that they should get the payment from the owner. Said Rabba bar R. Huna: The inhabitants of Sura, who usually get their money on the market-day, do not transgress if they postpone the wages of their laborer until the market-day, as the laborers are aware of this. However, if they have money and do not pay, they transgress that of the Proverbs cited above.

For a few hours, etc. Said Rabh: If he was hired for hours of the day, he collects the whole day,

and if for the night, he collects the whole night. Samuel, however, maintains that of the day collects at daytime, and that of the night collects at night and the whole day after. But does not our Mishna state "for a few hours, the night and day after," and also further

on, "for a week, month," etc., "if his term expires during the day, collects in the same day," etc., which is an objection to Rabh's statement? Rabh may say that in this case the Tanaim differ, as we have learned in the following Boraitha: A laborer of a few hours of the day collects the whole day; of the night, the whole night. So is the decree of R. Jehudah. R. Simeon, however, maintains that of the night collects the whole night and the day after. From this it was said that one who withholds wages transgresses the commandments of the following five verses: [Lev. xix. 13,] "Thou shalt not withhold anything from thy neighbor," [and *ibid*.,] "nor rob him"; [Deut. xxiv. 14,] "Thou shalt not withhold," etc., and in the above cited verse, "There shall not abide," etc.; and from [Deut. 15,] "On the same day," etc., and finally, that "the sun may not go down upon it." The laborers who finish at daytime, the night does not apply to them, and they who finish at night, to them the day does not apply.

Said R. Hisda: The Boraitha does not mean that one transgresses all the five negative commandments cited above, but the case of hiring is subject to them, that some of them transgress when the day is past, and some when the night is past. What is considered withholding and what robbery? Said R. Hisda: Come again, come again, is withholding; but if one says: "I have the wages, but do not want to give them to you, "' that is robbery.

R. Shesheth opposed from the following: What is considered withholding? That to which the Law prescribed an offering, which is equal to that, as, *e.g.*, to him who denies a money-deposit. (Hence "call again" is not under that category, as he does not deny.) Therefore, says Rabha, withholding and robbery are one and the same. And why is it written separately? That one, by doing this, transgresses two negative commandments.

MISHNA *XI*.: The commandment: "In the same day you shall give his wage," and also the negative, "there shall not abide . . . until morning," applies to men, cattle, and vessels; however, the transgression is only when the laborer demanded it, but not otherwise. If the owner has transferred him to the storekeeper or money-changer (and he does not pay him immediately) there is no transgression.

A laborer who claims his wages when his time for collection is not yet elapsed, collects his money with an oath (in case the owner says, You were paid already), but not after the lapse of

time. If, however, there are witnesses that he has demanded his money in due time and did not get it, he may collect it with an oath even thereafter.

To a proselyte who promised not to worship any more idols, and not to commit adultery, but not to conform to all other Jewish laws, the commandment, "Thou shalt pay him the same day," applies. However, not the negative commandment, "There shall not abide," etc.

GEMARA: According to whom is the statement of our Mishna? Not to the first Tana, nor according to R. Jose bar Jehudah of the following Boraitha: It is written [Deut. xxiv. 14]: "Of thy brethren," means to exclude idolaters; "or of thy strangers," means a real proselyte; [1] "that are in thy land," means a proselyte who has only promised not to worship idols. This all treats of the wages of man; whence do we know that cattle and vessels are to be included? Therefore it is written, "in thy land"--*i.e.*, all which is in thy land--and for all of them the transgressions of the five cited verses apply. From this it was said that there is no difference between the wages of man, of cattle, and of hired vessels; the verse, "in the same day," etc., applies, and also the verse, "there shall not abide . . . until morning." R. Jose b. Jehudah, however, said, that to a proselyte of the second kind mentioned above, the first verse, "in the same day," applies, but not the other one; to cattle and vessels neither applies, but "Thou shalt not withhold" does apply.

Now if the Mishna would be in accordance with the first Tana, then the proselyte in question would be a difficulty; and if with R. Jose, then the cattle and vessels stand in the way. Said Rabha: Our Mishna is in accordance with a Tana of the disciples of R. Ishmael, who taught elsewhere the very same as our Mishna does.

