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CHAPTER III.

RULES AND REGULATIONS CONCERNING THE QUALIFICATION OR DISQUALIFICATION OF JUDGES AND WITNESSES WHO MAY DECIDE UPON STRICT LAW AND WHO IN ARBITRATION. WHEN A REJECTION AGAINST JUDGES AND WITNESSES MAY OR MAY NOT TAKE PLACE. OF RELATIVES THAT ARE DISQUALIFIED AND THOSE THAT ARE NOT. HOW THE WITNESSES SHOULD BE EXAMINED IN CIVIL CASES. UNTIL WHAT TIME NEW EVIDENCE MAY OR MAY NOT AFFECT A DECISION RENDERED.

MISHNA *I.*: Civil cases by three; one party may select one and so the other, and both of them select one more; so is the decree of R. Meir. The sages, however, maintain that the two judges may select the third one. One party may reject the judge of his opponent, according to R. Meir. The sages, however, say: This holds good only when the party brings evidence that the judges selected by his opponent are relatives, or they are unqualified for any other reason. If, however, they were qualified, or they were recognized as judges from a higher court, no rejection is to be considered. The same is the case with the witnesses of each party, according to R. Meir, so that the rejection of each party against the witnesses of its opponent may be taken into consideration. The sages, however, say: Such holds good only in the cases said above concerning the judges, but not otherwise.

GEMARA: How is to be understood the expression of the Mishna: One party selects one, etc.? Does it mean one party may select one court of three judges, and likewise the other; and then both the third court, which would be altogether nine judges? Are, then, three not sufficient? It means, if one party selects one judge its opponent may also do so, and then both may select the third one. And what is the reason of such a selection? It was said in Palestine in the name of R. Zera: Because each party selects its own judge, and both agree in the selection of the third one, the decision will be a just one.

"*The sages, however, say*," etc. Shall we assume that the point of their difference is what was said by R. Jehudah in the

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name of Rabh: Witnesses may not sign a document unless they are aware who will be the others; and so R. Meir does not hold this theory and the rabbis do? Nay! All hold this theory, and the point of their difference is thus: According to R. Meir, the consent of the parties is also needed; but the rabbis hold that the consent of the judges, but not of the parties, is needed.

The text reads: R. Jehudah said in the name of Rabh: Witnesses, etc. There is also a Boraitha: Pure-minded people of Jerusalem used not to sign a document unless they were aware who was the other who was to sign it, and also would not sit down to judge unless they were aware who

was to be their colleague, and would also not go to a banquet unless they were aware who were invited to it.

"*Each party may reject*," etc. Has, then, one the right to reject judges? Said R. Johanan: It speaks of the little courts in Syria, where there were Gentile judges who were not recognized by the higher court. But if they were, no objection could be taken into consideration. But does not the latter part state: "and the sages, however, say . . . recognized by the court"? From which it is to be understood that their opponent R. Meir speaks even of them who were recognized? They mean to say: If not disqualified (on account of kinship or bad conduct) they are to be considered as if they were authorized judges against whom no rejection can take place.

Come and hear: The sages said to R. Mair: One cannot be trusted with any right to protest against a judge who was appointed by the majority? Read: One has no right to reject a judge who was appointed by the majority. And so we have learned in the following Boraitha: One may reject the selected judge of his opponent until he has selected a judge who was recognized by a majority. So is the decree of R. Mair. But are not witnesses considered as recognized judges, and nevertheless R. Mair. said that one party may disqualify the witness of his opponent? Aye! But was it not already said by Resh Lakish: How is it possible that a holy mouth like R. Mair's should say such a thing? Therefore it must be supposed that R. Meir did not say "witnesses," but "his witness" (*i.e.*, a single witness). Let us see! What does he mean by one witness? If concerning a civil case, the law itself disqualifies him; and if concerning an oath, he is trusted by the law as if there were two witnesses. It speaks of a civil case, and the case was that previously the parties accepted him, saying that his testimony would be considered as

if it were testified by two. But, after all, what news did he come to teach us--that he may retract? This we have learned already in the succeeding Mishna, which states that, according to R. Mair, he may retract, to which R. Dimi b. R. Na'hman b. R. Joseph said that the Mishna speaks of when he has accepted his father as a third judge (and because biblically a father is not fit to judge in a case of his son), he may retract even if he has previously accepted him. Why not say the same in our case, because one is not fit for a civil case he may retract although he had previously accepted him? Both cases were needed, as if the case about his father only were stated one might say that because the same is fit to be a judge in other cases, therefore the rabbis maintain that no retraction is to be considered; but in the case of a commoner, who is not fit to be a judge in any case whatsoever, the retraction would hold good, even in accordance with the rabbis. And if the case of a commoner were stated, one might say that only in that case R. Meir permitted to retract. But in the other case he agrees with the rabbis, therefore both are stated.

But how would the expression of the Mishna be understood? It speaks about the judge in the singular (one may reject the *judge*, etc.), and concerning witnesses, it speaks in the plural (one may reject the *witnesses*, etc.). Hence we see that the Mishna is particular in its expression. How, then, can you say that R. Mair maintains a single witness? Said R. Elazar: It means that he-one of the parties, and also another one who does not belong to this case--come to reject this witness, as then they are two against one, and therefore the rejection holds good. But, after all, why should one of the parties have a right to reject? Is he not interested in this case, and there is a rule that the testimony of such is not to be taken into consideration. Said R. Aha b. R. Ika: The case was that he laid before the court the reason of his protest, which can be examined.

Let us see what was the reason. If, *e.g.*, robbery, it must not be listened to, as he is interested in this case. Therefore we must say that the reason was the incompetence of his family--*e.g.*, that he or his father was a bondsman, who was not as yet liberated. According to R. Mair, he may be listened to, as his testimony is against the entire family. The rabbis, however, maintain that even then he must not be listened to because of his interest in this case, and the court has not to consider his testimony at all.

When R. Dimi came from Palestine, he said in the name of

[paragraph continues] R. Johanan that the point of their difference is two parties of witnesses, *i.e.*, *e.g.*, the borrower said: "I have two parties of witnesses who will testify to my right," and brought one party of them against which the lender protests. According to R. Mair, the protest holds good because the opponent himself confessed that he had another party. Hence he may bring the other party, against whom no protest would be considered (and his reason is that a proof is needed to each claim, even if it is not so important that it could injure the case); and according to the rabbis, no protest must be listened to even in such a case, as they do not desire a proof to each claim. But when there was only one party of witnesses, all agree that no rejection is considered.

Said R. Ami and R. Assi to R. Johanan: How is it if the other party of witnesses were found to be his relatives, or incompetent to be witnesses for any other reason, should the testimony of the first party be considered, or because of the incompetence of the other party, the first party also loses credit? Said R. Ashi: The testimony of the first party was already accepted, and therefore there is no basis to ignore their testimony because of the incompetence of the other party. Shall we assume that R. Mair and the rabbis differ the same as Rabbi and R. Simeon b. Gamaliel. differ concerning one who claims that he has bought a document and "hazakah" (Last Gate, p. 377), and in the discussion we come to the conclusion that the point of their difference is, if one must prove his words or not? Nay! According to R. Simeon b. Gamaliel, they do not differ at all, and the point of their difference is according to Rabbi's statement there. R. Mair holds with Rabbi. The rabbis, however, maintain that Rabbi does so only in case of the claim of hazakah, which is based upon the document; but in our case, where the testimony of the witnesses is not based upon that of others, even Rabbi admits that no proof is needed.

When Rabbin came from Palestine, he said in the name of R. Johanan that the first part of our Mishna treats of incompetent witnesses but competent judges, and because they reject the witnesses the judges are also rejected; and the latter part speaks of the reverse--that the judges were incompetent and not the witnesses, and the witnesses are rejected because of the judges. Rabha opposed: It would be correct to say that because of the incompetence of the witnesses one may reject the judges, as the case can be brought before other judges. But how can the witnesses be rejected because of the judges? Then the

party would remain without witnesses at all. It speaks of when there was another party of witnesses. But how would it be if there were no other witnesses? Then no rejection is to be considered. Thus Rabbin said the same that R. Dimi said? The theory of "because" is the point of their difference. As to R. Dimi, the theory of because is not to be used at all, while according

to Rabbin it is.

The text says: Resh Lakish said: "The holy mouth of R. Mair should say such a thing," etc. Is that so? Did not Ula say that he who saw Resh Lakish in the college saw one uprooting hills and crushing them? (Hence how could he say such a thing, which was objected to?)

