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CHAPTER III.

RULES AND REGULATIONS CONCERNING OCCUPANCY (HAZAKAH)--AT WHAT TIME AND IN WHAT RESPECT IT GIVES TITLE. REPLEVINS BY COURT. PROPERTIES OCCUPIED BY A DEFENDANT WHO IS MIGHTIER THAN THE PLAINTIFF BUT EQUAL IN EVIDENCE. A PROTEST AGAINST OCCUPANCY IN ONE'S PRESENCE: OR ABSENCE BY ONE'S OPPONENT. THE WRITING OF BILLS OF SALE AND DEEDS OF GIFT. OCCUPANCIES WHICH CAME FROM INHERITANCE. THE OCCUPANCIES OF SPECIALISTS, PARTNERS, GARDENERS, AND GUARDIANS. OBTAINING PROPERTIES FROM THE CONTRACTING COLLECTORS OF DUTIES AND TAXES. BAILMENTS--OF WHOM THEY MAY BE ACCEPTED. PERSONAL PROPERTIES TO WHICH THE LAW OF OCCUPANCY DOES AND DOES NOT APPLY. OPENING OF WINDOWS AND DOORS TO NEIGHBORS' OR PARTNERS' PROPERTIES, AND BUILDING OF CAVES, PITS, ETC., UNDER PUBLIC GROUND.

MISHNA *I.*: The law of hazakah (occupancy) is, if one has occupied any property for three years from date to date (without any protest from another party), and this applies to houses, pits, excavations, caves, pigeon-coops, bath-houses, press-houses, dry land, slaves, and the same is with all other articles which bring fruit frequently. However, to a field not artificially watered, the three years of hazakah must not be counted from date to date. Thus, according to R. Ishmael: If one had occupied it eighteen months--viz., three months in the first year, the following whole year, and three months of the third, it is considered three years, and constitutes a hazakah. R. Aqiba, however, said: "Fourteen months--viz., one month of the first, one month of the third, and the whole second year suffices to constitute a hazakah." Said R. Ishmael: This is said of a grain field of which the products are harvested at one time; but if an orchard were within, bearing olives and figs, then, if one has harvested the grain, pressed the olives, and dried the figs, it is considered three years.

GEMARA: R. Johanan said: I have heard that the Sanhedrin of Usha used to say: Whence do we know that to constitute a

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hazakah three years are needed? From the law of a goring ox; as an ox, when it gores thrice, comes out of the category "not vicious" and is placed under the category of "vicious." So, also, if one has occupied a property three years (without protest), it comes out from the control of the seller and is placed under the control of the buyer.

But if this is so, it can be said that as a vicious ox is not guilty unless he gores the fourth time, so also should it be with the hazakah, that it shall not be considered until the fourth year. Nay, that is no comparison. An ox which gores three times becomes vicious; but even then, if he has not gored oftener, what shall he pay? But here, when one has occupied any property for three years, it becomes his. But according to this, let an occupancy for which no reason can be given by the occupant be considered; and this is not permissible, since a Mishna further teaches that such is

not to be considered? The reason that three years are considered a hazakah is because it approves the claim of the occupant--*e.g.*, if the plaintiff claims, "You have stolen it," and the defendant says, "I have bought it," the occupancy of three years approves the fact that the defendant tells the truth. But if to the question, "What are you doing on my property?" he has no answer, what shall the hazakah approve? Shall the court make for him such a claim as he himself does not? R. Avira opposed: If hazakah is inferred from a vicious ox, then a protest not made in the presence of an occupant should not be considered, as concerning a vicious ox the maiming must be in his presence [Ex. xxi. 29]? Nay; in this respect, there is no comparison, as there the Scripture directs that the warning shall be in the presence of the owner. But here the protest is only to show that he had not relinquished his ownership, and if he has protested for other people it suffices, as he (who has heard the protest) has a colleague, and his colleague has another, etc.; and if it is said in public, it will certainly reach the ear of the occupant. According to this, if he has occupied it three months and consumed the fruit which grew each month--*e.g.*, a *pastio*--let it be considered a hazakah? Was not R. Ishmael [1] of the Sanhedrin of Usha? And according to him this law holds good; as it is stated in our Mishna that if he has harvested his grain, etc., it is considered three years, according to R. Ishmael. But what is the reason of the decision of the rabbis? Said Rabha: Because for the first

three years one usually takes care of his deed; but not for more than this. Said Abayi to him: According to your theory, let a protest which is not in his presence not be considered; as the occupant might claim, "If you gave the protest to me, I would take care of the bill of sale," this claim cannot be considered for the reason stated above, "that your colleague has a colleague," etc.

R. Huna said: "The three years in question must be uninterrupted." What does he come to teach us? Is it not stated in our Mishna, three years from date to date? Lest one say that it means to exclude the case which is told in the Mishna, of a field which is not artificially watered, but if one has occupied it three years on an average it is considered a hazakah even if it was with interruption, he comes to teach us that it is not so. Said R. Hamma: R. Huna admits that in places where it is usual to let the fields rest one year, the three years are considered hazakah, although there is interruption. Is this not self-evident? The case was when he had his field in a *pagus*, where some let it rest while others did not: lest one say that the plaintiff might claim, "If it were yours, you would not make any interruption," he comes to teach us that the defendant might claim, "It was more agreeable for me this way, because after it rests a year it brings more produce." But does not our Mishna apply hazakah to houses to which testimony could be given for occupying in the day-time, but not in the night-time? (Hence a hazakah is considered even when there is no testimony that it was not interrupted.) Said Abayi: Who testifies as to the occupancy of houses? Neighbors. And neighbors are aware of the nights as well as of the days. Rabha said: The Mishna means when two witnesses came and testified: "We have rented the house from the defendant, and lived in it three years, day and night." Said R. Jimir to R. Ashi: Are the witnesses not interested in it; for if they would not so testify, they would be told to pay their rent to the plaintiff? Answered he: "Ignorant judges would give such a decision. May it not be the case that the witnesses hold the rent of the house, asking, To whom shall we pay?" Said Mar Zutra: Nevertheless, if the plaintiff requires that the defendants should bring two witnesses who should testify that they lived in the house three years, day and night, the court must listen to him. And Mar Zutra admits, if the plaintiff was a traveller who had travelled in large cities with his stock that although he does not require the testimony for day and night, the court may claim it for him. And R. Huna admits,

that in stores like those of Mehusa, which are usually occupied in the daytime only, three years is considered a hazakah.

Rami and R. Uqba, the sons of Hamma, bought a female slave jointly: one kept her the first, third, and fifth years, and the other the second, fourth, and sixth. And thereafter a claim was made concerning this slave. And they came before Rabha. Said he to them: Why did you do so--to the end that neither of you should be able to claim hazakah? As it is not a hazakah for each of you, so it is not considered a hazakah for the whole world. This, however, applies because there was no written agreement between you that she should serve you in such a manner. But if such had been written, it might be regarded the same as if it were made public, and no claim is to be considered. Rabha said: If one has used a whole field the years of hazakah, except a quarter of a saah, he acquires title to the whole field except to that which he has not used. Said R. Huna to R. Joshua: It is so if this piece was also fit for sowing. If, however, it was not fit for that, title is acquired to it also, with the field. R. Bibi b. Abayi opposed: According to your theory, how should one make a hazakah on rocky ground, if not by putting cattle or drying fruit there? The same ought to be done with that which was not fit for sowing; and because he has not done so, title is not acquired.

There was one who said to his neighbor: "What are you doing in this house?" to which he answered: "I bought it from you and have occupied it the years of hazakah." Said the plaintiff: "I used to live in the front rooms, passing through yours, and therefore I did not care to protest." And when the case came before R. Na'hman, he said to the defendant: Go and bring evidence that you have occupied the whole house alone. Said Rabha to him: Does not the law dictate that it is for the plaintiff to bring evidence?

The following case, however, contradicts both R. Na'hman and Rabha. It once happened that one said to his neighbor: "I sell you all the properties which formerly belonged to Bar Sisin." There was, however, another estate which also bore the name of Bar Sisin estate, and the buyer wanted to take possession of it; but the seller claimed that this had never belonged to Bar Sisin, and that it was only so called. And when the case came before R. Na'hman, he decided that it belonged to the buyer; and Rabha said to him: Does not the law dictate that it is for the plaintiff to bring evidence? Hence the decision of this case contradicts

the former entirely? Nay; in the former case the plaintiff was the owner of the house, and in the latter case the buyer was the plaintiff. Hence Rabha did not change his decision. And concerning R. Na'hman, he also did not contradict himself; but merely because it was named Bar Sisin, he held that it was formerly owned by Bar Sisin, and it was for the claimant, who said it was not so, to bring evidence. And this case is similar to a case where one wants to deny hazakah with a note. Would it not be said to him: Bring evidence that the note is a right one, and then only you can have this?

There was one who asked his neighbor, "What are you doing in this house?" and he said, "I bought it from you, and I have occupied it the years of hazakah." But the owner claimed that he

was always out of the city and was not aware that he had been occupying this house, and therefore no protest was made. The defendant, however, stated he had witnesses to the fact that thirty days each year the owner used to be in the city, to which the plaintiff again answered: "These thirty days I was always busy in the market, and I never thought about my house." When the case came before Rabha, he decided that the owner of the house was to be trusted.

There was another who asked his neighbor, "What are you doing on my estate?" to which he answered, "I bought it from so and so, who told me that he bought it from you." Then he said: "You admit, however, that the estate was mine and that you have not bought it from me. Then go (and see the man you bought it from). *I*, however, have nothing to do with you." And Rabha decided that the plaintiff's claim was in accordance with the law.

There was another who answered to the same question as above: "I bought it from so and so, and occupied it the years of hazakah." But the owner answered: "That man is known as a robber." The defendant, however, claimed that he had witnesses that at the time he bought it he took the owner's advice. To which the plaintiff answered: "It is true I advised you to buy it, because it would be easier for me to take it away from you than from the robber." Upon which, Rabha decided that the plaintiff's claim was in accordance with the law. Is this in accordance with Admon of the following Mishna: "If one claims that this estate belongs to him notwithstanding the fact that he was a witness on the bill of sale to this field, it may be considered, because he may claim that from this man it is easier for

me to take it away than from the first. So is the decree of Admon. The sages, however, maintained that when he was qualified as a witness he lost his right." It may be even in accordance with the rabbis, as in the case of the cited Mishna he was a witness in writing; but here he only gave his advice in words and had not lost his right.

There was another case where one questioned and answered the same as above. Said the defendant: "I have witnesses that you called upon me on that evening and requested me that I should sell it to you, without your mentioning that it belonged to you." And the plaintiff replied: "I thought I would buy my estate for a small amount, instead of taking the matter into court." And Rabha, before whom the case came, decided that such a claim might be considered.

There was another case in which the defendant claimed that he bought it from so and so, and had occupied it the years of hazakah, to, which the plaintiff opposed: "Here is a bill of sale, showing that I bought it four years ago from the same man you claim you bought it from." To which the defendant answered: "Do you think by the expression 'the years of hazakah,' I meant three years? I meant many years--so that I had occupied it three years before you bought it." And Rabha decided that people call many years the years of hazakah. But this can hold good only when he has occupied it seven years, so that the years of hazakah have preceded the bill of sale; but if he has occupied only six years, then the claim of hazakah cannot be considered, because the bill of sale is the greatest protest.

If two persons come before the court, one claiming, "This estate was my parents'," and the other claiming, "It was my parents'," and one of them brings witnesses that it was his parents', and the other witnesses that he had occupied it the years of hazakah? Said Rabha: The one who brings

evidence that he occupied it the years of hazakah is to be trusted, since, if he wished to tell a lie, he could claim, "I bought it from you and have occupied it the years of hazakah." Said Abayi to him: "The supposition if he cared to tell a lie cannot be applied in a case where there are witnesses. "If thereafter, however, the plaintiff claims: "It is true it was your parents' estate, but I bought it from you. And by what I said before, I It was that of my parents,' I meant that this estate was so long in my possession that I looked upon it as if it were bequeathed to me by my parents"--may one change his claim before the court, or not?

[paragraph continues] According to Ula he may do so by giving a good reason; but according to the sages of Nahardea, he may not. Ula, however, admits that if the first claim was, "It was my parents', and not yours," it cannot be changed in any circumstances. The same is also the case if, before the court, he claimed so, and afterwards, as he was going out, he claimed otherwise, since it is to be supposed that to such claims he was advised by some one else, and they must not be considered. The Nahardeans, however, admit also that if this man claims, "When I said my parents' estate, I meant that my parents bought it from yours," such a claim is to be considered; and also that if one, in discussing a case outside of the court, did not mention anything of that which he is now claiming before the court, he cannot be accused of not having said so before, as it may be supposed that one does not like to tell his right claim to people in absence of the court. Said Amemar: "I am a Nahardean, and nevertheless hold that if there is a good reason one may change his former claim." And so the Halakha prevails.

If one claims, "It was from my parents," and the other claims the same, and one brings evidence that it was his parents' and that he occupied it the years of hazakah, and the other also brings evidence that he has occupied it the years of hazakah? Said R. Na'hman: Disregard the claims of hazakah which contradict each other, and decide it under the evidence that it was from the parents, which was not denied. Said Rabha to him: But do not the witnesses contradict each other, and in such a case not one of them ought to be taken into consideration? And he answered: They contradict each other as to the years of hazakah, but do they contradict themselves with regard to the parents?

Shall we assume that Rabha and R. Na'hman differ in the same way as R. Huna and R. Hisda differ? As it was taught. If two parties of witnesses contradict each other, they may be listened to in another case where there is no contradiction. R. Hisda, however, maintains that, it being manifest they are perjurers, nothing must be trusted to them.

Shall we then assume that R. Na'hman is in accordance with R. Huna, and Rabha with R. Hisda? Nay; if the decision were in accordance with R. Hisda, Rabha and R. Na'hman would not differ (as, according to R. Hisda, such witnesses cannot be used again in any case). Therefore we must say that both are in accordance with R. Huna; and nevertheless they differ, as Rabha maintains that even according to R. Huna the witnesses are fit

for another case, but in this case they must not be listened to in any circumstances. The man who previously brought evidence that he had occupied it the years of hazakah, found thereafter witnesses that the estate was his parents'. Said R. Na'hman: We dispossessed the defendant of that estate (for a good reason), and now that the circumstances have changed we may bring him

in again, without fear that this would be a humiliation to the court. Rabha, or, according to others, R. Zera, objected from a Mishna in Tract Kethuboth, which states, concerning marriage, that after the court has decided no change is to be made, even in the event of new evidence being introduced. Said R. Na'hman to him: I was about to practise according to my theory. Now, as you object, and R. Hamnuna of Suria does the same, I shall not do so. However, thereafter R. Na'hman acted according to his theory. One who had seen him doing so thought it was an error on his part. In reality, however, it was not, as he did so on the basis that many other great men had decided that the humiliation of the court must not be taken into consideration.

There was one who said to his neighbor, "What are you doing on this estate?" to which he answered, "I bought it from you, and here is the deed," to which the defendant opposed that the deed was false: The plaintiff bent and whispered to Rabba: Concerning this note, his claim is right. However, I possessed, but lost, the true one; and this is a correct copy. Said Rabba: He may be trusted, since if he wished to tell a lie he would claim that the document was genuine. Said R. Joseph to him: "But, after all, what is the basis of the plaintiff's evidence? Is it not the deed in question in reality nothing else but a broken piece of clay, as he has himself admitted that it was made by him?"

There was another case similar concerning a hundred zuz in cash, in which the plaintiff admitted that the note in his hand was a false one, made instead of the genuine, lost; and Rabba took it into consideration for his reason stated above, and R. Joseph opposed him as above. And R. Iddi b. Abbin said: The Halakha prevails in accordance with Rabba if the case dealt with real estate, because we leave the estate in the possessor's hands. And the Halakha prevails in accordance with R. Joseph if the case concerned ready-money, for the same reason that we have to leave the money in the hands of the possessor (*i.e.*, according to the rule that it is for the plaintiff to bring evidence).

