

## CHAPTER IV.

RULES AND REGULATIONS CONCERNING THE WITNESS-OATH: WHO IS OR IS NOT RESPONSIBLE THEREFOR; HOW THE PLACE WHERE SUCH IS MADE (WITHIN OR WITHOUT THE COURT) DETERMINES ITS LIABILITY; IF MADE INTENTIONALLY.--THE LAWS OF ADJURATION.--TWO PARTIES OF WITNESSES CONTRADICTING EACH OTHER.--FOR WHICH OF THE DIVINE NAMES AND ATTRIBUTES (WHEN USED IN AN OATH) ONE IS CULPABLE.

MISHNA I.: The witness-oath applies to men but not to women, to unrelated but not to kindred, to legally fit to testify but not to those unfit, as such an oath is given only to those fit to testify in the presence as well as in the absence of the court; provided it comes forth from one's own lips, but if from the mouth of others, they are liable only when they deny it before the court; such is R. Mair's view; the sages, however, maintain: Whether it comes forth from one's own mouth or from that of others, they are not liable unless they deny it before the court. Again, the witnesses are liable for an intentional oath, and for an error *in* the oath made while intentionally testifying, but are not guilty when made in error. And what is their fine for intentional swearing? A poor and rich offering.

GEMARA: Whence is this deduced? From what the rabbis taught, it reads [Deut. xix. 17]: "Then shall the two men, who have the controversy, stand before the Lord," etc.; this means the witnesses; but perhaps it means the contending parties themselves? As it reads: "Who have the controversy," hence, the parties are already indicated, consequently, "the men" indicate the witnesses. And should you like to object to this deduction, then we may refer to the analogy of expression "two" mentioned here, and also found in [ibid. 15]: "Upon the evidence of two," where it *expressly* means witnesses, hence, also here witnesses are meant. [And what would be the objection? Lest one say that because it is not written "and who have the controversy," the whole verse speaks only of the parties, hence, the analogy of expression.]

There is another Boraitha: "The two men shall stand

means the witnesses; but perhaps it means the parties? This cannot be, for do only men and not women come to court? And should you like to object, we may refer you to an analogy of expression; as there "two" means witnesses, so also here [and what would be the objection? Lest one say that it is not customary for a woman to go to court, as it reads [Psalm, xlv. 14]: "Awaiteth the king's daughter in the inner chamber"; wherefore, the analogy of expression].

The rabbis taught: "The two men shall stand" signifies that it is a meritorious act that both parties declare their grievances standing. Said R. Jehudah: I have heard that if the court allows both parties to sit, they may do so, since it is forbidden only that one stand and the other sit; or

that one party be allowed freedom in speaking, and the other he asked to speak briefly.

The rabbis taught, it reads [Lev. xix. 15]: "In righteousness thou shalt judge thy neighbor," which means no preference is to be given to either party, as said above. Another explanation of the just-cited verse is: Try always to judge everybody from his better side. R. Joseph taught: This verse signifies that him who is your equal in wisdom and deeds, you shall try to judge fairly.

It [happened](#) that Ula b. Eilai had a case in the court of R. Na'hman, and R. Joseph sent word to R. Na'hman: Ula, our colleague, is equal to us in wisdom and deeds; and R. Na'hman wondered what the purpose of the message was; does he mean: I shall flatter him? After some deliberation he said: He must mean I shall give preference to Ula's case over some other cases, or if in his case the evidence will be equally balanced on the two sides, and the opinion of the judges will be [decisive](#).

Ula said: The point of difference above concerns only the contending parties, while concerning the witnesses all agree that they must stand, as the above-cited verse, "The two men shall stand," signifies; and R. Huna said: The difference concerns only the time of the trial, while at its conclusion the judges, all agree, should sit and the parties stand, as the conclusion is equalled to witnesses and as they are standing according to the above-cited verse, so also must the parties stand.

The wife of R. Huna had once a case before R. Na'hman, and the latter deliberated with himself as to how to proceed. Shall I rise to honor her, then her opponent will remain stupefied, and should I not rise, there is a rule that the wife of a

p. 49

scholar must be treated in the same manner as the scholar himself. He then helped himself out of the difficulty by instructing his servant, thus: Throw a duckling upon my head as soon as the wife Huna enters, so that I will have to rise anyhow. But did not the master say that at the conclusion of the trial the judges, all agree, are to sit while the parties must stand? (And how could R. Na'hman remain standing when she enters to hear the conclusion)? The answer is: He then sits halfway, as though untying his shoe-laces, and pronounces the verdict.

Rabba b. R. Huna said: If a scholar has a case with one of the common people, the court may invite both to sit down, and if the common man remain standing, it is not necessary to repeat the invitation.

Rabh b. R. Shrabia had a case with an Amharetz (a common) before R. Papa, and the latter invited both to sit down; the messenger of the court, however, came and made the Amharetz to stand up, to which R. Papa said nothing. But why was R. Papa indifferent, could not this stupefy the opposing party? R. Papa thought: I, myself, invited the two to sit, and the act of the messenger the Amharetz may explain as due to the fact that he has not gratified him (the messenger).

