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CHAPTER V.

RULES AND REGULATIONS CONCERNING SALES OF SHIPS, BOATS, ANIMALS, AND TEAMS; CONCERNING BROODS OF PIGEONS AND BEASTS; TREES, WITH THE GROUND AND WITHOUT. HOW TO ACQUIRE TITLE TO FRUIT AND FLAX. OF ARTICLES WHICH BECAME DEARER OR CHEAPER BETWEEN THE TIME OF SALE AND DELIVERY. AT WHAT TIME THE WHOLESALERS AND STOREKEEPERS HAD TO CORRECT THEIR WEIGHTS AND MEASURES, AND OF WHAT MATERIAL THE WEIGHTS MIGHT AND MIGHT NOT BE MADE.

MISHNA *I.*: If one sells a boat, the sale includes the mast, the flag, the shovels, and all things pertaining to the leading of the boat, but not the slaves, and the sacks for carrying goods, nor the *entheca*. If, however, he sells the boat with all its contents, all is sold.

GEMARA: The rabbis taught: If one sold a boat, the sale includes the *scala*, and also the well with water therein. R. Nathan said: The sale includes also the safety boats. And so also said Symmachos, but he named them *dugit* as in Palestine, while R. Nathan named them *bizit* as in Babylon. [1](#)

It was taught: To acquire title to a boat, according to Rabh, as soon as one made a little drawing on it title is given. Samuel, however, maintains that title is not given unless he moved the entire boat. Shall we assume that they differ in the same way as the Tana'im of the following Tosephtha do: How does one acquire title by transferring? By taking hold of the feet of the animal or its hair, its saddle or the load that is upon it, the bridle, the bell on its neck (although the animal has not moved from its place), title is given. And how does one acquire title by drawing? By calling it and it follows the voice, or by striking it with a stick and it runs from him: as soon as the animal has moved hand or foot, title is acquired. R. A'hi,

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and according to others R. A'ha, said: Not unless it has moved its whole body. Hence it is to be assumed that Rabh holds with the first Tana and Samuel with R. A'ha? Nay. Rabh may say: My decision is in accordance with R. A'ha's also, as R. A'ha speaks of a living body, which, even if it raised hand or foot, it remains still on its place without moving from it (and therefore he requires the moving of its whole body); but I speak of a boat, which, if one draws it a little, the entire body thereof is set in motion. And Samuel also may say: My decision can be also in accordance with the first Tana, who speaks of a living body which lifts its hand or foot, and usually it is to move the other one also; but concerning a boat, it is not considered a drawing unless he moves the entire boat.

Shall we assume that they differ in the same way as the Tana'im of the following Tosephtha do? To a boat, title is given by drawing. R. Nathan says: To a boat, and also to promissory notes, title is given by drawing, or by a bill of sale. And to the question: Where are promissory notes

mentioned, so that R. Nathan's statement should apply? it was answered that the Tosephtha is not complete, and is to be read thus: To a boat, title is given by drawing, but to promissory notes by transferring. R. Nathan, however, maintains that to both title is given by drawing, as well as by a bill of sale.

But is, then, a bill of sale needed for a boat--is it not movable property, for which drawing is sufficient? It must then be said it was taught thus: To a boat, title is given by drawing, and to promissory notes by transferring. R. Nathan, however, says: To a boat by drawing, and to promissory notes by a bill of sale. And as R. Nathan's statement concerning a boat would be superfluous if his decision were the same as the first Tanaim, we must then say that they differ in the same way as Rabh and Samuel differ (*i.e.*, that R. Nathan requires that the whole body of the boat should be moved, while according to the first Tana a little drawing suffices)? Nay; both may agree with Rabh or with Samuel, and they do not differ at all concerning a boat. Wherein they differ is but as to promissory notes. Said R. Nathan to the first Tana (of the above Tosephtha): Concerning a boat I certainly agree with you, but concerning promissory notes I hold to my opinion that if there were a bill of sale the transferring gives title, but not otherwise. And they differ in the same point as the Tanaim of the following Boraitha do: To promissory notes title is given by transfer.

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[paragraph continues] So is the decree of Rabbi. The sages, however, say: Title is not given by writing (as to all the debts contained in the promissory notes) unless the notes in question are transferred to the buyer, and the same is the case when the notes were transferred without a bill of sale: as to such things, both writing and transferring are needed.

Now let us see. The above Boraitha is explained in accordance with Rabbi. Let, then, the case of the boat also be explained in accordance with Rabbi, who holds that to a boat title is acquired by transfer, inasmuch as we have learned in the following Boraitha that such is the decree of Rabbi. But the sages say that title is not given unless he makes a drawing or he hires the place in which it is then placed? This presents no difficulty. Rabbi speaks of when the boat was placed on a public ground (as then drawing could not be made, because he must draw to a place which is under his control, which is not the case when it is in public ground; and the Boraitha speaks of when it was in a place where he could make a drawing to one under his control). Now we see that the Boraitha just cited speaks of a boat that was placed in public ground. How, then, is to be understood the latter part of it, which states: And the sages say title is not given unless the buyer makes a drawing? Now, if it was in public ground, from whom could the buyer hire the place so that a drawing should suffice? And aside from this, does, then, a drawing give title in public ground? Did not both Abayi and Rabha say: Transfer gives title in public ground, and also in a yard that does not belong to both (the seller and the buyer)? In a *semita* (path), however, or in a yard belonging to both, drawing gives title, and "lifting up" gives title everywhere? The expression "unless he makes a drawing" means that he shall move from the public ground to the *semita*, and the expression "unless he hires the place" is also to be explained as meaning that if it happens to be placed on premises belonging to one of them title is not given unless he hires the place.

Shall we assume that Abayi and Rabha both are in accordance with Rabbi (who holds that transferring suffices for a boat)? Said R. Ashi: If he should say: "Go make a hazakah and acquire title," then title would be given. Here, however, it is understood the seller told him, "Go

make a drawing and acquire title." And the point of their differing is, one holds that the seller was particular with his words, that only by drawing

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title should be given (but not otherwise), and the other holds that his expression is to be considered only as if he should show him the place where it is to be found (*i.e.*, "If you wish to make a drawing, here it is").

R. Papa said: If one sells a promissory note, he must write in the bill of sale, "Acquire title to it, and to all the debts it contains."

Said R. Ashi: I have explained the Halakha before R. Kahana and questioned him: How would it be if this were not inserted--would not title be given? Did, then, the buyer need it for the purpose of covering a glass with it (is it possible that a man should invest his money in a piece of paper that he cannot use but to cover something--must it not be assumed that he bought the debts which it contained)? And he answered: Yea! for this purpose he bought it. (And if the amount shows that it was double the value of the paper, then the sale would in any case be null and void, as exacting beyond a sixth makes the sale void.)

Amemar said: The Halakha prevails that to promissory notes title is given by transfer in accordance with Rabbi. Said R. Ashi to Amemar: Is your decision traditional or according to common sense? And he answered: Traditional. Rejoined R. Ashi: It is also according to common sense, as promissory notes are only words. (The note proper does not contain the debts or any money, but the promise of the borrower, which are words, and title cannot be given by words only.)

"*But not the entheca.*" What does this mean? It means the contents of the *entheca*.

MISHNA If.: If one sold a wagon, the bill of sale does not include the mules for it (when not hitched), and *vice versa*. If the yoke with the wagon were sold, the oxen when not hitched were not included, and *vice versa*. R. Jehudah, however, maintains: The amount paid may serve as evidence. How so? If one said: Sell to me your yoke for two hundred zuz, it is self-evident that he meant the whole team, as there is no yoke that could be worth two hundred zuz. The sages, however, say that such cannot be taken for evidence (as it may be he desires to make him a present without humiliating him).

GEMARA: R. Ta'hlipa b. Merba taught a Boraitha before R. Abuhu: If one has sold a wagon, the sale includes the mules. Said R. Abuhu: But our Mishna teaches that it does not. Rejoined the former: Then ignore my Boraitha. Said Abuhu: It

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is not necessary, as it can be explained that your Boraitha speaks of when the mules were hitched to the wagon.

"*If one has sold the yoke,*" etc. Let us see how was the case? If people by the expression "yoke"

mean the yoke without the cattle, then it is self-evident that he sold him the yoke only; and if the expression means "a team," then he certainly sold him the whole team? It speaks of a place in which some people by yoke mean the entire team, while others by this expression mean the yoke with harness, but not the cattle. According to R. Jehudah this can be ascertained from the amount; but the rabbis hold that the amount cannot be taken as evidence (as it is for the buyer to explain his desire plainly, as there are some who by yoke mean the wagon prepared for the oxen, not including them, and therefore the preference is given to the seller).

But even if the amount is not an evidence, let the sale be void if there was an exaction beyond a sixth of the value. And should you say that the rabbis do not hold to the theory that an exaction beyond a sixth makes void the sale but that they hold that the sale is valid, and the seller has only to return the amount which was overcharged, the answer is: This is not so, as we have learned in Middle Gate, Mishna, p. 132, that the rabbis hold this theory? Yea! They hold the theory only in a case where an exaction could be made (*i.e.*, in a sixth or more of the value); but in our case (two hundred zuz for the yoke only), where exaction cannot be made, it may be assumed that the buyer wishes to give a present to the seller (but does not wish to humiliate him, and so presents him the money for the yoke).

MISHNA III.: If one sells an ass, the harness is not included. Nahum the Modaite, however, maintains it is. Said R. Jehudah: At one time they may be sold, and at some other time they may not. How so? If the ass with its harness was before him, and the buyer says, "Sell me this ass," and the seller agrees, the harness is also sold; but if he says, "Is this your ass? sell it to me," then the harness is not included.

GEMARA: Said Ula: The first Tana and Nahum differ only in the sacks and *disacos* and *khumni*, as the first Tana holds that usually an ass is bought for riding (consequently the utensils that are not for this purpose are not included); but Nahum maintains that an ass is usually sold for carrying burdens, consequently the utensils for this purpose are included, as the saddle, sumpter-saddle, belt, and girdle.

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An objection was raised from the following: "I sell you the ass with its harness": the saddle, the sumpter-saddle, the belt, and the girdle are sold, but not the sack, the *disacos*, nor the *khumni*, unless he said, "it and all pertaining to it"; then all is sold. We see, then, that only when he said, "the ass with its harness," the saddle, etc., are sold; but not, if he did not mention the harness? Nay; the same is the case even if he did not so mention, and the Boraitha comes to teach that the sack, etc., are not sold, even if he said, "the ass with its harness."

What does *khumni* mean? Said R. Papa b. Samuel: A saddle used by females only.

The schoolmen propounded a question: Does the Mishna treat of when the things mentioned above were upon the ass, so that, if they were not so, Nahum the Modaite would agree with the first Tana, or, on the contrary, does it treat of when the ass was not dressed in them, in which case the first Tana would agree with Nahum? Come and hear! If, however, he said, "it and all that is upon it," all is sold. And this is correct according to the supposition that they differ when the ass was dressed in these things, and the Boraitha is in accordance with the first Tana of our Mishna; but on the supposition that they differ when the ass was not dressed, according to whom

would be the Boraitha? Nay; this cannot be taken for a support, as it may be that they differ even when the ass was not dressed, and the cited Boraitha is to be read: If he said, "the ass and all those things in my possession fit for its use."

Come, then, and hear what R. Jehudah says in our Mishna, and there is no doubt that he speaks of when the ass was dressed in them, as his expression "this ass" means all is sold. Is it not to be assumed that this was an answer to the first Tana (who said that even in such a case the things are not sold)? Nay! R. Jehudah was not answering, but taught a separate Halakha. Said Rabhina to R. Ashi: Did not R. Abuhu say, replying to R. Ta'hlipha (above, in the Gemara to the second Mishna): Explain your Boraitha, "When they were hitched," etc.? from which is to be inferred that the Mishna speaks of when they were not hitched; and when the second Mishna treats of them not hitched, it must be assumed that the third Mishna also speaks of the same case? On the contrary, take the first Mishna, which states, "not the slaves nor the *entheca*"; and to the question what does *entheca* mean, R. Papa answered: The

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contents of the *entheca*. Hence the Mishna treats of when the load was upon it, from which is to be inferred that the second Mishna speaks also of when they were hitched (and this is not so). Therefore you cannot object or support from their teachings, as each Mishna speaks of a different case.