There was a surety who claimed that he had paid to the

lender for the borrower one hundred zuz, by showing the note. Said the borrower: "Did not I pay you?" And he answered: "But did you not take it again from me." When the case came before R. Iddi b. Abbin, he turned it over to Abayi, and Abayi sent a message to R. Iddi: Why are you doubtful in this case? Was it not you who said that the Halakha prevails with R. Joseph in case of ready-money--that is, that we leave the money with its possessor? This law, however, holds good when the surety claims he lent it again, without giving any reason; but if he claims, "I returned the money because it was not circulating," this claim must be considered, and the note is in force.

It was murmured among people that Rabha b. Sharshum had appropriated land belonging to orphans; and Abayi sent for him and asked him to tell him about the case. And he told him thus: This estate was pledged to me by the father of the orphans. I, however, had other money with him without any pledge; and after I had collected the first debt from the product of the pledge I knew, if I turned over the estate to the orphans and claimed that I had other money with their father, I should have to take an oath in accordance with the decision of the rabbis (stated above, p. 10). Therefore I kept the pledge, with the deed, until I should collect from the products what was due me, and then I would return it. And the court must take my claim into consideration in

accordance with the theory of "because"--that is, because I could claim that I had bought the estate from the deceased, and I would be trusted after I had occupied it the years of hazakah, therefore my claim that I had money with the deceased must be regarded. Said Abayi to him: You could not claim you had bought it, as people are still murmuring that the estate belongs to the orphans. Therefore you must return the estate to the orphans, and when they shall be of age, you can sue them.

A relative of R. Iddi b. Abbin died, and left a tree, and another relative took possession of it. But R. Iddi claimed that he was a nearer relative, and that it belonged to him, while the other claimed that he was a nearer relative. Finally the other party admitted that R. Iddi was a nearer relative, and R. Hisda transferred the tree to R. Iddi. Said R. Iddi to R. Hisda: This man must return to me all the product of this tree which he has consumed since the death of the owner. Said R. Hisda to him: Are you the man about whom it is said that he is a great man? Your claim relies upon his admission that you are a nearer relative,

after you gave evidence; but until that time he felt sure that he was a nearer relative. Consequently he has consumed the fruit rightly, and his admission now is to be considered as if he made you a present. Both Abayi and Rabha disagreed with R. Hisda, as his admission now must be taken into consideration, even concerning the previous product.

There was one who questioned his neighbor as to what he was doing on his estate, and he answered: "I bought it from you, and occupied it the years of hazakah." However, he found witnesses for the occupancy of two years only; and R. Na'hman decided he should return the estate, and also the value of the fruit he had consumed in two years. Said R. Zebid: If he were to claim: "I did not intend to keep the estate, but had the right to consume the fruit thereof, because I rented it," he is to be trusted; for did not R. Jehudah say: If one holds a scythe and a basket, saying, "I am going to gather the dates of such and such a tree, which I bought," he is to be trusted, because one would not dare to take possession of a tree which does not belong to him? And the same is the case here, for no one would dare to consume fruit which did not belong to him. If so, why should this law not apply to an estate also? For land a deed is demanded (as nobody would buy an estate without a deed); but in hiring products, a deed is unusual, and therefore it cannot be demanded.

There was another man who questioned his neighbor as to what he was doing on his estate, and he answered, "I bought it from you and occupied it the years of hazakah," to which he brought one witness. The rabbis who were in the presence of Abayi, before whom the case was brought, were about to say that this was similar to the following case: One snatched a piece of silver from his neighbor, and the case was brought before R. Ami, in the presence of R. Abba, and the plaintiff brought one witness that he snatched. And the defendant answered: "Yes, I took it; but I did so because it was mine." And R. Ami was deliberating," How decide this case?" Shall he repay it? There are no two witnesses. Shall we free him? There is one witness. Shall we give him an oath? The plaintiff claims that he snatched it, which is robbery, and a robber is not to be trusted with an oath. Said R. Abba to him: Consequently this man is obliged to take an oath, for which he is not to be trusted. And the law is, that he who is obliged to take an oath and cannot swear, must pay. Said Abayi to them: What comparison is this? A case

similar to R. Abba's would be if the *plaintiff* had brought one witness that he had consumed the product two years; then he would have to pay, because he would not be trusted with an oath, as concerning the consumed fruit he would be considered a robber. [1] But here, the *defendant* has brought a witness to support himself; and if he had another, we would leave the whole estate in his hand. Hence he cannot be considered a robber who is not to be trusted to take an oath, and therefore we cannot make him pay.

There was a boat about which two parties quarrelled, each claiming that it was his, and one came to request the court that it should take charge of the boat until he should be able to get witnesses that it was his. Should his request be granted, or not? According to R. Huna, it should; and according to R. Jehudah, it should not. But in case the request was granted and the court took charge of it, and the other party, seeing that his opponent could not find evidence, requested that the court should resign its charge and leave it to the parties, so that he who could, should take possession of it--should this request be granted, or not? According to R. Jehudah, it should not; but according to R. Papa, it might. The Halakha, however, prevails that in such a case the court should not take charge of it; but, if it was already done, it should not be released before the question was decided.

If each of the parties claim: "This estate belonged to my parents"--said R. Na'hman: "In such a case, the law of the stronger is to be applied." But why should this case be different from a case where two notes are given out on the very same date to two different persons, and the property of the debtor is sufficient for the payment of one note only, in which Rabh's decision was that the property should be divided between both creditors equally; and Samuel's, that it must be left to the consideration of the judges, so that they might give the preference to him who had more right according to their opinion? It is because there is no hope that one of them would bring evidence that he has the preference (since the notes were written on one and the same day, and even if one should bring witnesses that his note was written before the other, there is a rule that there is no priority in a

matter of hours); but in one case there is hope that one of them may bring evidence. But why should this case not be equal to the one in Mishna 4, p. 261, Middle Gate, about the doubt when the young ass was born, and it was decided that it should be divided? There each of the parties, claiming it was born while under his control, has an equal chance; but here each of them claims the whole article to be his own, and the court cannot decide that it should be divided, since, if the claim of the one be true, the other has never had any right to it. Said the Nahardeans: If a third party from the market came and took possession of it, the court has no right to take it away from him, because there is no plaintiff. As R. Hyya taught: If one steals an article belonging to many persons, he cannot be considered a thief whom the court can compel to return it, as there is no plaintiff. Said R. Ashi: R. Hyya meant to say that he cannot be considered a thief who atones by returning the article, for he does not know whom he robbed; but the court may compel him to place the article under its charge.

"*Three years from date to date*," etc. Said R. Aba: If there are witnesses who testify that the plaintiff has loaded a basket of fruit from this field on the shoulders of the defendant, the hazakah is effected immediately. Said R. Zebid: If, however, the plaintiff claims, "I have let him this field for the products only," he is to be trusted, provided this claim was made during the

three years of hazakah, but not afterwards. Said R. Ashi to R. Kahana: Why should not his claim be regarded even after three years, as, if he sold (for three years) him the fruit, what should he do before the time had elapsed? Answered R. Kahana: He should have protested before the time the hazakah elapsed, so that it should be known that the estate belonged to him. If this were not the case, the pledges of Sura, in the documents of which are written: "After the time of these pledges elapses, this estate shall be returned without any payment," how is it if the possessor of the estate should hide the pledged deed after three years, and claim, "I have bought it"--should he be trusted? Would, then, the rabbis enact such a thing as could do harm to the pledger? We must then say that the pledger, before the lapse of the time, must proclaim his protest, so that it shall be known that the estate belongs to him. The same is the law in our case.

R. Jehudah in the name of Rabh said: An Israelite who has bought a field of a Gentile, who has occupied it the

years of hazakah, claiming to have bought it from another Israelite, but had not shown any deed, the law of hazakah does not apply to the last buyer, even if he has occupied it three years or more, because he relies upon the Gentile, and the law of hazakah does not apply to Gentiles (who are mightier); and it may happen that he has occupied the estate without any right, because the Israelite was afraid to claim it (unless he shows a deed). Said Rabha: If the last buyer claims, "I was told by the Gentile that he bought it from you," he is to be trusted, because he could claim, "I myself bought it from you, and occupied it the years of hazakah." But is such a thing possible, that if the Gentile should claim the property in his own name he would not be relied upon because the law of hazakah does not apply to him, and when the Israelite claims in the Gentile's name he is to be trusted? Therefore Rabha's statement was thus: If the last buyer claims, "In my presence the Gentile bought it from you, and then he sold it to me," he is to be trusted, because he could claim, "I bought it directly from you." R. Jehudah said again: If one holds a scythe and a basket, saying, "I am going to cut off the dates from the tree which I bought of its owner," he is to be trusted, as one would not dare to go publicly to cut off products which do not belong to him. The same said again: If one has occupied a piece of land which was outside the fence of one's field (which they usually sowed for the wild beasts to feed on), he cannot claim hazakah, as the owner may say, "I did not protest because I could not have made use of it anyhow, for the wild beasts would have consumed the produce." If one of the years of hazakah happened to be a year of *arla*, it is not to be considered. And so, also, we have learned in the following Boraitha: If one of the years was a Sabbatic or an *arla* year, or one has sown it with Kilaim, it must not be considered. R. Joseph said: If in the hazakah years he harvested the stalks while yet unripe, it is not to be considered (because he has not occupied it as usual). Said Rabha: But if this was around the city of Mehusa it is to be considered, because all the farmers, on account of their cattle, are in the habit of doing so. R. Na'hman said: To land which is full of pits and cannot be worked up properly the law of hazakah does not apply, because the owner may claim, "As it was of no use to me, I did not protest." The same is the case with such fields as return no more than was sown in them. And also in the case of exilarchs, to an estate which is bought from them, or which they buy, the law of hazakah does not apply, because they

are mighty, and no one would dare to protest against them; and, also, they themselves do not care to protest.

"*Slaves*." Does the law of hazakah apply to slaves? Did not Resh Lakish say: To every living creature the law of hazakah does not apply? Said Rabha: He means to say it does not apply before three years (*i.e.*, one cannot claim that he bought it as he may do with other personal property for which no evidence is needed when found in his possession), but after three years it does. And Rabha said again: If this slave was an infant lying in his cradle, the law of hazakah applies immediately. Is this not self-evident? He means even in case it has a mother; and lest one say that it is to be feared that its mother left it there, it comes to teach us that this is not to be feared, because usually a mother does not forget her child.

There were goats that consumed peeled barley in the city of Nahardea, and the owner of the barley caught them and would not return them until the value of the barley was paid. And his claim was of considerable amount, and the father of Samuel decided that he might claim the value of all the goats, as if he were to claim that he bought them he ought to be trusted, seeing that they were found in his possession. But did not Resh Lakish say that the law of hazakah does not apply to living creatures? Why did the father of Samuel decide (Middle Gate, pp. 306 *seq*.) that he could collect the whole value of the goats? (See there.) With goats it is different, as they are usually transferred to the shepherd. But do not goats go in the morning and evening without the shepherd? In the city of Nahardea thieves were frequently found, and the shepherds used to deliver the cattle into the hands of their owners.

"*Three months in the first year*," etc. Shall we assume that the point of difference between R. Ishmael and R. Aqiba is that one holds ploughing is a hazakah (*i.e.*, if one ploughs a field and the owner does not protest, it is supposed that he bought it from him). And one holds that it is? But how can you bear in mind that R. Aqiba holds ploughing to be a hazakah, when he means a whole month in two hazakah years? Is one day not sufficient for ploughing? Therefore we must say that, according to all, ploughing is not considered a hazakah, and the point of their difference is ripe and unripe fruits. According to R. Ishmael, the hazakah applies only to ripe fruits, and according to R. Aqiba also to unripe ones.

The rabbis taught: Ploughing is not a hazakah. According

to others, it is. Who are the others? Said R. Hisda: It is R. Aha of the following Boraitha. If one has ploughed it one year and sown it two, or *vice versa*, it is not a hazakah. R. Aha, however, says it is. Said R. Ashi: I have questioned all the great men of this generation, and they have told me that ploughing is a hazakah. Said R. Bibi to R. Na'hman: The reason of him who holds that ploughing is a hazakah is because that usually one would not keep silent if a stranger came and ploughed his land. And the reason of him who holds that ploughing is not a hazakah, is because the owner might think: "I can derive benefit from every furrow he makes with the plough on my land, so I will protest afterwards."

The inhabitants of the city of Pumnahara sent a message to R. Na'hman b. R. Hisda thus: Let the master teach us if ploughing is a hazakah or not. And he answered: R. Aha and all the great men of this generation have decided that ploughing is a hazakah. Said R. Na'hman b. Itz'hak: It was too much of him to assert, "All the great men." Are not Rabh and Samuel in Babylon, and R. Ishmael and R. Aqiba in Palestine, who bold that ploughing is not a hazakah? R. Ishmael and R. Aqiba we hear saying so in our Mishna, but where did Rabh and Samuel say so?

As R. Jehudah said in the name of Rabh: R. Ishmael and R. Aqiba were a minority of the sages, but the majority of the sages held that a hazakah is three years from date to date. And this was certainly to exclude ploughing. And concerning Samuel. said also R. Jehudah in his name: This was the opinion of R. Ishmael and R. Aqiba only; but all the other sages held that the hazakah does not apply unless one has harvested, gathered the vintage, and pressed olives, each of them three times. What is the difference between Rabh and Samuel--as, according to both, three years are needed? Said Abayi: A young tree which bears fruit on the average three times in less than three years, according to Samuel it is a hazakah, and according to Rabh it must be from date to date.

"*Said R. Ishmael . . . a field for grain*," etc. Said Abayi: From R. Ishmael's decision, that three harvestings suffice to constitute hazakah, we can understand the opinion of the rabbis opposing him: If the field contains thirty trees, each ten of which take up a space where a saah of grain can be sown, and the defendant has used ten the first year, ten the second, and ten the third, it is a hazakah, although three years have not yet elapsed

[paragraph continues] (as he has consumed in each year what was ripe). And this is to be inferred from R. Ishmael's statement that each performance of the three articles is counted as if it were done thrice, to constitute a hazakah. The same is the case with the thirty trees: the consuming of each ten is counted with the consuming of the others, and therefore it constitutes a hazakah. But this is only the case when but ten of them were ripe each year; but if more were ripe, and he only consumed ten, it is not. And the same is the case if the ten trees were ripe in one place only the first year, ten in another place the second, and ten in a third place the last year; for in order to constitute a hazakah, the trees must be scattered throughout the whole field, three or four of them growing in the space of a saah each year.

If one has made a hazakah on the trees and another upon the ground, each of them acquires title to what he holds. So said R. Zebid: R. Papa opposed; for, according to this theory, the one who has made a hazakah on the trees has nothing in the ground. So let the owner of the field say to the owner of the trees, "Cut down your trees and go." "Therefore," said he, "in such a case one has acquired title to the trees and half of the ground, and the other to the other half of the ground."

It is certain if one has sold his ground and left the trees, the ground required by the trees must be left for them; for even according to R. Aqiba, who said elsewhere that usually when one sold a thing he did so with a good eye (*i.e.*, with the intention of benefiting the buyer), this is only in case he sold him a well. We must say the stone-walls to the well on his property are also sold to him. But in this case, where he retains the trees, which make the ground poor, and also their roots may hinder the plough, it is certainly his intention that the ground needed for the trees shall remain his, as otherwise the buyer will have a right to demand from him that he shall cut down his trees. But if he has sold the trees and retained the ground, in this case the rabbis and R. Aqiba differ. According to R. Aqiba, who holds that usually the seller sells with a good eye, the buyer has a right to the growing of the trees. But according to the rabbis, who do not hold so, the buyer has no such right. And even according to R. Zebid, who said above, in the case of hazakah, that each of them has nothing in that which the other has occupied, it is only as to buyers that the one who has occupied the ground can say to him who possesses the trees, "As I

have nothing in your trees, so you have nothing in my ground."