Rabba b. Huna said again: If a young scholar has a case with an Amharetz, the former must not

sit down before the judge appears, in order that the Amharetz should not think that the scholar came there to prepare his own case and send it to the judge; provided, however, the scholar was not usually appointed to sit in court for some other purpose, but if he was, he may sit down, as his opponent will think that he is there for a purpose other than the case.

The same said again in the name of the same authority: If a scholar was aware of a case to which he could be a witness, but it was a humiliation to him to go to that particular court where the judge was inferior to him, he may remain at home. Said R. Sheshah b. R. Idi: This we have also learned in a Mishna, if one finds a sack or a basket on the way and it is a humiliation to him to carry it, he may leave it (in spite of the commandment to return a loss to its owner); but all this, he says, concerns civil cases; as to criminal cases, it reads [Prov. xxi. 30]: "There is no wisdom nor understanding, nor counsel against the Lord," which means wherever there is a case of profaning the holy name, no distinction or honor must be given to any rabbi.

p. 50

R. Yenai was witness to a case where Mar Zutra was one of the contending parties, in the court of Amemar; and latter invited all, parties and witnesses, to sit down. Said R. Ashi to him: Did not Ula say that only concerning the parties there is a difference of opinion, but concerning the witnesses all agree that they must stand? And he answered: This is a positive commandment; and to honor a scholar is also a positive commandment (inferred by R. Aqiba from the particle *Eth*, the sign of the accusations, written in "*Eth* the Lord thy God thou shalt fear," which means to add the scholar) and the latter commandment is to me of greater value.

The rabbis taught, it reads [Exod. xxiii. 7]: "Keep thyself far from a false speech"; this signifies that the judge must not with his speech advocate either party, furthermore that he shall not enter discussion with an ignorant disciple in a case (so that he might not be misled by the latter); again, that the judge, being aware that the party is a robber and there being only one witness, must not conjoin with the latter, for in this case the robber may be right; nor must this (conjoining) be done by any other person; that, if the judge notices the witnesses to testify falsely, he shall not say to himself: I will decide the case in accordance with their evidence according to the law and the "collar remain on their neck."

From this verse is further to infer: That if a disciple saw his master err in his judgment, he must not say, "I will wait until he issues his verdict and then I will disclose the error, thereby causing the issue of another verdict, which will have to be done with the acknowledgement of my authority" (but must call his attention immediately). That the master shall not tell to his disciple: It is known to all that I will not lie even if offered 100 manas, but there is one who owes me a *mana*, and I have only one witness, it is but right that you appear in court, so that the defendant might think you, too, a witness, and I will thus get my *mana*, although he does not instruct his disciple to tell a lie, but begs him to stand and say nothing, yet the verse reads, "Keep thyself *far* from false." Furthermore, if the plaintiff claims a *mana*, he must not claim two, thinking that thereby he will cause the defendant to confess one, which partial confession will make him liable to a biblical oath, so that there will be possible for the plaintiff to include here in the oath also other claims he may have against the defendant; this, too, is prohibited, because "Keep thyself *far* from false." For the same

p. 51

reason the defendant must not say: Since the plaintiff claims two, and will therefore not confess even the one I owe him in order to avoid the biblical oath in which the plaintiff may include some other claims. From the said verse is further inferred: That, when three persons claim one *mana* from one party, and there are no witnesses, they shall not institute one of themselves as the plaintiff and the other two as witnesses, thereby recovering the *mana* and dividing it among themselves. Again: If two appear before the court,, one richly dressed in a cloak worth 100 *mana*, and the other clad in rags, the court must instruct the former to go and dress like his contestant, or to dress him richly like one's self (this, too, is inferred from the verse, because the contrast between the rich and the poor would stupefy latter and also possibly influence the judge). [1](#)

It reads [Ezek. xviii. 19]:"And did that which is not good in the midst of his people," which according to Rabh means him who conies to court with a power of attorney, and according to Samuel, him who buys a field on which there are several claims.

"*Such an oath . . . only to those fit,*" etc. To exclude whom? Said R. Papa: To exclude a king, and R. Aha b. Jacob said: To exclude a gambler. To him who says "a gambler," so much the more a king, and to him who says "a king" a gambler is not excluded, since biblically he is fit, and only the rabbis have declared him unfit.

"*In the presence as well as in the absence of the court.*" What is their point of difference? The rabbis said in the presence of R. Papa: The theory "Deduce from it, and again from it," in case one thing is deduced from another (*i.e.*, any further provision connected with *A* may be transferred to *B*) is the theory of R. Mair (as explained further on). The opponents of R. Mair, however, hold the theory of "Deduce from it, the rest, however, leave in its place" (*i.e.*, after having transferred the main provision of *A* to *B*, we are to let *B* retain its own character); thus the case of witnesses is inferred from the case of a deposit; as in a deposit one is liable only when swearing himself, so also in the case of witness; again, as in the former case it is indifferent the presence or absence of the court, so also with witnesses; and this is R. Mair's theory just mentioned.

p. 52

[[paragraph continues](#)] The rabbis, however, who uphold the other theory, argue thus: As in a deposit, he is liable when swearing himself, so also in the case of witnesses; but if one is sworn by others which case can take place only in the presence of the court but not otherwise, we have a case that must retain its own characteristics; and the same is the case when he swears himself, it must be in the presence of the court. Said R. Papa to them: If the rabbis of the Mishna inferred this from the case of a deposit, they would certainly adopt also R. Mair's theory above mentioned; the reason, however, why the rabbis do not adopt it is that they proceed by an inference *a fortiori*--viz.: since one is liable when sworn by others, so much the more he is liable, if he himself swore; and concerning this there is a rule: "It is sufficient that the result derived from inference be equivalent to the law from which it is drawn;" and since the case of being sworn by others must take place only in the court, the same is in the case of swearing himself.