Abayi said: R. Eliezer, R. Simeon b. Gamaliel, R. Meir, R. Nathan, Symmachos, and Nahum the Modaite all hold that if one sells a thing the sale includes also all those things that are used with it—Eliezer, who said: If one sells a press-house, the treading-rod is included; Simeon b. Gamaliel, who said: If one sells a town, the *santer* is included; R. Meir, who said: If one sold a vineyard, all the vessels in use for the same are included; Nathan and Symmachos, who said above that the safety boats are included in the sale of the boat; and Nahum the Modaite with his statement in our Mishna.

"R. Jehudah said," etc. What is the difference whether he said "this ass," or "is this your ass"? Said Rabha: If he said "this ass" he was sure that the ass belonged to him, and with the word "this" he meant the harness; but if he asked him, "Is this your ass?" he was not sure it was his. And he asked, if it was his, that he should sell it to him, meaning the ass only, without the harness.

MISHNA IV.: If one sold a she-ass, its foal is sold; but if a cow, the calf is not. If he sold the place where the manure is kept, the manure in it is sold therewith; a well, the water it contains is included; a beehive, the bees are included; a pigeon-coop, the doves it contains are included.

GEMARA: Let us see how was the case? If he said, "with its offspring," even if it is a cow why should the offspring then not be included; and if he did not say so, why should the offspring of an ass be included? Said R. Papa: It speaks of where he told him: I sell you a nursing ass, or a nursing cow. Of the latter the buyer can use the milk, but to what purpose did he say a nursing ass? We must assume that he means the nursing ass with its offspring. [1](#)

"A well, the water it contains is sold." Said Rabha: Our Mishna is in accordance with an individual Tana of the following Boraitha (but the majority do not agree with him). If one sells a

well, the water it contains is not included. R. Nathan, however, maintains it is.

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MISHNA V.: If one buys the brood of a pigeon-coop (*e.g.*, if he buys in the month Nisan all the pigeons to be hatched during the whole year, but not the old ones, and usually each dove hatches two young ones every month, male and female, and those pigeons after two months hatch also, and so it is during the entire year, the month Adar excluded), he must leave the first pair of little ones with the parents. If one buys the brood of a beehive, he has to take the first three broods, after which the owner may make the bees impotent of propagation. If he buys the honey in combs, he must leave two with the beehive. If one buys olive trees for the purpose of cutting them down, he must leave the branches which are only two spans high for the seller.

GEMARA: But have we not learned in a Boraitha, concerning a pigeon-coop, that he must leave the first and second pair? Said R. Kahana: This presents no difficulty. The Mishna speaks of the old dove, and the Boraitha of both mother and daughter which have hatched--one pair for the old and one for the young mother. But why should not the pair left for the old mother suffice also for the young one, as she would not leave the pigeon-coop, because her mother and the pair remaining would bind her to stay there, even as the old dove is bound to the same? The old one is bound to both--to the young mother as well as to the pair left, while her daughter, as soon as she has hatched, has no longer anything to do with her mother, but is bound to her children.

"*Three broods*," etc. By what means does one make them impotent? Said R. Jehudah in the name of Samuel: By feeding them with mustard. In Palestine, however, it was said in the name of R. Jose b. Hanina: Not the mustard, but the honey which they consume after having eaten the harsh mustard, causes the impotency. R. Johanan said: He must not take the three broods at one time, but gradually, taking one and leaving one, etc.; and a Boraitha states that the first three he may take one after another, and after that he takes one and leaves one. [1](#)

"*Olive trees*," etc. The rabbis taught: If one buys a tree for the purpose of cutting it down, he must begin a span high from the ground; if it was an uninoculated sycamore, he must

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leave three spans; and if a trunk of a sycamore, two spans. If sticks or vines, from the knots upwards. If date and cedar trees, he may take them with the roots, for if they were cut at the top they would not grow again.

Do we need three spans for an uninoculated sycamore? Have we not learned (Shebiith, IV. 5): One must not cut an uninoculated sycamore on a Sabbatical year, because it is considered a labor in a field? R. Jehudah said: One must not do it in the usual way, but higher than ten spans he may, or he may cut it at the level of the ground. Hence we see that it harms only if it is cut at the level of the ground, but not if a little higher than three spans. Said Abayi: If exactly three spans, it is beneficial for the growth of the tree, and at the level of the ground it surely harms it, but up to three spans it does neither good nor harm. Concerning a Sabbatical year, only what harms may be done; and concerning buying and selling, only things which are beneficial.

It is said that date and cedar trees one may take with the roots, because if cut at the top they will

not improve. Has not R. Hyya b. Luliyini lectured that it is written [Ps. xxxii. 13]: "The righteous shall spring up like a palm tree, like a cedar," etc.? Why are both trees mentioned? If it mentioned the cedar only, one might say: As the cedar does not yield any products, so is the upright. Therefore it mentions the palm tree. And if the latter only were mentioned, one might say: As a palm tree does not improve after being cut off, so is the righteous. Therefore both are mentioned. Hence we see that a cedar does improve? This speaks of another kind of cedar which does so. As Rabba b. R. Huna said (Taanith, p. 75): There are ten different kinds of cedars.

MISHNA VI.: If one buy two trees within his neighbor's field, the ground beneath is not sold. R. Meir, however, maintains it is. If the branches were wide-spreading, the seller has no right to cut them off, though the shade of them harms his field. That which grows from the trunk belongs to the buyer, and that from the roots to the seller. If the trees die, the buyer has no right to the ground; however, if he bought three trees, the ground is included, and if the branches become wide-spreading, the owner of the ground may cut them off, and all that is growing from both trunks and roots belongs to the buyer; and if the trees die, he has the right to plant others.

GEMARA: There is a Mishna (Bikurim, I. 6): If one buy

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two trees within his neighbor's ground, he may offer the firstfruit, but he must not read [Deut. xxvi. 10]: "The soil which thou hast given to *me*," as the earth is not *his*. R. Meir, however, said: He may offer and also read. Said R. Jehudah in the name of Samuel: According to R. Meir, one is obliged to offer the firstfruit, even if he bought it in the market. And whence has he inferred it? From the superfluous Mishna--*i.e.*, it is already said in our Mishna that he who buys even two trees has bought the ground therewith according to R. Meir. Why, then, was it necessary to repeat that in the cited Mishna? We must say that only to teach that, even if one does not possess any ground, he is nevertheless obliged to offer the firstfruit if he possesses such, even from the market (and the cited Mishna is to be explained thus: R. Meir said to the first Tana: Even if I should agree with you that the one who buys the two trees does not possess any ground, he is nevertheless obliged to offer the firstfruit). But is it not written [Deut. xxvi. 2]: "Which thou shalt bring in from *thy* land"? This is to exclude the land outside of Palestine. But is it not written [Ex. xxiii. 19]: "The first of the firstfruits of *thy* land shalt thou bring," etc.? This is to exclude the ground of a Gentile. But is it not written [Deut. *ibid.*]: "Which thou hast given *me*"? This means, thou hast given me money to buy."

Rabba objected from the following: If one bought one tree within the trees of his neighbor, he may bring the firstfruit; but does not read, ". . . thou hast given," because he has no ground. So is the decree of R. Meir. Hence we see that if he has no ground he cannot read, "the earth thou hast given." This objection remains.

Said R. Simeon b. Elyakum to R. Elazar: On what reasons did R. Meir base his theory concerning one tree, and the rabbis theirs concerning two trees--that the men should bring the firstfruit and should not read? Does not the Scripture exclude him from bringing also? Said R. Elazar to him: Concerning a thing for which one previous master gave no reason you are questioning me in the college for the purpose of bringing me to shame? Said Rabba: I do not see any difficulty in it, as it may be assumed that the rabbis, as well as R. Meir, were doubtful as to the accuracy of the law: the rabbis could not absolutely decide that he who bought two trees had no ground, and R. Meir could not be certain concerning one tree, and therefore they decided he

should bring, but not read.

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But how can you say that R. Meir was doubtful--did he not plainly say above, because he has not acquired title to the ground? Read: "Perhaps he has not acquired titles," etc. But according to both, why should the man in question bring? Suppose that, according to law, they are not considered firstfruit at all, and that he brings common fruits to the sanctuary, which is prohibited--*i.e.*, that he first sanctified them. But the fruit must be consumed by the priests, and if they are not considered firstfruit, they are consecrated for an offering or for another purpose, and it is prohibited that any one should derive benefit therefrom--*i.e.*, after he brings them, he redeems them. But even then, if they are not considered firstfruit, they are liable to separate "heave-offering and tithe"; and by bringing them he exempts them from these duties--*i.e.*, he previously separates the above from them. This can be correct concerning heave-offering, which belongs to the priest, and the same concerning "second tithe"; and also the "tithe for the poor" he may give to a poor priest, but to whom shall he give the first tithe that belongs to the Levite, as the Levite must not derive any benefit from consecrated things? This he may also give to the priest in accordance with R. Elazar b. Azarya of the following Boraitha: Heave-offering must be given to the priest, first tithe to the Levite. So is the decree of R. Aqiba. R. Elazar b. Azarya, however, maintains that even the first tithe may be given to the priest (after Ezra fined the Levites). But if they are considered firstfruit, the reading of the passages is obligatory? The obligation does not prevent the bringing. As R. Jose b. Hanina said elsewhere: If one has gathered the firstfruit, and sent it by a messenger who died while on the road, then the firstfruit may be brought into the sanctuary; but the passages should not be read, for it is written [Deut. xxvi. 2]: "Thou shalt take," and farther on, "Thou shalt go," etc., which means that the gathering as well as the bringing should be done by one person, and as the messenger is dead the reading cannot take place.

Said R. A'ha b. R. Ivya to R. Ashi: Let us see I The reading consists of passages from the Scripture, which are allowed to be read by every one and at any time. Let him then read, "And he answered": when he reads this with the bringing, it looks like a lie, which is not the case when he reads the Scripture.

R. Mesharshia b. R. Hyya said: The reason is that if the

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reading were allowed, another, who has similar fruit, might think that such is really considered firstfruit, and will not separate the heave-offering therefrom.

"If the branches were wide-spreading." What is to be considered trunk, and what roots? Said R. Johanan: All above the surface of the ground is considered trunk, and beneath roots. But suppose that an upheaval should occur that will cover the trunk so that the branches shall have the appearance of three trees, and then the buyer may claim: You sold me three trees, and I have a right to the ground. Therefore said R. Na'hman: The expression in the Mishna, "from the trunk belongs to the buyer," means as to cutting it down, but not to leaving it. And thus also said R. Johanan.

R. Na'hman said: We have a tradition that a date tree has no trunk. R. Zebid was about to explain R. Na'hman's statement by what our Mishna states, that if such a tree is cut on the top it does not further increase, and therefore the buyer cannot claim a right to the outgrowth of the trunk, as, the remainder of the tree being only for removal, he renounced his hope to derive any benefit therefrom. To which R. Papa opposed the statement in our Mishna that he who bought two trees which are also for removal has no right to the ground, and nevertheless he has a right to the outgrowth of the trunk? "Therefore," said he, "R. Na'hman means that it can never occur that trunks of date trees may bring forth outgrowths."

But does not the Mishna oppose R. Zebid's theory? He may say: The Mishna treats of a case in which the buyer bought the trees for the term of five years (*i.e.*, if it should happen that in the meantime they shall die, he has a right to plant others instead), and therefore he has a right also to the outgrowth of the trunks.

"*If he has bought trees,*" etc. To what extent of ground has he acquired title? Said R. Hyya b. Abba in the name of R. Johanan: He acquires title to the ground beneath the branches and that between them; and outside, to the extent that he may stand with his basket to gather the fruit from the outside branches. R. Elazar opposed: How is it possible that this should be granted to the buyer, when even a path through the field is not granted, as he has not any right to the ground which is outside of the trees?

Said R. Zera: From the teaching of our master (R. Elazar) we may learn that if he bought three trees he has no path, but

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if he bought two trees he has, as he may claim: The trees are situated on your ground, and as you have sold me trees situated on your ground, so also have you granted me a path to them.