Said Rabhina: Was it not said of R. Mair that he who saw him in the college had seen one uprooting *mountains* and crushing them (and nevertheless he was criticised by Resh Lakish). Therefore he (Ula) meant thus: Come and see how the sages respected each other (though Resh Lakish was such a genius, he nevertheless, in speaking of R. Mair, named him holy mouth). [1]

MISHNA *II.*: If one says, "I accept as a judge in this case your father or my father," or, "I accept certain three pasturers to judge our case," according to R. Mair he may retract thereafter, and according to the sages he must not. If one owes a note to a party, and the latter said to him, "Swear to me by your life, and I will be satisfied," according to R. Mair he may retract, and according to the sages he may not.

GEMARA: Said R. Dimi b. R. Na'hman b. R. Joseph: It speaks of when he has accepted his father as a third judge. Even then he may retract, according to R. Mair. Said R. Jehudah in the name of Samuel: The Tanaim of the Mishna differ in case the creditor said to the debtor: Your or my father may judge this case, and if they should acquit you, I will renounce my claim. But if the debtor said to the creditor: I trust your father, and if they shall hold me liable, I will give you the money--all agree that he may retract. R. Johanan, however,: said that they differ in the latter case.

The schoolmen propounded a question: Does R. Johanan mean to say that they differ only in the latter case, but in the former, "I will renounce my claim," all agree that no retraction is to be considered; or, does he mean to say that they differ in both cases? Come and hear what Rabha, said: They differ only

if he said, "I will satisfy your claim," but in case of "I will renounce my claim," all agree that he cannot retract. Now let us sec! If the question of the schoolmen is to be resolved according to Rabha's decision just mentioned, it is correct, as he is in accordance with R. Johanan; but if the question should be resolved that they differ in case of renouncing, etc., according to whom would be Rabha's opinion? Rabha may differ with both, and declare his own opinion. R. Aha b. Tahlipa objected to Rabha from the latter part of our Mishna's statement, that if he told him to swear by his life, according to R. Mair he may retract, etc. Does not the Mishna speak of one who is to be acquitted with an oath, which is equal to "I renounce my claim"? Nay; it speaks of them who ought to swear and collect, which is equal to "I will give you." But this was stated already in the first part? The Mishna teaches both cases, one in which he is dependent upon himself and one in which he is dependent on the mind of others. And both are needed; as, if there were stated the case when he is dependent upon others *e.g.*, "I trust your father," etc.--one might say that only in such a case R. Mair permits to retract, as he has not as yet made up his mind to pay, thinking that probably he will be acquitted; but when he depends upon himself--*e. g.*, "Swear by your life," etc.--R. Mair also admits that he cannot retract. And if this case only were stated, one might say that in such a case only the rabbis hold that he cannot retract; but in

case he depends upon others. they agree with R. Mair. Therefore both are needed.

Resh Lakish said: The Tanaim of the Mishna differ in case the decision was not yet rendered; but after it was, all agree that no retraction can take place. R. Johanan, however, maintains that they differ in the latter case.

The schoolmen propounded a question: Does R. Johanan mean to state that they differ in a case where the decision was rendered, but in case the decision was not as yet rendered all agree that a retraction can take place, or does he mean to say that they differ in both cases? Come and hear what Rabha said: If one has accepted a relative or one who is legally disqualified to be a judge, if before the decision, his retraction holds good; but if after, no retraction is to be considered. Now let us see! If the saying of R. Johanan is to be explained that they differ when the retraction took place after the decision--but if before, all agree that it holds good--Rabbi's decision is correct, as it is in accordance with R. Johanan's explanation and in accordance

with the rabbis. But if it should be explained that they differ also in case it was before the decision, according to whom would be Rabha's decision just mentioned? Infer from this that they differ in the case after the decision but before, all agree that a retraction holds good.

R. Na'hman b. R. Hisda sent a message to R. Na'hman b. to Jacob: Let the master teach us in which case the Tanaim of our Mishna differ--after or before the decision, and with whom the Halakha prevails. And the answer was: After the decision, and the Halakha prevails with the sages. R. Ashi, however, "I said that the question was: Do they differ in case he said, "I will renounce my claim," or in case "I will satisfy your claim"? And the answer was: They differ in the latter case: the Halakha prevails with the sages. So was it taught in the College of Sura. In the College of Pumbeditha, however, it was taught: R. Hanina b. Shlamiha said it was a message from the college, to Samuel: Let the master teach us how is the law if the retraction took place before the decision, but they have made the ceremony of a sudarium? And the answer was that nothing could be changed in such a case.

MISHNA *III*.: The following are disqualified to be witnesses: Gamblers (habitual dice-players) and usurers, and those who play with flying doves; and the merchants who do business with the growth of the Sabbatic year. Said R Simeon: In the beginning they were named the gatherers of Sabbatic fruit; *i.e.*, even those who had gathered the fruit, not for business, were disqualified. However, since the demand of the government to pay duties increased, the gatherers of the Sabbatic fruit were absolved from the disqualification, and only those who did business with same were disqualified. Said R. Jehudah: Then the merchants and all the other persons named above were disqualified only when they had no other business or trade than this; but if they had, they were qualified.

GEMARA: What crime is there in dice-playing? Said Rami b. Hama: Because it is only an *asmachtha*, which does not give title. R. Shesheth, however, maintains that such is not to be considered an *asmachtha*; but they are disqualified because they do not occupy themselves with the welfare of the world--and the difference between them is if they had another business besides. As we have learned in our Mishna, according to R. Jehudah, if they have some business besides, they are qualified. Hence we see that the reason of the disqualification is because they

do not occupy

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themselves with the welfare of the world--and this contradicts Rami b. Hama's above statement? And lest one say that R. Jehudah's opinion is only of an individual, as the rabbis differ with him, this is not so, as Jehoshua b. Levi said that in every place where R. Jehudah says "this is only," or if he says "provided," he comes only to explain the meaning of the sages, but not to differ with them; and R. Johanan maintains that when he says "this is only," he comes to explain, but when he says "provided," he means to differ. And as in our Mishna he expresses himself "this is only," all agree that he is only explaining.

Hence Rami is contradicted? Do you contradict one man with another man? Each of them may have his opinion. Rami holds that they do differ, and Shesheth that they do not.

Have we not learned in the following Boraitha that it does not matter if he has another business besides; he is nevertheless disqualified? The Boraitha is in accordance with R. Jehudah in the name of Tarphon of the following Boraitha: R. Jehudah said in the name of R. Tarphon, concerning a Nazarite (Tract Nazir, 34a), that wherever there is any doubt he is not deemed a Nazarite. And the same is in our case, as the gambler is not certain that he will win or lose, it cannot be considered a real business, but robbery, and therefore he is disqualified even when he has another business.

"*Usurers*." Said Rabha: One who borrows to pay usury is also disqualified. But does not our Mishna state "usurers," which means the lenders, and not the borrowers? It means to say a loan which is usurious. There were two witnesses who testified against Bar Benetus. One said: In my presence he has given money at usury; and the other said.. He has loaned to me at usury. And Rabha disqualified b. Benetus from being a witness. But how could Rabha take into consideration the testimony of him who said: I have borrowed from him at usury? Did not Rabha say that the borrower also is disqualified, because, as soon as he has borrowed at usury, he is wicked; and the Torah says: Thou shalt not bring a sinner as a witness. Rabha is in accordance with his theory elsewhere, that one is not trusted to make himself wicked. (Hence his testimony that he himself has bor. rowed at usury is not taken into consideration, but that part, that Benetus has loaned to him at usury, was.) There was a slaughterer who sold illegal meat in his business, and R. Na'hman disqualified him . And he let his hair and nails grow as a sign of repentance; and Na'hman was about to remove the

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disqualification. Said Rabha to him: Perhaps he is deceiving you. But what remedy can he have? As R. Aidi b. Abin said elsewhere: For him who is suspected of selling illegal meat there is no remedy, unless he goes to a place where he is not known and returns a valuable lost thing, or he recognizes the illegality of meat in his business, even if it is of great value.

"*Flying doves*," etc. What does this mean? In this college it was explained: If your dove should fly farther than mine (such and such a distance), you shall take an amount of money. And Hama b. Oushia said that it means an •ρυω {Greek *a?ruw*}, one who uses his doves to entice to his cot doves belonging to other cots--and this is robbery. But to him who maintains, "If your dove shall

fly farther," etc., is this not gambling? (Why, then, is it repeated?) The Mishna teaches both cases--depending upon himself and depending upon his dove; as if depending upon himself only were stated, one might say that, because he was sure he would win, he offered such an amount, and be has not made up his mind to pay the sum willingly in case of a loss, and therefore it is considered an *asmachtha*, which does not give title. But in the other case, where he is dependent upon his dove, in which he is not sure, and has nevertheless offered a sum of money, it is to be supposed that he made up his mind to pay willingly in any event, and therefore it is not considered an *asmachtha*. And if this latter case were stated, one might say that he did so probably because the winning of the race depends on the clapping, and he knew better how to clap (at the pigeon race); but when he depends upon himself, it is different. Therefore both are stated.