"*Guilty for an intentional oath,*" etc. Whence is this deduced? From what the rabbis taught: In all other cases (concerning an offering) it reads "Escaped his recollection," except this case; hence, this teaches that one is liable for an intentional oath, just as for an unintentional.

"For an error in intentional testifying," etc. What instance could illustrate this? Said R. Jehudah in the name of Rabh: If one says, I know this oath to be prohibited, but I do not know that the liability therefor is an offering.

"But they are not liable when made in error." Shall we assume that this Mishna decides the question discussed above by R. Kahana and R. Assi, concerning the saying of Rabh made in the college? Nay; it was necessary for Rabh to teach them that, since otherwise one might say that the decision of the Mishna. concerns only that case with regard to which the Scripture does not mention "Escaped," etc. (*i.e.*, the case concerning witnesses), but it does not apply to an uttered oath regarding which "Escaped" is mentioned, so that any error entails liability; therefore he came to teach that even in such case there is no liability.

MISHNA II.: How does a witness-oath come about? If someone said to two: Come and bear witness for me, and they say, We swear that we know no testimony for you, or they said, We know nothing to testify for you, whereupon he answers, Do you swear, and they say, Amen, they are liable. If he repeated

p. 53

this five times outside of court, and upon coming before the court they confessed and testified, they are free; but if they deny it also here, they are guilty for each time severally. If, however, he repeated his adjuration five times in presence of the court and they denied, they are liable but once. Said R. Simeon: What is the reason? Because they are not able to retract the previous statement and to testify. If the two denied simultaneously, they both are guilty, but if successively, only he who denied first is guilty, while the second one is free. If one of them denies and the other confesses the truth, the denier is guilty. If there were two parties of witnesses and both denied successively, the two are guilty, since the testimony could have been established by either one.

GEMARA: Said Samuel: If the witnesses saw one running after them and said to him: What are you running for, we swear that we know no testimony for you, they are free, as liability attaches only to the case when they heard him adjuring them.

What news does Samuel come to teach us? Is this not plainly stated in the last part of Mishna V.--viz.: "They must hear it from the mouth of the plaintiff"? Samuel finds it necessary to teach the case where he runs after them, lest one say that running he considered equivalent to direct asking. But even this point is already stated in our Mishna--viz.: "If one *said*," which renders it obvious that if he did *not say* it is not considered? Nay; if not for Samuel's statement, it could be said that the expression of the Mishna is merely usual language; and it seems, indeed, to be no more than that, for the same expression is used in the next chapter concerning the oath of a depositary, and there the "said" can be meant *only said*, as it reads [Lev. v. 21]: "If he lie unto his neighbor," where there can be no difference whether one is asked or not; hence, the expression there is not particular (therefore Samuel teaches that in our Mishna the language is particular).

There is a Boraitha in accordance with Samuel: If they, seeing someone coming after them, exclaimed: What are you following us for, we know no testimony for you, they are free; however, when this took place with regard to a deposit, they are liable.

"If he repeated this adjuration five times," etc. Whence is it deduced that liability attaches only to a denial made in the presence of the court, Said Abayi, from [ibid., ibid. 1]: "If he do not tell it, and thus bear iniquity," which implies only

p. 54

such a place where the telling is effective, so as to make one pay upon it, but not if told in any other place. Said R. Papa to Abayi: According to your theory no oath should be considered if made outside the court! This could not be borne in mind as there is a Boraitha: From the expression [ibid., ibid. 4]: "To anyone," which makes one liable for each oath; now, if an oath made outside the court be not considered, how could one be liable for each, after it has been stated in our Mishna that even for five times he is liable but once, and R. Simeon gave the reason therefor? Infer then therefrom that an oath is considered even when made outside the court, but a denial-only when in the court.

"If the two denied simultaneously," etc. But how is it possible to ascertain with precision the simultaneity of their minds? Said R. 'Hisda: It is in accordance with R. Jose the Galilean, who says that it is possible. R. Johanan, however, maintains that this may also be in accordance with the rabbis, who hold that such is not possible, but our Mishna treats of the case where the two denied in an interval of a single word. Said R, Aha of Diphti to Rabina: Let us see; the length of an interval of a single word is estimated as the interval it takes a disciple to greet his master, and here they have to say: We swear that we know no testimony for you, which sentence consists of several words; and he answered: It means that each of the witnesses begins his testimony yet before his preceding witness has completed his.