Said R. Na'hman b. Itz'hak to Rabha: Shall we assume that R. Elazar does not agree with his master Samuel, who said that the Halakha prevails in accordance with R. Aqiba, who holds that usually the seller sells with a good eye (and according to this theory, if he sold him three trees he granted him also a path to them). And he answered: Our Mishna cannot be in accordance with R. Aqiba, as it states that when the branches are wide-spreading the seller has the right to clear them, and in accordance with R. Aqiba, this right could not be given to him, for the supposition is that he sold them with a good eye. Rejoined R. Na'hman: We have heard R. Aqiba saying so only concerning a well, etc., which does not impoverish the ground; but have you heard him saying so concerning a tree, which does? Does not R. Aqiba agree that, in a case in which the branches of a tree overhang the field of another, he may clear the size of a plough handle?

There is a Boraitha in accordance with R. Hyya b. Aba that the buyer of three trees acquires title to the ground beneath, between, and outside to the extent that he can stand there with a basket in the hand. Said Abayi to R. Joseph: Who has a right to sow the outside ground that belongs to the buyer (the buyer of the trees, to whom it belongs, or the owner of the ground, who allows the buyer to be present there only at the time of gathering--therefore he may sow it, and the buyer has a right to step on it at that time)? And he answered: This we have learned in the Mishna farther on, that the outsider may sow the path which leads to the inside field. Rejoined Abayi:

What comparison is this? There the buyer of the inner field does not suffer any damage when he steps on the sown path to his field; but here, if the owner of the ground should sow it, there is a damage to the buyer of the trees in not having the products of the ground belonging to him. Therefore if this case should be compared to the one in the cited Mishna, it is only to the latter part, which states that neither of them has a right to sow. There is a Boraitha in accordance with Abayi, which states plainly that neither of them has a right to sow.

How much space is to be left between the trees in question, that it should be considered the buyer's? R. Joseph in the name of R. Jehudah, quoting Samuel, said: From four to eight

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ells. And Rabha in the name of R. Na'hman, quoting Samuel, said: From eight to sixteen. Said Abayi to R. Joseph: Do not quarrel with R. Na'hman, as there is a Mishna (Kilaim, IV. 9) in accordance with him: If one has planted his vineyard sixteen ells square, he may sow other seeds between the rows. And R. Jehudah said: It happened in the city of Zalmon that one had planted his vineyard sixteen ells square. One year he trained the branches of every two rows in one direction, and sowed in the opposite direction; and the next year he trained the branches in another direction, and sowed on the ground that had lain fallow. And when the matter was brought before the sages, they sanctioned it [his manner of proceeding]. And he answered: I took my theory from such a case as happened in the village of the shepherds, which was brought before R. Jehudah, and he decided to give them space for a yoke of oxen with the harness thereof; but I did not know the measure of such a space, and after I had given my attention to a Mishna stated above, as follows: "One must not plant a tree near his neighbor's field unless he leaves four ells space," and a Boraitha in addition to this states the four ells mentioned are for the purpose of working up a vineyard (as explained above, [p. 78](#)), I inferred from this that the measure of a yoke with the harness is four ells. But is there not a Mishna (Kilaim, IV. 9) in accordance with R. Joseph: Beth R. Meir and R. Simeon say: If one plants his vineyard eight ells square, he is permitted to sow other seeds therein? Yea; nevertheless, a practised act is more important for evidence.

It is correct in accordance with R. Joseph, which is according to R. Simeon's theory, as we have heard that R. Simeon's theory equals both cases, when the vines are scattered and also when they are growing together--"scattered," from the Mishna just cited, and "growing together," from the following Mishna. A vineyard which is planted in less than four ells is not to be considered a vineyard at all. So is the decree of R. Simeon, etc. But according to R. Na'hman, who is in accord with the rabbis' theory, we have heard their opinion concerning scattered ones (as said above in the case of Zalmon); but have you also heard their opinion about growing together? This is common sense. As R. Simeon considers the half space in his theory of growing together, the same is the case with the rabbis: they also consider the half space in their theory of growing together.

Said Rabha: The Halakha prevails--from four to sixteen

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ells; and there is a Boraitha which supports him as follows: What is meant by being near one to another? Four ells. And what is meant by being far? Sixteen ells. In the latter case, if one bought

the trees he bought also the ground, and also the shrubs between; and, therefore, if it happens that a tree withers or is cut off, the ground remains his. If, however, it were less or more than the above space, or he bought the trees not at one time, but one after another, the ground and the shrubs between do not belong to him; and, therefore, if a tree becomes withered or is cut off, he has no right to the ground (to plant another instead).

R. Jeremiah questioned. How should the ground belonging to the buyer be measured--from the end of the branches or from the trunk (so that he would have more space than by measuring from the branches)? And R. Gibiahh from the city of Khthil said to R. Ashi: Come and hear the following Mishna [Kilaim, VII. 1]: If a vine has been bent in such a manner that the main stem is out of sight [underground], the measure [as to legal distance] must be calculated from the second stem--*i.e.*, the place where it rises from the ground and again becomes visible. R. Jeremiah questioned again: How is the law if one has sold a tree of which the branches are separated by four ells from one another: And the above R. Gibiahh said to R. Ashi. Come and hear the second Mishna [ibid., ibid.]: If three vines are bent [and partly covered with mould] and their stems remain visible, R. Elazar ben Zadok said: If there remain between them not less than four and not exceeding five ells in width, they [the vines] must be looked upon as connected; otherwise, they are not to be so considered.

R. Papa questioned: If one has sold two trees situated in his field and one on the boundary, are they to be counted together, or not? The same question arises when one has sold two situated on his own ground and one on his neighbor's, and both questions remain undecided. R. Ashi questioned: (If in the above questions it were decided that they should be counted together,) how is the law if there were a well, or a channel, or intervention by a public ground or a row of young trees? This question also remains undecided.

Hillel questioned Rabbi: If a cedar tree intervened, how is the law? And he answered: Then title is given to him in the trees, as well as in the cedar. How should the trees be situated so that the sixteen ells in question should be measured? According

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to Rabh in a row (. . .) and according to Samuel diagonally (' '); and the difference is, that according to him who said "in a row" the ground belongs to the buyer, so much the more when they are situated diagonally; while according to him who says "diagonally," if they are in a row the ground does not belong to the buyer, as if in a row the ground between is fit for sowing. R. Hamnuna opposed: According to the theory that if they were placed diagonally the ground belongs to the buyer only for the reason that such a ground is not fit for sowing, how would it be if one should sell three thorns which are called *Higi Runiitha*, the ground between which is also unfit for sowing--shall we also assume that the ground belongs to him? And he was answered that the thorns in question are of little value, which is not the case with the trees in question (and the law dictates both that the trees should be of value and the ground between unfit for sowing).

MISHNA VII.: If one sold the head of a cow, the feet are not included, and *vice versa*; the windpipe, the liver is not included, and *vice versa*. However, concerning a calf, the feet are included in the sale of a head, and *vice versa*; and the same is the case with the windpipe and the liver.

There are four legal customs concerning sales: If one alleges having sold good wheat and thereafter it was found to be bad, the buyer may retract; if he alleged having sold bad and thereafter it was found good, the seller may retract. If, however, it was found as alleged, neither of them can retract (although from the sale of the wheat to the delivery the price for same has increased or decreased). If one sold dark red wheat and it was found to be white, or *vice versa*; trees of olives, and they were found to be sycamore, or *vice versa*; wine, if it was found to be vinegar, or *vice versa*--both have a right to retract.

GEMARA: Said R. Hisda: If one has sold wheat worth five zuz for six, and subsequently it increases to eight, who was imposed on prior to the increase? The buyer. Therefore the right of retraction from the sale is given to him only, but not to the seller, as the buyer may say: If you had not imposed on me in the beginning, you could not retract from the sale even if the price increased, and having imposed on me, should you have the right to retract? And it was learned in our Mishna that if one alleged having sold good and it was found bad, the right of retraction was given to the buyer and not to the seller, even if it had increased in price more than the seller took.

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The same said again: If one has sold for five the value of six, and thereafter it lowered to three zuz, who was imposed on prior to that decrease? The seller. The right to retract is only for him and not for the buyer, for the reason stated above, that the seller may say to the buyer: If I had not been imposed on in the beginning, you could not retract though the price should decrease, and inasmuch as I have been imposed on, should you have such a right? And so teaches our Mishna: If one alleges having sold bad, and thereafter good was found, the right of retraction is given to the seller and not to the buyer.

But what then came R. Hisda to teach? Does not the Mishna state so? Without his statement, one might say that according to the Mishna, in those cases illustrated by R. Hisda, both have a right to retract, as there was imposition in the beginning of the sale (while the Mishna treats of where no imposition took place), and therefore R. Hisda came to teach us that the Mishna must be interpreted according to his illustration.

"*Wine, and it was found vinegar.*" Shall we assume that our Mishna is in accordance with Rabbi, and not with the rabbis of the following Boraitha? Wine and vinegar are considered one kind, concerning heave-offering (so that if he has separated *troomah* from the wine for the vinegar also, or *vice versa*, it is valid). Rabbi, however, maintains that it is not, because they are two separate kinds? Nay! Our Mishna may be in accordance with the rabbis also, as they differ with Rabbi only concerning tithe and heave-offering, and it is in accordance with R. Ilaha, who has inferred elsewhere from the Scripture that if one has separated tithe or *troomah* from the bad, for the good ones of the same kind (grain or fruit), his action is valid; but concerning selling and buying the rabbis also agree that the one who desires wine cannot be satisfied with vinegar, and *vice versa*.

MISHNA VIII.: If one has sold fruit, and the buyer has made a drawing on it, although it was not as yet measured, title is given, but not if it was measured for him, and the drawing has not taken place; and if the buyer were shrewd, he would hire the place where the fruit is to be measured, so that the seller should not have the right to retract even before the drawing is made.

If one buys flax, title is not given unless he removes it from one place to another; but if the flax was still attached to the ground, and the buyer pulled up some of it, title is given.

GEMARA: Said R. Assi in the name of R. Johanan: If he

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has measured it, and placed it on the *semita* (path) for the buyer, title is given. Said R. Zera to him: Perhaps the master has heard from R. Johanan that he has measured and put it in the basket of the buyer. And he answered: The question of this scholar is similar to that of men who do not understand a Halakha at all, for is it then needed to teach that title is given if the seller puts it in the basket of the buyer?

(Says the Gemara:) Has R. Zera accepted R. Assi's theory, or not? Come and hear! R. Yanai said in the name of Rabbi: If the yard where the fruit was placed belonged to both the seller and buyer, title is given to the latter.

Is it not assumed that title is given even if it was placed on the ground of the yard? Nay; it means if it was placed in the basket of the buyer; and it seems to be so, as R. Jacob in the name of R. Johanan said. If after measuring he puts it on the *semita*, title is not given. And as this would contradict the above statement of R. Assi in the name of R. Johanan, we must then say that one has heard from him when the basket of the buyer was placed on the *semita*, and from the other, when the basket of the buyer was not. Infer from this that R. Zera had not accepted. Come and hear another objection! But when measured, and a drawing was not made, title is not given. Does this not mean in the *semita*? Nay; it means "public ground." If so, how is the first part to be understood: "If he has made a drawing, but not measured, title is given." Does, then, a drawing give title in public ground? Is it not said above, [p. 169](#), that in public ground only transferring gives title, but not drawing? The expression "drawing" means that he removed it from the public ground to the *semita*. But how about the latter part: "If the buyer is shrewd, he hires the place," etc.? If it speaks of a public ground, from whom can he hire it? It means to say, if it still remained on the premises of the owner, then if the buyer is shrewd he will hire the place.