An objection was raised from the following: Gamblers are counted those who play with dice; and not only dice, but even with the shells of nuts or pomegranates. And when is their repentance to be considered? When they break the dice and renounce this play entirely, so that they do not play even for nothing. And usurers are counted both the lender and the borrower, and their repentance is to be considered only then when they destroy their documents and renounce this business entirely, so that they do not take usury even from a heathen, from whom it is biblically allowed. And among those who play with doves, those who train doves to fly farther are counted; and not only doves, but even other animals; and their renunciation is considered only when they destroy their snares and renounce the business entirely, so that they do not catch birds even in

deserts. Among those who handle Sabbatic fruits are counted those who buy or sell, and their renunciation is considered only when they cease to do so in the next Sabbatic year. Said R. Na'hamia: It is not sufficient that they cease to do so, but they must return the money which they derived from the sale of the fruit. How if one say: I, so and so, have obtained two hundred zuz from the Sabbatic fruit, and I present them for charity? We see, then, that among those who play with doves, those who do so with other animals are also counted; and this can be correct only according to him who explains our Mishna: "If your dove should fly farther than mine," as the same can be done with other animals. But to him who says an •ρυω {Greek *a?ruw*}, could this be done with other animals? Aye, this can be done with a wild ox; and it is in accordance with him who says that a wild ox may be counted among domesticated animals.

There is a Boraitha: There was added to the disqualified witnesses robbers and forcers (*i.e.*, those who take things by force, although they pay the value for them). But is not a robber disqualified to be a witness biblically? It means even those who do not return a found thing which was lost by a deaf-mute or by minors (which according to the strict law is not to be returned, but it was enacted that it should be returned for the sake of peace--that there should be no quarrel with their relatives), and as this does not occur frequently, they were not counted among the disqualified. Thereafter, however, they were added, as, after all, they take possession of money which does not belong to them. And the same is the case with the forcers, who were not placed among the disqualified, because this does not happen frequently. Thereafter, however, as the rabbis saw that it became a habit, they added them also.

There is another Boraitha: There was secondly added to that category, pasturers, collectors of duty, and contractors of the government. Pasturers were not put in this category previously,

because, when it was seen that they led their animals into strange pastures, it was only occasionally; but later, when it was seen that they did it intentionally, they were also added. And the same is the case with the collectors of duty and the contractors, as at first it was thought that they took only what belonged to them; but after investigation, when it was found that they took much more than they ought, they were added. Said Rabha: The pasturer in question--it matters not if he is a pasturer of small cattle or of large ones. Did Rabha indeed say so? Did

he not say that a pasturer of small cattle is disqualified only in Palestine, but not outside of it, and pasturers of large cattle even in Palestine *are* qualified? This was taught of them who raise the cattle for themselves; and if they are small cattle, they are disqualified because it was forbidden to keep small cattle in Palestine, as explained elsewhere. And so it seems to be as the previous Mishna expresses, "three pasturers," and it is to be assumed for witnesses. Nay; it means for judges, and this is to be understood from the number three. As if for witnesses, for what purpose are three needed? But if for judges, why does the Mishna express itself "pasturers"--let it state three laymen who do not know the law? It means to say that even pasturers who spend their time in uninhabited places are nevertheless qualified to judge of the appointment of the parties.

R. Jehudah said: A pasturer of whom it is not heard that he leads his cattle into strange pasture is nevertheless disqualified, but a duty collector of whom it is not said that he takes more than he ought, is qualified.

The father of R. Zera was a collector for thirteen years, and when the governor would come to that city he used to say to the scholars: Go and hide yourselves in the houses, so that the governor shall not see so many people, or he will demand from the city more taxes. And also to the other people, when he saw them crowded in the streets, he used to say: The governor is coming, and he will kill the father in presence of the son, and the son in presence of his father. And they also used to hide themselves. And when the governor came, he used to say to him: You see that there are very few people in this city. From whom, then, shall we collect so much duty? When he departed, he said: There are thirteen maes which are tied in the sheet of my bed; take and return them to so and so, as I took it from him for duty and did not use it.

"*They were named gatherers of Sabbatic fruit*," etc. What does this mean? Said R. Jehudah thus: Formerly it was said the gatherers of the fruit were qualified, but the merchants were not. But when it was seen that they used to pay the poor that they should gather the fruit for them and bring it to their houses, it was enacted that the gatherers as well as the merchants were disqualified. This explanation, however, was a difficulty to the scholars of the city of Rehaba as to the expression of our Mishna, "since the demand of the government," and according to this explanation it ought to be, "since the increase of buyers,"

and therefore they explain thus: Since the government has increased their duties [as R. Jani announced, "Go and sow in the Sabbatic year, because of the duties"], it was enacted that the gatherers were qualified, but not the merchants.

Hyie b. Zarssuqi and Simeon b. Jehuzdack went to intercalate a year in Essia, and Resh Lakish met them and said: I will go with them to see how they practise. In the meantime he saw a man who was ploughing in the Sabbatic year, and he said to them: Is this man a priest, who is suspected of doing work in the Sabbatic year? And they answered: Probably he is hired by a Gentile to do so. He saw again a man who was collecting the fluid in a vineyard and putting it back into the bale. And he said again: Is this man a priest, who is suspected, etc.? And they answered: He who trims vines in the Sabbatic year may say: I need the twigs to make a bale for the press. Rejoined Resh Lakish: The heart knows whether it is done for "ekel" (a legitimate purpose) or out of "akalkaloth" (perverseness). And they rejoined: He is a rebel. When they came to their place, they ascended to the attic and moved the steps that he (Resh Lakish) should not ascend with them. The latter then came to R. Johanan and questioned him: Men who are suspected of transgressing the Sabbatic year, are they fit to establish a leap year? After deliberating, however, he said: It presents no difficulty to me, as they may be compared with the three pasturers mentioned above (p. 46), and the rabbis recommended them to do so, as so it should be according to their reckoning.

Afterward, however, he said to himself: There is no similarity, as, concerning the three pasturers mentioned thereafter, the rabbis selected the right number needed for intercalation. Here, however, they themselves did it, and they are only a society of wicked men who are not at all qualified to intercalate. Said R. Johanan: I am distressed that you called them wicked. When the above-mentioned rabbis came to R. Johanan, complaining that Resh Lakish called them pasturers of cattle in the presence of R. Johanan and he kept silent, he answered: If he were to call you pasturers of sheep, what could I do to him?

[1]Ula said: One's thought for his maintenance injures him in his study of the law (*i.e.*, because of his sorrow it remains not in his mind for a long time, and he forgets it easily). As it is written [Job, V., 12]: "Who frustrateth the plans of the crafty, so that

their hands cannot execute their well-devised counsel." Said Rabba, however: If he occupies himself with the Torah for the sake of Heaven, he is not injured. As it is written [Prov. xix. 21]: "There are many thoughts in a man's heart; but the counsel of the Lord alone will stand firm"--which is to be explained: A study which is for the sake of Heaven, no matter in what circumstances one is, it remains forever. [1]

"*Only then*," etc. Said R. Abuhu in the name of R. Elazar: The Halakha prevails with R. Jehudah. And the same said again in the name of the same authority: All the persons mentioned in the Mishna and in the Boraithas are disqualified only then when their crime was announced by the court. However, concerning a pasturer, R. Aha and Rabhina differ. According to one, even concerning him announcement is needed; and according to the other, no announcement is needed for his disqualification. (Says the Gemara:) It is correct, according to him who holds that no announcement is needed, that which R. Jehudah said above, that a pasturer is disqualified even if we are not aware of any crime; but according to him who holds that even a pasturer must be announced, why, then, Jehudah's decision? Because he holds that the court has to announce of each pasturer, no matter what he is, that he is disqualified. There was a document for a gift which was signed by two robbers, and R. Papa b. Samuel was about to make it valid because they were not announced by the court. Said Rabha to him: When to a robbery which is only rabbinical an announcement is needed, should we say that the same is needed to a biblical

robbery

R. Na'hman said: They who accept charity from idolaters are disqualified to be witnesses, provided they do so publicly, but not if privately; and even publicly, they are disqualified only then when it was possible for them to do same privately and they do not care to disgrace themselves publicly; but if not, one is not disqualified, as he is compelled to get a living. The same said again: He who is suspected of adultery is qualified to be a witness. Said R. Shesheth to him: Master, answer me. Should a man who has forty stripes on his shoulders [2] be qualified?