What is the reason of the first Tana of the above Boraitha? He takes into consideration the analogy of the expression "hired," which is written in Deut. xxiv. 14 and Lev. xix. 13. As in the former case the law of robbery applies to a proselyte, cattle, and vessels, the same is the case there with wages. And R. Jose b. Jehudah does not take this analogy into consideration. But even then, why should not the law of in the same day,"

etc., apply to cattle and vessels also? Taught R. Hanina: Because it is written [Deut. xxiv. 15]: "That the sun may not go down upon it, for he is poor." This signifies that this law applies only to those who can become poor or rich, excluding cattle and vessels, to which such conditions cannot apply. The first Tana, however, needs this verse, because of the law that if there were two laborers, a poor one and a wealthy one, and he has cash at that time to pay only one of them, the poor has the preference. And R. Jose maintains that this is deduced from *ibid*. 14. The first Tana, however, maintains that both of the above-cited verses are needed; one to give preference to the poor over the rich, and the other to give preference to the poor over the mendicant; and there is a necessity for both, as we could not infer one from the other. *E.g.*, if it were written that the poor laborer has preference over the mendicant, one might say that because the mendicant is not ashamed to demand it, and because the rich laborer is ashamed to make demand, the poor laborer is not to be preferred; and if it were written concerning a wealthy laborer and a poor one, one might say that because the wealthy man does not need it, and a mendicant needs it as much as the poor laborer, the latter is not to be preferred; therefore both are written.

What does R. Jose deduce from the words, "with thee," from the above-cited verse? That which R. Assi said: That even if he was hired only to press one cluster of grapes, if he was not paid in time, there is a transgression of "there shall not abide . . . till morning." The first Tana, however, maintains that this can be deduced from [Deut. xxiv. 15] "his soul longeth," etc., which signifies that the law applies to all things for which "his soul longeth."

It was said: From the words, "the soul longeth," etc., is to be inferred that one who withholds wages is considered as if he would take out the soul. And R. Huna and R. Hisda differed in the explanation of it. According to one it means the soul of the withholder himself, and according to

the other the soul of the laborer. The reason of the former is [Proverbs, xxii. 22, 23]: "Rob not the poor . . . and despoil the life of those that despoil them"; the reason of the latter is [*ibid*. i. 19]: "It taketh away the life of those that own it."

Is only when the laborer demanded it, etc. The rabbis taught: One might say that he is guilty even when the laborer does not demand. Therefore it is written, "with thee," which means

with thy knowledge. (And if he does not demand, how should he know that he needs it?) And lest one say that he is guilty even if he has no cash at that time, therefore it is written, "with thee"; and lest one say that he is guilty even if he has transferred him to a storekeeper or money-changer (with his consent), therefore it is written "with thee."

The schoolmen propounded a question: If the storekeeper or the money-changer failed to pay him, may he return his claim to the owner or not? According to Rabha he may, and according to R. Shesheth he may not. Said Rabha: My statement is based upon the teaching of the Mishna, which states "there is no transgression," from which we infer that the transgression does not apply, but the obligation remains. R. Shesheth, however, interpreted this expression, that he is no more subject to that law.

R. Shesheth was questioned: Is piece-work subject to that law or not? Shall we assume that the master acquires title to the improvement of an article given him, and therefore when he returned it and was not paid, it is to be considered as a loan, for which there is no transgression; or that the master does not acquire title and it is considered labor? And R. Shesheth answered, It is subject. But there is a Boraitha that it is not. The Boraitha treats if he has transferred him to a storekeeper or money-changer.

Collects his money with an oath. For what purpose have the rabbis enacted the oath? Said R. Na'hman in the name of Samuel: These enactments were made to serve as a rule forever; in such cases as are biblical, the oath is to be taken by the employer, and the rabbis have removed the oath from him to the laborer for the sake of his livelihood (*i.e.*, that he should be able to take an oath immediately and collect the money).

But is it correct that for the sake of the laborer the right of the employer should be taken away? With this his right is not taken away, as it is more pleasant for the owner that the oath shall be given to the laborer, so that laborers shall not say that he pays his laborers with oaths. But why can you not say the reverse, that it may be more pleasant for the laborer if the employer takes the oath, that the employers shall not say that he is an unjust claimant? Therefore it must be said that the reason is, that because the owner has many laborers, it is easy for him to make a mistake in giving to one man instead of the other and swear falsely. But if so, why should not the laborer

be paid without any oath? To quiet the mind of the employer. But why should it not be enacted that the owner shall pay in the presence of witnesses? This would be too much trouble. But why should it not be enacted that it shall be paid in advance? Because it is convenient to both to have the payment after (for the owner, as perhaps he has not yet prepared it, and for the laborer, as he