Both Rabb and Samuel said: The vessels of the buyer give title to him in every place, except on public ground. R. Johanan and R. Simeon b. Lakish both are of the opinion that it gives title even when on public ground. Said R. Papa: The above parties do not differ, as the latter speaks of a *semita*; and why they call it public ground is because it is not private ground. (Says the Gemara:) It seems to be so, as R. Abuhu said in the name of R. Johanan: The vessels of one give him

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title in every place where it is permitted to him to place them. Hence we see that only to those places where it is permitted to him to place them is title given, but not to public ground where one is not permitted to place one's vessels. Come and hear the following Tosephta: There are four legal customs concerning sellers: (a) If the measure does not belong to both of them and it was placed on public ground, or in a yard that does not belong to both, then, if the measure was not as yet filled up and the seller wishes for some reason to recede from his sale, he may do so; but if it was filled up, then it is considered already the buyer's (as it is supposed that for this

purpose it was lent to the buyer, that as soon as filled he might take it with its contents); (b) if the measure belongs to one of them, to every atom that is put in the measure the owner of the measure acquires title, provided it was at those places named above; (c) if it was on the premises of the seller, the buyer does not acquire title unless he lifts it up or removes it from the seller's premises; and (d) if it was on the premises of the buyer, as soon as the seller agreed to sell him the grain for such and such a price the buyer has acquired title. If, however, the grain in question was deposited previously by the seller without the intention of selling it, and thereafter the depositary bought it from him, title is not given unless the seller agrees to renounce his right to the place where the grain is now placed, or the buyer hires it. We see, then, that if the measure was filled up title is given to the buyer, even if it was on the public ground? Also, here, by public ground is meant a *semita*; but if so, why the repetition, "a yard that does not belong to both"? Is it not the same as a *semita*? By this expression is also meant that the whole yard does not belong to one of them, as they were partners in it.

R. Shesheth questioned R. Huna: If the vessels of the buyer were placed on the premises of the seller, does the buyer acquire title or not? And he answered: This we have learned (Githin, I. 1): "If he put the divorce in the pocket of her dress or in her basket, she is divorced" (hence we see that one's vessels give him title). Said R. Na'hman to R. Huna: Why have you decided this question from that Mishna which was objected to, and there were about a hundred explanations of the meaning of it (*q.v.*)? You should decide this from the Tosephtha cited above: If it was on the premises of the seller, title is not given unless he lifts it up, or removes it; and it is to be assumed that it speaks of when the measure was the buyer's. (Answered he:)

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[paragraph continues] Nay; it means if the vessels belong to the seller. (Rejoined he:) If the first part speaks of when the vessels belong to the seller, the second part must also treat of the same. How, then, is the decision to be understood: "If it was on the premises of the buyer, as soon as the seller has agreed," etc., title is acquired? Why, then, is it not still in the hands of the seller? Nay; the latter part speaks of when the vessels belong to the buyer. But what compels you to explain the two parts of it in different applications? Because, generally, if on the premises of the seller his measures are used, and on the premises of the buyer his are used.

Said Rabha: Come and hear another objection: If the buyer or his servants have led the asses of the seller, with the load, to his premises (and the load was still upon the asses or in the hand of the servants), whether the price was made but no measure taken, or measure taken but no price made, both have a right to retract. If, however, they were unloaded in the street and one brought the stuff to his house, if the price was made before measuring neither of them can retract; but if measured before the price was made. the sale is not considered settled, and both may retract. Now, as we see that the vessels belonging to the seller, if they are on the premises of the buyer, do not give title, it must be the same with the vessels of the buyer on the premises of the seller--neither do they give title? Said R. Na'hman b. Itz'hak, it speaks of when the buyer removed it from the vessels and placed it on his premises. Rabha became angry at this explanation: Does not the Tosephtha plainly teach "unloaded," and he says, "removed it and placed it on his premises"? Said Mar b. R. Ashi: It can be explained that the load was of bundles of garlic of which the unloading itself makes it rest on the premises of the buyer, and it needs no more work. Said Huna b. Mar Zutra to Rabhina: Let us see. It states "unloaded" (from which it must be supposed that he did it with the consent of the owner). What, then, is the difference whether the price was made or not? (Is it not said above that if on the premises of the buyer, as soon as

agreed on, no retraction can take place, as the premises of the buyer give title?) Why, then, should a retraction take place in such a case? And he answered: If the price was made, the seller relies upon it, and the sale is made; but if otherwise, he does not. Said Rabhina to R. Ashi: Come and hear what both Rabh and Samuel declared above: The vessels of one give him title at every

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place. Is this not equivalent to saying even on the premises of the seller? Yea, provided he told him: Go and acquire title.

There is a Mishna (Kidushin): To real estate title is acquired by money, deed, or hazakah, and to personal property title is given by drawing only. As to which in Surah it was taught in the name of R. Hisda, and in Pumbeditha in the name of R. Kahana, according to others in the name of Rabha, as follows: This is said concerning things which it is not usual to lift up; but to those which it is usual to lift, title is given only by lifting up, but not by drawing.

Abayi was sitting repeating this Halakha, and R. Ada b. Mathna objected to him from the following: If one steals a purse on Sabbath and takes it into the street, he is obliged to pay for the purse, because he was culpable of stealing before the violation of the Sabbath was committed. (There is a rule that if in one and the same thing a liability for money and a crime were committed, the punishment for the crime absolves him from payment.) In such a case, however, two separate crimes are considered, as after he steals the purse it becomes his (and the violation of the Sabbath is done with his own). If, however, he drew the purse little by little, and he picked it up when it was already on public ground, he is absolved from payment, as both crimes were committed together. Now a purse is certainly a thing which is usually lifted up, and nevertheless one acquires title to it by drawing; for should it not be Sabbath, he would be obliged to pay for it, even if he should not have lifted it up until it reaches the street? And he answered: It speaks of a purse fastened with a cord, of which drawing is usual. Said R. Ada: I also speak of such a kind of purse. And he rejoined: I mean such a big purse as could not be lifted up except by drawing it by the cord. It was objected again from the above Tosephtha that if on the premises of the seller, title is not given unless he lifted it up or drew it, from which we see that to a thing that can be lifted up title is acquired by drawing also. Said R. Na'hman b. Itz'hak. It is meant in parts. To a thing which is usually lifted up, title is given by lifting, and usually drawn, by drawing.

Come and hear! If one sold fruit, if he made a drawing although not measured, title is given. Now fruit is usually carried, and nevertheless drawing suffices? It means big loads of fruit. If so, how is the latter part to be understood: "If one buys flax, title is not given unless he removes it to another

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place"? Is it not usual for flax to be in big loads? With flax it is different, because it is usually detachable in big loads.

Said Rabhina to R. Ashi: Come and hear! To a cow, title is given by transferring; and to a calf, by lifting up. So is the decree of R. Meir and R. Simeon b. Elazar. But the sages say: To a calf, by drawing also. Now a calf can be lifted up, and nevertheless drawing gives title? With a calf it

is different, as it resists. Therefore it is difficult to lift it up.

Rabh and Samuel both said: If one says: I sell you a kur of thirty saahs for such an amount, the seller has a right to retract even at the last saah. If, however, he said: I sell you a kur of thirty saahs, each saah for a selah, title is acquired to every saah as measured. Come and hear! If the measure belongs to one of them, to every atom that was put in title is acquired, although the whole measure was not as yet filled. Hence we see that title is given even when one did not say: I sell you each measure for a certain price? It speaks of when in the measure were marks, as where one said: I sell you a bin for twelve selahs, each lug for a selah. And R. Kahana illustrates thus: There were marks in the bin for one, two, three lugs, etc. The same is it with the measure in question: there were marks for each saah. Come and hear! If one hires a servant to work for him in the barn (not in harvest-time) for one dinar a day, with the stipulation that he shall work for him for the same price in the harvest-time, although at that time the price is a selah a day (and advances him the wages for the whole time), it is prohibited to do so, as it looks usurious; but if he hires him for one hundred days from to-day for a dinar a day, and advances him one hundred dinars, although during the time the harvest begins and each day is worth a selah, it is permissible. Now, if you say that to a kur of thirty saahs, each saah for a selah, title is given for each saah measured, it ought to be the same with the days in question--for each working day a dinar shall be charged, and when the harvest comes he shall add every day for the increase in price at that time, and by not doing so it is to be considered usury? Said Rabha: Whence did you obtain that it is not permissible to one to lower the price for his work? Hence this does not contradict the statement of Rabh and Samuel at all. But if so, why is there a difference between the first part of the Boraitha and the latter? In the first part it does not say: Work from to-day. And if he begins his work at the harvest-time for a lower price, it looks usurious, as he has

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lowered the price for advancing the money. In the second part, however, where he begins to work immediately, and works every day for the same price, it cannot be considered usury if he does not increase the price at harvest-time.

"And the buyer pulled up some of it," etc. Because he pulled up some of it, he acquires title to the whole? Said R. Shesheth: It treats of a case in which the seller said to him: Fix something in the ground, and acquire title to all that is attached thereon.

MISHNA IX.: If one sold wine or oil, and it became dearer or cheaper, if before the measure was filled it is to be charged to the seller; and if afterwards, to the buyer. If the sale was made through a broker, and it happens that a barrel leaks, it is to be charged to the broker, and the seller is obliged to add a few drops to the measure. After the seller has turned over the measure, and some of the liquid has gathered, it belongs to the seller; the storekeeper, however, is not obliged to keep the measure until the last three drops are leaked out. R. Jehudah says that on the eve of Sabbath, when it grows dark, one is exempt from this duty.

GEMARA: Let us see to whom the measure in question belongs? If to the buyer, why should it be charged to the seller, even if it was not filled; and if to the seller, why should it be charged to the buyer, even if it was filled up? Said R. Ilaah: It speaks of when the measure was the broker's. But does not the Mishna state in the latter part, "if there was a broker," from which it is to be inferred that the first part means without a broker? The first part speaks of the broker's measure in his absence; and the latter, in his presence.

"After the seller has turned over the measure," etc. When R. Elazar reached Palestine, he met Zeeri and asked him- Is there here some scholar whom Rabh has taught the laws about measures? And he showed to him R. Itz'hak b. Abdimi. And he asked him: What is your difficulty? The statement of our Mishna, which says that this belongs to the seller, and another: If, of *troomah* which was given to the priest, after the barrel was turned over and leaked out there was still some remainder, it is *troomah* (hence we see that it belongs to the buyer)? And he answered: This presents no difficulty, as additional to our Mishna was taught by R. Abuhu: The reason is that usually the seller renounced his right to such a trifle (which cannot be said there, as who can renounce *troomah*?).

"The storekeeper," etc. The schoolmen propounded a question:

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[paragraph continues] Does R. Jehudah with his statement mean to say that the wholesaler is exempt from adding the drops on the eve of Sabbaths, therefore being more lenient than the first Tana, or does he mean the storekeeper, and is rigorous, as he exempts him on the eve of Sabbaths and not on week-days? Come and hear the following Boraitha, which states plainly: R. Jehudah said on the eve of Sabbaths the storekeeper is exempt, for he is then busy.

MISHNA X.: If one sends his little son to the storekeeper with a *pundiun* (dupondius) to buy one issar's worth of oil and to get one issar change, and the storekeeper so acts, but the child loses the issar and breaks the glass containing the oil, the storekeeper is responsible. R. Jehudah, however, frees him, as for this purpose the child was sent. The sages, however, admit that when the glass was in the hand of the child and the storekeeper poured the oil into it, the storekeeper is free.

GEMARA: It is correct, in their difference concerning the oil and the change of the issar, that according to the rabbis the child was sent only to notify the storekeeper of his want, so that the storekeeper shall supply it, and according to R. Jehudah that it was sent to bring it; but why should the storekeeper be responsible for the *glass*, which the father should not have intrusted to the child, who was unable to take care of it? Said R. Houshiah: The Mishna treats of when the sender was a glass-dealer, and the storekeeper took it to examine it and it broke. And it is in accordance with Samuel, who said elsewhere that if one takes a vessel to a specialist for examination, and it was destroyed by an accident, the latter is responsible. Is it to be assumed that in this simple statement of Samuel the Tanaim differ? Therefore said both Rabba and R. Joseph: It treats of when the storekeeper was a glass-dealer also, and he gave the glass to the child; and R. Jehudah's decision that the sender is nevertheless responsible for the glass also is because it was sent for the purpose of bringing the oil (and as the father gave no vessel, the storekeeper did only what was demanded); and the rabbis are in accordance with their theory that the storekeeper had to supply. But if so, how is the latter part, "If the glass was in the hand of the child," etc., to be understood? Is it not said that the child was sent only to notify him? Therefore Abayi and R. Hanina, sons of Abin, both said: The Mishna speaks of a case in which the storekeeper took the glass to measure with (and although the storekeeper

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had not requested that such should be sent to him, as soon as he took it for the purpose of measuring he is responsible). And this is in accordance with Rabba, who said (Middle Gate, p. 69): "If he has struck the animal, although he was not obliged to return it, he is responsible. But Rabba's statement was concerning a living thing, which usually runs away when struck. Have you also heard him stating in such a case as ours? Therefore said Rabba: I and the lion of our society, which is R. Zera, have explained thus: The Mishna treats of when the storekeeper took the glass for measuring to other customers--and the point of their differing is, "a borrower without consent." According to one, he is considered a robber and is responsible; and according to the other, he is considered a borrower who is not responsible for an accident.