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[paragraph continues] Said Rabha: R. Na'hman admits that concerning a woman he is disqualified to be a witness. And Rabhina, according to others R. Papa, said: This is said only concerning a divorce, but concerning bringing her into the house of her husband, the suspicion does not matter. R. Na'hman said again: If one has stolen in the month of Nissan at the harvest-time, and has stolen again in the month of Tishri, he is not named a thief so that he should be disqualified, provided he was a gardener and stole a thing of little value, and if it was a thing which could be consumed without any preparation. The gardener of R. Zebid stole a kab of barley, and R. Zebid disqualified him. And also another one stole a bunch of dates, and was also disqualified.

There were undertakers who had buried a corpse on the first day of Pentecost, and R. Papa put them under the ban and disqualified them to be witnesses. However, Huna b. R. Jehoshua qualified them, and to the question of R. Papa: Are they not wicked? he answered: They thought they were doing a meritorious act. But were they not put under the ban for this transgression, and nevertheless did it again? They thought that the putting under the ban was only a kind of atonement imposed by the rabbis for violating the holiday. However, the burial act itself is meritorious, though they will have to be under the ban for a few days for violation of a holiday.

An apostate who eats illegal meat, which is identical with carcasses, because it is cheaper, all agree that he is disqualified. But if he does this not because it is cheaper, but for the purpose of angering his former brothers in faith, [1] according to Abayi he is disqualified and according to Rabha he is not. The reason of Abayi is because he is wicked, and the Scripture reads plainly: "Thou shalt not bring a sinner as a witness." Rabha's reason, however, is that it speaks of one wicked in money matters only. An objection was raised from the following: "The meaning of the Scripture concerning the testimony of a sinner means one who is wicked in money matters; as, for instance, robbers and perjurers. No matter if the oath was a vain one (*e.g.*, if one has sworn that a stone is a stone), or if the oath was a false one concerning money matters." Hence we see that even a vain swearer

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is also disqualified? By the expression "vain swearer" is not meant as explained, but that he has sworn in vain concerning money matters--*e.g.*, A owes money to B, which was not necessary at all, as A has never denied it. An objection was raised from the following: "Thou shalt not bring a sinner as a witness," means one wicked in robbery--namely, robbers and usurers. Hence this Boraitha contradicts Abayi's statement. The objection remains.

Shall we assume that the above Amoraim differ in the same respect as the Tanaim of the

following: A collusive witness is disqualified in all law cases. So is the decree of R. Mair. R. Jose, however, maintains: Provided he was made collusive in a case of capital punishment; but if in money matters, he is still qualified to be a witness in criminal cases? Now, shall we say that Abayi holds with R. Mair, who maintains that even from a lenient we disqualify to a rigorous one, and Rabha holds with R. Jose, who maintains that only from a rigorous case we disqualify, even to a lenient one, but from lenient to rigorous we do not? Nay! In accordance with R. Jose's theory, they do not differ. But the point of their difference is concerning R. Mair's theory, as Abayi holds with him, and Rabha maintains that even R. Mair said so only concerning a collusive witness in money matters, which is both wicked against man and wicked against heaven; but in our case, where the wickedness is in heavenly things only, even R. Mair admits that he is qualified to be a witness in money matters. The Halakha, however, prevails with Abayi. But was he not objected to? The Boraitha which contradicts Abayi is in accordance with R. Jose. But even then, is it not a rule, when R. Mair differs with R. Jose, that the Halakha. prevails with the latter? In this case it was different, as the editor of the Mishnayoth taught an anonymous Mishna in accordance with R. Mair's opinion. And where is it? This was, explained in the following case: Bar Hama had slain a man and the Exilarch told Aba b. Jacob to investigate the case; and if he really slew the man, they should make the murderer blind. (Since the Temple was destroyed, capital punishments were abolished by Israel, and therefore to make a man blind was to make him dead to the world.) And two witnesses came to testify that he surely killed the man. The defendant, however, brought two witnesses who testified against one of the witnesses. One of them said: In my presence this man stole a kab of barley; and the other said: In my presence he stole the handle of a borer.

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[paragraph continues] And the Exilarch said to him: You wish to disqualify this man to be a witness because of R. Mair's theory, but I know of the rule that the Halakha prevails with R. Jose when he differs with R. Mair; and according to R. Jose, if one was collusive in money matters, he is still qualified in criminal cases. Said R. Papa to him: This is so in other cases; but in this case it is different, as there is an anonymous Mishna in accordance with R. Mair. But which Mishna is it? Shall we assume it to be that which stated that he who is competent to judge criminal cases is competent for civil cases also, which cannot be in accordance with R. Jose, as, according to his theory, there is a witness who was made collusive in civil cases and is still competent in criminal cases? Hence it is in accordance with R. Mair. But perhaps the cited Mishna does not speak about collusive witnesses, but of such as are incompetent to be witnesses because of their family. Therefore we must say that he means our Mishna which states the following are disqualified for witnesses: Players with dice, etc.; and a Boraitha adds: And also slaves. This is the rule in all cases in which women are not allowed to be witnesses--they also are disqualified. And this cannot be in accordance with R. Jose, as he holds that they are qualified to be witnesses in criminal cases, for which women are disqualified. Hence it is in accordance with R. Mair. B. Hama then arose and kissed him, and freed him from paying duties all his life.

MISHNA *IV*.: The following are counted relatives who may not be witnesses: Brothers, brothers of father or mother, brothers-in-law, uncles by marriage from father's or mother's side, a stepfather, a father-in-law, the husband of one's wife's sister, they and their sons and their sons-in-law, and also a stepson himself--but the latter's children are qualified. Said R. Jose: This Mishna was changed by R. Aqiba. The ancient Mishna, however, was thus: One's uncle, one's first-cousin, and all those who are competent to be one's heirs and also all one's relatives at that time; but if they were relatives and thereafter became estranged, they are qualified. R. Jehudah, however, maintains that even if a daughter dies and leaves children, her husband is still

considered a relative. An intimate friend, as well as a pronounced enemy, is also disqualified. Who is considered an intimate friend? The groomsman. And who is considered a pronounced enemy? The one who has not spoken to him for three days because of animosity. And the sages answered R. Jehudah: The children of Israel are not suspected of witnessing falsely because of animosity.

GEMARA: Whence is this deduced? From that which the rabbis taught. It is written [Deut. xxiv. 16]: "Fathers shall not be put to death for the children . . . for his own sin," etc. To what end is this written? If only to teach the meaning of it literally, it would not be necessary, as the end of the verse reads, "for his own sin shall every man be put to death." It must therefore be interpreted, fathers should not die by the witnessing of their children, and *vice versa*. From this is deduced fathers by sons, and *vice versa*; and so much the more fathers who are brothers are incompetent to' testify for each other. But whence do we know that grandsons (cousins) are also incompetent to testify for each other? It should read, "parents shall not die because of their son." And why "sons" in the plural? To teach that their sons are not competent to testify for each other. But whence do we know that two relatives are not qualified to testify in one case even for a stranger? It should read in the singular, "and a son for his parents." And why in the plural, "and sons"? To teach that two sons are incompetent to testify in one case, even for a stranger. But from this is deduced the relatives from the. father's side only. Whence, however, do we know that the same is the case with the relatives from the mother's side? From the repetition of the word "fathers" in the same verse. And as it was not necessary for the relatives on the father's side, apply it to the relatives on the mother's side. But this verse speaks of accusation. Whence do we know that the same is the case concerning advantage? From the repetition of the words, "shall not die," which were not necessary in the case of accusation. Apply it, therefore, to cases of advantage. All this, however, is said concerning criminal cases. But whence do we know that it is the same with civil cases? Hence it reads [Lev. xxiv. 22]: "One manner of judicial law," etc., meaning that all cases must be judged equally.