may lose it while laboring). If so, why should not the law be the same concerning a stipulation; and there is a Boraitha that if the specialist says: Your stipulation was to pay me two dinars for this my work, and the employer says only one, the plaintiff has to bring evidence (and if he has none the defendant takes an oath)? Stipulations are different, because they are usually borne in mind. But if the reason is because the owner is liable to make a mistake, why should not the same law apply even if the time has elapsed, and the statement of our Mishna is not so? It is because usually one would not easily transgress the law, "There shall not abide," etc. But was it not said that the owner is liable to make a mistake, as he has many laborers? This is before the time elapsed, but thereafter one is reminded of his duty. But is then the laborer suspicious of robbery? Concerning the owner there are two hazakahs; one that it is not likely that he would transgress by not paying, and the other that the laborer would not leave his wages without any claim. The laborer, however, has only one hazakah, that he would not demand robbery; therefore the preference is given to the employer.

If there are witnesses, etc. But is he not demanding now? Said R. Assi: The witnesses are that he did so in time. But perhaps he has paid him afterwards? Said Abye: The witnesses are to testify that he had demanded in time, and afterwards was not paid. But does this hold good forever (*i.e.*, that the laborer must always bring witnesses when he demands wages)? Said R. Huna bar Uqba: It means one day after time is elapsed, it was granted that he shall take it with an oath.

MISHNA *XII*.: If a creditor has to pledge his debtor, he may do so only by court; and even then he has no right to enter his house, as it is written [Deut. xxiv. 11]: "In the street shalt thou stand." If he had mortgaged him two vessels, he may take only one; he also has to return a pillow for the night and the plough for the day. If the debtor dies, however, he has not to return it to his heirs. R. Simeon b. Gamaliel, however, said that even to the debtor himself he is not obliged to

return only the first thirty days; thereafter he may sell it out in the presence of the court.

GEMARA: Said Samuel: Even the messenger of the court has a right only to take away from him in the street, but not to enter his house.

But does not our Mishna state that he shall pledge him in the court, of which it is understood that the court may pledge him even in his house? In this case Tanaim differ, as we have learned from the following Boraitha: The messenger of the court who came to pledge a debtor must not enter the house, but stand on the street; and the debtor has to bring the pledge out to him, as it is written: "In the street shalt thou stand, and the man"(which may be interpreted the messenger of the court and the creditor). And another Boraitha: If the creditor himself comes to pledge him he must stand outside, and the debtor has to bring him the pledge, but if this is to be done by the messenger of the court, he may enter the house; however, he has no right to pledge cooking utensils, and he also must leave two beds, and a feather-bed for a wealthy man, and a bed and a mat of reeds for the poor one; for him, but not for his wife and children, as the cases of estimation and creditor are equal, concerning the essentials of the debtor, that it must be left to him.

The master said: Two beds, etc. For whom? It is not for his family, as it is stated "for him only."

Why, then, are two beds necessary? One for eating and one for sleeping? And this is according to Samuel, who said: That to all sicknesses I know a remedy except to the following three: if one eats unripe dates on an empty stomach, if one wraps himself with a wet μεθοιον on the naked body, and if one takes his meal and immediately goes to sleep without walking four ells.

A disciple taught in the presence of R. Na'hman: We have to leave for the debtor if he owes to an ordinary creditor. The same essentials which are left by the collector in case of an estimation must be left also in case of a common creditor.

Said R. Na'hman to him: According to the law all his goods are sold out for the sake of the creditor, as, according to R. Simeon b. Gamaliel, after thirty days even the pillows must be sold out, and you say that here shall be applied the law of estimation.

But whence do we know that the Halakha prevails in accordance with R. Simeon b. Gamaliel? Perhaps it prevails in accordance

with the first Tana of our Mishna. The disciple who taught in the presence of R. Na'hman said that so is the law, even in accordance with R. Simeon, and therefore R. Na'hman's objection. But perhaps even R. Simeon b. Gamaliel means to say that only things which are not absolutely necessary are sold, but not that which is. If it were borne in mind that so is the decree of R. Simeon, then all the things would be considered absolutely necessary for him, as Abye said that R. Simeon b. Gamaliel, and R. Simeon, R. Ishmael, and R. Akiba--all of them hold that in this respect all Israel are equal to princes. R. Simeon b. Gamaliel and R. Simeon in Tract Sabbath (pp. 228, 276), and R. Ishmael and R. Akiba in the following Boraitha: If one owed a thousand zuz and wears a stola worth almost the same price, it is to be removed and replaced by another one according with his dignity; however, it was taught in the name of Ishmael and R. Akiba that all Israel are fit for such a stola. But according to that which was borne in mind first, that we sell out only what is not necessary, it is correct with a pillow and a cover that they can be sold out, and cheaper ones bought. But a plough, to what purpose should it be sold, as all the ploughs are alike? Said Rabha b. Rabba, *i.e.*, in case his plough was a silver one. R. Haga opposed. Let the creditor say: Is it my duty to support you? Said Abye to him: Yea, it is so, as it is written [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God."