The text says: Samuel said: "If one took a vessel from a specialist, to examine it, he is responsible for an accident." This is only when the price of the article was fixed.

There was a man who entered a butcher shop and lifted up a shoulder of meat, and while examining it a crusher came and took it away from him; and when the case came before R. Ziemar, he made him responsible, as the price for it was already made.

There was a man who brought cucumbers to the city of Punnahara, and a crowd arriving, each of them took one for the purpose of buying, but the seller could not see of whom to demand the money. And he exclaimed, "All of them are consecrated for heaven." When the case came before R. Kahana, he decided that one cannot consecrate a thing not belonging to him (and as the price for each cucumber was fixed and they were in the hands of the buyers, they had acquired title to them even before paying; but if the price were not fixed, they would be still under the control of the owner and the consecration valid).

The rabbis taught: If one were examining herbs in the market, selecting from them and putting the same aside, even if he did so the whole day title is not acquired, and there is no obligation for tithe. (It treats of when the seller was one of the common people who was suspicious that he did not separate tithe therefrom.) If, however, he had made up his mind to buy, title is acquired, and they become a subject for tithe. In case of reconsidering he has no right to return, because they are already a subject obligatory for tithe; and also he has no right to separate the tithe if he intended to return, as he would diminish

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the value. Therefore he can do no other than separate the tithe and pay the owner for them.

But is it so, that because one has made up his mind to buy he acquires title and makes a thing subject for tithe? Said R. Houshiah: The Boraitha treats of one who fears heaven like R. Saphra, who always acted as it is written [Ps. xv. 2]: "And speaketh the truth in his heart."

MISHNA XI.: The wholesaler has to clean his measures once within thirty days (because the stuff sticks to them and impairs accurate measuring). A retailer, however, has to do so once within twelve months. R. Simeon b. Gamaliel, however, maintains that the reverse is the case. (With the wholesaler, who measures continually, the stuff does not stick, and it is sufficient to clean them once within a year; but with the retailer, who does not measure continually, the stuff sticks, and he is obliged to clean them once within thirty days.) The storekeeper must do the same with his measures twice a week, and the weights once a week (as he takes hold of them

with wet hands, and consequently they become heavier, and when he buys something, in weighing the stuff he deceives the seller). The scales, however, he must clean before each weighing thereon. Said R. Simeon b. Gamaliel: All this is said when he sells liquids, but otherwise it is not necessary. The storekeeper is obliged to bend the cross-bit the size of a span to the scale that contains the stuff sold (in case he sells a *litra* or more). If, however, he weighs strictly, he must give him the overweight due--one-tenth of a liquid and one-twentieth of a dry thing. Where it is customary to measure with small measures, one must not do it with large ones, and *vice versa*. Where it is customary to smooth the measures, it must not be heaped; and to heap, it must not be smoothed.

GEMARA: Whence is all this deduced? Said Resh Lakish: From [Deut. xxv. 15] "A perfect and just weight shalt thou have"; and as the word "just" is superfluous, it is to be explained thus: justify the perfect measure from thy own. If so, how is the latter part, "if he weighs strictly," to be understood? (If it is a biblical obligation to add to the exact weight, how can it be allowed to weigh strictly?) Therefore it must be said that the first part of the Mishna treats of places where it is customary, and the interpretation of Resh Lakish refers to the latter part, which states that he must give him the overweight. And to the question, Whence is this deduced? Resh

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[paragraph continues] Lakish interpreted the above-cited verse. And how much shall the overweight be? Said R. Abba b. Mamal in the name of Rabh: A tenth of a *litra* in liquid to a quantity of ten *litras*.

"One-tenth to liquid," etc. The schoolmen propounded a question: Does it mean one-tenth of a liquid to ten wet measures and one-twentieth to twenty dry measures, or one-tenth to ten liquid and to twenty dry ones? This question was not decided.

R. Levi said: The punishment for false measuring is harder than for adultery, as concerning the first the expression in Scripture is [Lev. xviii. 24], "with *all*," and the latter [Deut. xxv. 16], "with *iele*." And whence is it inferred that these words mean hard punishment? From [Ezek. xvii. 13]: "But the mighty (*iele*) did he take away."

And what is the reason? Concerning adultery one can atone by repentance, which is not the case with an unjust measure, as he cannot know whom he has cheated, in order to make amends.

The same said again: It is harder for the cheating of a commoner than for the cheating of the sanctuary, as the punishment for robbing a common man is more severe than for robbing the sanctuary. ¹ Concerning a commoner it is written [Lev. v. 21]: "If any person sin and commit a trespass against the Lord--if, namely, he lie unto his neighbor . . . in a thing taken away," etc. Hence even in the beginning of the deception the passage calls him sinner, while concerning the robbing of the sanctuary [ibid., ibid. xiv. 15], "If any person commit a trespass," etc., he is not called sinner at the time he took it, unless he derived benefit therefrom.

The rabbis taught: Whence is it deduced that it must not be smoothed where the custom is heaping, and *vice versa*? From [Deut. xxv. 15]: "A perfect and just measure shalt thou have." And whence is it deduced that if one say, where the custom is not to smooth, "I will smooth and diminish the amount," or, in places where it is smoothed, "I will heap and increase the amount,"

he must not be listened to? From the same cited verse and from the superfluous word "just," as stated above.

The rabbis taught: Whence is it deduced that one must not weigh accurately where it is customary to add to the weight, and *vice versa*? From the same cited verse: "perfect and just

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weight." And if one cared to do otherwise than according to custom, and pay the difference? He must not be listened to, as said above.

Said R. Jehudah of Sura: It is written [ibid., ibid. 14]: "Thou shalt not have in thy house," etc. (the term "in thy house," which is superfluous, is to be interpreted thus: thou shalt not have money in thy house, for the purpose of smoothing where it is the custom of heaping, and *vice versa*, or for overweight, etc.), because this would bring one to keep in his house two divers measures. And the same explanation is to be given to [ibid., ibid. 13]: "As it is desired of every one to have one weight and one measure, just and perfect."

The rabbis taught: From the same verse is to be inferred that *gradums* must be appointed to investigate measures, but not to investigate prices. The Exilarchs used to appoint gradums for both (measures and prices). And Samuel said to Karna: Go and lecture to them that gradums should be appointed for measures only. He, however, lectured that for *both* (measures and prices) gradums must be appointed. And Samuel cursed him for this. However, Karna did it in accordance with Rami b. Hama, who said in the name of R. Itz'hak: Gradums should be appointed for measures as well as for prices, because of cheating.

The rabbis taught: If one desires a *litra*, a half, or a quarter, it may be given to him with its weight, but for less than this no weight should be made; but he may give it to him according to the money or by weight of coins.

The rabbis taught: If one desires three-quarters of a *litra*, he has no right to demand one shall weigh him each quarter separately (and give him overweight to each of them); but one may weigh him a *litra*, and leave the fourth quarter for overweight. The same is the case if he needs ten *litrans*: he has no right to demand he shall weigh him each *litra* separately with an overweight; but he weighs him all the ten in one scale, and gives one overweight to all.

The rabbis taught: The scales must be hanging three spans in the air--*i.e.*, three spans from the ceiling or three spans from the ground; and the cross-bit with the cords of the scales must be the size of twelve spans; for wool and glassware two spans, and the cross-bit with cords of the scale nine spans; the storekeeper and privates, however, one span, and the cross-bit with cords of the scale six spans; and for gold and silver three fingers

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in the air, and of the cross-bit and the cord of the scales I do not know the size (the Tana of this Boraitha says so).

(Says the Gemara:) For what purpose is the first-mentioned scale of which it is not stated what should be weighed upon it? Said R. Papa: For *gravita* (of iron and copper smiths, who weigh pieces of one hundred *litras* on one scale., according to others, their filings).

Said R. Mani b. Patish: The same sizes of scales are needed to make a subject for defilement (this will be explained in the proper place).

The rabbis taught: Weights must not be made of tin, lead, cassiterite, or other kinds of metal, but they may be made of granite or glass.

The rabbis taught: The roller for smoothing must not be made from a melon stem, as it is too light; nor of iron, as it is too heavy; but of olive, nut, sycamore, or box tree.

The rabbis taught: The roller must not be made thick at one end and narrow at the other; one must not strike rapidly, because this would be a benefit for the buyer and a disadvantage to the seller; and also not too slow, which is a disadvantage to the buyer and beneficial to the seller. And to all this was said by Rabban Johanan b. Zakkai: It would be painful to me to declare the art of measuring, as this would serve as a lesson for swindlers, and also painful not to declare it, as swindlers would say that the rabbis have no idea of the art of our profession.

And to the question of the schoolmen: Did R. Johanan declare so, or not? said R. Samuel b. R. Itz'hak: He did; and on the basis of the following verse [Hos. xv. 10]: "For righteous are the ways of the Lord, and the just shall walk in them, but the transgressors will stumble through them." [1](#)

Said R. Jehudah in the name of Rabh: One must not keep in his house an unjust measure, even if he uses it for a chamber. Said R. Papa: This is said of places where measures are not stamped; but in places where they are it does not matter, for no one would take a measure without being stamped. And even where they are not stamped, it is prohibited to keep them when they are not examined by the government; but if they are, it does not matter.

(Says the Gemara:) In reality, however, it is not so, as it

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may happen that one may measure with it by twilight. And so also we have learned in a Boraitha: One must not keep in his house an unjust measure, even if he uses it for a chamber. He may, however, keep a saah, a tarkab, a half of it; a kab, a half, or a quarter of it; a thuman or a half of it; and an ukla. [And how much is an ukla? A fifth of a lug.] And of liquids--a hin, a half, a third a quarter; a lug, a half, a quarter, and an eighth, and an eighth of an eighth, which is named kartub. But why is it not allowed to keep a measure of two kabs? for one may take it for a tarkab. We see, then, that a mistake can be made in a third. Then it ought not to be allowed to keep a kab, as we may take it for a half tarkab. Therefore we must say that a measure of two kabs is not allowed, for one may take it for a half tarkab. We see, then, that a mistake can be made in a quarter, as a half tarkab measures a kab and a half. Why, then, is it allowed to keep a half thuman and ukla? Said R. Papa: Small measures are known to the people, and no mistake can be made. But why is it allowed to keep a third and a quarter of a hin? Because these measures were used in the Temple, the rabbis would not care to prohibit them. But why were

they not prohibited in the Temple also? Because the priests were always careful.

Samuel said: If the elders of the city want to enlarge the measures, it must not be more than a sixth of them; and the same is the case when they want to enlarge a coin. And the seller should not fix his profit at more than a sixth (provided the price of the stuff has not increased; but if it has, then the profit may be even twofold).

Let us see what is the reason of Samuel's decision? Shall we assume that the reason is, if the wholesalers do not increase the price more in proportion, then they may do so even when it is enlarged to one-sixth exactly? And if the reason is not to make void the sale (as exacting more than a sixth makes the sale null and void)? Did not Rabha say: Every sale by measure, weight, or number, if there should be an exaction of even less than the law prescribes, it may be retracted? Therefore it must be said that the reason is that an outside seller should not suffer any damage (*i.e.*, if an outside seller, who is not aware of the increase, sells for the same price as before, and his profit is usually a sixth, if it was enlarged to a sixth only then he derives no profit, but neither does he suffer any damage in the cost price). Is that so? Does not the seller need to make profit on

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his sale? Should one who sells at cost be called a merchant? Therefore said R. Hisda: Samuel took as a basis for his decision the following verse [Ezek. xlv. 12]: "And the shekel shall be twenty gerahs: (in pieces of) twenty shekels, five and twenty shekels, fifteen shekels, shall be your maneh." Was, then, a maneh sixty shekels, which makes two hundred and forty zuz? Therefore from this verse may be inferred three things: (*a*) That the maneh of the sanctuary was in value twice as much as the common shekel; (*b*) that it is allowed to increase a sixth, but not more; and (*c*) that the sixth may be added even from outside (*e.g.*, to add ten to fifty, so that the sixth may be reckoned after being added, as the maneh of Ezekiel is sixty shekels, while a maneh in general contains twenty-five shekels).