"Both denied successively," etc. Our Mishna is not in accordance with the Tana of the following Boraitha: If one adjured one witness, he is free; R. Elazar b. R. Simeon, however, holds him liable. Now, shall we assume that the point of difference here is that one holds one witness serves only to cause an oath to the other party, and that the other holds that he can also cause the payment of money? But how can you reason thus? Does not Abayi say further on that all agree that only one witness is necessary in the case where the defendant is suspicious regarding an oath? Therefore, it must be said that all agree that one witness can cause only an oath but not payment, and the point of their difference is as follows: One holds that a thing which causes payment is itself considered as money, and according to the other it is not considered such.

What has Abayi said? He said as follows: All agree concerning *one* witness in the case of a suspected wife; likewise all

p. 55

agree concerning two witnesses in same; and furthermore there is a difference of opinion concerning the same case. All agree concerning the law of one witness, as well as concerning the law regarding the case where the opposing party is suspicious of perjury. All agree concerning one witness in the case of a suspected wife that he is liable in case he was aware of the fact that the woman has sinned and refused to testify, as here the law trusts him to testify [Numb. v. 13]: "And there be no *witness* against her," hence, his refusal makes the husband pay; and all agree concerning witnesses that they are free, if they refused to testify that he warned his

wife against staying alone with so and so; as their testimony would only cause not a direct payment, since apart from their testimony there must be yet another testimony by two witnesses that she has actually stayed with another one. And there is a difference concerning witnesses in such a case; if they were witnesses regarding her staying alone with so and so and they refused to testify; in which case if they did testify, they would only necessitate the drinking by her of the bitter water, when for fear she may confess, and only then the husband would be free from paying her marriage contract; it is regarding this that one holds that a thing causing the payment of money is itself considered as money, and therefore they are liable to pay, while the other does not consider it such, therefore they are free. Furthermore, all agree concerning a case where there is but one witness and one of the parties is suspected of perjury, that the witness is liable; likewise they all agree concerning one witness in a case similar to that, which happened in the court of R. Aha, where one of the parties robbed a piece of metal (Last Gate, p. 93).

(Says the Gemara): Let us see how was the case where one party is suspected of perjury? Who was suspected? If the borrower was so, and the lender says to the witness: If you would testify I should surely get the money, for my opponent is not fit to swear, hence, the oath will return to me so that I would swear and get the money; then the witness could retort: Who is sure that you will swear? Therefore we must say that both the parties were suspected, and the Master said elsewhere that in such a case the oath applies to him who has to swear first, and as he is not fit to swear he must pay.

R. Papa said: There is also a case concerning a witness who refuses to testify to the death of a husband; in one case all agree that he is liable, and in another case all agree that he is

p. 56

free; the latter is illustrated thus: If he told the fact to the widow, but refused to testify before the court, he is free; because there is a Mishna: If a woman said that her husband is dead, she is trusted and may remarry (hence, his refusal to testify is not harmful to her); while the former case is illustrated: If he refused to tell the fact even to the wife herself. Now, shall we infer from this that he who makes witnesses to swear in a case of real estate, it is considered, and they have to pay (as a marriage contract is collected from real estate only, and there is further on a question concerning this point)? Nay; perhaps in the hands of this woman it was already movable property, in which case she may collect her contract therefrom.

*"If one of them denies and the other confesses,"* etc. To what purpose is this stated? It has been said already above, that even if the second denied after the first he is free, so much the more so if he confessed? It means when both have denied, but one has instantly thereafter retracted and confessed; and it comes to teach us that the confession made in an interval of one word is considered as though no denial was made. But this is correct only according to R. Hisda, who has explained our Mishna in accordance with Jose the Galilean; then the first part teaches that exact ascertainment is possible, and the second part teaches that the one-word interval is equivalent to a word. But according to R. Johanan both parts teach the same? It was necessary, as the last case speaks of denial and confession, while the first, only of denial.

*"If there were two parties,"* etc. It is correct that the second party be liable, because it denied after the first had done so (hence, its refusal is a direct harm); but why should the first party be liable, when there is yet a second party who is fit to testify? Said Rabina: It speaks of a case where the witnesses of the second party were related to one another on their wives' lines, and at

that time when the first party denied, the wives of the other party were in the agony of death; and lest one say that in such a condition they are considered dead and hence their husbands are fit to be witnesses and consequently the first party is free, it comes to teach us; that the agony of death is not to be taken into account, as they may yet recover.

MISHNA III.: If one says: I adjure you that you come and bear me witness that I have in the possession of so and so a deposit, a loan, a stolen or lost object, to which they reply: We swear that we know no testimony to you, they are guilty

p. 57

but once. But if their reply be: We swear that we are ignorant of your having in the possession of so and so a deposit, etc., they are guilty for each severally. I adjure you that you testify for me that I have deposited by so and so wheat, barley and rye, to which they answer: We swear that we know no testimony for you, so they are guilty but once. But if their answer be: We swear that we are ignorant of your having deposited by so and so wheat, barley and rye, they are guilty for each one severally. I swear you to witness that so and so owes me damages, half damages, double payment, or four and five-fold payment; that so and so insulted my daughter, seduced my daughter; that my son struck me, that my neighbor wounded me; set fire to my stag on the day of atonement, they are guilty (in case they deny).