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[paragraph continues] But in case of selling, according to the rule that a seller sells with a good eye, this claim cannot apply even in accordance with the opinion of the rabbis. And even R. Papa, who said above that the owner of the trees has a share in the ground, it is only in the above case where there were two buyers--the one who buys the trees and the buyer of the ground--that each of them can claim, "As the owner sold to you with a good eye, so did he to me." But in this case, according to the rabbis, who hold that a man usually sells with a bad eye (*i.e.*, with the intention of benefiting merely himself), R. Papa may also agree that, according to the rabbis' theory, the buyer of the trees has no claim to the ground. The Nahardeans said that if, of the above-mentioned thirty trees, fifteen of them were planted in the space of a saah, although he had consumed the product of all of them three years successively, it is not considered a hazakah, because he has not done as people do (*i.e.*, fifteen trees in the space of a saah cannot bear good products, and the one who possesses such usually cuts out many of them to make room for the others; and as he did not do so, it seems that he does not consider this to be his property). Rabha opposed this. For, according to this theory, one could never acquire title to a bed of a *pastio*, which is usually sown three times a year, and the overcrowding is thinned out to make space for the remainder (and when the occupant has only consumed them, and not thinned out, he does not acquire title). "Therefore," said he, "in such a case he acquires title to the trees, and not to the ground." Said R. Zera: In this case the Tanaim of the following Mishna differ: A vineyard which was planted in less than four ells' space, R. Simeon said: Concerning Kilaim, it is not considered a vineyard at all. The sages, however, maintained that it is so considered, and the middle ones are to be considered as if they did not exist (*i.e.*, the law of a vineyard, which should interfere with other kinds of seeds, is that it must be planted so that between each row of the vines four ells of space must be left; and if not, it is not called a vineyard. But according to the rabbis, the middle one is not considered; consequently there is more than four ells' space between them, and it does interfere-hence, according to this theory, of the trees in question which were overcrowded, fifteen in the space of a saah, the middle ones are not to be considered, according to the rabbis; but they are considered, according to R. Simeon).

The Nahardeans said again: If one has sold a tree to his neighbor, the buyer acquires title to it from beneath it unto the

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deep. Rabha opposed. Why should it be said that the whole ground unto the deep shall be sold to him? The seller may claim: I sold it to you as people used to sell a saffron tree, of which the buyer derives the benefit as long as the tree yields fruit, but after it became withered, the buyer had to remove it and leave the ground to the seller. Therefore said Rabha: This applies only to him who claims that he bought it with the stipulation that if the tree dies he may plant another one in its place, and after he possessed it the years of hazakah. Said Mar the Elder, the son of R. Hisda, to R. Ashi: Even if it was a saffron tree, and in such a case the buyer usually cares for the valuable saffron, and not the ground beneath, what should the seller do if, after the three years, the buyer claims he has also bought the ground (so that he can plant another one)? And he answered: The seller should protest before the years of hazakah elapse, as is said above.

MISHNA *II*: There are three lands concerning the law of hazakah: The land of Judea, the land

on the other side of the Jordan, and of Galilee. If the owner of the estate was in Judea, and one has made a hazakah in Galilee, or *vice versa*, it is not considered a hazakah unless the owner of the estate should be with the occupant in one and the same country. Said R. Jehudah: The law of three years is made only for the purpose that if the owner, for instance, was in Spain, and his estate was in Judea, which is a year's journey from there, if one has occupied his estate while on the road, a year's time is given for him to be notified, and another year for his return (*i.e.*, no matter where he is, three years suffice for hazakah).

GEMARA: Let us see! What does the first Tana of the Mishna hold? If a protest in the absence of the occupant is considered, then, even when one was in Judea and the other in Galilee, he could protest; and if it is not considered, then even if both were in one country, when they are not in one city, the hazakah should not apply, as he could not protest. Said R. Abba b. Mamal in the name of Rabh: He holds that a protest not in his presence is to be considered. But our Mishna treats of a case of war, during which this protest would be of no use (because there would be no one to notify him). And why does he mention Judea and Galilee? To teach that these two countries are always considered as if there might be a war between them, as caravans going from one country to the other are very rare.

R. Jehudah in the name of Rabh said: If one runs away from a city because of crime, etc., and one occupies his estate, the law of hazakah applies. And R. Jehudah continued: After Rabh's death I said this Halakha in his name before Samuel, and he said to me: Is this not self-evident? Must, then, a protest be in one's presence? (Says the Gemara:) And, indeed, what news did Rabh teach with this statement, unless that a protest not in one's presence is considered? He already said so elsewhere. With this statement he teaches us that, even when the protest was before two witnesses who were not able to notify the occupant, it is nevertheless considered a protest. As R. Anan said. Mar Samuel has explained to me his opinion that only when one protested in the presence of two witnesses who are able to notify the occupant, it is considered; but not otherwise. Rabh, however, is of the opinion: "Thy colleague has another colleague," etc.; and so, when protested before two, it will become known. Said Rabha: The Halakha prevails that the law of hazakah does not apply to the property of one who runs away, and also that a protest which is not in one's presence is considered. Are not the two Halakhas contradictory of each other? This presents no difficulty. If one runs away because of money matters, he is not afraid to protest, as he does not care whether his residence is made known; but if one runs away on account of a crime, then he cannot protest, as this would make known his hiding-place.

How should one protest? Said R. Zebid: If the protest was, so and so is a robber; it does not suffice, but he must protest: "He is a robber who has robbed me of my estate, and as soon as it is possible I shall summon him." But how is the law if he added to this protest, "Do not notify him of my protest"? Said R. Zebid: How can this be considered, when he plainly says: Do not notify *him*. R. Papa, however, is of the opinion that it means: Do not notify him, but tell it to other people, so that he will become aware of it afterwards. How is the law if the witnesses told him: We will not notify him? According to R. Zebid, such a protest is not to be considered, and according to R. Papa, it is, because although they should not notify him, they will nevertheless tell it to other people. But how is it if the protestor said: Do not mention it to any one? According to R. Zebid, it is certainly not to be considered. But how is it when they said: We will not mention this to any one? According to R. Papa, it is not to be considered. R. Huna b. R. Jehoshua, however, maintains that, even then, it is a protest, as a thing which does not

belong to a man, he will talk about it some time, and it will become known.

Rabha said in the name of R. Na'hman: A protest not in one's presence is to be considered; and he opposed him from the statement of R. Jehudah in our Mishna, who said that a year is allowed for notifying him and a year for returning. And if a protest not in one's presence should suffice, why must he come back? And he answered: R. Jehudah's statement is only an advice for one that he had better come himself, so that he should be able to take possession of the estates and products. (Says the Gemara:) From that which Rabha objected, it must be said that he himself does not hold with him concerning a protest in the absence of the occupant; and above it was said that Rabha himself had so decided? After he had heard it from R. Na'hman, he accepted it.

R. Jose b. Hanina happened to meet the disciples of R. Johanan and questioned them as to whether R. Johanan had said before how many people a protest must be made. R. Hyya b. Abba said in the name of R. Johanan: In the presence of two. And R. Abuhu said in his name: Three are needed.

Shall we assume that the point of their differing is the saying of Rabba b. R. Huna: "Everything which is said in the presence of three persons cannot be considered slander"? Now he who holds that two persons are sufficient does not agree with Rabba, and he who holds that three are needed does so, because he holds with him? Nay, all agree with Rabba, and the point of their differing is-a protest not in one's presence: he who says that two are sufficient, because such is not to be considered (and therefore he needs two, so that they shall testify that the occupant was present at the protest). [1] And he who holds that three are needed does so because a protest not in one's presence is considered, and therefore three are needed in order to make the protest public. If you wish, it may be said that all agree that such a protest is to be considered, and the point of their differing is that one holds that for this purpose *witnesses* are needed, and the other one holds that it is only necessary to make it public.

Giddle b. Minjumi had to make a protest against some one,

and happened to meet R. Huna, Hyya b. Rabh, and R. Hilkiah b. Tubi, who were sitting together, and he made his protest before them. The next year he came again to protest. Said Hyya b. Rabh to him: The protest from last year is sufficient. Said Resh Lakish in the name of B. Kapara: It is, however, necessary for one to repeat his protest after the lapse of every three years. R. Johanan, however, doubted concerning this decision, saying: Does the law of hazakah apply to a robber? A robber! Is it, then, certain that he is a robber? (Does he not claim that he had a deed, that it was lost?) He means to say that, as after the first protest he has done nothing to find the deed or to bring any other evidence, he is so considered, and the law of hazakah should not apply to him. Said Rabha: The Halakha prevails that one has to repeat his protest after each three years.

Bar Kapara taught: If one has protested once, twice, and three times, if the second and third times he has claimed the same that he claimed the first time, the occupant has no hazakah; but if he comes with other claims, the hazakah prevails with the occupant.

Rabha said in the name of R. Na'hman: When a protest is made before two persons, there is no necessity to ask that it be written down. The same is the case with an announcement. (There is a law that if one is compelled to sell his property, or to do any other thing against his will, he may announce it before two persons, and afterwards he can sue the buyer.) For an admission, however (that he owes something to one), he must ask the two witnesses to write it down. The ceremony of a *sudarium* must be done before two persons without writing. The approval of an oath, however, must be done by three persons. Said Rabha: I could not understand why the *sudarium* should be made before two. If it is considered an act of Beth Din, then three are needed; and if it is not considered such, why should it not be written down? After deliberating, however, he said: This act is not considered as an act of Beth Din, and writing down is not needed, because this act is as good as if it were written. (This is the final conclusion of the act, and cannot be denied.)

Rabha and R. Joseph both said: We do not write down an announcement unless in a case where the defendant does not listen to the court. Both Abayi and Rabha, however, said that even for such people as we are, it may be written down. The Nahardeans said: An announcement in which it is not written:

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[paragraph continues] "We witnesses testify that it was known to us that this man was compelled," etc., is not to be considered. What kind of an announcement do they mean? If concerning a divorce or a gift, it is sufficient when it is made public only. And if for a sale, did not Rabha say elsewhere: We do not write announcements about things sold? It means of a sale, and Rabha admits that when one was compelled to sell against his will, as, for instance, in the case of certain vineyards (Middle Gate, p. 176), we do write such announcements.

R. Jehudah said: A hidden deed of gift is not sufficient for collection. What does this mean? Said R. Joseph: If one said to the witnesses, "Go to a place which is invisible, and write him a deed of gift." According to others, R. Joseph said: If the giver did not say to the witness, "Go to the market, and in the presence of the people you shall write him this deed." And the difference between these two sayings is when he said to them: "Go and write," without any addition. Said Rabha: Such a deed is sufficient to be an announcement in case one has to render the same to another.

Said R. Papa: This statement attributed to Rabha was not plainly said by him, but it was inferred from his decision of the following act. There was a man who wanted to marry a certain woman, and she said to him: "If you will transfer all your property to me, I will be yours, and not otherwise." And he did so. Then came his older son, and said to him: "What then becomes of me?" And the father told two witnesses they should hide themselves in a certain place and write a deed that the property belonged to his son. And when the case came before Rabha, he decided that none of them had acquired title to the property (the son, because it was written in a hidden place; and the woman, because the first deed was an announcement against the latter deed). This, however, was only a supposition by those who heard this decision. In reality, however, Rabha did so because any one could see that the deed to the woman was written only under compulsion. But in the above case of a hidden deed, it could not serve as an announcement, because the latter was made in public. And it is to be assumed that he did so because such was his will, and the former was done unwillingly; and therefore he told the witnesses to write it in a

secret place.

The schoolmen propounded a question: How is it when he told them to write a deed of gift without any explanation? (The question is concerning the two sayings of R. Joseph mentioned

above.) According to Rabhina, it is considered proper; and according to R. Ashi, it is not proper (unless he told them to make this publicly). And so the Halakha prevails.

MISHNA *III*.: A hazakah to which there is no claim is not to be considered. How so? "What are you doing on my property?" And if he answered: "Because there was no claim against it," it is not to be considered. But if he says: Because you have sold it; or, You had presented it to me; or, Because your father did so, this is to be considered. A property, however, which one possesses by inheritance does not need any explanation (which means that the claim, "I have inherited," is sufficient).

GEMARA: Is not the first statement in the Mishna self-evident? Lest one say: As the man has occupied the estate, it must be supposed that he has bought it, but has lost the deed; and the reason why he does not claim "bought," is because he feared that the plaintiff would ask to see the deed, therefore it is for the court to ask him: "Perhaps you had a deed, which was lost?" as it is written [Prov. xxxi. 8]: "Open thy mouth for the dumb," etc.; it comes to teach us that it is not so.

It happened that an overflow took away the fence of R. Anan's field, and he built a new one in the space belonging to his neighbor. And his neighbor complained before R. Na'hman, who decided that he must remove it. Said R. Anan to him: But I have made a hazakah on it. And he answered: You desire that I shall decide in accordance with R. Jehudah and R. Ishmael, who said that if it was done in the presence of the plaintiff, it is immediately considered a hazakah. The Halakha does not prevail according to them. Said R. Anan: But this man has relinquished his right to me, as he himself assisted me in making the fence. And he answered: Such a relinquishment was only an error, and cannot be considered; as you yourself, if you were aware that you were building the fence on a space which did not belong to you, would not do it. And so was it with your neighbor: he, also, was not aware that the space belonged to him.

The same happened to R. Kahana, and his neighbor came to complain before R. Jehudah, bringing two witnesses. One testified that R. Kahana had occupied two rows of his neighbor's estate, and the other testified three. And R. Jehudah decided he should pay him for two of the three rows. Said R. Kahana to him: Is not your decision in accordance with R. Simeon b. Elazar, who said elsewhere that the school of Hillel agrees that

the smaller amount is included in the larger one (*i.e.*, as there is no contradiction to the two rows, it is considered as two witnesses for two rows which must be paid for)? But I can bring you a letter from Palestine that the Halakha does not prevail with R. Simeon b. Elazar. And he answered: If you will bring me this letter, we shall see.

It happened in the city of Kashta that one had lived in an attic four years, and then the owner of the house came to ask him what he was doing in the house. To which he answered: I bought it from so and so, who bought it from you. And the case came before R. Hyya, who said to the defendant: If you will bring witnesses that the man from whom you bought it lived in this attic even one day, I will leave the attic in your possession, but not otherwise. Said Rabh: I used to sit then before my uncle, and I said to him: Can it not happen that one should sell out his property in the night-time, and leave it immediately? And I understood from my uncle's appearance that if the defendant should claim: "I was present when my seller bought it from you," he would trust him, because, if he wished to tell a lie, he could claim: I bought it from you directly. Said Rabha: It seems to me that R. Hyya was correct in his decision, as our Mishna states that if the defendant claimed inheritance, no other explanation is needed, which means an explanation is not needed, but nevertheless evidence that he inherited it is needed. (Said the Gemara:) This support does not hold good, as it may be said that the expression, "no explanation is needed," means also no evidence. Furthermore, the claim "bought" should have more chance than an heir; for if it were not known to him that the seller had a right to sell it, he would not throw away his money.

The schoolmen propounded a question: If the seller was seen on this property, not as a tenant, but as the owner, to measure it, would this be sufficient, according to R. Hyya? Said Abayi: "Aye." Rabha, however, maintains that it may happen that one shall measure his property without any intention of selling. If there were three buyers to one estate (*i.e.*, A sold it to B, who occupied it a year, and thereafter sold it to C, who also after a year's occupancy sold it to D, with a bill of sale: then came A and claimed that the estate was his--he never sold it--and B does not possess any bill of sale, shall we say that, as between B, C, and D three years of hazakah have elapsed, and as A has not protested, D is entitled to it? or, as each of them has not occupied

it the years of hazakah, A's claim is to be considered), the years of occupancy count. Said Rabh: This is only when both C and D possessed their deeds, but not otherwise.