Rabh said: My father's brother shall not witness in my cases; he, his son, and his son-in-law. And similarly, I, for my part, will not witness in his cases, neither my son nor my son-in-law. But why? Is not one's son a grandnephew, who is a third to a father's brother, and our Mishna teaches that only a cousin is not competent, who is second to the party, but not a second-cousin, who is third to the party? The expression in our Mishna, "his son-in-law," means the son-in-law of his son, who is already a third. But if so, why does it not teach "the son of his son" (grandson)? Incidentally, the Mishna teaches us that the husband

is equal to his wife. But if so, according to whom would be the following Boraitha, taught by R. Hyya: Eight fathers, which counts twenty-four, including their sons and sons-in-law (*i.e.*, father and brother, two grandfathers, and four great-grand fathers--two from each side--and eight sons and eight sons-in-law)? And if our Mishna means the son's son-in-law, then it ought to be thirty-two, viz.: eight fathers, eight sons, eight sons-in-law, and eight grandsons. Therefore we must say that our Mishna means his son-in-law. And why does Rabh name him the son-in-law of his son? Because he is not a descendant from him, but came from strangers, he is considered not of the second generation but as of the third. But, after all, according to Rabh's saying it is a third to a second-cousin, and we are aware that Rabh holds that such is qualified to be a witness?

Therefore we must say that Rabh holds with R. Elazar, who says in the following Boraitha: Even as my father's brother cannot be a witness for me, neither his son nor his son-in-law, the same is the case with the son of my father's brother and with his son and son-in-law. Still, this cannot serve as an answer to the objection that Rabh himself has qualified a third to a second-cousin? Say, Rabh holds with R. Elazar only concerning his son, but differs with him concerning the son of his father's brother. And the reason of Rabh's theory is because it reads: "Fathers shall not die because of their sons; and sons," etc.--which means the addition of one more generation. And the reason of R. Elazar is: "For their children" means that the incompetence of the fathers shall extend to their children also.

R. Na'hman said: The brother of my mother-in-law cannot be a witness for me, and the same is the case with his son, and also with the son of the sister of my mother-in-law. And there is also a Boraitha similar to this, viz.: The husband of one's sister, also the husband of the sister of one's father And the husband of the sister of one's mother, their sons and their sons-in-law, are also excluded from being witnesses. Said R. Ashi: While we were with Ula we questioned him: How is it concerning the brother of one's father-in-law and his son, and also concerning the son of the sister of his father-in-law? And he answered: This we have learned in a Boraitha: One's brothers, the brother of one's father and of one's mother, they, their sons and their sons-in-law--all are incompetent.

It happened that Rabh was going to buy parchments, and he was questioned: May one be a witness to his stepson's wife? The

answer to this question was, according to the College of Sura, that the husband is the same as his wife; and according to the College of Pumbeditha, the answer was that the wife is the same as her husband--which means that he is considered as if he were really her father-in-law. And as Huna in the name of Rabh said: Whence do we know that the woman is considered to be the same, as her husband? From [Lev. xviii. 14]: "She is thy aunt." Is she indeed his aunt? Is she not the wife of his uncle only? We see, then, that the wife is considered the same as her husband.

"*A stepfather . . . his son and son-in-law*." Is not his son a brother of the: party from the mother's side? Said R. Jeremiah: It means the brother of his brother--*e.g.*, the son of his stepfather from another wife. R. Hisda, however, qualified such ~ a person. When he was questioned: Was he not aware of Jeremiah's explanation of our Mishna just mentioned? He answered I do not care for it. But if so, it is his brother. The Mishna teaches concerning a brother from the father's side, and also from the mother's side. R. Hisda said the father of the groom and the father of the bride may be witnesses for each other, as their relation is similar to the relation of a cork to a barrel only, which cannot be counted relationship. Rabba b. b. Hana said: One may be a witness for his betrothed, but not for his wife. Said Rabhina: Provided he testified against her; but if his testimony is in her behalf, he is not trusted. In reality, however, (says the Gemara,) there is no difference: One is not trusted in any case, as the reason concerning witnesses is that one is too near in mind to his relatives; and as she is betrothed to him, he is not fit to be a witness in any case.

The rabbis taught: One's stepson only. R. Jose says: The husband of one's wife's sister only. And there is another Boraitha: The husband of one's wife's sister only. R. Jehudah says: One's stepson only. How is this to be understood? Shall we assume that the Tana of the first Boraitha

has mentioned only the stepfather, but that the case is the same with the husband of one's wife's sister? And R. Jose with his statement also does not mean to differ, but he mentioned the latter, and the same is it also with the former. Then our Mishna, which states, "the husband of one's wife's sister, he, his son, and his son-in-law are excluded, would be neither in accordance with R. Jedudah nor with R. Jose. "Or does the Boraitha mean to say that regarding a stepfather only is he excluded, but concerning the husband of the wife's sister, he, with his sons, etc., is excluded; and R. Jose differs, as, according

to his opinion, the latter only is excluded, but not his sons, etc.; but a stepfather, with his sons, etc., is excluded? Then the Boraitha of R. Hyya, mentioned above, which states that there are twenty-four, would be neither in accord with R. Jose nor with R. Jehudah. Therefore we must say that the Boraitha is to be explained thus: The stepfather only is to be excluded, but concerning the husband of his wife's sister, his children are also excluded. And R. Jose came to teach that even concerning the latter he only is excluded, but not his children, and so much the more a stepfather. And then our Mishna is in accordance with R. Jehudah and the Boraitha in accordance with R. Jose. Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Jose.

There was a deed of gift which was signed by two brothers-in law--*i.e.*, two husbands of two sisters--and R. Joseph was about to make it valid, based upon the decision of Samuel that the Halakha prevails with R. Jose. Said Abayi to him: Whence do you know that Samuel meant R. Jose of our Mishna, who qualified the husband of one's wife's sister? Perhaps he meant R. Jose of the Boraitha who disqualified him. This could not be supposed, as Samuel said, *e.g.*, I and Pinchas, who are brothers and brothers-in-law--but if only brothers-in-law, they are qualified. And Abayi rejoined: It is still uncertain, as perhaps Samuel meant to say: Because Pinchas was the husband of his wife's sister. Therefore said R. Joseph to the beneficiary: Acquire title to this gift by the testimony of the witnesses who were present when the gift was transferred to you, in accordance with R. Aba's decision. Said Abayi again: But did not Aba admit that if there was a forgery in the deed while writing, it is invalid even in the latter case? And R. Joseph said to the beneficiary: Go! you see people do not allow me to transfer it to you.

"*R. Jehudah said*," etc. Said Thn'hum in the name of Tabla in the name of Bruna, quoting Rabha: The Halakha prevails with R. Jehudah. Rabha, however, in the name of R. Na'hman, and also Rabba b. b. Hana in the name of R. Johanan, said: The Halakha does not prevail with him: There were some others who taught the saying of Rabba with regard to the following: Thus lectured R. Jose the Galilean: It is written [Deut. xvii. 9]: "And to the judge that may be in those days." Was it necessary to state thus? Can it then be supposed that one should go to a judge that is not in his days? Therefore it is to be explained that it means that the judge was previously a relative of

his, and that thereafter he became estranged. And to this said Rabba, etc., the Halakha prevails with R. Jose the Galilean.

The sons of Mar Uqba's father-in-law were relatives, and became thereafter estranged. And they had a case, and came, with it to his court. He, however, exclaimed: I am disqualified from being

your judge. They then rejoined: Is it because you hold with R. Jehudah? We will bring you a letter from Palestine stating that the Halakha does not prevail with him. Rejoined he: I myself know that I am not attached to you with wax, and my saying that I am disqualified to judge you is because I know that your custom is not to listen to my decision.

"*A friend is a groomsman*." But how long shall this friendship hold? R. Aba in the name of R. Jeremiah, quoting Rabh, said: All the seven days of the wedding. The rabbis, however, in the name of Rabha said that after the first day the friendship is no longer considered, and he is qualified.

"*An enemy*," etc. The rabbis taught: It reads [Num. xxxv. 23]: "He was not his enemy and did not seek his harm"--which means, he who is not one's enemy may be a witness and he who does not seek one's harm may be his judge. This is concerning an enemy. And whence do we know that the same is the case with a friend? Read, then, "and he is not his enemy and not his friend"--and then he may be a witness; and if he does not seek his harm and not his welfare, then he may be his judge. But is it, then, written a friend? This is common sense. Why not an enemy? Because his mind is far from doing any good to him; and the same is it with a friend, whose mind is near to do all that he can in his behalf. The rabbis, however, infer from this two things: one concerning a judge and the other that which we have learned in the following Boraitha: R. Jose b. R. Jehudah said: From the verse, "he is not his enemy and does not seek his harm," is to be inferred that if two scholars have animosity toward each other they must not judge in a case together.