GEMARA: The schoolmen propounded a question: How is the law, if one adjure witnesses in a case of fine? This question is not according to R. Elazar b. R. Simeon, who says elsewhere that such witnesses are considered even after the defendant has confessed that he was fined; but is according to the rabbis, who declare the defendant free even when, after his confession, witnesses testified; and it seems that the rabbis of that statement are in accordance with the rabbis of the Mishna said above, that a thing causing money is not itself considered money. Now, shall we say that the refusal of the witnesses is not of direct harm, since the defendant has the choice to confess and then he is free; or, as he has not yet confessed, there is a claim of money and their refusal is of direct harm? Come and bear the statement of our Mishna: "To testify half-damages," which is a fine and nevertheless he is liable. But is there not one who says that even half-damages are according to law and not fine? (Hence, nothing can be inferred from here.) But again, does not the Mishna mention double-amount, which is surely fine? Yea; but the fine here is the *doubling*, while the Mishna finds him liable because in the doubling is included the *amount* stolen; and the same may be the case with four and five-fold. But is not the money which a seducer or insulter has to pay, not a fine, and yet the Mishna treats of it? Maybe the Mishna exacts this as indemnity for the shame and loss of value, and this indemnity is not a fine. But if all in the Mishna is money and not mere fine why should it repeat all these cases? The Mishna comes in its first part to teach us by the way that half-damages are considered money, and in its last part that if

p. 58

one set fire to a stag on the day of atonement, he is liable to pay, although his act is in the category of *Korath*, which is against R. Neheunia b. Hakana (and all the other things are treated of only on account of this connection).

Come and hear the following: I adjure you to testify that so and so has spread abroad an evil name on my daughter [Deut. xxii. 14], they are liable (if they refuse to do so); but if the man

who has spread the evil name, confessed before the court that he did so falsely, he is free from paying the 100 shekkels (as according to the law he who confesses in a case subject to fine is free), hence, we see that this money is fine and they are liable none the less? It maybe said that this Mishna is in accordance with R. Elazar b. Simeon, quoted above, who holds one liable even when the witnesses testify after his confession. But is not the last part which holds one free if he confessed on his own accord, in accordance with the rabbis? Nay; the whole Mishna is in accordance with R. Elazar, and it means to say that there can be found no case where one be free from payment (of the 100 shekkels) unless there were no witnesses at all and be confessed.

MISHNA IV.: If one says: I adjure you to bear me witness that I am a priest, a Levite, not the son of a divorced woman, nor one who has performed *Chalitzah*; that so and so is a priest, a Levite, not the son of an aforesaid woman; that so and so insulted or seduced someone's daughter; that my son wounded me, that my neighbor wounded me or set fire to my stag on Sabbath, they are free.

GEMARA: They are free because his claim concerns a third person; but how is it if he made them to swear that so and so owes a *mana* to someone, they would be liable? And does not the Mishna state that they are not liable unless made to swear by the plaintiff himself? Said Samuel: It means that he has from the latter a power of attorney. But did not the sages of Nahardea say that a judgment is not given on movables? Yea; but this is in case he denies, but if he does not deny, a judgment is given.

The rabbis taught: Whence do we know that the verse [Lev. v. 1], quoted above, speaks of a money-claim only? Said R. Eliezar: From the analogy of expression "or" and "no" found here, and also in the case of a deposit, and as there it treats of a civil case, so also here. But is not the same expression found in [Numb. xxxv.] concerning a murder, *i.e.*, a criminal and not

p. 59

a civil case? We infer from these expressions, a case which implies an oath, while in that (of Numb.) there is no oath. But again, are not such expressions used in connection with a suspected woman in which case there is an oath, and yet it is not a civil case? There is used in this last case a priest, wherefor we infer but like cases where there is an oath but not a priest. R. Aqiba, however, said: It is inferred from [Lev. v. 5]: "By any one of *these*," which means for some of them he is, while for others he is not, liable. How so? If it was a civil claim, he is liable, but not for something else. R. Jose the Galilean said, it reads [Lev. v. 1]: "And he is a witness, since he hath either seen or knoweth," which signifies such cases where he may be liable by seeing only or by knowing only; how so? I have lent you a *mana* in the presence of such and such witnesses, who may come and testify, this is a case of seeing only; and by knowing only, as in case one claims that so and so has confessed in the presence of such and such witnesses that he owes me a *mana*. R. Simeon said: We infer this from the case of deposit: as there it is only civil, so also here; furthermore we may draw this by an inference *a fortiori--viz.*: a deposit, with regard to which male and female, relatives and unrelated, fit and unfit to testify, are equal, and there is a liability for each oath, be it made in the presence or absence of the court, is nevertheless but a civil case--the case of witnesses where the foregoing classes are not equal and where the liability attaches to but one oath and only when made in the presence of the court, should so much the more be only civil. And lest one say: The case of witnesses is more rigorous, as there is here a liability for an intentional and for being sworn by others which is not the case concerning a deposit, to this there is an analogy of expression: "Sin" found here and also in the case of a

deposit, which justifies the inference that as the latter is civil, so also is the other case.