Shall we assume that Rabh holds that only a deed is considered to be known by the people, but not witnesses; and the reason why he said elsewhere that he who sells his field in the presence of witnesses, and thereafter it was taken away from the buyer, the buyer has a right to collect his money from encumbered estates, is because the people who bought their estates afterwards from the seller had to investigate whether he had not sold his estates previously with security, but not because witnesses are considered known to the people? But how could Rabh say so? Is there not a Mishna farther on which states that if by witnesses only, he may collect from unencumbered estates only? And lest one say Rabh is a Tana who has a right to differ with a Mishna, did not Rabh and Samuel both declare that a loan which was made orally is not collectible either from heirs or from buyers? You contradict a case of a loan with a case of selling. They are entirely different, as he who makes a loan does it privately, as he would not like people should know he needed money, and the value of his estate would decrease. But he who sells an estate does it publicly, as he is searching for a buyer who will give him a better price.

The rabbis taught: If the father has consumed one year and his son two, or *visa versa*, or each of them one year, and the buyer from them one year, it is considered a hazakah. Shall we assume that it is a hazakah because a sale is considered known to the people, and therefore the owner ought to protest? Does not the following contradict: If one has occupied or consumed in the face

of the father one year, and in the face of his son two, or *vice versa*, or in the face of each one year, and in the face of the buyer who bought it from the son one year, it is considered a hazakah for the occupant? Now, if you would bear in mind that selling and buying are considered known to the people, why is the selling itself not considered the greatest protest? Said R. Papa: This may not contradict, as the cited Boraitha may treat of one who sold the field among his other fields. (And so the sale of this particular field was probably not known to the people, and therefore it cannot be considered a protest.)

MISHNA *IV*.: The law of hazakah does not apply to the following: specialists, farmers, partners, gardeners, and guardians. There is also no hazakah to a husband on the estate of his wife,

and *vice versa*; and no hazakah to a father on the estate of his son, and *vice versa*. All this is said concerning hazakah, but concerning a gift or an inheritance of brothers, or one who takes possession of the estate of an heirless proselyte, if he has done any work whatever (*e.g.*, if he has locked it, or made any partition, or torn down the old one), it is considered a hazakah.

GEMARA: Both the father of Samuel and Levi taught: There is no hazakah to a partner, and so much the less to a specialist. Samuel, however, taught: There is no hazakah to a specialist, but to a partner there is. And Samuel is in accordance with his theory elsewhere, that concerning partners the law of hazakah applies. They also may be witnesses for each other, and they are also considered bailees for hire to each other. R. Abba raised the following contradiction to R. Jehudah "At the cave of R. Zakkai." How can you say that Samuel holds that hazakah applies to partners? Did not he say that when one works on his partner's estate, it is to be considered as if he had done this with the permission of his partner. Is this not to be understood to mean that a partner has no right of hazakah? This presents no difficulty. One of Samuel's decisions speaks of when the partner has consumed the products of the whole estate which belongs to both, and the other decision treats of when he took possession of a half share, claiming that they had divided their estates long before and that he had made a hazakah on the part he now holds. To which his partner objects, saying: Our stipulation was such that you should keep it three years, and then I should keep it three years.

In explaining this, two parties differ. One maintains that Samuel's decision that a partner has a right of hazakah is in case he has consumed all the products of the estate belonging to both. For a partner usually consumes the products of half of the estate, taking them from one half one year and from the other half the following, in order to equalize matters. And as we see that one has taken possession of the entire estate for three years in succession, it is to be supposed that he bought the same. And the other decision of Samuel speaks of when they do as is customary, consuming the products of the same half three years in succession: no hazakah applies, because his partner may claim that such was the stipulation, as stated above.

And the other maintains to the contrary. If he consumes the whole, there is no hazakah, because it may be that that was their arrangement; namely, that one should use the products the

first three years and his partner the three years succeeding. But if one utilizes exactly half for

three years in succession, it may be said that he bought it, and therefore hazakah applies. Rabhina, however, says that both of Samuel's decisions may apply to the case that one has consumed the whole estate; but the decision that he has a hazakah speaks of a field which contains the prescribed quantity for division. Consequently, if one consumes the whole field (without any protest from his partner), it is to be supposed that he bought it. And the decision that there is no hazakah speaks of a field which has not the prescribed quantity. And it is to be supposed that their arrangement was that each should use it for three years, as said above.

The text says: "Samuel holds that when one works on his partner's estate," etc. What did Samuel mean to teach, that in partnership the law of hazakah does not apply? Let him then say so plainly. Said R. Na'hman in the name of Rabba b. Abuhu: He means to say that when one takes his partner's field, which is fit for sowing only, and plants trees in it, he is not liable for damages, as it is considered to be done with his partner's permission, and, moreover, his partner can claim half of any profits which may accrue after the expense of planting has been deducted. Farther on Samuel says: "They may bear witness for each other," etc. Why? Are they not interested in each other's affairs? He means to say, in case one of them gave a deed to the other, saying he had nothing further to do with the field. But even then, what is it? Have we not learned in the following Boraitha: If one says to his partner: "I have no claim on this field," "I have nothing to do with it," or, "I keep my hands off it," he says nothing (*i.e.*, unless he distinctly says, "It is yours, and I shall have nothing further to do with it," it is not to be considered, because it may be that he said it in a manner indicating that he wished he would have nothing to do with it, etc.)? It means that this was done with the ceremony of a sudarium (and then certainly he has nothing to do with it). But, after all, he is still interested in this case, for if the plaintiff should win the case, and the estate were taken away from the defendant, it might be appraised insufficient to cover the debt made while he was still a partner, and then it would devolve upon him. And he may also be interested in seeing that this estate shall remain with his partner, as it may happen afterwards that some one should claim that his partner had borrowed some money while they were still partners, and when his partner should have no estate, the

debt be turned over to him? This means that when he transferred his property to him he at the same time in writing took upon himself the responsibility. The responsibility of what? If the responsibility of this estate, in case it were taken away by some one, should devolve on him, then he is certainly interested in this case; and if it means he takes the responsibility of claims which may be upon the estate for his own debts, then he has nothing to do with any other claims: he is disinterested in so far as he has nothing to do with the estate itself--only the making good of his own debts. But has he a right to cut himself off from all other liabilities? Have we not learned in a Boraitha that if Holy Scrolls were stolen from a city the thieves must not be tried by the judges of that city, and also no witnesses from that city should be brought as evidence?

Now, if one should have a right to say: "I have cut myself off from this estate entirely," it would be possible, in the above case, for two judges to say, "We have relinquished our shares in the Holy Scrolls," and witnesses the same way, and then the judges could decide the case and the evidence of the witnesses be used. With Holy Scrolls it is different, as they are made for reading, and one cannot help hearing them. Come and hear! If one say: Give a manna to the poor of that city--if there is a trial about this, the case must not come before the judges of that

city, and no evidence of witnesses of the same city should be admitted. Now, how can you maintain, because the poor of the city take the charity, that the judges of the city should not be eligible to decide the case? You must say, then, that the judges must not be of the poor who take charity, nor witnesses who have benefit therefrom. And why let the judges or the witnesses relinquish their share in this charity and be used? The Boraitha speaks also When the manna in question was given for Holy Scrolls, and the expression "poor" is because concerning the Holy Scrolls all are considered poor; and if you wish, it may be said, the expression "poor" is to be taken literally, and it speaks of the poor whom the judges or witnesses are obliged to assist. And therefore the trial could not come before them, because they are interested in it (*i.e.*, if the poor should win the case, their share of assistance would be less than before). And even if the judges or witnesses were taxed to assist the poor of that city with a certain sum per annum, they are still considered interested in that case, for they are pleased at the poor receiving more support.

Samuel says further: "They are also considered bailees for

hire," etc. Why so? Is this not a guard in the presence of its owner, and it is said above that in such a case he is not responsible? Said R. Papa: He means to say, if one said to his partner: Guard for me to-day and I will guard for you to-morrow.

The rabbis taught: If one sells another a house or a field, he is not allowed to be a witness, because he is always responsible for it, if there should be a claim against it. But if he has sold him a cow or a garment, he may be a witness, because he has nothing more to do with them. What is the difference between the former and the latter facts? Is the seller not responsible in case it should be found that the cow or garment in question was stolen by him? Said R. Shesheth: The first part speaks of the following case: If A has robbed B of a field and has sold it to C, then D comes with a claim, B then has no right to be a witness for C, because he is interested in having it returned to A, so that he can establish his claim. But if B should be a witness that C is right, how can he claim afterwards that the field is his? He can only testify that D's claim is wrong. But could not B exercise his right, even if it were D's? He may think that C, who is not .so mighty, might settle with him, while with D it would not be so easy. And if you wish, it may be said that it speaks of a case as follows: B has witnesses that this property belongs to him, and D has witnesses who contradict B's witnesses. And in such a case, usually the judges decide that the property shall remain with its present owner. And therefore B is interested in it, .and must not be trusted as a witness. But why was it necessary for R. Shesheth to illustrate this Boraitha in case the robber had sold the field to another? Could he not illustrate this by saying that C had announced his claim while the field was still in the hands of the robber A--then B cannot be a witness? Because it has to teach in the last part that if he has sold movable property to some one, which means the one who robbed the property in question and sold it, the one who has been robbed may be a witness, and this can only hold good in case of movable property which was passing into another's hands and of the renouncing of the hope to regain it by the owner. As the law dictates that these two things give title to the possessor, consequently the robbed one, who has nothing more to do with these articles, may be a witness. But if the article were still in the hand of the robber, the robbed one would not renounce his hope of regaining .it, and it would still be considered his property, and consequently he cannot be a witness. Therefore he illustrated the first part

also in the same manner. But, after all, although the robbed one renounced his hope of regaining the article, did he do the same about the value of it? He speaks when the robber no longer exists--when he has no further hope even for the value, as we have learned in a Mishna that if one robbed movable property and bequeathed it to his children, they are free from paying for it. But why does not R. Shesheth explain this Boraitha as speaking of an heir (it means if the robber dies and leaves it for his heirs)? This objection would not hold good, in accordance with him who, holds that the control of an heir is not equal to the control of a. buyer. But to him who holds that they are equal, what can be said? Furthermore, there was a difficulty to Abayi: Why does; the Boraitha use the expressions "responsible" and "not responsible"--as, according to R. Shesheth's explanation, it ought to be said, because this is "returning" and "not returning"? Therefore the Boraitha must be explained in accordance with Rabbin b. Samuel, who said in the name of Mar Samuel as follows: If one sold a field to his neighbor without security, he has no right to qualify as a witness concerning it, because in case of a creditor he can show this as a source of collection. But this. can only be in case of a house or other real estate, and not of movable property; and not only when it was sold without any stipulation that collection is not to be made on movable property for the claim of a creditor, but even in case it was written, "You shall collect your money from the garment which is on my shoulders," he can do it only when the movable property is still in his; possession, but not otherwise. As even then the property in question has been made a hypothec, he can only collect when it is yet under the borrower's control; but when it is not under his; control, he cannot. As Rabha said (First Gate, p. 19): If one has made his slave a hypothec, and thereafter he sold it, a collection can be made; but if the hypothec was an ox or an ass, and he has sold it, the creditor cannot collect. Why so? Because real estate, when it is sold, people talk about it, which is not the case with movable property. But let it be feared that the owner of the movable property has mortgaged it together with the real estate. As Rabba said elsewhere: Such an agreement holds: good to collect also from the personal property. And R. Hisda. added to it that this law holds good only when the borrower mentioned in his agreement that this should not be considered, an *asmachtah*, or a copied agreement? It speaks of a case in which the movable property was bought and sold immediately.

[paragraph continues] Let it still, however, be feared that he wrote in the mortgage of the real estate: "All the personal property which I possess and which I shall possess hereafter." Shall we assume that because such is not feared, a similar agreement is not to be considered? And if in spite of such agreement he has sold out or bequeathed his movable property, the sale is valid? Nay; it may be said that the above case treats of when there are witnesses who testify that this man never possessed any real estate. But did not R. Papa say that although the rabbis had enacted that if one sold out real estate without security, and a creditor took it away from the buyer, the latter could not claim the money from the seller? If, however, the investigation shows that the seller has never possessed this estate, he must pay?

It speaks that the buyer was aware that the ass in question was born from his cattle. R. Zebid, however, maintained that if sold without security, even if it was found afterwards that he never possessed it, the buyer could claim his money, because the seller might claim that on this account it was sold without security.

It is said above, in the name of Samuel, that he who has sold a field without security cannot be a witness concerning this estate, as he is interested in it; in case his creditor came, he can show him this field for collection. Let us see how the case was. Does the seller possess other real

estate? Then certainly the creditor will make his claim against that estate first, as there is a rule that no collection should be made from encumbered estate when there are unencumbered estates of the defendant. And if he does not possess any others, then what can the creditor take from him, even if it remains with the buyer? It may be said that he does not possess other estates. Nevertheless, he may say: "I do not want to be wicked," that the verse in Ps. xxxvii. 21, "The wicked borrowed and repayeth not," should apply to me. But would not the same verse apply to him concerning the buyer? Nay; as he may say: I plainly told him that I would not secure this field to him. Consequently he was willing to buy it, even though it might be taken away from him afterwards.

Rabha, according to others R. Papa, announced: It shall be known to them who are ascending to Palestine or descending to Babylon, that if one Israelite sold to another an ass, and a Gentile came and took it away, claiming that it was stolen from him, it is but right that the seller shall settle with the buyer, so that he shall not suffer the whole damage. This, however, is said

when the buyer was not aware that this ass was born among his animals. But if the buyer was aware of it, he cannot expect any settlement (as such was his fate). And even in case he was not aware, he may do so when the Gentile takes away the ass only, but when he takes away the saddle and also the man, since he takes not only what belongs to him, but all that the buyer possessed, then again it is his fate.

"*Specialists*," etc. Said Rabba: "This is said when the owner has transferred to the specialist in the presence of witnesses; but otherwise, because he may claim that he never took it from him, he is to be trusted if he says that he bought it from him. Said Abayi to him: According to your theory, even if it was in the presence of witnesses, he should also be trusted, because he could claim that he has returned it already. Answered Rabba: Do you mean to say that if one deposits an article with his neighbor in the presence of witnesses the depositary should return it to him without witnesses, and that it should not be born in mind (that he used witnesses when presenting)? The latter must do the same when returning; for, if not, he will not be trusted when he claims to have returned it. Abayi objected from the following: If one has seen his slave learning a trade at a specialist's, or his garment at a cleaner's, and to the question, "What does it concern you?" he answers, "You sold it, or made it a present to me," he said nothing. But if he claims: "I was present when you told so and so to sell it, or give it for a present," he may be trusted. And to the explanation of the difference in the law between the first part and the latter, said Rabba: The latter part means to say: If the article in question came to the present possessor from a third hand, and the latter said to the plaintiff: In my presence you told so and so that he might sell it, or give it as a present. And the reason is because, if he wished to tell a lie, he could claim: I myself bought it from you. Now we see that the first part states, "If one has seen." And what does it mean? If there were witnesses, why the expression "seen"? He should bring his witnesses and take it away. We must say, then, that there were no witnesses; yet, as soon as he has seen it, he may take it away (hence this contradicts your statement that if there were no witnesses he is to be trusted, claiming, "I bought it from you"). Says Rabba: Nay; it means that there were witnesses (when he presented it to him), and even then only when he saw it in his possession. (Said Abayi:) But did you not declare that he who has deposited an article in the presence of

witnesses, the returning must also be done in the presence of the same? And he answered: I retract that statement. Rabha, however, objected to Abayi, and brought the following as a support to Rabba: If one has given his garment to a specialist, the latter claiming, "The stipulation was that you should give me two zuz," and the owner claims the stipulation was for one zuz, so long as the. article is in the hand of the specialist, it is for the owner to bring evidence. If, however, the specialist has already returned it to the owner, if he announced his claim in time (*i.e.*, before sunset, at which time a laborer has to get his payment), then he takes an oath and gets the full payment. But if it was after that time, he is the plaintiff, and it is for him to bring witnesses. Now let us see how was the case. If there were witnesses, then it must be done as the witnesses testify. It must be said, therefore, that there are no witnesses, nevertheless the specialist is trusted. Is this not because he could claim, "I bought it," so that he would be trusted? So is it when he claims his payment? Nay; it treats of when there were no witnesses, and also when the owner of the article did not see it in the hands of the specialist (so that the specialist could claim that he had returned it).