The schoolmen propounded a question: If things belonging to a debtor are to be sold out, has the court to consider which should be sold and which left to him, or is all sold out? Come and hear. Rabbin sent a letter: I have questioned this from all my masters, but there was no reply. The question, however, was as follows: If one vowed a mana for the preparation of a temple, and the treasurer came to collect this money from his property, does he take all that belongs to that man, or are the essentials to be left him? And to this question R. Jacob in the name of R. Pada and R. Jeremiah in the name of Ilpha said that it must not, because an *a fortiori* conclusion is to be drawn fro-m a creditor who is obliged to return necessary things. Nevertheless, when, selling out, nothing is left, so much the more as in the case of the sanctuary, which has not to return, that nothing should be left. R. Johanan, however, maintains concerning estimation [Lev. xxvii.]: It is said, "a particular vow," to

the estimated value, and in case of estimation necessary things are left; the same is the case with the sanctuary.

Rabba bar Abuhu met Elijah at a cemetery of idolaters, and questioned him about the law in question in regard to a creditor, and he replied: There is an analogy of the expression "poor" used in both estimation [*ibid*., *ibid*. 8] and creditor [Lev. xxv. 35], from which we infer that the same law is to be applied in both. Rabba then questioned him: Is not your master a priest, a descendant of Aaron? Why then do you stand on a cemetery? And he answered: It seems that you have never studied Section Tabarot (purifications), in which there is a Boraitha: R. Simeon b. Johe said graves of idolaters do not defile, as it is written [Ezek. xxxiv. 31]: "And ye, my flock, the flock of my pasture, are men," which signifies that ye are called men, but not idolaters. Rejoined Rabba: My circumstances hardly allow me to study the four necessary sections (Festivals, Damages, Women, and Holiness); should I undertake to study the remaining two, which are not used at the present time? Elijah then asked, What does he mean? And he answered: I cannot make my livelihood. He then took him to paradise, and told him to take from the leaves lying on the floor in the garden, and he did so. While going out he heard some one saying: Who else has consumed his share in the world to come as Rabba did? He then shook his garment, and the leaves fell out. However, his garment retained the smell of them, and be sold it for three thousand dinars, and be donated them to his sons-in-law.

The rabbis taught: It is written [Deut. xxiv. 13]: "And if he is a poor man, thou shalt not lie down with his pledge," from which it is to infer that if he was rich he may. How is this to be understood? Said R. Shesheth, *i.e.*, if he is a poor man you must not lie down while his pledge is in your house, but if he is wealthy it does not matter.

The rabbis taught: If one lends money to his neighbor, he has no right to pledge him, is not obliged to return, transgresses all the commandments which are in the Scripture concerning (pledging). What does it mean? Said Rabha: He must not pledge, and if he did so, be must return in case the pledge be taken thereafter; but if he took the pledge at the time the money was lent, he is not obliged to return; however, he transgresses the above commandments.

R. Shizby taught in the presence of Rabba: It is written

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[paragraph continues] [Ex. xxii. 25]: "Thou shalt restore it unto him by the time the sun rises" [1]--a garment used by day and pledged at night, and [Deut. xxiv. 13]: "Thou shalt punctually deliver him the pledge again, when the sun goeth down," means a garment which is used at night and was pledged in the daytime.

R. Johanan said: If the pledge was returned and the borrower died, the lender has a right to take it away from his children. An objection was raised. R. Mair said: Since it was pledged, why then the returning and pledging again? For the purpose that the sabbatic year should not make it free and it should not be considered personal property of his children in case of death. We see, then, that only in case it was pledged again this law holds good, but not if it is already in the possession of his children. Said R. Ada b. Mathna: Have you not tried to explain the curiosity of pledging and returning in some way? Explain it then thus: If it is to be returned, why then the pledging altogether? For the purpose that the sabbatic year shall not free it, and it shall *never* be

considered the property of his children.