R. Hamnuna was once in the presence of R. Jehudah, who propounded a question. If one says: I have lent you a *mana* in the presence of so and so and so, and the witnesses saw the parties from the outside without being seen by the defendant, how is the case? Said R. Hamnuna: It depends on the form of the defendant's answer; if he says that such has never occurred, he must be recognized as a liar; but if he says that he did take money but it was his own, then there will be no use in the witnesses' testifying to have seen this! Rejoined R. Jehudah: Your place may be in the college, as you enlighten your master.

p. 60

There was one claiming: I lent you a *mana* here near this pillar; and the answer was: I have never in my life passed near this pillar. Witnesses, however, came and testified that he once urinated near that pillar; said R. Na'hman: He is then to be regarded a liar. Said Rabha to him: From a thing where one is not particular, his attention may wander away; this may have been the case with this defendant; he paid in that case no attention to the pillar.

R. Simeon said: As in the case of the deposit, etc., this statement was ridiculed in the west. Why? When R. Papa and R. Jehudah b. R. Jehoshua came from college, they said: The people of the west have ridiculed R. Simeon's last statement--viz.: Lest one say that the case of witnesses is more rigorous, etc.; saying: To what purpose did he need this after he had used an analogy of expression? But why should it be ridiculed? Perhaps he had put this point before, but not after, he established the said analogy? 1 Because it was known that the Scripture has made mention of a witness-oath in connection both with an uttered oath, and with the case of defiling the Temple and its holiness in order to indicate that concerning a witness-oath "Escaped his recollection" is not stated (whereas it is stated regarding the others) in order to make one liable to a sin-offering even for such an *intentional* oath.

MISHNA V.: If one says: I adjure you to bear me witness that so and so has promised to give me (as a present) 200 zuz, and did not, they are free, as they are guilty only in the case when money is required as a deposit. I adjure you that as soon as you become cognizant of testimony for me, you come and testify for me, they are free, since the oath preceded the act of testifying. When one says while standing in synagogue: I adjure you to bear me witness if you are cognizant thereof, so they are free unless he especially address his challenge to them. When one says to two: I adjure you so and so that, if you are cognizant of testimony in my favor, come and do so, to which they say: We swear that we know nothing for you, while in reality they do know, but only indirectly, or one of them is found to be a relative or an unfit, they are free. If one sends his servant to adjure them; or the defendant says to the witnesses:--

p. 61

[paragraph continues] I adjure you to testify for him if you know any testimony, they are free, for they must hear it from the mouth of the plaintiff.

GEMARA: The rabbis taught: I adjure you to bear me witness that so and so promised me as a present 100 zuz and did not give them to me, they are free; lest one say that they should be liable, the analogy of expression "sin" used both concerning a deposit and here, teaches that as

in the former the deposit was given, so also in this case.

"*As soon as you become cognisant,*" etc. The rabbis taught: Lest one say that in such a case they should be liable, it reads, "If he is a witness, or hath seen or knoweth," which signifies that the act of testifying must precede the oath and not *vice versa*.

"*While standing in synagogue,*" etc. Said Samuel: Even if his witnesses were among them. Is this not self-evident? He means to say: Even if he was standing beside them, and lest one say that in such a case it is considered as though he talked directly to them, he comes to teach us that it is not so.

There is a Boraitha in support of Samuel: If one saw a crowd standing, among whom he recognized his witnesses and said: I adjure you to come and testify for me, lest one say that they are liable, it reads, "And he is a witness," which signifies that the witnesses must be directly addressed, which he did not do. If, however, he said: I adjure you all who are standing here, to testify for me, they are liable, as here he addresses the witnesses directly.

"*When one says to two,*" etc. The rabbis taught: Lest one say that in such a case they should be liable, it read, "He shall bear his iniquity," which signifies that only then when they are fit to tell (on their own knowledge).

"*If one sends his servant,*" etc. The rabbis taught: Lest one say that in such a case they should be liable, therefore the just-cited verse. But how is this to be understood? Said R. Elazar: The word "not" (Hebrew, *Lo*) is spelled here with a redundant *vahve* and *lo* (with a *vahve*) means him (dativus) which is to be interpreted thus: If he will not tell to him, to the party himself, he bears iniquity; but if he will not tell to a stranger, he is free.

MISHNA VI.: If one says: I adjure you, I impose upon you, I bind you (by oath), so they are guilty. If, however, he says: By heaven and earth, they are free; by any of the divine

p. 62

names, or by some other divine attribute, so they are guilty. Blaspheme applies to them all, according to R. Mair, but not according to the sages. Whoever curses his father or mother by any of the above divine names, is guilty, so holds R. Mair, while the sages declare him free. Whoever curses himself or his neighbor by any of these transgresses a negative command. (If one says to the witness): Smite you God, or: May the Lord God smite you, so is this a biblical swearing. If he says (on your testifying): God smite you not, but bless you, may He bestow but good upon you (and they say: Amen), R. Mair finds them guilty, while the sages declare them free.