MISHNA *V.*: How were the witnesses examined? They, were brought into separate chambers and were frightened to tell the truth. And then all except the eldest were told to go out, and he questioned: How do you know that A owes money to B?, And if his answer was: "Because A himself told me that he owes,. him," or, "C told me that such was the case," he said nothing, unless he testified that, in the presence of myself and my colleague, A confessed that he owed to B two hundred zuz: and then the second witness is brought in and they examine him, and if both

testimonies correspond the court discusses about the case. If two of the judges acquit and one makes him liable, he is acquitted; and if *vice versa*, he is liable. If, however, one acquits and the other makes him liable, and the third one says, "I don't know," then judges must be added. And the same is the case if there were five, and two of them were against two, while the fifth was doubtful. After the conclusion of the judges is arrived at, they are told to enter, and the eldest of the judges announces, "You, R, are acquitted," or, "You, A, are liable." And whence do we know that one of the judges must not say: I was in favor of the defendant, but my colleagues were against, and I could not help it, as they were the majority. As to this it reads [Lev. xix. 16]: "Thou shalt not go up and down as a talebearer among thy people"; and it reads also [Prov. xi. 131 He that walketh about as a talebearer revealeth secrets."

GEMARA: How were the witnesses frightened? Said R. Jehudah. Thus [ibid. xxv. 14]: "Like clouds and wind without rain, so is a man that vaunteth falsely of a gift" (*i.e.*, that because of false witnesses, even though it is cloudy, the rain is withheld), Said Rabha: This is no frightening, as they may think what people say, even seven years of famine do not pass the gate of a specialist. "Therefore," said he, "it was said to them [ibid., ibid. 18]: 'A battle-axe, and a sword, and a sharpened arrow is a man that testifieth as a false witness against his neighbor.'"

And R. Ashi maintains that even this is not sufficient, as they may think, even in time of a pest one does not die before his time. Therefore said he: I was told by Nathan b. Mar Zutra that they were frightened that false witnesses were disgraced even in the eyes of those who hired them. As it reads [I Kings, xxi. 10]: "And set two men, sons of Belial, opposite to him, and let them bear false witness against him," etc.

"*'A' himself told me*," etc. This is a support to R. Jehudah, who said in the name of Rabh: If one wants the case to be recognized by the court, he must insist that the debtor shall say: Ye shall be my witnesses. And so also was taught by Hyya b. Aba in the name of R. Johanan. And there is also a Boraitha as follows: (A said to B:)"I have a mana with you," and he answered, "Yea." On the morrow A asked him, "Give it to me," and B said it was only a joke, he is free. And not this only, but even if A has had two witnesses hidden under a fence (so that B could not see them), and questioned him: "Have I a mana with you?" and B answered, "Yea." And to the question, p. 86 "Would you like to confess before witnesses?" B answers, "I am afraid, if I do so, you will summon me to the court"; and on the morrow A asks B to give him the mana, and his answer is, "It was only a joke," he is not liable. However, one must not defend a seducer. A seducer! Who has mentioned this term? The Boraitha is not complete, and should read thus: If, however, B does not defend himself, the court must not question him; perhaps it was a joke. But in criminal cases, a similar question must be asked by the court, although he has not so defended himself, except in the case of a seducer. And why? Said R. Hama b. Hanina: From the lecture of R. Hyya b. Aba I understand that it is because it reads [Deut. xiii. 9]: "Nor shall thy eye look with pity on him, nor shalt thou conceal it for him."

Said Abayi: All that is said above is, provided the defendant claims, "It was a joke"; but if he claims, "I have never confessed," he must be considered a liar and is liable. R. Papa b R. Aha b. Ada, however, maintains: In the case of a joke, people do not remember their confession, and therefore even such a claim must be investigated.

There was one who had hidden witnesses under the curtains of his bed, and he said to his debtor, "Have I a mana with you?" and he answered, "Yea." And he questioned him again, "May the people who are here sleeping or awake be witnesses?" and he answered, "No." And when the case came before R. Kahana, he said: He cannot be liable, as he said no. A similar case happened with one who had hidden witnesses in a grave, and to the question, "May the living and the dead be witnesses?" he answered, "No." And when the case came before Resh Lakish, he acquitted him. Rabhina, according to others R. Papi, said: The decision of R. Jehudah that it must be said by the party, "Ye are my witnesses," is no matter whether it is said by the lender in the presence of the borrower and he keeps silent, or by the debtor himself. And this is inferred from that which was said above, that the debtor had answered the question with no; but if he should remain silent, he would be liable. There was one who was named by the people "the man who has against him a whole kab of promissory notes." And when he heard this, he exclaimed: Do I owe to anyone but B and C? The latter then summoned him before the court of R. Na'hman, and R. Na'hman decided that the above exclamation could not be taken as evidence, as it might be that he said so for the purpose that people should not think him too rich. There was another one who was

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named "the mouse who lies on dinars," and at the time he was dying he said: A and B are my creditors. After his death the creditors summoned his heirs before R. Ismael b. R. Jose, and he

made the heirs pay, for the reason that, if he said so while in good health, it might be supposed that he did so for the purpose mentioned above, but this could not apply to a man who was dying. The heirs, however, only paid the half, and were summoned for the other half in the court of R. Hyya, who decided, as it is supposed that one may say so for the purpose that he shall not appear too rich, so it may be said that the deceased did so that his children should not appear too rich. The heirs then demanded what they had already paid, to which R. Hyya answered: It was decided long ago by a sage, and the decision must remain.

If one has confessed before two witnesses and they have made the ceremony of a sudarium, they may write it down; but if there was no sudarium, it must not be written. If he has, however, confessed before three without a sudarium, according to Rabh it may, and according to R. Assi it must not be written. However, there was such a case before Rabh, and he took into consideration R. Assi's decision.

R. Ada b. Ahba said: Such a document of confession is dependent upon circumstances. If the people were gathered by themselves and he confessed before them, then it must not be written; but if he himself caused the gathering, it may. Rabha, however, is of the opinion that even in the latter case it must not be written unless he said to them, "I accept you as my judges"; and Mar b. R. Ashi maintains that even then a judgment is not to be written unless they appoint a place, and summon him to the court.

It is certain, when one has confessed with the ceremony of a sudarium in cases of movable property, that a judgment may be written, but not otherwise. But how is it with real estate--without a sudarium? According to Ameimar it may not, and according to Mar Zutra it may be written. And so the Halakha prevails. It happened that Rabhina came to the city of Damhariah, and R. Dimi b. R. Huna of the same city questioned him: How is the law if the confession was for movable property which is still in full possession of the parties? And he answered: Then it is considered as real estate. R. Ashi, however, maintains that so long as the creditor has not collected it, it is to be considered as money, because if the possessor

would like to sell it, he could do so even after the confession, which is not the case in real estate.

There was a document of confession in which it was not written: "He (the debtor) has said to us, 'Write a document, sign it, and give it to him' (the creditor)," and both Abayi and Rabha decided that this case was similar to that of Resh Lakish, who decided that witnesses would not sign a document unless they were aware that the person who told them to sign was of age; the same is the case here, they would not sign it unless he said to them, "Sign and give." R. Papi, according to others R. Huna b. Joshua, opposed: Is there a thing of which we, the judges, are not sure, and the scribes are? Therefore the scribes of Abayi and of Rabha were questioned, and they were aware of the law, when it must be written and when not. There was another document of confession in which the memoranda, and all the versions which are needed thereto, were written correctly, but. the words, "in the presence of us three," were missing, and the document was signed by two only. And Rabhina was about to say that this case was similar to that of Resh Lakish mentioned above; but R. Nathan b. Ami said to him: Thus was it said in the name of Rabha: In such a case it may be feared that it was an error by the court--*i.e.*, they thought that such might be done by two. Said R. Na'hman b. Itz'hak: If in the document was written, "we the Beth Din," although it was signed by two, it is valid without any investigation. But perhaps it

was written by an impudent Beth Din of two, of which, according to Samuel, the decision is to be considered, but they are named impudent (and the Halakha does not so prevail). The case was that the document read, "the Beth Din appointed by R. Ashi." Still, perhaps the same holds with Samuel. It means that it was written: Our master, Ashi, thus said.

The rabbis taught: If one said I have seen your deceased father hide money in a certain place, saying this belongs to so and so," or, "The money is for second tithe," if this place is to be found in this house, he said nothing. if, however, the place was in a field, where the witness could take it without being prevented, his testimony is to be considered, this being the rule in such a case. If he is able to take it himself without notifying, his word is to be trusted, but not otherwise. Moreover, if they themselves saw their father hide money in a chest, or the like, and he said to them, "This money belongs to so and so," or, "It is for second tithe," if it looks as if he told this as his last will,

he is to be trusted; but if it appears that he desires to deceive them, then his words are not to be considered. The same is the case if one became harassed, searching for the money which his father left for him, and he dreamed that the sum was of such and such an amount and was placed in a certain place, but it was for second tithe. Such a case happened, and the sages decided that the caprices of dreams are not to be taken into any consideration.