R. Na'hman b. Itz'hak objected from our Mishna, which states that a specialist has no hazakah, from which it is to be inferred that only a specialist has not, but a common man has. And this is certainly the case if there were no witnesses; for if there were, why should he? Hence we see that a specialist has no hazakah even when there were witnesses. And this contradicts Rabba's above statement, and this objection remains.

The rabbis taught: If one has exchanged his utensils for another's in the house of a specialist, he may use them until the owner shall come and recognize his. If the same was done at the house of a mourner or at a house of a wedding, he must not use them before they shall be recognized. And what is the reason for the difference in the two cases? Said Rabh: I used to sit before my uncle, and he explained it to me that it might happen that the owner of an article might say to a specialist, "Sell this article for me" (hence the article might be given to him, not by an error but intentionally by the specialist, who has a right to sell it), which cannot be the case in the house of a mourner or of a wedding. Said R. Hyya b. R. Na'hman: Then it may be used only when the specialist himself has exchanged it; but if this was presented to him by his wife or children, he must not use it.

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[paragraph continues] And even when it was presented by the specialist himself, the law holds good if he said to him: "Here is *this* article"; but if he said to him: "Here is *your* article," then he must not use it, as we see that the specialist has erred in giving it to him. Said Abayi to Rabha: Come and I will tell you what the swindlers of Pumbeditha are doing. If one claims: "Give me up my mantle which I have given to you for repairing," the other answers that this never occurred. And if he claims: "I have witnesses who saw it at your place," he claims it was another's. "But bring it forth and let us see it." He answers: "No, indeed! I have no right to show you the goods of others." Answered Rabha: Although he is a swindler, nevertheless he does it in accordance with the law, as the Boraitha states plainly, when he sees it with his eyes. Said R. Ashi: If the claimant is a clever man, he can make the specialist show him the article in question, saying: I understand that you keep it because you are afraid I shall deny the debt which I owe you. I admit to you in the presence of witnesses that I owe you, and will pay you when you shall bring forth this garment and it shall be appraised. Then you will take yours, and I shall take mine. Said R. Aha b. R. Ivya to R. Ashi: The swindler may answer: I do not need your appraisement, as it was

appraised long ago by more competent men than you are.

"*Gardeners*," etc. Why so? Until now he took only the half, and now we see he has consumed the whole of it for three years, why has he no hazakah? Said R. Johanan: It speaks of family gardeners (*i.e.*, the same gardeners used to guard and work up the fields as gardens of that family since it was in its possession, and as this was a kind of inheritance, the owners could not discharge them by substituting others, and with such gardeners it might happen that they consumed the fruit for three years in succession and thereafter the owners consumed the fruit for the same period, and therefore no hazakah applies to them. But to ordinary gardeners, if they consume the fruit for three years, hazakah does apply. R. Na'hman said: A gardener who has hired other gardeners to substitute him for the years of hazakah (even if he was of the kind mentioned by R. Johanan), hazakah may be considered, because in such a case the owners would protest. R. Johanan said again: To a gardener of the above sort, who has divided the work which is needed for the gardens, to hired gardeners, hazakah does not apply, as it may be supposed that he does so with the permission of the owner (as he himself could not do the whole work).

R. Na'hman b. R. Hisda sent a message to R. Na'hman b. Jacob: Let the master teach us. May a gardener be taken as a witness in case of a claim, or not? R. Joseph was sitting before the latter when the message came, and said to him: "So said Samuel: A gardener may be a witness." But is there not a Boraitha which states that they must not? This presents no difficulty. If there are products still on the estate, the gardener may not qualify as a witness; but if there were none, then he may.

The rabbis taught: A surety maybe a witness for the borrower in case the latter has other property besides that to which the claim refers. And the same is the case with a lender. The first buyer may be a witness to the second (e.g., if A sold one field to B and another to C, and D claims that the field sold to C belongs to him as A has robbed him of it, B may be a witness in that case in behalf of C in case A has other property), so that if there should be another claim he should be able to pay from the remainder.

A receiver (*i.e.*, one who receives the money from the lender and forwards it to the borrower, as to which the law dictates that the lender has a right to collect from whomsoever he chooses--either from the receiver or from the borrower)--according to some he may, and according to others he may not be a witness. He who permits this maintains that the receiver is considered an ordinary surety whom the law permits to be a witness, and he who forbids it maintains that the receiver is always pleased when the borrower has more estates, so that in case a creditor should appear he will be able to pay him from his middle estate.

R. Johanan said again: A specialist has no hazakah, but his son has; and the same is the case with a gardener. A robber, however, neither he nor his son has hazakah, but his grandson has. Let us see how was the case? If all mentioned above claimed that the estate was their fathers', then they also should not have any hazakah; and if they claim for themselves, it means that they themselves bought it. Why should this law not apply to the son of the robber also? He speaks of a case where there are witnesses who testify that the owners have admitted to their fathers in their presence that they sold it; and then the sons of a gardener or a specialist are to be trusted if they claim to have inherited from their fathers; but the son of a robber is not to be trusted even

in such a case. As R. Kahana said: It may be feared that the owner has admitted to the robber only for fear

lest he make him more trouble. Said Rabha: It may happen that even the grandson of a robber shall not have any hazakah. It is when the basis of his claim is his grandfather. Who is to be considered a robber, so that the law of hazakah should not apply? Said R. Johanan: When he has occupied a field which does not belong to him (and as he was an influential man, the owner was afraid to sue him). R. Hisda, however, maintains that it means only people like a certain family of N, who used to kill men when they opposed them in money matters.

The rabbis taught: A specialist has no hazakah so long as he keeps up his profession, but otherwise when he has ceased. And the same is the case with a gardener when he has given up his gardening. The same is the case with a son who has separated himself from his father, and with a woman who was divorced from her husband--all of them are considered, in a case of hazakah, with men in general. It is correct to teach about a son who has separated himself, lest one say that usually a father relinquishes his right to a son; but was it also necessary to teach about a divorced woman? Is not this self-evident? It means that the divorce was made by such a document as is doubtful in legality, and in such a case she is considered divorced and not divorced; and it is in accordance with R. Zera, who said in the name of Jeremiah b. Abba, quoting Samuel, that in a case where the sages say, "She is divorced and not divorced," her husband is obliged to support her.

R. Na'hman said: Huna told me that all the persons mentioned above who have not the right of hazakah, if they bring evidence, it is to be considered, and the court may leave the property in their possession; except a robber, for even if he brought evidence, it must not be considered, and the court replevins the estate. But what news comes he to teach us? Have we not learned this already elsewhere, that if one has bought estates from a *sicarius* (a man who took away the estate by threatening murder if it was not given to him), and afterwards he got a bill of sale from the owner (without giving him any money), the bill of sale is not considered and he has no title (hence it is already taught that a robber and all those who base their claims upon his actions, even if they bring evidence, are not to be considered)? This teaching was necessary to deny Rabh's theory, who said that the cited Mishna speaks only of a case in which the owner told the buyer: "Go make a hazakah on the estate and acquire title," but has not furnished him with any deed.

[paragraph continues] But if he gave him a deed, title is acquired. R. Huna comes to teach us that the Halakha prevails in accordance with Samuel, who said that in such a case, even if he gave him a deed, title is not acquired unless he take the responsibility for the future. And R. Bibi has added to the above statement of Huna in the name of R. Na'hman, that the estate does not remain in his possession, but the claim for his money, in case he paid afterwards to the robbed one, is to be considered, provided witnesses testify that he gave him the money in their presence. But if they testify that in their presence the robbed one has admitted to the robber that he was paid for it, it is not to be considered. As R. Kahana said elsewhere: Such an admission may have been made only because of fear that he would be killed. R. Huna said: If one sold his estate by duress, the sale is valid. Why so? For if one sells every estate which belongs to him, he usually does so

because he is compelled to do so by circumstances, and nevertheless the sale is valid.

But perhaps there is a difference between the pressure of his private circumstances and duress, which is a pressure by others? This is to be explained as we have learned in the following Boraitha: It is written [Lev. i. 3]: "Shall he bring it," which means that he may be *compelled* to bring it--that it may be *Lirzuno* (literally, according to his will). And what does this mean--that he shall be compelled until he shall say: "I am *willing* to do so." But still it may be that there is a difference, because one likes to atone (and consequently he does it, finally, with good will). Therefore we may infer the same from the latter part of the cited Mishna: And the same is the case with divorced women--he may be compelled until he says: "I am willing to do so." But still it may be that this is to be done because it is a meritorious act to listen to the law (which is not the case with R. Huna's theory). Therefore we must say that R. Huna's decision was from a commonsense standpoint, that when a man is in such circumstances he resolves to give title to the buyer. R. Jehudah objected from the following: A divorce which was compelled by the court of Israelites is valid. By Gentiles, it is not, unless they beat him, saying: "Do as the Israelite court dictates to you." Now, if you say because of the circumstances he resolves to give title, why should the divorce be invalid, even at a court of Gentiles? It may also be supposed that because of circumstances it was resolved to give the divorce legally. The answer is: Was it not taught in addition to this that R. Mesharshiah said: Biblically

the divorce is valid, even when it was obtained in a court of Gentiles. And why did the rabbis enact that such should be invalid--that every woman who did not like her husband should not go to the Gentile court to be divorced from her husband? R. Hamnuna objected from the above-cited Mishna: If he bought of a *sicarius*, etc. Why, then, should it not be said in that case also, that because of the circumstances he resolved to give title? Of this, also, it was taught that Rabh said that this holds good only when there was no deed (as said above). But still there would be an objection to Samuel, who said above that even with a deed the same is invalid?

Samuel himself. agrees that such a sale is valid in case the buyer has paid the owner in cash. But would not R. Bibi's above statement in the name of R. Na'hman contradict R. Huna? Bibi's statement is not a Boraitha and not a Mishna, but only a saying, to which R. Huna need not pay any attention. Said Rabha: The Halakha prevails that if one sells his goods under duress the sale is valid, provided he was compelled to sell one of his estates, and he himself has made the selection. But if he was compelled to sell this field, the sale is not valid, provided he did not count the money given him for it (as this shows that he does it unwillingly); but if he has counted the money the sale is valid. And all this is said in case he has no opportunity to extricate himself; but if he had, and did not take advantage of it, the sales are valid. (Says the Gemara:) In reality, the Halakha prevails that in all these cases the sale is valid, even if he was compelled to sell *this* field, as a woman is similar to *this* field; and Amemar said that if a woman is compelled to betroth herself under duress the betrothal is valid. Mar b. R. Ashi, however, said that in case of a woman the betrothal is null and void. Because he has acted unlawfully, he must also be treated unlawfully, and the rabbis deny his betrothal and consider it void.

Tabba hung Pappi on a tree called khidra, to compel him to sell him his field, and he did so. And Rabha b. b. Hana signed his name on both--on the protest of Pappi made before being compelled, and on the bill of sale made under duress. Said R. Huna: He who has signed his name to the protest, and also he who has signed his name on the bill of sale, did well. How is

this to be understood? If there was a protest, the bill of sale cannot hold good, and *vice versa*? He meant to say that if there were no protest, he who signed his name on the bill of sale did well, for according to his theory a sale under duress is valid. But why

should the protest annul the bill of sale, when the same witnesses who signed the protest signed the bill of sale also? Did not R. Na'hman say: Witnesses who testify that they signed their names to a note whose amount was not yet paid, hut which was prepared by the borrower in case he should find some one who would make him the loan, are not to be trusted? And the same is the case if some one has sold a bill of sale, and the witnesses whose signatures were on the same testified that the one who made the bill of sale made also a protest previously "before us, that he was compelled to make *this* bill of sale, and we have acknowledged the truth of his protest."

Why, then, said R. Huna that if not for the protest the sale would be valid? Let him say it is valid, notwithstanding this protest, in accordance with R. Na'hman's decision just stated? R. Na'hman's statement was when the protest was oral, as such cannot harm a written document. In our case, however, the protest was a written one, and therefore it annuls the bill of sale.

Mar b. R. Ashi, however, maintains that if witnesses testify, "We signed our names before the money was given" (as explained above), they are not to be trusted; but if they testify that this bill of sale was previously "protested before us and acknowledged by us," they may be trusted. Why so? Because in the first case, after the witnesses signed their names to the fact that so and so had borrowed money from so and so, they could not sign another document that the borrower had not received the money as yet, as it would contradict their first statement, and it would seem that they had made themselves liars; and, therefore, if they testify so, they are not to be trusted, as there is a rule that one cannot make himself wicked; *i.e.*, if one comes before the court, and says, "I am a liar," or "wicked," for the purpose that another shall have benefit from this confession, he is not to be trusted. But in the other case, however, both documents may be written by the very same men; *i.e.*, if they see a man in trouble, they may listen to his protest, write it down, and sign it, and thereafter also sign the bill of sale to which he was compelled. And therefore, even if the protest was not written by them, they may be trusted if they testify that they have heard the protest and acknowledged to the truth of it.

"*No hazakah to a husband*," etc. Is this not self-evident? As he has a right to use the fruit of her estate,. how can it be considered a hazakah? It speaks of even when he gave her a document that he has no interest in her estate. But even then,

what is it? Have we not learned in a Boraitha above (p. 109), that if one says: "I have nothing to do with this field," "I have no claim to it," and, "I keep my hands off it," he says nothing? Said the disciples of R. Yanai: Our Mishna treats of when he gave her such a document when she was still betrothed. And this is in accordance with R. Kahana, who says of an estate which one expected to take possession of in the future, he has a right to make a stipulation that he should not inherit it. And it is also in accordance with Rabha, who said: If one declares: "I do not care to have the privilege of the enactment by the sages in a thing similar to the above," he may be listened to. What does this mean? That which R. Huna said in the name of Rabh: A woman has a right to say to her husband "I do not wish to be supported by you and also would not wish to do

any work for you."

Now the Mishna states that the consuming of fruit does not make a hazakah; but if he brings evidence that she sold her estate to him, it would be a hazakah. Why? Let her claim that she had done so only to please her husband. Have we not learned in a Mishna: If one bought an estate from another whose properties were encumbered by the marriage contract of his wife, and afterwards he also took a deed from his wife, the sale is invalid? Is it not because she may say: I did so only with the intention of pleasing my husband, but not with the intention of selling it? Was it not taught in addition to this Mishna that Rabha b. R. Huna explained it that the Mishna treats of certain three fields--namely, one, of one he had set apart in the marriage contract before marriage; and another, of one of which he had made a *hypothec* in the marriage contract after marriage; and the third, of one which she brought him as a gift from her father, which was appraised at a certain amount of money, for which the husband became responsible in the marriage contract? What does he mean to exclude? Shall we assume to exclude all other estates which were also encumbered to her? Then, certainly, it would create so much the more animosity between her husband and herself, because he would say: You did not want to sign this because you are expecting my death or to be divorced. Hence the claim that "I have done so to please my husband" would be right. And shall we say that he means to exclude the usage of fruit? Did not Amemar say that if the husband and his wife have sold the usage of fruit from her estate, it is not to be considered (because of the same claim, "I have done it only to

please my husband")? He means to exclude the use of fruit; and Amemar's statement was only in case he had sold out and died, that she might, after his death, make use of that claim, or in case of her death, he had a right to make use of such a claim, according to the enactment of the rabbis. And it is as R. Jose b. Hanina said (First Gate, p. 197). But when they are both alive and have sold out, and even when the husband only has sold out, the sale is valid. And if you wish, it can be said that Amemar's statement is based upon R. Eliezer's elsewhere, that an article which does not bear the name of its owner--as, for instance, the fruit of the wife's estate, which cannot be said to belong to her or to belong to him--cannot be sold by either of them. And Rabha said that R. Eliezer based his statement on [Ex. xxi. 21], "for he is *his* money," which means the money which belongs to him alone.