GEMARA: "*I adjure you,*" etc. How is this to be understood? Said R. Jehudah: Thus, I adjure you with the oath written in the Torah, I impose upon you with the commands of the Torah, I bind you with the bonds of the Torah. Said Abayi to him: According to you, how should be understood the Boraitha of R. Hyya: "For I chain you" they are liable! Do we find "chaining" in the Torah? Therefore, said Abayi, it means to say thus: I adjure you with an oath, I impose upon you with an oath, I bind you with an oath, I chain you with an oath.

"*Adonai*," etc. Shall we assume that *chanun* and *rachum* (mentioned in the Mishna among the names to swear by) are also divine names? If so, then there is a contradiction from the following: There are names that may be erased, and others that must not; the latter are: *Eil*, *Eloëchu*, *Eloïm*, *Eloëchem*, *Eiëh asher Eieh*, *Aleph Daleth*, *Yah*, *Shadai* and *Zebaoth*; but *Hagodal*, *Hayibor*, *Hanora*, *Haädir*, *Hachazak*, *Haämatz*, *Haäzaz*, *Chanun*, *Rachum*, *Erech-apäim*, *Rabh-chessed* 1 may be erased; we see thus that *chanun* and *rachum* are not divine names? Said Abayi: The Mishna means to say, I adjure you by him who is all favor, or: all merciful. Said Rabha to him: If so, let him be liable for adjuring one by heaven and earth, as you could explain it to mean: by him to whom heaven and earth belong? This is no comparison; if you say, "by him who is all favor," etc., so as there is none but the Almighty who is such, it certainly means Him, but heaven and earth as separate existences, cannot be explained as belonging.

The rabbis taught, If one writes *Aleph lamed* (the first letters

p. 63

from *Eloïm*), or *Yah* from *Jehova*, it must not be erased; but *Shin daleth* from *Shadai*, or *Aleph daleth* from *Adonai*, *Zadik beth* from *Zebaoth*, may be erased. Said R. Jose: The whole word *Zebaoth* may be erased, for this name applies only to Israel, as it reads [Exod. vii. 4]: "And bring forth my armies (*Zebaothai*), my people, the children of Israel." Said Samuel: The Halakha does not prevail with R. Jose.

The rabbis taught: All the prefixes and suffixes of the divine names may be erased, *e.g.*, in *b'adonai*, *badonai*, *meadonai*, the initial letters (which are prefixes) may be erased; in like manner in *Eloëchu*, *Eloënu* *Eloëêm* the last syllables (which are suffixes) may be erased. Anonymous teachers. however, say: They must not be so, for they are already sanctified by the holy name. Said R. Hana: And so the Halakha prevails.

All the divine names found in the Torah in connection with Abraham, are holy, except that of [Gen. xviii. 3]: "And he said, my Lord," which was addressed to an angel. Hanina, the nephew of R. Jehoshua, and R. Elazar b. Azaria in the name of Elazar the Madai say that even this name, too, is holy. (Now, what was said in the name of R. Jehudah b. Rabh that hospitality is considered greater than the reception of the glory of the *Shechina*, is in accordance with these two.) Furthermore, all the names found in connection with Lot, are common, except [ibid. xix. 18, 19]: "Oh, not so, my Lord; (*Adonai*) thy servant hath found grace in thy eyes, and thou hast magnified thy kindness," etc., and who but God can save? Again, all names in connection with Nob'oth. 1 are holy, those in connection with Micha [Jud. xvii.] are common. R. Elazar, however, said that the names with Nob'oth are holy, but those with Micha are partly holy and partly common, namely *El* is common and *Yah* is holy, except [ibid., ibid. 31]: "*Eloïm*," which though beginning with *El*, is holy. All the names in connection with the Vale of Benjamin [ibid. xx.] are according to R. Eliezar common, and according to R. Jehoshua they are holy. Said R. Eliezar to him: How can they be holy when He has not fulfilled his promise? Said R. Jehoshua: He has fulfilled His promise, but the people there did not understand what was said to them; a proof to this you find in the fact that after they had comprehended it, they conquered, as it reads [ibid., ibid. 28]: "And Phineahas, the son of Elazar . . . stood," etc. The

p. 64

name *Shelomah* wherever mentioned in Solomon's Songs is holy [Song, i. 1]: "*Le-Shelomah*" means, to the king to whom peace belongs; except [ibid. vii. 12]: "Thine, O Solomon." According to others [ibid. iii. 7]: "The bed which is Solomon's," is also common. Wherever in Daniel the word king is mentioned, it is common except [Sam. ii. 37]: "Thou, O king, art a king of kings, to whom the God of heaven hath given kingdom, power, and strength, and honor." According to others also [ibid. iv. i6]: "My Lord! . . . for those who hate thee"; for, to whom did Daniel address this? Surely not to Nebuchadnezzar, because by so doing he would curse Israel, who were the haters of the same; hence, he must have addressed it to God. The first Tana, however, maintains that enemies exist only to Israel, but other nations have no enemies.