R. Papa b. Samuel made a kielah of three kpiz. 1 And to the question: Did not Samuel say there must not be added more than a sixth? answered he: I have invented a measure entirely new. He sent it to Pumbeditha, and it was not accepted; but the city of Papunia accepted it, and called it *Rus-Papa* (*i.e.*, the measure of Papa).

The rabbis taught: "Those who forestall fruit," etc. (here as in *Derech Eretz--Rabba*, Vol. IX., p. 1, line 17 *seq.--q. v.*). Those who forestall fruit--who are meant thereby? Said R. Johanan: People like Sabbati, the forestaller of fruit (whose custom was to buy fruit only for the purpose of selling it to the poor at a high price; but if one buys fruit at the cheap season not for this purpose, and the price increases, and he sells it at the existing price, it does not matter). The father of Samuel used to buy grain at harvest-time, and sold it at the same price. Samuel his son, however, used to store up the grain he bought in harvest until the price became higher, and then sold it at the same price as in harvest-time. And from Palestine a message was sent that the acts of the father were more meritorious than those of his son. Why so? Because through the acts of the father the wholesaler could not increase the price, while the acts of the son did not prevent the increase of price, and his selling cheap could not affect the high price which was already fixed.

Rabh said: One may store up the grain he has harvested from his field (as it is prohibited only to buy in the market at

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harvest-time for the purpose of increasing the price). And so we have also learned in the following Boraitha: One must not forestall fruit, grain, etc., by which a livelihood is made, as, *e. g.*, wine, oil, and fine flour; but spices, pepper, etc., one may. This is said, however, if one buys it from the market; but from one's own field it is allowed to store everything. One is also allowed to store up in Palestine for the following three years--for the eve of a Sabbatic year, for the Sabbatic year itself, and for the succeeding year (as in the last year people must wait for the new crop). In famine years, however, even a kab of carobs must not be stored up, for it produces a curse to the prices. R. Jose b. Hanina said to Puga his servant: Go, store up for me grain for three years--for the eve of the Sabbatic year, the Sabbatic year itself, and the succeeding year.

The rabbis taught: There must not be exported from Palestine things by which a livelihood is made, as wine, oil, and fine meal. R. Jehudah b. Bathyra allows to export wine, because it diminishes intoxication; and even from Palestine to Syria the export of the above is prohibited. Rabbi, however, allows export from the last province of Palestine to the first province of Syria which bounds it.

The rabbis taught: One must not buy from the farmer things by which a livelihood is made for the purpose of selling in the market at a higher price in the provinces of Palestine; but for the farmer himself it is allowed to sell in the markets.

It was said, however, that R. Elazar b. Azarya used to sell wine and oil to the retail dealers, and they sold it at a higher price; and the reason was, that he holds with R. Jehudah concerning wine; and oil was abundant in the markets of his place, so that the retail dealers could not affect the price.

The rabbis taught: One must not derive twice a profit on eggs. Said Mari b. Mari: In the interpretation of the Boraitha Rabh and Samuel differ. According to one, it means one shall not double the price; and according to the other, it means one seller shall not sell it to another seller so that he has profit, and the seller in the market will also make a profit--but he himself must sell it in the market.

The rabbis taught: It may be prayed by blowing of horns, even on Sabbath, when business becomes dull. Said R. Johanan: This is to be done in case remnants of flax become very low in Babylon, and wine and oil in Palestine. Said R. Joseph: Provided that the stuff was lowered to near half-price.

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The rabbis taught: One must not emigrate from Palestine to other provinces, unless the price of grain has increased to the extent of a selah for two saahs. Said R. Simeon: This is only when one could not find any grain at all to buy; but if he can get it even at the price of a selah for each saah, one must not emigrate. And so also was the opinion of R. Simeon b. Johai, who used to say that Elimelech, Mahlon, and Kilyon were the great men of their generation, and were their

leaders; and they were punished only because they emigrated from Palestine. As it is written [Ruth, i. 19]: "All the city was in commotion about them, and people said, Is this Naomi?" And to the question: What does it mean? said R. Itz'hak: It means: See what has become of Naomi, who emigrated from Palestine.

He said again: At that day when Ruth reached Palestine, the wife of Boaz had died; and this is what people say, that before the deceased departed the substitute for managing the house was already prepared. Rabba b. R. Huna in the name of Rabh said: Boaz is identical with Ibzan. What came be to teach us? That which was said in his name elsewhere, viz.: One hundred and twenty banquets Boaz made for his children. As it is written [Judges, xii. 9]: "And he had thirty sons, and thirty daughters he sent abroad, and thirty daughters he brought in for his sons from abroad," etc. And at each marriage two banquets were given--one in the father's and one in the father-in-law's house--and to not one of them did he invite Manoah, saying: What return can I expect of this childless man? And there is a Boraitha that all the children died when he (Boaz) was still alive. And he remarried and begat one who was better than all the sixty, the same was Obed, who was born by Ruth, from whom David descended.

R. Hanan b. Rabha in the name of Rabh said: Elimelech, Shalman the kinsman, [Ruth, iv. i] and the father of Naomi all were the descendants of Nahshon ben Aminadab. To what purpose was it said? To teach that even him who is a descendant of such great men, the meritorious acts of his parents do not absolve him when he emigrates from Palestine. The same said again in the name of the same authority: The name of Abraham's mother was Amthlai bath Khrubu, and the name of Haman's mother was Amthlai bath Urbthi; the name of the mother of David was Nzb'th bath Edal; the mother of Sampson, Z'llpunith, and his sister N'shiin. To what purpose was this said? For an answer to the Epicuristen (who deny all

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the legends of the Bible, saying, for instance: If Abraham existed, why was his mother's name not mentioned, as doubtless his father had many wives, and the mother of Abraham should be distinguished, the same being the case with the others mentioned above? and we answer them that all their names are known to us traditionally).

The same said again in the name of the same authority: Abraham our father was in prison ten years three in the city of Khutha and seven in Qurdu. R. Dimi of Nahardea, however, taught the reverse (seven in Khutha and three in Qurdu; some say that he was imprisoned by Nimrod and others by his father, because he broke his idols). R. Hisda said: The city Eibra-Zeira of Khutha is the city Ur Kasdim mentioned in the Bible.

R. Hanan b. Rabha in the name of Rabh said again: On the day when Abraham our father departed from this world, all the great men of the nations stood up in a file and said: Woe to the world, that has lost its leader! and woe to the ship, that has lost its κυβερνητης (steerer)!

It is written [I Chron. xxix. 11]: "And thou art exalted as the head above all." And the above said in the name of Rabh: Even an officer of wells (who has to keep order in using them for watering the fields) is appointed by Heaven (*i.e.*, that even such an insignificant office is not filled without the decree of Heaven; and he takes the verse literally, "and thou art exalted over all the heads that are appointed by thee").

R. Hyya b. Abin in the name of R. Jehoshua b. Karsha said: Elimelech would not emigrate from Palestine, if he could get even bran-flour for use. But why was he punished? Because he ought to have prayed for his generation, which he did not. As it is written [Is. lvii. 13]: "By thy crying thou canst be saved with all who are gathered with thee." [1](#) Said Rabba b. b. Hana in the name of R. Johanan: One must not emigrate from Palestine when money is cheap, but the grain high; but if *vice versa*, even when the price of four saahs is only one selah, one may. As R. Johanan said: I remember a time when there were four saahs for one selah, and there were many who starved, as they did not have an issar. And he said again: I remember that working people did not wish to take work on the east side of the city, as the smell of bread (which the west wind carried

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to them) would kill them, as they had not eaten fresh bread for a long time. The same said again: I remember when a child used to break a piece of carob, threads of honey would leak out and moisten his hands. R. Elazar said: I remember, when a raven would catch a piece of meat, a thread of fat would be seen dropping from the height to the ground. R. Johanan said again: I remember times when a young girl of sixteen and a boy of seventeen walked together and did not sin. He said again: I remember what was said in college: Who yields to idolaters in discussion, the end will be that he will fall into their hands; and he who confides in them, all that he possesses will remain in their hands.

It is written [Ruth, i. 2]: "Mahlon and Kilyon," and in [I Chron. iv. 22]: "Joash and Saraph." Rabh and Samuel differ. One said that the real names were Mahlon and Kilyon; but why were they named Joash and Saraph? Joash, because they despaired of redemption, and Saraph, because they were liable to burning. And the other says their real names were Joash and Saraph; and why were they named Mahlon and Kilyon? Mahlon, because they made themselves very common by their emigration, and Kilyon, because they were liable to destruction. [1](#)

It seems that Mahlon and Kilyon were their real names, as we have learned in the following Boraitha: It is written [ibid., ibid.]: "And Jokim and the men of Coseba, and Joash and Saraph, who had dominion in Moab and Jashubi-lechem. And these are ancient things."

Jokim means Joshua, who had confirmed the oath which was given to the men of Gibeon; and "the men of Coseba" [2](#) means the men of Gibeon, who lied before Joshua. Joash and Saraph were Mahlon and Kilyon; and why were they named Joash and Saraph? Because they despaired of redemption, and for this they were liable to burning. "Who had dominion in Moab" means that they had married daughters of Moab. "And Jashubi-lechem" means Ruth the Moabitess, who had returned and was attached to Beth-Se'hem. "And these are ancient things" means the above was said by Him who is older than the days. As it is written [Ps. lxxxix. 21]: "I have found David my servant." It is also written [Gen. xix. 15]: "And

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thy two daughters, that are found." [1](#) It is written [I Chron. iv. 23]: "These were the potters (Hayozrim), and those that dwelt in plantations and sheepfolds; for the king's sake, to do his work, they dwelt there." Hayozrim [2](#) means the children of Jonadab b. Rechab, who preserved the oath of their father. "In plantations" means the king Solomon, who was a plant in his

kingdom. Vegidroh (sheepfolds) means the Sanhedrin, who had fenced the broken partition of Israel. "For the king's sake," etc., means Ruth the Moabitess, who lived to see the kingdom of Solomon her great-grandson. As it is written [I Kings, ii. 19]: "And placed a chair for the king's mother." And R. Elazar said that it means "to the mother of the kingdom."

The rabbis taught: It is written [Lev. xxv. 22]: "Shall ye eat yet of the old harvest," which means without need of preserving. How is this to be understood? Said R. Na'hman: It will not be worm-eaten. And R. Shesheth said: It will not be singed. There is a Boraitha in accordance with R. Na'hman: "Of the old harvest," lest one say that Israel must wait for the new crop, as the old has already gone, therefore it is written [ibid., ibid.]: "Until its harvest come in," which means, until the harvest shall come by itself (and he will not need to take it before it is ripe, and make it fit for use by drying).

And there is also a Boraitha in accordance with R. Shesheth: "Ye shall eat yet from the old harvest," lest one say that Israel would have to wait for the new harvest because the old one became spoiled, therefore it is written, "Until its harvest come in," which means that the old will suffice until the new shall come in its natural way, without any need to take it before it is ripe.

The rabbis taught: It is written [ibid. xxvi. 10]: "And ye shall eat very old store." From this may be inferred that a thing that is older is better, but this is said of things which are used to be preserved. But whence do we know of things which are not to be preserved? Therefore it is written: "Joshon Noshon" (literally, old, old) [ibid., ibid.], "and the old ye shall remove because of the new," from which is to be inferred that at that time all their granaries were filled up with the old crop and their barns with the new. And Israel used to say: "Why

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should we remove the old, which is as good as the new, for the latter?"

Said R. Papa: All old things are good, except dates and the beer thereof, and *harsnah* (a dish at that time used by the poor--see *Aboda Zara*, 73a).