"If two of the judges acquit," etc. But how is the judgment to be written? According to R. Johanan, "So and so is ac. quitted," and according to Resh Lakish, "Such and such judges acquitted, and such hold him liable." R. Elazar, however, says it should be written, "From the discussion of the judges, the decision is that such is acquitted." And what is the difference? The tale-bearing. According to R. Johanan it must not be written who acquits and who holds liable, as this would appear like tale-bearing; and according to Resh Lakish, it must be written, as, if not, it would appear like a unanimous verdict, and it would look as though they had lied; and R. Elazar's decision is: To prevent vainglory it may be written, "From their discussion, the decision is that the defendant is acquitted," in which there is no tale-bearing and it does not appear unanimous.

"Are told to enter." Who? Shall we assume the parties? It is not stated the parties, but the witnesses, must go out. You must then say that the witnesses are told to enter, and this would not be in accordance with R. Nathan of the following Boraitha: The testimony of the witnesses is not to be conjoined unless both witnesses have seen the case together. R. Jehoshua b. Karha, however, maintains that, even if they have seen one after the other, their testimony is not to be approved by the court unless they both testify together. R. Nathan, however, maintains that the court may hear the testimony of one to-day, and on the morrow from the other one, when he appears. Hence, according to him, both witnesses may not be present? The Mishna means the parties, and it is in accordance with R. Nehemiah, who said in the following Boraitha: So was the custom of the pure-minded in Jerusalem. They let the parties enter, listened to their claims, and thereafter let the witnesses enter, listened to their testimony, and told all of them to go out, and then discussed the matter.

The text says that their testimony is not conjoined, etc. What is the point of their difference? If you wish, it may be said common sense. If, for instance, one testifies that he has

seen A borrow a mana from B, and on the morrow the other witness testifies that he has seen A borrow a mana from B, one may say, *e.g.*, C has seen one mana and D has seen another mana. Hence their testimony cannot be conjoined according to the first Tana of the Boraitha; but according to R. Jehoshua b. Karha it may be conjoined, as both admit that A owes a mana to B. This is common sense. And if you wish, they differ in the meaning of the verse [Lev. v. 1]: "And he is a witness," etc. And there is a Boraitha: It reads [Deut. xix. 15]: "There shall not rise up one single witness against." Why is it written "single"? This is a rule for every case in which is mentioned "a witness," that it means two, and the term single is expressed because their testimony is to be considered only then when they saw it together. So is the explanation of the first Tana. B. Karha, however, gives his attention to the verse cited [Lev. v.]: "And he is a witness, since he either hath seen or knoweth something." Hence it matters not whether they have seen together or singly. And what is the point of difference between R. Nathan and the first Tana? Also, if you wish, it is common sense; and if you wish, in the explanation of the Scripture. "Common sense"--usually one witness is brought not to make the defendant pay, but to make him liable for an oath. Hence, if their testimony does not come together, it cannot be conjoined to make the defendant pay. Such is the meaning of the first Tana. But Nathan maintains: Even when they come together, does, then, their testimony go out from one mouth? They testify one after the other, and we conjoin them. The same is the case when they come on two days. "In the explanation of the Scripture "[ibid., ibid.]: "If he do not tell it, and thus bear his iniquity." And both the first Tana and Nathan hold with the opponents of B. Karha, that both witnesses have to see the case together. And the point of their difference is, if the testimony is to be similar to the seeing of the case. One holds it is: hence it cannot be conjoined if not seen together; and one holds it is not.

Simeon b. Alyaqim was anxious that the degree of Rabbi should be granted to Jose b. Hanina, but the opportunity did not present itself. One day they were sitting before R. Johanan, and the latter questioned: Is there one here who knows if the Halakha prevails with B. Karha or not? And B. Alyaqim pointed to Jose b. Hanina, saying: He knows. Johanan then said: Then let him tell. But B. Alyaqim, however, rejoined: Let the master give him the degree of Rabbi, and then he will tell. And he did so,

and then said to him: My son, tell me just so as you have heard. And he answered: I have heard that B. Karha yielded to R. Nathan. Rejoined R. Johanan: Is that what it was necessary for me to know? Is it not self-evident that B. Karha could not demand that they should testify together, as he does not desire that the seeing shall be together? Nevertheless, since you have already ascended to the degree of Rabbi, it may remain with you. And R. Zera said: Infer from this act that if a great man gives a degree, even conditionally, it remains forever.

Hyya b. Abin in the name of Rabh said: The Halakha prevails with Jehoshua b. Karha concerning real estate, as well as movable property. Ula, however, maintains: It prevails with him concerning real estate only. Said Abayi to Hyya: You say that the Halakha prevails. Is there one who differs with him? 'Did not Aba say in the name of R. Huna, quoting Rabh: The sages yield to B. Karha concerning the testimony as to real estate. And so also taught Idi b. Abin in the Section Damages, taught by the College of Karna: The sages yield to B. Karha concerning the testimony as to a first-born, as to real estate, as to hazakah, and concerning the signs of

maturity--for a male as well as for a female? You contradict one person with another. People may hold different opinions. Said R. Joseph: I say in the name of Ula that the Halakha prevails with B. Karha concerning real estate, as well as movable property. However, the rabbis who came from the city of Mehuza say in the name of Zera, quoting Rabh: Concerning real estate, but not concerning movable property. And Rabh is in accordance with his theory elsewhere, that a confession after a confession, or a confession after a loan, may be conjoined; but a loan after a loan, or a loan after a confession, do not conjoin. (*I.e.*, if one says, "In my presence A confessed on Monday that he owed a mana to B"; and the second witness says, "In my presence A confessed on Tuesday that he owed a mana to B," they may be conjoined. And the same is the case if one says, "On Monday A borrowed from B a mana in my presence," and the other witness testifies, "In my presence A confessed on Tuesday that he owed a mana to B." But if one testifies that in his presence A made a loan to B on Monday, and the other testifies that the same was done on Tuesday, they are not to be conjoined, as they may be two different manas. And the same is the case if one testify that A confessed on Monday that he owed a mana to B, and the other testified that B had made a loan to A on Tuesday.)

Na'hman b. Itz'hak met Huna b. R. Jehoshua, and questioned him thus: Let us see why the testimony of a loan after a loan is not to be conjoined. Because the loan which one witness has seen may not be the same which the other saw. Why, then, not say the same concerning a confession? Say, the confession of Tuesday was not the same as that of Monday? The answer was: He speaks of when he said to the last witness, "The mana which I confess before you is the same as that which I confessed yesterday before so and so." But even then, the second witness only knows this, but not the first. It means that after he has confessed before the second he goes again to the first witness, telling him, "The mana which I confessed before you, I did so also before so and so." Rejoined Na'hman: Let your mind be at rest, for you have set my mind at rest. And Huna asked him: What was the trouble? Because I had heard that Rabha, and according to others R. Shesheth, swung an axe at it (*i.e.*, disproved the opinion), saying: Is this not similar to a confession after a loan? Which means that he said in his confession, "I confess before you that I owe a mana to so and so, which I borrowed yesterday in the presence of so and so." Hence it was already said once by Rabh. Why, then, the repetition? Rejoined Huna: This is what I have heard of your people--when they tear out trees, they plant them again (*i.e.*, you answer questions, and then object to them again). The sages of Nahardea, however, say that, no matter if it is a confession after a confession, a loan after a confession, or a loan after a loan, they are to be conjoined, as they hold with B. Karha.