"On his wife's estate." But did not Rabh say that a married woman must protest (in case one has occupied her estate). Who is the one who has occupied her estate? Shall we assume any one? Did not Rabh say: "There is no occupancy in the estates of a married woman"? We must therefore say, he means even when her husband has occupied her estate? Said Rabha: He means the husband, and in case he has dug in her estate excavations, pits, and caves, then she must protest, as he has the right to her estate only for usage of fruit; and if she did not, he has a hazakah, as, if he had not bought it, he would not dare to dig in it. But did not R. Na'hman say in the name of Rabba b. Abuhu that there is no hazakah concerning damages (hence if the husband has damaged her estate, she. has not had to protest). Was it not taught in addition to this (above, p. 69), R. Mari said: Concerning smoke, etc.? R. Joseph, however, said: Rabh means a stranger, and he speaks in case he has occupied it at a certain time while her husband was still alive and three years after his death; and because the occupant could claim, "I bought it from you" (as three years have already elapsed since her husband's decease), he is to be trusted if he claims, "You sold out your estate to your husband, and I bought it from him." The text states: Rabh says: There is no occupancy in the estate of a married woman. The judges of the Exile, however,

maintain that there is. And Rabh himself, when he was told of this, said: The Halakah prevails in accordance with the judges of the Exile. (Samuel and Karna were called the judges of the Exile.) And to the question of R. Kahana and R. Assi: Has the master

receded from his statement? he answered: I meant to say, as it was illustrated above by R. Joseph. [1]

"And *vice versa*." Is this not self-evident? Has she not to be supported from the estate of her husband? It treats in case he has set aside another estate for her support. But how is it if she brings evidence that she has paid him for it? Has she the right? Let him claim: I intended only to discover the money which she had hidden from me, and therefore I told her I would sell it, never intending, however, actually to transfer it to her. And because it was not stated, let it be inferred from this that if a husband sold his estate to his wife, the above claim should not be taken into consideration? Nay; it may be said that the Mishna means evidence in the form of a transfer as a gift.

R. Na'hman said to R. Huna: "The master was not with us yesterday, in our college, and there were taught many good things." "And what were they?" "That when a husband sells his estate to his wife, she acquires title, and the claim, 'I did it only to discover her money,' etc., is not to be considered." And Huna answered: This is self-evident, as if you take away the fact that she has given him money, the bill of sale gives her title. For have we not learned in a Mishna that real estate may bought with money or a document, or with hazakah? Rejoined R. Na'hman: But was it not taught, in addition to it, that Samuel said that it speaks only of a bill of a gift, but a bill of sale gives no title unless he paid the money for it? Said Huna: But was this not objected to by R. Hamnuna, from the following: With a document--how so? If he wrote on a piece of paper [or on a piece of broken clay, although it has no value whatever], "My field is sold to you," or, "My field is bought from you," it is sold and transferred to the buyer? And R. Na'hman answered to this: Did not R. Hamnuna himself answer his objection that it speaks of one who sells his estate because of its barrenness? R. Ashi, however, answered (the objection of Hamnuna): The cited Boraitha speaks of a gift which was written in the manner of a bill of sale, to strengthen its power (*i.e.*, the seller has to make good all claims to it). An objection was raised from the following: If one borrowed from his bondsman, and encumbered his estate for him by a document, and afterwards he freed him, or from his wife and thereafter he divorced her, they have nothing

to claim. Must we not assume that the reason is because we suppose that he only intended to discover the money which was hidden from him? That case is different, as one would not like to make himself a slave to the lender ([Prov. xxii. 7]: "The borrower is servant to the lender").

R. Huna b. Abbin sent a message to the college relating that if one sold out his field to his wife, she acquires title, but he has still a right to use the products. However, R. Abba b. Abuhu, and all the great men of the generation, said that such a bill of sale is to be considered a deed of gift, but it was written in the manner of a bill of sale for the purpose of strengthening its power. This message was objected to by the college, from the Boraitha just cited, and was answered with the

same reply.

Rabh said: If one sold his field to his wife, she acquires title, and the husband uses the products. If, however, he has presented it to her as a gift, she acquires title, and he must not use the fruit. R. Elazar, however, maintains that in both cases title is acquired, and the husband has no right to use the fruit. R. Hisda acted in accordance with R. Elazar. Said Rabban Uqba and Rabban Nehemiah, sons of Rabh's daughter, to R. Hisda: "Does the master put aside the great men and act like the small ones?" (R. Elazar was only a disciple of R. Johanan.) And he answered: I have also acted according to the theory of the great men, as when Rabbin came from Palestine, he said in the name of R. Johanan that in both cases she acquires title, and the husband has no right to use the products. Said Rabha: The Halakha prevails that if one sells his field to his wife she does not acquire title, and the husband may use the fruit; and if a gift, she acquires title, and he may not use the products. Does not Rabha contradict himself? (He says she does not acquire title, and it is self-evident that he may use the fruit; and when he says he may use the fruit, it means although she has acquired title.) This presents no difficulty. If she bought with the money which was hidden from her husband, she does not acquire title at all; but if with money which was not hidden from him, she acquires title; but he may, nevertheless, use the fruit. So was it said in the name of R. Jehudah.

The rabbis taught: One must not accept bailments from women, from slaves, or from children: If, however, one has accepted from a woman, he must return it to her; and in case she dies, he must return it to her husband. From a slave, he must return to him; and in case he dies, then to his master. If from

a minor, he should invest it in such a thing as will bear good fruit until he shall be of age, and in case of death return it to his heirs. All of them, however, if they said, while dying, "This belongs to so and so," he must act accordingly (even when the depositor was a minor); and if they have declared nothing, he may do in accordance with his conscience--(*i.e.*, he shall return it to him whom he thinks to be the proper heir. The wife of Rabba b. b. Hana while dying said: These earrings belong to Martha, and to the sons of his daughter. And Rabba came to question Rabh what he she should do. And he answered: If these people whom she mentioned are worthy, so that they can afford to keep bailments with her, then do as she declared; and if not, then you may explain her declaration as you please. "From a minor, he should invest," etc. R. Hisda maintains in Holy Scrolls; and Rabha b. Huna said: A tree which bears dates.

"*A father on the estate of his son*," etc. Said R. Joseph: Even if they have separated themselves. Rabha, however, maintains that in case of separation the law is different. Said R. Jeremiah of Diphti: R. Pappi has acted in accordance with Rabha's statement. Said R. Na'hman b. Itz'hak: I was told by R. Hyya of Hurmiz Ardshir that he was told by R. Aha b. Jacob, quoting R. Na'hman b. Jacob, that when they have separated themselves each of them has a right of hazakah. And so the Halakha prevails.

It was taught: If one of brothers who was the business man of the house, and the bills of sale and notes were in his name, claims: "All this is my own, inherited from my mother's father," according to Rabh, the burden of proof lies upon him; and according to Samuel, it lies upon his brothers. Said Samuel: Abba admits that in case he dies the burden of proof is thrown upon his brothers. R. Papa opposed: Should we make for orphans such a claim as their father while alive

had not any right to (*i.e.*, when this brother was alive, it was for him to bring evidence, and if he could not, the goods belong to all the brothers, and because he is dead, shall we say that the brothers have to bring evidence, and if they cannot it belongs to his orphans)? Did not Rabha levy upon a pair of shoes and a book of Hagadah from orphans without any evidence that they were things which are usually hired and borrowed? And he did so in accordance with the message of R. Huna b. Abbin, that of things which are usually borrowed and hired one is not trusted to say, "They were bought by me." This difficulty remains.

Said R. Hisda: The decision of Rabh concerning the brother who manages the business of the house, holds good only when all the brothers are not separated in the household--even in the dough of bread which they take for the house. But if they are, he may claim that he has spared from his householding the amount which he has in his hand, and the brothers have nothing to do with it. The evidence mentioned in Rabh's decision--what should it be? According to Rabba, the evidence should be with witnesses that he has saved the money or it came from other sources; and according to R. Shesheth, it is sufficient when the court has approved the bill of sale or other notes which bear his name (as it is to be supposed that the court would not approve if it were not sure it belonged to him only). Said Rabha to R. Na'hman: There are Rabh and Samuel, with Rabba and R. Shesheth, who discuss this matter, and I would like to know the opinion of you, master--with whom you agree. And he answered: I am aware of the following Boraitha: One of brothers who was the business man of the house, and there were bills of sale and other notes bearing his name only, and he claims: "They are my own, inherited from my mother's father," the burden of evidence rests with him. And the same is the case with a woman who was managing the business in a house and there were documents bearing her name only, and she claims that they are her own property which came from her grandfather on the father's or mother's side--it is upon her to bring evidence. (Says the Gemara:) It was necessary for the Boraitha to declare the same law in the case of a woman, lest one say that because it is an honor for a woman to be trusted with the management of a house, she would surely take care not to rob the orphans, and therefore she ought to be trusted without evidence, it comes to teach that it is not so.

"*Concerning a gift or an inheritance of brothers*," etc. How is this to be understood? Does not the law of hazakah apply to the persons mentioned farther on in the Mishna? The Mishna is not complete, and should read thus: All this is said of a hazakah to which there is a claim; as, for instance, the seller says, "I did not sell," and the buyer says, "I have bought." But a hazakah to which there is no claim, as, for instance, who presents a gift or an inheritance of brothers, or who takes possession of the property of a proselyte, to which the law prescribes that he needs to acquire title by doing something-if he has locked it or made any partition, etc.--it is a hazakah. R. Houshia taught: In a

[paragraph continues] Tosephtha of Tract Kidushin, written by the school of Levi, "If he locked it," etc., in the face of the other party--it is a hazakah. Is this to be understood, only to his face, but not in his absence? Said Rabha: He meant to say: If this was in the face of the other party, it is not necessary for the latter to tell him: "Go make a hazakah, and acquire title." But if not to his face, it is not considered a hazakah unless he distinctly said to him the words just mentioned. Questioned Rabh: How is the law concerning a gift, according to the Boraitha just mentioned

(must the giver also tell the receiver, "Go and make a hazakah," or not)? Said Samuel: Why was Abba doubtful? When, concerning a sale for which the seller gets money, it is not a hazakah unless he tells him, "Go and make a hazakah," so much the less it must be so with a gift, for which he has received nothing. Rabh, however, maintains that he who makes a gift usually makes it with a good eye, and no explanation is needed.

The Mishna states: "Any work whatever." What does this mean? As Samuel said: If he has completed the partition which was there already to the size of ten spans, or he has broken a hole in the partition through which he can go in or out, it is considered a hazakah. Let us see how was the partition! If it was placed in such a position that one could not climb over it to the estate, and after its completion by the occupant it is also the same, what, then, has he done that shall be considered a hazakah? And if in its previous condition one could climb over it, and after its completion one cannot, then he has done much that does not correspond with the expression "whatever"? It means that in the previous condition one could easily climb over it, and after it was completed it is not so easy for one to do so; and the same is the case with a hole in a partition, by which, in the previous condition, it was not easy to enter, and one broke it to such an extent that it is easy to enter. R. Assi in the name of R. Johanan said: If the occupant of the property of a proselyte put a little piece of wood too near the hole which was in the partition and with this he has improved it, or he took out a piece of wood and with this he has improved it, it is considered a hazakah. What does he mean by the expression, "he put . . . or he took out"? Shall we assume that with this piece of wood he closed the hole so that it prevents the water from going in, or he took out a piece of wood, and with this he has made place for the water gathered in to come out? Why should it be considered a hazakah? Is it not the duty of every Israelite to save the property

of his neighbor from damage when seeing danger is near? Therefore it must be supposed that he means he has put in a piece of wood with the purpose that the water which is useful to the estate shall remain, or he took out a piece of wood so that he opened a channel permitting water to reach the estate. The same said again in the name of the same authority: If there were two estates left by a proselyte and there was a boundary between them, and one has made a hazakah in one of them with the purpose of acquiring title to it, it is acquired. If for the purpose of acquiring title to both, title is acquired only to that on which he has made a hazakah, but not to that which was on the other side of the boundary; and if for the purpose of acquiring title to the latter, even to that in which he has made a hazakah, title is not acquired.

R. Zera questioned: If one has made a hazakah for the purpose of acquiring title to it, to the boundary, and to the estate which is beyond it, how is the law? Shall we assume that, because all are connected title is acquired, or because the boundary intervenes between them it is considered as if they were separated and title is not acquired? This question remains undecided. R. Elazar questioned: How is it if this man has made a hazakah on the boundary itself with the purpose of acquiring title to both? Should the boundary be considered a breadth of the earth which joins the two fields, and therefore title is acquired, or the fields are nevertheless considered separated and title is not acquired?

This question also remains undecided.

R. Na'hman said in the name of Rabba b. Abuhu: If there were two houses, one inside of the

other, and one has made a hazakah on the outer one for the purpose of acquiring title to it, title is acquired. If for the purpose of acquiring title on the inner one also, the outer one is acquired, but not the inner. For the purpose of acquiring the inner one only, even the outer one is not acquired. The same is said again in the name of the same authority: If one has built a palace on the property belonging to the proselyte in question, and another comes and puts doors to the palace, the latter has acquired title to the whole of it. Why so? Because the work of the first is considered as if he had only turned bricks without using them, as the doors to it are the main thing.

R. Dimi b. Joseph in the name of R. Elazar said: If on the estate of the proselyte in question there was a palace and one has coated one of the walls with lime, or painted one of the pictures

therein, title is acquired. How much of the wall must he coat or how large must he paint the picture? Said R. Joseph: One ell. And R. Hisda added that this ell must be opposite the door (but at another place he must coat or paint more than this).

R. Amram said: The following was told to us by R. Shesheth, who to enlighten our eyes explained a Boraitha. He said: If one has prepared his bed in the estate of the proselyte in question and slept there, he acquires title to the whole estate. And he enlightened our eyes to the Boraitha as follows: How can one acquire title to a bondsman with hazakah? If the slave has put on the shoes of the master or taken off his shoes, or has carried his garments after him to the bath-house and undressed him and washed him, anointed, rubbed, dressed him, put on his shoes, or even lifted him up, title is acquired.

Said R. Simeon: There cannot be a better hazakah than lifting up, as this act gives title to one in everything. How is this to be understood? The Boraitha says that if the slave has lifted up his master it gives title to the master; but if *vice versa*, it does not. And to this answered R. Simeon: There is no better hazakah than lifting up, which means that this gives title even if the slave was lifted up by the master. R. Jeremiah of Bira in the name of R. Jehudah said: If the estate of the proselyte in question was already ploughed and one put radishes in the furrows, it is not considered a hazakah, because at the time he put the radishes in, without covering, there was no improvement at all; and even if in a few days afterwards these begin to grow, it is not considered as if done by him, but from itself.

Samuel said: If one peels off the bark of a tree, if he has done it for the improvement of the tree, title is acquired; and if for food for his cattle, it is not. [And how can we know this? If he peels off the tree from both sides, it is supposed that he does it for the improvement of the tree; but if from one side, it is for his cattle.] He said again: If one cleans off the estate in question, if he has done this for the improvement of the earth, title is given; but if he has done so with the idea of using it for fuel, it does not. [And how shall this be proved? If he takes off all there is, it is supposed that he does it for the improvement; but if he chooses the larger pieces and leaves the smaller ones, it is to be assumed that he does it for the purpose of using it for fuel.]