Rabba said: 1 Sailors told me the wave that usually makes the ship sink is visible by a ray of whitish light, and we struck it with a stick, upon which is engraved, "I will be that I will be" [Ex. iii. 14]. Then it became quiet. He said again: The sailors told me that from one wave to the other are three hundred parasas, and the height of each wave is also three hundred parasas. It once happened that I was on the boat, and a wave lifted me up to such a height that I could see the basis of a little star, and in my eyes it looked as a space where forty saahs of mustard could be sown. Should the wave have lifted me up higher, I would have been burned by the heat of that star; and I heard a voice, one wave speaking to the other: My colleague, did you leave something in the world which thou hast not destroyed, that I may accomplish it? And the answer was: Go and see the Might of thy Master, as there is only one row of sand that separates the sea from the land; and yet I could not step over it. As it is written [Jer. v. 22]: "Will ye not fear me? saith the Lord; will ye not tremble at my presence, who have placed the sand as a bound for the sea by an everlasting law, which it never can pass over? and though the waves thereof be upheaved, yet can they not prevail; though they roar, yet can they not pass over it."

He said again: I have seen Hurnim bar Lilith, who jumped on the top of brick-houses of the city

of Mehusa, and was running so fast from one to the other that a rider could not overtake him. Once it happened that two mules were saddled for him on the two bridges over the river Drugging, which were far from each other, and he jumped continually from one saddle to the other, while holding two cups of wine, pouring from one into the other continually without spilling one drop, and this

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day was such a stormy one, as illustrated [Ps. cvii. 28], until the government took notice of him, and he was slain. [1](#)

He said again: I have seen a roebuck one day old, which was like the mountain of Tabur, which measures four parsas; and the length of its neck was three parsas and the space covered by its head one and a half parsas; and when it emitted excrement it stopped the Jordan.

Rabba b. b. Hana said again: I have seen an alligator as large as the city of Hagrunia, which contained sixty houses. A snake came and swallowed it, and a large-tailed raven came and swallowed the snake, and then the raven sat on a tree. Come and see how strong was that tree! R. Papa b. Samuel said: If I had not been there, I should not have believed it.

Rabba said again: At one time when on board of a ship I saw a fish into whose gills a reptile crept from which it died, the sea throwing it out on land. And sixty streets were destroyed by its fall, and sixty streets consumed its flesh, and sixty other streets salted the flesh that was left; and from one eye they filled three hundred measures of oil; and when I returned thither after twelve months, I saw its bones being sawed to restore the streets that were destroyed by it.

He said again: At one time I was on board of a ship, which was driven between two fins of a fish, three days and three nights the fish was swimming against the wind and we were sailing with the wind [and lest one say that the ship did not go fast enough, when R. Dimi came from Palestine, he said that it was so fast that in the time of heating a *cumcuma* of water the ship ran sixty parsas, and a rider shooting an arrow at the same time could not be swifter than the ship]. And R. Ashi said that this was one of the smallest fishes of the sea which has two fins.

The same Rabba said again: It once happened that I was going on a boat, and saw a fish on which sand was gathered and grass grown thereupon. And we thought it was an island, descended, baked and cooked upon it. When the back of the fish grew hot, it turned over, and had the ship not been so near we would have been drowned.

The same Rabba said again: At one time while on board of a ship I saw a bird which was standing in water that reached only up to its toes; its head, however, reached the sky, and we

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thought the water was shallow, so we were about to bathe there, when we heard a heavenly voice. Do not go down, for a carpenter here lost an axe seven years ago, and still it has not reached the ground--not because it is so deep, but because of the current. Said R. Ashi: This bird is the *Zeez Sodai* mentioned in Ps. l. 11.

Rabba b. b. Hana said again: It happened once, while in the desert, that I saw geese of which the feathers fell out owing to their fatness, and a whole river of fat was beneath them, and to my question, "Have I a share in you in the world to come?" one of them lifted up its wing, and one of them a foot. When I told this to R. Elazar, he said: Israel will be punished for them, as by his sin Messiah does not come, and the geese must endure their fatness.

The same Rabba said again: Once while in the desert we were accompanied by an Arabian merchant who used to take a clod of earth, smell it, and say: This way leads to such a place, and this to such a one. And we asked him: How far are we from water? And he smelt the earth, saying: Eight parsas. Thereafter we gave him other earth to smell, and he said: Three parsas. I changed the clods of earth, but we could not deceive him, and he said to me: Come with me. I will show you the corpses of the dead in the desert at the time of Moses. I did so, and their appearance was as fresh as if they went to sleep while drinking. All of them were lying on their backs. The foot of one of them, however, was lifted up, and the merchant, while riding and holding a spear in his hand, passed beneath it, without reaching the joint of his knee. I took and cut off a corner of one's *taliths*, 1 in which were *tsitsith*. Then neither we nor our cattle could stir. Said the merchant to me: Perhaps you have taken something belonging to the dead, as I have a tradition that if one takes something from them he cannot stir. When I told this to the rabbis, they said: The whole Abba is an ass, and the whole Bar Bar Hanah is nonsense (all his stories are). For what purpose didst thou take it? To know with whom the Halakha concerning *tsitsith* prevails--whether with the school of Shammai 2 or with the school of Hillel? Then thou oughtest to have investigated their *tsitsith* by counting the threads and knots. Then (continued Bar Bar

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[paragraph continues] Hanah) the merchant said to me: Come and I will show you the mountain of Sinai. I followed him, and saw that it was surrounded by serpents. All of them were standing, and looked like white asses. I also heard a heavenly voice saying: Woe is me that I have sworn; and now after having so done, who will absolve me from that oath? When I told this before the rabbis, they said again: The whole Abba is an ass, etc. Why didst thou not say: Thou art absolved, thou art absolved? [He, however, did not do so, because he thought: Perhaps it means the oath for the deluge, referring to what is written in Is. liv. 9: "As I have sworn that the waters of Noah," etc. The rabbis, however, were right in accusing him, as if it were about the deluge, why, then, "woe is me"?] The same merchant said to me: Come and I will show you the place where the children of Korah were swallowed. And I saw two crevices in the ground from which smoke issued. I took a piece of wool, wetted it with water, put it on my spear, placed it in the crevice, and when I took it out it was smudging. And the merchant said to me: Stoop down and hear. And I heard them saying: Moses and his Torah are true, and we are liars. Said the merchant to me: Each thirtieth day of the month, Gehenna turns them over here, like meat in a kettle, and they (the swallowed) repeat the above.

He said again to me: Come and I will show you where the sky and earth meet. I followed him, took my basket, and put it on the window of the sky. After praying, I searched for it but could not find it. Then I said to the merchant: Are there, then, thieves here? And he answered: It was the wheel of the sky which took it with it. Wait until to-morrow at this same time and you will find it.

R. Johanan used to tell: Once while on board of a boat I saw a fish which raised its head out of the water, and its eyes looked like two moons; water was pouring from both of its nostrils like the two rivers of Sura.

R. Saphra used to tell: Once while on board of a boat I saw a fish which had horns raising up its head from the water, and on its horns was engraved thus: "I am of the small creatures in the sea and measure three hundred parsas, and I am going into the mouth of the leviathan." Said R. Ashi: This is a sea-goat that digs with its horns the ground of the sea.

R. Johanan told again: Once while on board of a boat I saw a *χαρταλος* (a kind of basket) which was set with diamonds and

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pearls and surrounded by a kind of fish called *karshah*, and a diver descended in order to catch it; but the basket made a motion and threatened to break his leg. He, however, threw a leather bag containing vinegar (according to others a leather bag with sand) towards it, and the basket sank. At the same time a heavenly voice spoke to us: What business have ye with this *kartilitha*, which belongs to the wife of R. Hanina b. Dosa, who will deposit in it the purple for the upright in the world to come?

R. Jehudah of Mesopotamia used to tell: Once while on board of a ship I saw a diamond that was encircled by a snake, and a diver went to catch it. The snake then opened its mouth, threatening to swallow the ship. Then a raven came, bit off its head, and all water around turned into blood. Then another snake came, took the diamond, put it on the carcass, and it became alive; and again it opened its mouth, in order to swallow the ship. Another bird then came, bit off its head, took the diamond, and threw it on the ship. We had with us salted birds, and we wanted to try whether the diamond would bring them to life, so we placed the gem on them, and they became animated, and flew away with the gem.

The rabbis taught: It happened with R. Eliezer and R. Jehoshua who were on a ship, that R. Eliezer was asleep and R. Jehoshua awake. The latter became frightened, so that R. Eliezer awoke, and said: What is the matter, Jehoshua? What have you seen that frightened you? And he answered: I have seen a great light on the sea. Rejoined R. Eliezer: Perhaps you have seen the eyes of the leviathan about which is written [Job, xli. 10]: "And his eyes are like the eyelids of the morning dawn."

R. Ashi said: Huna b. Nathan told me: It happened once, while I was in the desert, and we had with us a leg of meat, that we cut it, made it legal for eating, put it on the grass, and went to gather wood for roasting. When we returned, the leg had resumed the shape it had before it was cut; and we then roasted it. When we returned after twelve months, the coals upon which it was roasted were still alive. When I told this to Amemar, he said that the grass was *samtrie*, that has the quality of combining things which were previously separated; and the coals were of broom-brush, which when ignited remains alive for a long, long time.

It is written [Gen. i. 21]: "And God created the great sea

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monsters." Here in Babylon they translate this the *reem* of the sea. R. Johanan, however, says: It means leviathan--leviathan male and female, as it is written [Is. xxvii. 1]: "On that day will the Lord punish with his heavy and great and strong sword leviathan the flying serpent and leviathan the crooked serpent, and he will slay the crocodile that is in the sea."

R. Jehudah in the name of Rabh said: All that the Holy One, blessed be He, created, was male and female, and also the leviathan--the flying serpent male and the crooked serpent female; and if they should have intercourse they would destroy the world. Therefore the Lord made the male impotent, and killed the female and salted it for the upright in the world to come, as it is written [ibid.]: "And he will slay the crocodile," etc. "and also the cattle upon a thousand mountains" [Ps. 1. 10]. He created them male and female, and if they should have intercourse they would destroy the world. Therefore the Holy One, blessed be He, made impotent the male and made cold the female, and preserved it for the upright in the world to come, as it is written [Job, xl. 16]: "only see (how great) is the strength in his loins," meaning the male, "and his force in the muscles of his belly," meaning the female.

But why did He not make cold the female of the leviathan also? Because a salted female has a better taste. And why did He not salt the females of the cattle in question? Salted fish gives a good taste, but salted meat does not.

The same said again in the name of the same authority: At the time the Holy One, blessed be He, willed to create the world, He said to the ruler of the sea: Open thy mouth, and swallow all waters that are to be found in the world. And he said: Lord of the Universe, is it not enough that I swallow the water under my dominion? And he was therefore killed immediately, as it is written [ibid. 12]: "By his power he split in pieces the sea, and by his understanding he crushed *Rahab*." Said R. Itz'hak: Infer from this that the name of the ruler of this sea is *Rahab*, and did not the waters of the sea cover the body, not one of the creatures could remain alive owing to the bad smell, as it is written [Is. xi. 9]: "They shall not do hurt nor destroy . . . as the waters cover the sea." Do not read "cover the sea," but "cover the ruler of the sea."

R. Jehudah in the name of Rabh said again: The Jordan discharges by the cave of Pmias. There is also a Boraitha: The Jordan discharges by the cave of Pmias, and flows to the sea of

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Sipchi, of Tiberias, until it reaches the ocean; and through it it flows until it reaches the mouth of the leviathan, as it is written [Job, xl. 23]: "He remaineth quiet, though a Jordan rusheth up to his mouth."

Rabha b. Ula opposed: "Did not this verse speak of the cattle on the thousand mountains? Therefore," said he, "this verse must be interpreted thus: When are the cattle in question sure that they shall remain alive? When the Jordan reaches the mouth of the leviathan (*i.e.*, so long as the leviathan lives, they are sure that they shall remain alive, as all are prepared for the world to come when the Messiah shall appear)."

When R. Dimi came from Palestine, he said in the name of R. Johanan: It is written in Ps. xxiv. 2: "For upon seas he hath founded it, and upon rivers he hath established it." It means the seven

seas and four rivers which surround the land of Israel (Palestine); and they are the sea of Tiberias, Sodom, Chirat, Chiltha, Sipchi, Aspamia, and the Ocean: these are the seven seas, and the four rivers are Jordan, Jarmuch, Kirumyun, and Phiga.