R. Jehudah said: Witnesses in civil cases who contradict one another in unimportant investigations are to be considered. Said Rabha: It seems that he meant that the contradiction was that one said the purse in which the mana was given was a black one and the other said it was a white one. But if one says that the loan was with old coins and the other said it was with new ones, they are not to be conjoined. But is such a contradiction not to be taken into consideration even in criminal cases? Did not R. Hisda say that if one testifies that he killed him with a sword and the other with an axe, it is not to be considered; but if one says the murdered or the murderer was dressed in white, while the other testifies that he was dressed in black, their testimony holds good? And the answer was: Do you contradict one scholar with another? Each may have his own opinion. The Nahardeans, however, maintain that even if one testifies old coins

and the other new, they are nevertheless to be conjoined; and this is because they hold with B. Karha. But have you then heard B. Karha say that they may be conjoined even when they contradict each other? Therefore we must say that the Nahardeans hold with the Tana of the following Boraitha: R. Simeon b. Elazar said: The schools of Shamai and Hillel do not differ, if there were two parties of witnesses. If one party testifies that he owes him two hundred, and one party testifies one hundred, the latter amount is to be collected, as in the testimony of two hundred one hundred is certainly included. In what they do differ is that, if among one party of witnesses was this contradiction (*i.e.*, one says that he owes two and the other one hundred), according to the school of Shamai the whole party must be disqualified, because one of them is surely a liar; and according to the school of Hillel they are not, as both admit that he owes one hundred (and so the Nahardeans, be it old or new coins, both admit that he owes a mana). Suppose one testifies that he borrowed a barrel of wine and the other of oil. Such a case came before Ami, and he made him liable to pay the value of a barrel of wine, as a barrel of oil amounts to twice as much as a barrel of wine. But according to whom was his decision? Is it in accordance with R. Simeon b. Elazar? He said so, because in the amount of two hundred a hundred is surely included; but did he say so in such a case as that of the barrels? The case was that they testified not for the barrels themselves, but for the value (*i.e.*, one testified that he owed him the amount of a barrel of wine and the other the amount of a barrel of oil, which is twice as much).

Suppose one of the witnesses says the law was made in the first attic, and the other says in the second attic. Said R. Hanina: Such a case came before a rabbi, and he conjoined their testimony.

"*And whence do we know that one of the judges must not say?*" The rabbis taught: Whence do we know that one of the judges, when he is going out, must not say, "I was in favor of the defendant, but my colleagues were against, and I could not help it, as they were the majority"? To this it reads [Lev. xix. 16]: "Thou shalt not go up and down as a talebearer among thy people"; and it reads also [Prov. xi. 131 "He that walketh about as a talebearer revealeth secrets." There was a disciple of whom there was a rumor that he told a secret thing which was taught in the college, after twenty-two years, and R. Ami drove him out of the college, saying: This man is telling secrets.

MISHNA *VI.*: So long as the defendant brings evidence to'. his advantage, the decision may be nullified by the court. If he was told: "All the evidence which you have, you may bring before the court within thirty days," if he found such within thirty days, it affects the decision, but after that it does not. Exclaimed R. Simeon b. Gamaliel: But what should the man do who could not find such within thirty days, but found it after? If he was told to bring witnesses, and he said, "I have none"; "Bring any other evidence," and he said, "I have none," and after the time had elapsed he brought evidence and found also witnesses, it is as nothing. And to this also R. Simeon b. Gamaliel exclaimed: What should this defendant do if he was not aware that there were witnesses and evidence? However, if, after he said "I have no witnesses," seeing that he is about to be liable, he says, "Bring in so and so to testify in this case," or he takes out from under his girdle a new evidence, it counts nothing (even according to R. Simeon).

GEMARA: Said Rabba b. R. Hana: The Halakha prevails with R. Simeon. And the same says again: The Halakha does not prevail with the sages. Is this not self-evident? If it prevails with R.

Simeon, it cannot prevail with the sages? One might say the Halakha prevails with R. Simeon to start with; but if some have done in accordance with the sages, it should remain so. He comes to teach us that even if it was so done, it must be changed.

"*If he was told to bring witnesses*," etc. Said Rabba b. R. Hana in the name of R. Johanan: The Halakha prevails with the sages. And the same said again: The Halakha does not prevail with R. Simeon b. Gamaliel. Is this not self-evident--that if the Halakha prevails with the sages it cannot prevail with R. Simeon? He comes to teach us that only in this case the Halakha does not prevail with R. Simeon, but in all other cases it does; and this is to deny what Rabba b. b. Hana said in the name, of R. Johanan, that everywhere R. Simeon b. Gamaliel is mentioned in the Mishnayoth the Halakha prevails with him, etc. (Last Gate, p. 388). There was a young man who was summoned to the court before R. Na'hman, and he asked him: "Have you no witnesses?" and he answered: "No." "Have you some other evidence?" and he answered: "No." And R. Na'hman made him liable. The young man went and wept; and some people heard him cry, and said: We know something in your behalf in the case of your father. Said R. Na'hman: "In such a case even

the rabbis would admit that the young man was not acquainted with the business of his father and therefore the new evidence is to be taken into consideration." There was a woman with whom a document was deposited and she gave it away to some one, saying: "I am aware that this document is already paid," and R. Na'hman did not believe her. Said Rabha to him: Why should she not be trusted? Should she desire to tell a lie, she could burn it. And R. Na'hman answered: Inasmuch as it was approved by the court and known that it was deposited with her, the supposition that if she wanted to lie she could burn it does not apply. And Rabha objected to R. Na'hman from the following: A receipt which was signed by witnesses may be approved by its signer. If, however, there were no witnesses, but he was coming out from a depository; or the receipt was written on the document after the signature of the witness (which was in the hands of the creditor), it is valid. Hence we see that a depository is to be trusted. This objection remains. When R. Samuel b. Jehudah came from Palestine, he said in the name of R. Johanan: The defendant has always a right to bring evidence against the decision of the court, unless all his claims are concluded and he himself confesses that he has no more witnesses nor any other evidence. However, even after this, if witnesses arrived from the sea countries, or the box of documents of his father was deposited with a stranger who has returned it after he was found liable, it may be taken into consideration to change the first decision. When R. Dimi came from Palestine, he said in the name of R. Johanan: If one is summoning a party who says, "I want my case to be brought before the assembly of sages," while the plaintiff says, "It is sufficient that it be tried in the court of this city," the plaintiff may be compelled to follow the defendant to the assembly. Said R. Elazar: Rabbi, is it right that, if the plaintiff claims one mana from the defendant, he shall spend another mana to go with him to the assembly? Therefore the reverse must be done: The defendant should be compelled to bring the case before the court in that city. It was taught also in the name of R. Saphra: If two men were cruel to one another, and one of them insisted, "We shall try our case here," while the other says, "Let us go to the assembly," the latter must be compelled to try his case in that city. However, if there was a necessity to question the assembly, they might write and send it in writing. And also, if the defendant demands, "Write down the reason why you accused me, and give it to me," he

may be listened to. In the case of a widow whose husband dies childless and she has to marry his brother, she is obliged to go to that place where the brother is to be found (that he should marry her or perform the ceremony of Halitzah). And to what distance? Said R. Ami: Even from Tiberias to Sephorius. Said R. Kahana: Whence is this deduced? From the Scripture [Deut. xxv. 8]: "The elders of *his* city"; of his, but not of hers. Said Ameimar: The Halakha prevails that one may be compelled to go to the assembly (and there try his case). Said R. Ashi to him: But did not R. Elazar say: He maybe compelled to try his case in that city? This is when the borrower said thus to the lender; but if the lender claims so, we apply to him [Prov. xxii. 7]: "The borrower is servant to the man that lendeth."

A message was sent from Palestine to Mar Uqba: To him to whom the world is light as to the son of Bathiah (it means to Moses), peace may be granted. Uqban the Babylonian complained before us that Jeremiah his brother destroyed his way (*i.e.*, he has treated me badly, through which I have lost my money), and we have decided that he shall be compelled to appear before us in the city of Tiberias. (How is this to be understood? Thus:) They said to him: You may try him. If he will listen to you, well and good; and if not, you must compel him to see us in the city of Tiberias. Said R. Ashi: This was a case of fine, and in Babylon they are not allowed to try cases of fine; and that which they said to Mar Uqba, "You shall try him," etc., was only to honor him.

Footnotes

68:1 Here is a repetition from Tract Sabbath, pp. 89-92, which is already translated.

75:1 The Haggadic passage we have transferred to the last chapter of this tract, which is all Haggadah.

76:1 Rashi gives also another interpretation to this passage; viz., mental resolution frequently fails, even if it is concerning the study of the Torah--*e.g.*, if one made up his mind to finish such and such a tract in a certain time. And to this came Rabba to say, if it was for the sake of Heaven, it would not fail, etc.

76:2 Rashi explains this, that one is suspected of such an offence, but cannot be punished with the prescribed punishment because there were no legal witnesses p. 77 or he was not warned, has nevertheless been punished with stripes, as so it is stated (Tract Kidushin, 81b).

77:1 Our explanation in the case of angering may be new, as we are not in accord with other commentators. However, it seems to us that this is the correct interpretation, as to which we challenge criticism.

Next: Chapter IV