And the same said again: If one engaged himself to level ground for the sake of the earth itself, it gives him title; and if

with the intention of placing a temporary barn there, it does not. [And how shall this be proved? If, for instance, he takes off the superfluous earth from the hills and puts it in the hollows (and so he has done with all of them), it is to be supposed that he does it for the improvement of the ground; but if he only made the hills lower, and only at the edges of the hollows he filled these in, then it is to be supposed that he does so with the intention of putting up a temporary barn.] He also said: If he opens a stream of water to this ground, if he does so for the improvement of the earth, title is given to him; but if with the idea of catching fish, it does not. [And how shall this be proved? If he opens both sides of the estate, one for the purpose of letting the water enter and the other side for letting it out, it is supposed that he does so with the intention of catching fish; and if he open only one side, so that the water may enter, it is assumed that he does so for the improvement of the earth.] There was a woman who peeled off on one side trees of the estate of the proselyte in question for thirteen years. Another man came who dug a little under the tree; and the case came before Levi, according to, others before Mar Uqba, and he left it in the possession of the latter. And this woman came and protested, and he said to her: What can I do for you, in that you have not made the hazakah as it ought to be?

There was a woman who had made a partition to that which was already there in the estate of a proselyte. Another man, however, came and digged in the estate; and when the case came before R. Na'hman, he left the estate with the latter. And this woman came and caused a disturbance, and R. Na'hman answered: What can I do for you, as you have not made a hazakah as people ought to do? 1

Rabh said: If one paints in the estate in question a likeness of an animal or a bird, title is acquired. So Rabh himself made such a hazakah at a garden which was near his college, left by a proselyte who died without children.

It was taught: A field which was marked out by boundaries on four sides, said R. Huna in the name of Rabh: As soon as one has dug one spadeful of earth he acquires title to the whole field. Samuel, however, maintains that he acquires only the place he has dug. And what is the law concerning a field not marked off by boundaries? Said R. Papa: If he digs in it as much as a team of oxen in one furrow and the return.

R. Jehudah said in the name of Samuel: The estate of idolaters, if sold to an Israelite and the latter has not made a hazakah on it, it is like a desert; and the first who makes a hazakah on it acquires title. Why so? Because the idolater, as soon as he gets the money, cuts himself off from it; and as the Israelite has not as yet acquired title to it until he gets the bill of sale, it is therefore like a desert, and every one may try to take possession of it (returning the money to the buyer). (The commentator Rashbam, however, maintains that from the expression, "It is like a desert," it is to be understood that the occupant has to pay nothing, and the buyer has to sue the seller if he can do so.) Said Abayi to R. Joseph: Is it possible that Samuel should say so? Did he not declare elsewhere that the law of the government must be respected as the law of the Torah, and the government dictates that title is acquired only by a deed, and not otherwise? Hence the other one who has made a hazakah is also without the deed needed. And he answered: I know it only from experience. As it happened in the village Dura of the shepherds, an Israelite bought an estate of idolaters, and the Israelite came and dug a little on this estate, and when the case came before R.

Jehudah, he left it in the hand of the latter. And Abayi rejoined: Do you want to compare any other cases to the case of the village Dura? There was a *pagus* with estates hidden from the government, and the possessors of those estates did not pay taxes for it. And the government dictates that he who pays the taxes owns the land.

R. Huna bought an estate from an idolater and another Israelite digged in it; and the case came before R. Na'hman, and he left it in the hands of the latter. Said Huna to him: The basis of your decision is what Samuel said, that the estates which are sold by an idolater are like a desert, and who takes possession thereof acquires title. Why should the master not decide in accordance with the other saying of Samuel, that the digger acquires title only at the place where he dug? And he answered: In this respect I hold in accordance with Rabh, in whose name R. Huna said: As soon as one has digged one spadeful he acquires title to the whole of it.

R. Huna b. Abbin sent a message: If an Israelite buys a field from a Gentile, and another Israelite comes and takes possession of it (before the bill of sale reaches the buyer), the court has no right to take it away from the latter. And to this, R. Abbin, R. Elaa, and all our masters at that time agree.

Rabba said: I was told by the Exilarch Uqban b. Nehemiah, in the name of Samuel, the following three things: (*a*) That the law of the government should be respected as the law of the Torah. (*b*) The hazakah of the Persians is no less than forty years. (*c*) And the rich farmers who buy land from the officers of the government for the taxes which were not paid by the previous owners, the sales are valid. But this is only when the owners owe to the government taxes. But if the land was taken for poll taxes, the sale is not valid. Why so? Because the poll taxes rest upon their heads, not upon their land. R. Huna b. Jehoshua, however, maintains that even the barley in the pitcher is mortgaged to the poll taxes (*i.e.*, when the land was taken away for poll taxes, they have a right to sell it). Said R. Ashi: Huna b. Nathan told me that Amemar objected to the decision of R. Huna, saying: According to this theory, the rule prescribed by the Scripture, that a first-born shall take two parts in the inheritance, should be abolished, as if the whole estate is encumbered to the government for poll taxes, the bequeathed estate will be fit only in the future for inheritance, but not as yet. And there is a rule that the first-born has a right to take a share only in that which is already fit. And he answered: Why this objection to poll taxes? The same can be raised concerning land taxes also. But to this it can be answered that he speaks of when one dies after he paid the land taxes, and the same can be said with poll.

R. Ashi said: Huna b. Nathan told me: I asked the scribe of Rabha, and he told me that the Halakha prevails in accordance with R. Huna b. R. Jehoshua. (Says the Gemara:) In reality it is not so, as the scribe of Rabha says this only to approve his acts. R. Ashi said again that an απραχτοσ (a man who goes idle) must bear the taxes of the city. But this is said only when he was freed by some of his friends in that city who told the chief that he owned nothing from which to pay and he let him go; but if the chief himself or the officers who were appointed by the government do not like to collect from him because he is idle (although they collect his share from the other townsmen), it is to be considered as a divine help to him and he must not be troubled again. R. Ashi said in the name of R. Johanan: A boundary or a tree which is found between two estates of a proselyte is considered an intervention concerning hazakah, but not concerning corner tithe and concerning defilement. When Rabbin came from Palestine, he said in the name of R. Johanan: It is considered an intervention concerning the two last-mentioned as

well.

[paragraph continues] But how is the law if there was no boundary and no tree, and nevertheless they were separated? R. Mrinus in the name of R. Johanan explained that he acquires title to the whole field which is called after his name. What does this mean? Said R. Papa: If people call it the field which the proselyte used to water from his valley. R. Aha b. Ivya was sitting before R. Assi, and said in the name of R. Assi b. Hanina that a hazuba makes an intervention in the estate of a proselyte. What is a hazuba? Said R. Jehudah. in the name of Rabh: This was a mark by which Joshua marked the land which he divided among the tribes of Israel. He says again in the name of the same authority: Joshua did not count but the cities which were placed on the boundaries (*i.e.*, the cities which are enumerated in the Book of Joshua). He said again in the name of Samuel: All that the Holy One, blessed be He, had shown to Moses from the land of Israel was subject to tithes. (It means that from the products growing in those places tithes must be separated biblically.) What does it mean to exclude? The land of the Kenites, Kenizzites, and Kadmonites [Gen. xv. 19].

MISHNA *IV.*: If there are two witnesses that the occupant has consumed the products of a field three years, and after investigation it is found that they were collusive, the witnesses have to pay the whole value of the products from the last three years to the plaintiff. If, however, two have testified for the first year and two others for the second year, and still two others for the third year (and all of them had witnessed falsely), the payment mentioned above must be divided among them, of which each of the parties has to pay a third.

If there were three brothers witnessing, and one stranger testified the same as they had, they may be considered as three parties of witnesses--*i.e.*, one of the brothers said: I am aware that the defendant has occupied this property the first year; the second: I am aware that he has occupied it the second year; and the third testified for the third year. If the stranger, how. ever, says: I testify that the defendant has occupied it all the three years, his testimony is counted to each of them, so that for each year there are two witnesses. If, however, the testimony was found to be collusive, they ought to be considered as one party of witnesses, and the brothers have to pay the whole claim.

GEMARA: Our Mishna is not in accordance with R. Aqiba of the following Boraitha: R. Jose said: When Abbah 'Halaftha went to study the Torah from R. Johanan b. Muri,

according to others the reverse was the case, he questioned him: How is it if one has occupied a property the first year in the presence of two witnesses, and the second in the presence of two others, and the third in the presence of still two others, should this be considered a hazakah, or not? And he answered: It is. Rejoined the former: I am of the same opinion; but R. Aqiba opposes, as he used to say: It is written [Deut. xix. 15]: "A case be established." A *case*, but not half a case (*i.e.*, as each party testifies only for one year, they are testifying to only half a case; but not the whole case).

R. Jehudah said: If one of the witnesses testifies that the occupant has occupied the estate all the

three years with wheat, and the other testifies with barley, it constitutes a hazakah. R. Na'hman opposed: According to this theory, if one testifies that he has occupied it the first, third, and fifth years, and the other for the second, fourth, and sixth, should this also be considered a hazakah? Answered R. Jehudah: What comparison is this? In your case one testifies for this year, and the other for other years; but in my case both are testifying for the very name year. The difference is only concerning barley and wheat, about which people are not used to be too particular.

"*If there were three brothers*," etc. There was a promissory note signed by two witnesses, of whom one died, and his brother with a stranger comes before the court to testify that the signature of the deceased is a right one. Rabhina was about to say that this case was familiar to our Mishna, which states that three brothers and one stranger are counted legal witnesses. Said R. Ashi to him: There is no similarity at all. In the case of the Mishna half the amount of the claim is collected, because of the testimony of the brothers, and the other half because of the testimony of the stranger. In this case, however, the brothers' testimony collects three-quarters of the whole amount (*i.e.*, the signature of the deceased witness gives the right to collect half the amount. Now when this brother came to testify concerning the signature, his testimony is for a quarter of the whole amount, and the testimony of the stranger who was with him for the other quarter. Hence three-quarters of the whole amount are to be collected by the testimony of the brothers, which is not legal.

MISHNA *V.*: There is a difference in usage of articles: In some cases the law of hazakah applies, and in some it does not. *E.g.*, if one used to keep his cattle in the yard of his neighbor, or a stove, oven, or handmill, or raised there hens, or he

kept there his manure, it is not considered a hazakah. However, if he has made a partition ten spans high for his cattle, or for the other articles mentioned above, or he has kept his hens in his neighbor's house, or has dug three spans in the ground of his neighbor for his manure, or he has made a heap of it three spans high on the same ground, it is a hazakah.

GEMARA: Why should the law differ in the latter part from the first part (is it not a fact that the owner of the yard would protest when a stranger kept his cattle therein without any right)? Said Ula: It is because of the following rule: Usage which does not give title to the property of a deceased childless proselyte, it also does not give it to the property of one's neighbor; and usage which does give title in that case, gives also title in the latter case.

R. Shesheth opposed: Does this rule always hold good? Is it not a fact that ploughing, which is not considered a hazakah concerning the estate of one's neighbor, gives title when it is done on the estate of a proselyte? On the other hand, usage of fruit, which is considered concerning a neighbor's estate, does not give title to the estate of a proselyte. "Therefore," said R. Na'hman in the name of Rabba b. Abuhu, "the Mishna treats of a yard belonging to partners, who usually are not particular if one of them keeps his cattle there; but they are, if one separates his cattle by a partition." Is that so? Have we not learned in a Mishna: If partners have vowed not to derive any benefit from one another they must not enter in their yard, as by entering one derives benefit from the share of his neighbor. Therefore R. Na'hman's above saying was concerning a rear yard, in which usually one is not particular if his neighbor leaves there his cattle. But concerning a partition, they would be particular. R. Papa, however, maintains that both our Mishna and the cited one speak about a yard belonging to partners; but some are particular concerning leaving

cattle and some not. Therefore, in a case that may lead to an offence, as in the cited Mishna, it is decided rigorously; and concerning money matters it is decided leniently. Rabhina, however, maintains that partners are never particular with one another. And concerning the case of deriving benefit, the Mishna which treats about vows is in accordance with R. Eliezer, who holds that even a little gift that is usually presented by the storekeepers to their customers is prohibited to him who has vowed not to derive any benefit from his storekeeper, which the rabbis allow.

R. Johanan in the name of R. Bnaha said: Everything (which is not in the agreement) may partners prevent each other from doing in the yard belonging to them except washing, because the daughters of Israel must not be left to disgrace themselves by washing at the bank of the river (as they must stand there with bare feet). And Hyya b. Aba said: It is written [Is. xxxiii. 15]: "And shutteth his eyes against looking on evil," meaning him who does not look upon women when they are occupied in washing. How is this to be understood? If there is another way to pass, and one passes by that way for the purpose of looking, then he is wicked; and if there is no other way, what can he do, as he is compelled to pass them? It means even in the latter case, and nevertheless one must manage not to look upon them.

R. Johanan questioned R. Bnaha [1]: What is meant by a shirt of a scholar? And the answer was: It covers the whole body, so that no part of it may be seen. And what is meant by a garment of a scholar? If it covers the shirt so that a fragment of it not more than a span should be seen. What is meant by a table of a scholar? That the table-cloth covers two parts of the table, and the third part is uncovered to place there plates and herbs, and the ring of the table (they used to have a ring in order to keep together the table-cloth, to hang it up after the meal), and the ring should be outside. [But have we not learned in a Boraitha that the ring must be inside? This presents no difficulty, as one Boraitha speaks of when there is a child sitting by the table--then it must be inside; or it speaks of the night meal, when it is better it should be inside, so that the servant should not touch it while it is dim; and another Boraitha speaks of a day meal, without a child.] And that of a common man looks like a *tam*, as the dishes are placed around and the bread is in the middle. What is meant by a bed of a scholar? If under it nothing is to be found but sandals in summer-time and shoes in the rainy season; and the bed of a commoner looks like a treasure of *vilis* wherein you may find everything?

R. Bnaha used to mark caves of the dead (for the purpose of defilement). When he came to the cave of Abraham (the Patriarch), he found Eliezer his servant standing outside, and to the question, What is Abraham doing now, he answered: He sleeps in the arms of Sarah, and she looks on his head. And Bnaha asked Eliezer to beg permission for him to enter. He said to

[paragraph continues] Abraham: Bnaha is waiting at the door. Said Abraham: Let him come in: it is known that the evil spirit does not remain in our world. Bnaha then entered, took the measure of the cave, and went out; when he arrived, however, at the cave of Adam the first, he heard a heavenly voice saying. Thou hast seen the image of Adam; but in the face of Adam himself, who is the work of (the Lord), thou hast no right to look. And to the protest: I need to mark the measure of the cave, he was answered: The measure of the outside of Abraham's cave equals the inside of Adam's.

Said R. Bnaha: I have seen the heels of Adam and they appeared to me as the circumference of the sun. Beside the face of Sarah, that of every one else looks like the face of an ape to that of a man. And Sarah's to that of Eve is also like the face of an ape to that of a man; and Eve's to that of Adam himself is also like the face of an ape to that of a man. The beauty of R. Kahana is similar to that of R. Abuhu, etc. (See Middle Gate, pp. 212, 213.)

There was a Magus who used to dig after the dead for the purpose of taking away their shrouds. When he arrived at the cave of R. Tubi b. Mathna, he grasped him by the beard, and Abayi came and requested him to leave him, and he did so. The next year the Magus came again to this cave, and Tubi again grasped him by the beard, and Abayi's request was refused, until scissors were brought and the beard was cut off.

There was a man who said while dying: I bequeath one barrel of earth to one son, a barrel of bones to another, and one barrel of down to the third. And they did not understand what he meant, and came with this question to R. Bnaha. And he asked them if they possessed estates. They said: Yea. Have you cattle? Yea. Have you also *vestes-stragula* (blankets, quilts, mattresses)? Yea. Then he said: If so, this is what your father has bequeathed to you (it means, one shall have the estate, one the cattle, etc.).