The same R. Dimi said in the name of R. Jonathan: The angel Gabriel will go hunting for the leviathan, as it is written [Job, xl. 25]: "Canst thou draw out the crocodile (leviathan) with a fishhook? or cause his tongue to sink into the baited rope?" And should not the Holy One, blessed be He, help him, he would not conquer him, as it is written [ibid., ibid. 19]: "He is the first in rank . . . he that hath made him can alone bring his sword near to him."

The same said again in the name of R. Johanan: When the leviathan becomes hungry, he expels from his mouth a gas which makes boil all the waters in the deep, as it is written [ibid. xli. 23]: "He causeth the deep to boil." And should he not enter his head in paradise, not one of the creatures could withstand the bad smell of the gas, as it is written [ibid., ibid.]: "He rendereth the sea like an apothecary's mixture." And when he gets thirsty, he makes the sea hollow like beds, as it is written farther on: "Behind him he causeth his pathway to shine." And R. Aha b. Jacob said: The deep does not come to its natural way before seventy years, as it is written: "Men esteem the deep to be hoary"--and hoary is not less than seventy years.

Rabba said in the name of R. Johanan: The Holy One, blessed be He, will make a banquet for the upright from the

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flesh of the leviathan, as it is written [ibid. xl. 30]: "*Yichrov* 1 *Olof Chahvierim*." *Yichrov* means a banquet, as it is written [II Kings, vi. 23]: "And he prepared for them a great meal" (the expression in Hebrew being *Veyichre*, etc.); and *Chahvierim* means scholars, as it is written [Solomon's Song, viii. 13]: "Companions (*Chaverim*) listen for thy voice," etc. And the remainder of it will be cut in pieces, and be sold in the markets of Jerusalem, as it is written [Job, xl. 30]: "Divide him among merchants."

The same said again in the name of the same authority: The Holy One, blessed be He, will make a booth for the upright from the skin of the leviathan, as it is written [ibid., ibid. 31]: "Canst thou fill his skin with *Soukoth*." 2 If the upright is to have a booth, a booth is made for him from it; and if less, a little hut; and if still less, a necklace will be made for him, as it is written [Prov. i. 9]: "And chains for thy throat -; and if still less, an amulet will be made for him, as it is written [Job, xl. 29]: "And tie him up for thy maidens"? And the remainder of the skin the Lord will spread on the walls of Jerusalem, and the brightness of it will shine from one end of the world to the other, as it is written [Is. lx. 3]: "And nations shall walk by thy light, and kings by the brightness of thy shining."

It is written [ibid. liv. 12]: "And I will make of *kadkad* (rubies) thy battlements," etc. Said Samuel b. Nahmeni: Two angels--in heaven, Gabriel and Michael, according to others two Amoraim of Palestine, and they are Jehudah and Hiskiyah the sons of R. Hyya--one says it means *shoham* (onyx) and others jasper, and the Holy One, blessed be He, said: Let it be as both say. [Is. liv. 12]: "And thy gates," etc. This is as R. Johanan lectured while sitting: The Holy One, blessed be He will bring jewels and pearls the size of thirty ells square, twenty ells in height and ten in width, and will place them on the gates of Jerusalem. And one disciple

ridiculed him: We do not even find a jewel as large as the egg of a dove, and he lectured about such sizes? Thereafter it happened that the same disciple was on a boat on the high sea, and he saw angels who sawed jewels and pearls the size of thirty ells square, boring holes in them twenty in height and ten in width. He asked them: For what purpose? And they answered: The Holy

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[paragraph continues] One, blessed be He, will place them on the gates of Jerusalem. And when he returned he said to R. Johanan: Lecture, Rabbi, for all you said is true, as I have myself seen. And R. Johanan said to him: Ignoramus, if you had not seen it, you would not have believed. So you would ridicule the words of the sages? He cast his eyes on him, and he became a heap of bones.

An objection was raised: It is written [Lev. xxvii. 13]: "I will lead you *qummiuth*." 1 R. Meir said: It means two hundred ells, double the height of Adam the first, who was one hundred ells in height. R. Jehudah, however, said: It means one hundred ells, the size of the Temple with its walls, as it is written [Ps. cxliv. 12]: "So that our sons may be like plants grown up in their youth, our daughters like corner-pillars, sculptured after the model of a palace." (Hence we see that according to both the height of the Temple will be one hundred ells at least. Why, then, said R. Johanan only twenty in height?) R. Johanan only meant for the windows in the gates that let in air.

Rabba in the name of R. Johanan said: The Holy One, blessed be He, will make seven canopies (*chupas*) for each upright, as it is written [Is. iv. 5]: "And then will the Lord create upon every dwelling of Mount Zion, and upon her places of assembly, a cloud and smoke by day, and the brightness of a flaming fire by night; for over all the glory shall be a covering (*chupa*)." Whence we deduce that the Holy One, blessed be He, will make a *chupa* to each upright according to His dignity. But why smoke to a *chupa*? Said R. Hanina: Each one who looks with a bad eye upon the scholars in this world, his eyes will be filled with smoke in the world to come. And why fire (in the *chupa*)? Said R. Hanina: Infer from this that each of the upright will be burned by the *chupa* of his neighbor. And woe to such a burn and such a shame! (*i.e.*, the neighbor's *chupa* is so beautiful and large that my *chupa* looks like a small hut against his). Similar to this is what is written [Num. xxvii. 20]: "And thou shalt put some of thy greatness upon him." But not all of it. The elders of that generation used to say: The appearance of Moses was like the sun, and the appearance of Joshua like the moon. Woe to such a burn! woe to such a shame!

R. Hama b. Hanina said: Ten *chupas* were made by the Holy

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[paragraph continues] One, blessed be He, for Adam the first in paradise, as it is written [Ezek. xxviii. 13]: "In Eden the garden of God didst thou abide; every precious stone was thy covering, the sardius, the topaz, and the diamond, the chrysolite, the onyx, and the jasper, the sapphire, the emerald, and the carbuncle, and gold.--(From the word *sardius*, including the word *gold*, are ten different kinds.) Mar Zutra says: Eleven--as he counts all the precious stones also. Said R. Johanan: The gold was less in value than all (as it is placed last). What is meant by the continuation of the same verse: "Thy tabrets and thy flutes," etc.? Said R. Jehudah in the name

of Rabh: So said the Holy One, blessed be He, to Hiram the king of Tyre: When I created the world, and saw that thou wouldst rebel, deeming thyself a god, I therefore created holes and flutes in men, in order that thou shouldst be known as human. And according to others He said: "I saw that thou wouldst rebel," etc. I have therefore punished Adam the first with death, so that it should be known that thou wast human. What mean the words, "upon her places of assembly" (Isaiah, in the above cited verse)? Said Rabba in the name of R. Johanan: Jerusalem in the world to come is not like Jerusalem of this world. In the latter every one who likes to enter does so, but in that of the world to come only those invited will enter.

He said again in the name of said authority: In the world to come the upright will be named with the names of the Holy One, blessed be He, as it is written [Is. xliii. 7]: "Every one that is called by my name, and whom I have created for my glory, whom I have formed; yea, whom I have made."

Samuel b. Nahmeni said in the name of R. Johanan: The following three will be named with the name of the Holy One, blessed be He: the upright, as said above; the Messiah, as it is written [Jer. xxiii. 6]: "And this is his name whereby he shall be called--The Lord Our Righteousness"; and Jerusalem, as it is written [Ezek. xlvi. 35]: "And the name of that city shall be from that day, The Lord is there" (*shamah*). Do not read *shamah* (there), but *shmah* (her name).

R. Elazar said: In the future, *holy* will be said before the upright as now it is said before the Holy One, blessed be He, as it is written [Is. iv. 3]: "And it shall come to pass that whoever is left in Zion, and he that remaineth in Jerusalem, shall be called holy--every one that is written down unto life in Jerusalem."

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He said again in the name of the same authority: The Holy One, blessed be He, will increase Jerusalem three parsas, as it is written [Zech. xiv. 10]: "And she herself shall be elevated, and be inhabited on her former site," which means that it will be increased to its former size. And whence do you know that the size of the former Jerusalem was three parsas? Said Rabba: There was a certain old man who told me that he had seen the first Jerusalem, and the size thereof was three parsas. And lest one say that it would be difficult to ascend, therefore it is written [Is. lx. 8]: "Who are these that are like a cloud," etc. Said R. Papa: Infer from this that the clouds are at a height of three parsas from the ground.

R. Hanina b. Papa said: The Lord wanted to give a measure to Jerusalem, as it is written [Zech. ii. 6]: "To measure Jerusalem." And the angels said before the Holy One, blessed be He: Lord of the Universe, there are many great cities thou hast created in thy world, belonging to the nations, of which thou hast not determined their length and their breadth. For Jerusalem, upon which thy name rests, where is thy Temple, and dwell the upright, thou dost determine a measure.

[Ibid. 8]: "And he said unto him, Run, speak to this young man, saying, Without walls shall Jerusalem be inhabited, because of the multitude of men and cattle in her midst."

Resh Lakish said: The Holy One, blessed be He, will add a *Litsuy* (probably a suburb) to Jerusalem a thousand times the area of one containing country seats and twelve hundred *T'rplirus*, a thousand towers and one hundred and sixty-nine thousand gardens, and each of all

that is said above will be like *Ziporias* in her glory. And there is a Boraita which states: R. Jose said: I have seen *Ziporias* in her glory, and there were one hundred and eighty thousand markets in which only spices for dishes were sold. It is written [Ezek. xli. 6]: "And the side chambers were three one over another, and thirty times." What does that mean? Said R. Levi in the name of R. Papi, quoting R. Jehoshua of *Skhui*: If there were three Jerusalems, each of them had thirty chambers on the top; and if thirty Jerusalems, each of them had three chambers on the top.

END OF FIRST PART OF TRACT BABA BATHRA AND OF VOL. V. (XIII.).

Footnotes

[167:1](#) Here in text are the well-known legends of Rabba b. b. Hana among the other Hagadah, which we find necessary to transfer to the end of this chapter.

[173:1](#) The Hagadah here we also transfer to the end of the chapter, as it has nothing to do with this text.

[174:1](#) In the text there is a statement of R. Elazar repeated several times, which we leave for the forthcoming Tract Uktzin at the proper place.

[193:1](#) The Hagadah in text will be placed at the end of this chapter.

[195:1](#) Here is repeated matter in pp. 147-148 of Vol. XII. to "Rabha said."

[197:1](#) A kpiz was nine lugs, or a kab less one lug; [according](#) to others, one tug, and the kielah was the same as a half tarkab, which contains one and a half kabs.

[200:1](#) Leeser translates differently; the Talmud, however, takes it literally.

[201:1](#) Joash means *despair*; Saraph, *burn*; Choolin, *common*; and Kilyon, *destroying*.

[201:2](#) Khzb in Hebrew means lie.

[202:1](#) Leeser translates "they are here"; but in the Bible is written Hninzouth, literally, "who are found."

[202:2](#) Nozar in Hebrew means *preserved*.

[203:1](#) This matter is transferred from its place at [p. 167](#). See foot-note there.

The Hagadah is known under the name Rabba's or Rabha b. b. Hana's Legends. The scores of commentators thereon say that this is allegoric, and each of them tries to explain after his manner (*e.g.*, [philosopher](#), [philosophically](#), moralist, morally, etc.). We, however, translate literally, without any explanation, leaving it for the consideration of the reader.

[204:1](#) Whether he was a human being or a demon, it is hard to say. As to this, commentators differ, and also as to which government--whether natural or supernatural.

[205:1](#) The garment in which *tsitsith* are woven.

[205:2](#) In Tract Menachoth the schools differ in the number of threads and knots.

[210:1](#) Leeser's translation could not be used here.

[210:2](#) In the Scripture it is written with *Seen*, which reads like *Samach*, and Sukkah means a booth. Leeser's translation cannot here be used.

[211:1](#) *Quomah* means the height of a person, *qummiuth* means two heights. Leeser's translation cannot be used.

[Next: Appendix](#)