The rabbis taught: The verse [Deut. xxiv. 10]: "Thou shalt not go into his house to take his pledge," signifies that in his house only you shall not go; you may, however, go into the house of his surety, and it is so written [Proverbs, xx. 16]: "Take away his garment because he has been surety for a stranger." And it is also said [*ibid*. vi. 1-4]: "My son, if thou hast become surety for thy friend," which means, if you were surety, then give him what you have assured, and if you have no money, see some friend, who shall ask him to favor you. "Into his house you must not go" to regain money loaned, but you may do so, for the payment of your work (with your shoulders), for your ass, for your man, or your pictures if you have not made this as a loan to him.

MISHNA *XIII*.: A widow must not be pledged whether she is rich or poor, as it is written [Deut. xxiv. 17]: "Thou shalt not take in pledge the raiment of a widow."

GEMARA: The above is the decree of R. Jehudah. R. Simeon, however, said that only a poor one must not be pledged,

because it must be returned (daily), and she would get a bad name among her neighbors, but to a rich one it does not matter. (The reason of that statement will be explained in the Third Gate in its proper place.)

MISHNA *XIV*.: One who pledged a nether and upper millstone transgresses a negative commandment and is guilty for two articles, as it is written [*ibid*., *ibid*. 6]: "No man shall take to pledge the nether or the upper mill-stone" (and not this only, but all other articles which are for the preparation of food), "for he taketh a man's life to pledge."

GEMARA: R. Huna said: He who has pledged the nether in question is punished with stripes prescribed for a negative commandment twice, for two negative commandments, for the nether and for man's life; both the nether and the upper millstone, he is to be punished thrice. R. Jehudah, however, maintains for each part of them, but not for man's life, as that verse signifies that all other working instruments are under the same law.

There is a Boraitha in accordance with R. Jehudah: If one has pledged a pair of scissors, or a team of cows, he is guilty for two crimes. If, however, he pledge only one of them, he is guilty for one; and another Boraitha states: Lest one say that he is guilty for one crime even if he pledge a pair, therefore it is written: "He shall not pledge the nether or the upper mill-stone." As these are separate instruments used together, one is guilty for each of them separately; so also is the case with all other instruments of such a kind.

There was a man who pledged a butcher knife from his debtor, and Abye told him to return it, as it is an instrument used for preparing food; and for his debt he shall summon the butcher. Rabha, however, maintains that this is not necessary, as the pledger could claim, I bought it. Therefore the whole value of this pledge can be collected for his debt. But did not Abye hold the same theory? Why should this be so different from the case which happened in Nahardai, that goats have consumed peeled barley, and the owner of the barley took the goats for pledge, and has

claimed more than the value of it, and the father of Samuel decided that he could collect from them the whole value? There it was different, as the barley was not for hire and loan, but the knife was for loan and hire. And R. Huna b. Abin sent a message: That all things which are for loan and hire, the one who claims that he has bought it is to be

trusted. But did not Rabha hold this theory? Has he not taken away from orphans a pair of scissors and a book of Hagada because they were for loan and hire? Rabha may say that a knife which became spoilt by frequent use one is particular not to lend.

Footnotes

276:1 We have translated this from the text, and according to the commentary of Thosphath. Rashi, however, says that he could not explain this paragraph, and, therefore, he brings another text of *Thorath Kohanim*, which is exactly the contrary to this text. It is remarkable, however, that in the Tract Yebamoth, 35 B., where the same is brought, Rashi explains it exactly as Thosphath did, without any remark, and Thosphath brings the text which Rashi used here.

285:1 The Hebrew term for this is ziria, *i.e.*, cold, for which the Talmud takes it; Lesser, however, translates it differently, according to the sense further on.

285:2 The Hebrew term for sickness is "ma'hlah."

288:1 The Ashri maintains that this claim is not meant that he may give him only one hundred zuz, and the buyer shall lose one hundred, as this would not correspond with the verse cited, "right and good." As if the estate would remain with the buyer it may be he would lose nothing, or to him it was worth double; but this is meant that the sale shall be considered invalid.

298:1 The Hebrew term for this is Garkho, literally, "thy coinhabitant." The word Gar, however, means also a proselyte. The Talmud explains it thy proselyte, *i.e.*, one who promised to keep the whole Jewish law.

305:1 Bo Hashemesh is the Hebrew term, which can be explained "the sun rises and also it goes down." (See Isaiah, Ix., Gen. xxvii.; in both places the word Bo is used.) Hence, Shizby explains, the first the sun rises and the second it goes down.

Next: Chapter X