There was a man who heard his wife saying to her daughter: Why are you not careful in your unlawful acts? I have ten sons, and only one is from your father. When he was dying he said: I bequeath all my properties to one son (as he did not know which one was his). And as they did not know to which of the sons, the case came to R. Bnaha, who advised them to go and knock on the father's grave until he should come and explain whom he meant. Nine of the sons did so, but the one who was

his did not. Then R. Bnaha decided that all the estates should be given to this one. His brothers then denounced him to the government, saying: There is one man among the Jews who collects money without witnesses and without any evidence. And he was arrested. His wife then came complaining: I had a slave. People came and cut off his beard, removed his skin, consumed his flesh, filled the skin with water, which they gave to drink to their comrades, and they did not give me any of the money or some other equivalent for it. The officers did not understand her, and decided to question the vise of the Jews; perhaps he would understand what it meant. They did so, and he answered: She is complaining about a leather-bag (it means she had a buck: they stole it from her, killed it, consumed the meat, and from the skin they made a leather-bag for water to drink from. They said then: Because he is so wise, he shall sit at the court and judge. He saw, then, that it was written on the αμβολαη: A judge who is summoned cannot be named a judge. Said R. Bnaha to them: If so, then any one may come and summon the judge (though he had never any business with him). Should he be no longer qualified to be a judge it ought to be thus: A judge who is found liable in the court, so that money is to be collected from him, is no longer qualified as a judge. And they thus corrected this: However, the sage of Judea maintains that a judge from whom money is collected by a judgment is not considered a judge.

He saw again that there was written at the head of each dead, I, blood, am the cause; and at the head of each life, I, wine, am the cause. And he said to them: According to this, if one falls from

the roof or a tree and dies, does also the blood kill him; and also, if you see one dying, give him wine and he will revive? It ought to be written thus: In the head of every sickness, I, blood, am the cause; and in the head of every medicine, I, wine, am the cause. And they corrected thus: In the head of all sickness, I, blood, am the cause; in the head of all medicines, I, wine, am the cause (*i.e.*, if the man would use wine in accordance to his health he would never come to sickness, and only in places where there is no wine is medicine needed--*i.e.*, because there is no wine, sickness is frequent). On the gates of the city of Kaputkaya was written: Anipak, Anbag, and Antell are all of equal measure (so that there is no claim that if one bought an Anpak and received an Anbag, etc.). These measures are equal to a quarter of a biblical lug (said the Gemara).

MISHNA *VI.*: The law of hazakah does not apply to movable pipes attached to the roof-gutters (drains), but does apply to the places of them and also to spouts. It does not apply to an Egyptian ladder or to an Egyptian window; but to both of Tyre it does apply. What is to be considered an Egyptian window? If a human head cannot enter in it. R. Jehudah, however, maintains: If it has a frame, although a human head cannot enter it, the law of hazakah applies.

GEMARA: How is it to be understood that the pipes have no hazakah, and the place has? Said R. Jehudah in the name of Samuel: It means thus: The movable pipes have no hazakah at one side (*i.e.*, if the pipes were fixed that water should come out; *e.g.*, on the north side of his neighbor's yard, so that if the owner of the yard needs this place he has a right to compel the owner of the house to remove them to the south side). However, he has no right, after long usage undisturbed, to insist that the gutters or pipes be entirely removed. R. Hanina, however, explained the Mishna thus: The law of hazakah does not apply to pipes in the respect that, if they are too long, the owner of the yard may insist that they be shortened; the place, however, has a hazakah, so that if the owner claim that they shall be removed, he is not to be listened to. And R. Jeremiah b. Abba said: It means if the owner of the yard wishes to build something beneath, he may; but he has no right to insist on their removal. An objection was raised from our Mishna, which states that the law of hazakah applies to a spout, which is correct in the two first explanations (as a spout, which is more stationary than a pipe, must not be removed or shortened); but in the third, that one may build beneath, to what purpose does the Mishna teach it? Why not? What harm can be done with this to the spout? The Mishna speaks of when the spout was surrounded by a stone building, so that the owner of it may claim that the new building would weaken the stone building surrounded by the spout.

R. Jehudah in the name of Samuel said: Drains which discharge water in the yard of one's neighbor, and the owner of the roof wants to stop it--the owner of the yard has a right to pre. vent him, claiming, As you have acquired title to my yard for discharging the water of your roof, so I have acquired title to that water of your roof.

It was taught: R. Oshyah said: He may prevent. And R. Hamma said: He may not. He then went and questioned R. Bissa (his father, who was also the grandfather of R. Oshyah)

and he decided that he might prevent. Rammi b. Hamma then applied to him the verse [Eccl. iv. 12]: "And a threefold cord cannot quickly be torn asunder," which means R. Oshyah, the son of

R. Hamma, the son of R. Bissa.

"*To an Egyptian ladder*." What is called an Egyptian ladder? Said the school of R. Yanai: Such as has not four steps.

"*An Egyptian window*," etc. Why does the Mishna explain what an Egyptian window means, and did not so do concerning an Egyptian ladder? Because to the. latter it had to state the opinion of R. Jehudah.

R. Zera said: The window in question has a hazakah when it is placed lower than four ells from the ground only; and one can prevent his neighbor from opening such in a building which adjoins his yard only when it exceeds four ells. R. Ailah, however, maintains that the same is the case even when it is higher than four ells. Shall we assume that the point of their difference is, if the court has to coerce one who acts after the manner of the Sodomites (*e.g.*, if one derives benefit from a thing which does not harm any one, the preventer is equalled to the Sodomites, and the question is, Must the court overrule such a preventer or must it be left to the conscience of this man, and the court has nothing to do with it?). Nay; all agree that in such a case the court shall overrule the preventer. Here, however, it is different, as the neighbor might say: It might happen that you would take a footstool, stand upon it to look in at my window, and then will be visible to you what is going on in my house.

There was one who wanted to open a window higher than four ells to his neighbor's yard, and the case came before R. Ami; and he referred it to R. Abba b. Mamal, who decided in accordance with R. Ailah. Said Samuel: To a window which is to be opened for light, whatever size it may be, the law of hazakah applies.

MISHNA *VII*.: To an enclosure the size of a span in width hazakah applies; and if one came to make it in his building which faces his neighbor's yard, the latter has a right to protest. To less than the above size hazakah does not apply, and also no protest can be made against it.

GEMARA: R. Assi, or R. Jacob in the name of R. Manni, said: If he has made a hazakah with the enclosure which was the width of one span, he has made it for four spans. How is this to be understood? Said Abayi: He means to say that if the enclosure one span wide has the length of four spans, he may

increase it to four spans square (as his neighbor does not disturb him from taking the space of four spans in the length, it would be the same as if it were square).

"*Less than that size no hazakah*," etc. Said R. Huna: This is said concerning the owner of the roof only, but the owner of the yard may prevent his neighbor from making an enclosure even less than a span. R. Jehudah, however, maintains that neither of them can prevent the other. Shall we assume that the point of their difference is, if harm done by looking is considered damage, or not? Nay; all agree that it is considered. But in this case such an enclosure not being fit for use, except to hang something in it, is different, as one may say: I can do it without looking into your property. The one, however, who forbids this, maintains that his neighbor may

claim: It can happen that while hanging his things in this enclosure he will be frightened, and even unwillingly his face will be turned to my property, and will see what I should not like.

MISHNA *VIII.*: One must not open windows to the yard even when he is a partner in it (without the consent of the other partner). If he bought a house in another yard, he must not open a door to that yard in which he is a partner. If he built an attic upon his house, he must not make its entrance in the yard in question. He may, however, divide a chamber inside of his house, and build an upper chamber upon it, so that the entrance should be through his house.

GEMARA: Why does the Mishna treat about a yard of partners? Is it not the same with the yard of one's neighbor, without any partnership? It means to say not only to one's neighbor's yard is he not allowed, but even to that in which he is a partner. Lest one say: As his partner has to hide from him (such things as he would not like his partner to see) in the yard anyhow, it does not matter if he should open a window to that part which belongs to him; it comes to teach us that his partner may say: Until now I had to hide myself from you in the yard only; but by opening a window from which my house will be visible, I shall have to hide myself in my house also.

The rabbis taught: It happened with one who opened his windows to a partner's yard, and he came before R. Ishmael b. R. Jose, who said to him: My son, thy hazakah is valid, as thy partner has not protested. When this case came up again before R. Hyya, he said: You have troubled yourself to open it, trouble yourself to close it. Said R. Na'hman: If one of the partners

built a wall against the window which was opened to the yard in question and was not disturbed by the owner of it, it is considered a hazakah immediately; as one would not tolerate that his light should be shut off in his face and be silent.

"*If he bought a house . . . he must not open a door to that yard*," etc. Why so? Because he increases walkers through the yard (and this would be disagreeable for the inhabitants of it, as their work in the yard would be visible to people, which they would not like). But if so, why then, does the latter part allow to build an upper chamber inside of one's house? Does he also not increase walkers with this? Said R. Huna: It means that he may divide his chamber horizontally, so that it should serve for an attic; but not to enlarge the building.

MISHNA *IX*: One must not open in a yard belonging to partners a door or window opposite his partner's door or window: If there is a small one, he must not enlarge it; and if there is one door, he must not make two of it. All this, however, may be done to the public street.

GEMARA: Whence do we deduce all this? Said R. Johanan: From [Num. xxiv. 2]: "When he saw Israel encamped according to their tribes." What did he see? That their doors were not exactly opposite each other. And then he said: They are worthy that the Shekhinah should rest upon them.

"*He must not enlarge it.*" Rammi b. Hamma was about to say, *e.g.*, that if it was the size of four ells, he must not make it eight; because he takes four ells space from the yard. But if it was two ells, he might enlarge it to four. Said Rabha to him: His partner may claim: When you had a small door, I could hide myself from you, which is not the case with a large one.

"*If there was one*," etc. Rami b. Hamma was about to say, when the door was four ells wide, he must not divide it into two each; but if it was eight ells wide, he might divide it in two--each of four. Said Rabha to him: His partner may claim when he had one door: I could hide myself from you, which is not the case when you will have two.

"*To the public street*." Because one may say: It does not matter that my door is open just opposite yours, as you must anyhow hide from the passers-by.

MISHNA *X*: One must not make a hole in public ground; viz., pits, excavations, or caves. R. Eliezer, however, permits this, if the surface of the ground remains strong enough to bear wagons loaded with stones.

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One must not build enclosures or balconies on the space belonging to public ground; he may do so, however, on the space of his property which faces the public ground. If one bought a yard and there were enclosures or balconies upon public ground, it constitutes a hazakah and may remain so.

GEMARA: Why do not the rabbis permit the same as R. Eliezer illustrated? Because it may happen that it shall break suddenly and will cause damage.

"*Enclosures*," etc. There were enclosures from R. Ammi's property facing an alley, and there was also another man whose property was facing the public ground; and the public complained, and the case came before R. Ammi, who decided that the enclosure should be cut off. Said the defendant: Does not the master's enclosures face the alley? And he answered: My enclosures are facing an *alley*, the inhabitants of which have relinquished their right in my behalf; yours, however, are facing the *public* ground. Who can relinquish to you? R. Yanai had a tree bending over public ground, and another man had the same, of which the public complained (that a mounted camel could not pass). And defendant came before R. Yanai, who, told him to leave him to-day and come to-morrow. On that night R. Yanai ordered the removal of his own tree. And when the defendant came in the morning, he told him to remove it. And to the question: Does not the master himself possess such? he answered: Go and see if mine is not removed; if not, yours can remain; but if it is, you must do the same. But why did not R. Yanai remove it before that case came before him? He previously thought that the passers-by were pleased to sit in its shadow; but when he saw that they were complaining, he ordered the removal. And why did he not order the defendant to remove the tree before removing his? Because of what was said by Resh Lakish (Middle Gate, p. 287): Correct first thyself, and then others.

"*In the space of his property*." The schoolmen propounded a question: If one left space for it, but has not yet made the enclosure, may he do it afterward, or not? According to R. Johanan he may; according to Resh Lakish he may not. Said R. Jacob, to R. Jeremiah b. Thalipha: I am able to explain to you that there was no difference between the two rabbis just mentioned, concerning the enclosures in question, as both agree that they may be made even at any time. In what they do differ is, if one wants to replace the walls of his property in their former position,

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and their decision was just the reverse. According to R. Johanan he may not; because of that which was said by R. Jehudah (above, p. 35): A path which is used by the majority must not be destroyed. And according to Resh Lakish he may; because even then there is still place for passing.

"*If one bought a yard*," etc. Said R. Huna: If the wall of the yard in question fall, he may rebuild it with the former enclosures. An objection from the following Tosephtha: One must not paint his house with whitewash or any other colored dye at this time to show that he is mourning for the destroyed Temple. However, if he bought such already painted, he may keep it as it is; but if it falls, he must not furnish the same painting to the ones rebuilt. (Hence the refurnishing is prohibited.) You cannot oppose mourning for the Temple to common money matters.

The rabbis taught: When the second Temple was destroyed, many of Israel separated themselves from eating meat and drinking wine. And R. Joshua approached them, saying: My children, why do you not eat meat and drink wine? They replied: Should we eat meat of which sacrifices were brought, or drink wine which was offered at the altar? Said R. Joshua to them: If so, let us not eat bread, as the meal-offering is also abolished?

Then we can live on fruit? They replied: But was there not also the firstfruit offering? And was it not also the custom to put water on the altar, which no longer exists? Let us, then, cease the use of fruit, and of water also. And they were silent. Then said R. Joshua to them: My children, come and listen to me. It would be wrong not to mourn at all, because the evil decree is executed. But to mourn too much is also impossible, as there must not be decreed a prohibition for the congregation which they could not stand, as it is written [Mal. iii. 9 1]. And therefore the sages said: When one paints his house, he shall leave part unpainted as a sign of mourning. [How much? Said Rab Joseph: An ell square. And Rab Hisda said: This must be opposite the door.] One may prepare all that he needs for his meal, leaving out some little things as a sign of mourning. And the same is the case with a woman: she may dress with all her ornaments, leaving out some of the unimportant for that purpose. As it is written [Ps. cxxxvii. 5]: "If I forget thee, O Jerusalem, may my right hand forget. May

my tongue cleave to my palate if I do not remember thee; if I recall not Jerusalem at the head of my joy." What is meant by at the head of my joy? Said R. Itz'hak: It is the custom to put some ashes on the head of the groom on the day of marriage. And R. Papa said to Abayi: They used to place it on their foreheads at the place of phylacteries, as it is written [Is. lxi. 3]: "To grant unto the mourners of Zion--to give unto them ornament," etc. And every one who is mourning for Jerusalem will be rewarded by seeing her joy. As it is written [ibid. lxvi. 10]: "Be highly glad with her, all ye that mourn for her."

There is a Boraitha: R. Ishmael b. Elisha said: From that day when the Temple was destroyed it would be only right we should take upon ourselves not to eat meat and not to drink wine; but such a thing must not be decreed, which the majority of the congregation could not endure. And from the day that the Roman government put upon us evil decrees, prohibiting to us the Torah and its commandments, did not allow us to circumcise and redeem our children, it would be only right we should take upon ourselves not to marry and have children, so that the children of

Abraham would be destroyed by themselves; but leave Israel, let them do as they please, as it is better they should sin unintentionally than intentionally (as if this should be ordered, they would certainly not observe it).

Footnotes

84:1 Rashbam says it is unknown to him wherefrom the Gemara took it that R. Ishmael was among the Sanhedrin in question.

93:1 The text contains only a few words, but very complicated; the commentators try to explain it at length, but they differ as to the meaning, and their interpretation is no less complicated. We have done the best we could, that the reader should have an idea of it.

102:1 This is according to Rashbam. R. Gershom, however, maintains that the two who witnessed the protest would notify the occupant, as only for this purpose were they appointed. From the text, however, it is impossible to decide which of the commentators is right, as there are only a few words. The one who holds that "two" suffice is of the opinion that "a protest in absence" is not considered.

124:1 R. Joseph was two generations after Rabh. But it is the custom of the Gemara to write as if Rabh would have said: "I illustrate this as R. Joseph has done it."

131:1 This paragraph is transferred from Erubhin, 25a, as this is the proper place.

137:1 This is placed here in text because all that was said and done by Bnaha should be together.

145:1 Leeser's translation does not correspond at. The commentators try to explain it, but do not succeed. We have, therefore, omitted the translation of the verse, leaving, however, the reference to it.

Next: Chapter IV