"Or by some other attributes," etc. There is a contradiction [Numb. v. 21]: "The Lord then make thee a curse (*olah*) and an oath"; to what purpose is this repeated, after the beginning of the verse reads: "And the priest shall charge the woman with an oath of imprecation (*olah*)"? Because, it reads [Lev. v. 1]: "The voice of adjuration (*olah*)," where it means an oath, so also here it means an oath; and as there it means "with the holy name," so here, too, it means so. Hence we see that *olah* means an oath, and the Mishna says that "Smite you. God" is an *olah* written in the Torah? Said Abayi: This presents no difficulty, the cited discussion is in accordance with R. Hanina b. Aidi, which our Mishna is in accordance with the rabbis, as we have learned in the following Boraitha. R. Hanina b. Aidi said: As it reads "Swear and not swear, curse and not curse," we must compare curse to swearing; just as an oath means by the holy name, so also not to swear means by the holy name, and the same is with curse and not curse. But let us see; what is the reason of the rabbis' view? If they uphold this analogy, then let them require the unique holy name (*i.e.*, *Jehovah*) to any oath; and if they do not uphold this analogy, whence do they deduce that *olah* means an oath? From the following Boraitha: The expression *olah* means an oath, and it likewise reads in the above-cited verse "And the priest shall charge the woman with an oath of *olah*." But as it reads here "with the oath of *olah*," must we not say that *olah* itself is not an oath? It means to say that the word *olah* comes together with an oath only. And whence do we know that oath alone should be treated as if conjoined with *olah*? From [Lev. v. 1]: "The

p. 65

voice of an *olah*" (which word voice would be superfluous, as *olah* alone means also an oath), therefore it is to be interpreted thus: He hears either a voice alone (without an *olah*), or an *olah* alone (without an oath).

R. Abuhu said: Whence do we know that *olah* means an oath? From [Ezek. xvii. 13]: "And bound him with an oath (*olah*)"; furthermore, it reads [II Chron. xxxvi. 13]: "Who had made him swear by God." There is a Boraitha: The word *orar* embraces ban (*nidui*), curse (*kelabah*), and oath (*sheb'uah*); ban--from [Jud. v. 23]: "Curse (*orur*) ye Meroz," etc., concerning which Ula said: He placed Meroz under ban with 400 trumpets; curse--from [Deut. xxviii. 13]: "And these shall stand for the sake of the curse (*kelabah*)," and [ibid., ibid. if]: "Cursed (*orur*) be the man"; finally, oath--from [Josh. vi. 26]: "And Joshua adjured . . . saying cursed," etc.; and also from [I Sam. xiv. 24]: "And Saül adjured the people, saying, cursed. "

R. Jose b. Hanina said: *Amen* embraces oath, acceptance, and confidence; oath--from [Numb. V. 22]: "And the woman shall say amen, amen"; acceptance--from [Deut. xxvii. 26]: "Cursed be he that accepteth not this law . . . and all the people shall say, amen"; and confidence--from [Jerem.

xxviii. 6]: "Said Jeremiah the Prophet, amen, may the Lord do so."

R. Elazar said: Nay means an oath, and yea means also an oath. (Says the Gemara): It is correct that Nay means an oath, as it reads [Gen. ix. 15]: "And the waters shall no more (*V'lo*) become a flood," and [Isa. liv. 9]: "As I have *sworn* that the waters of Noah should no more (*V'lo*)"; but whence do we know that yea is an oath? This is merely common sense: if Nay is an oath yea is one, too. Said Rabha: Provided he says each twice; nay, nay, or yea, yea; and this is inferred from the above cited verse [Gen. ix.] where no (*V'lo*) is written twice, and as Nay must be said twice to become an oath, so also yea. [1](#)

"*Curses himself or his neighbor*," etc. Said R. Janai: Concerning this statement, all agree that he transgress thereby a negative commandment; concerning one's self it reads [Deut. iv. 9]: "Only take heed to thyself, and guard thy soul"; and we have seen above that such an expression means a negative commandment; and concerning his neighbor, it reads [Lev. xix. 14]: "Thou shalt not curse the deaf."

p. 66

"*Smite you God*," etc. R. Kahana, while sitting before R. Jehudah, repeated the Mishna in its own language, and he said to him: Change the language and use it in the third person. It again happened that one of the rabbis while sitting before R. Kahana read [Psalms, lii. 7]: "God will also destroy thee," etc., the whole verse, and R. Kahana said to him: Read it in the third person. And the two cases are cited here, lest one say that in a Mishna it is allowed to change the language but not in the Scripture.

"*God smite you not*," etc. But we know that according to R. Mair's theory we do not infer from a negative rule a positive one; reverse then the order of the names in the Mishna. However, when R. Itz'hak came from Palestine he taught the Mishna as it is. Said R. Joseph: Now that we see that in Palestine, too, the Mishna is taught as by us, the foregoing difficulty must be resolved thus: R. Mair's theory that we are not to infer yeas from nays, concerns only civil cases, but concerning criminal cases he, too, holds that we do. But is not the case of a suspected woman a crime, and R. Tan'hum b. 'Hakhinui said: In this case it reads [Numb. v. 19]: "Then be thou free" to show that if it were not expressly stated we would not infer? Hence, even in criminal cases we do not infer, wherefor we must say that R. Mair's theory applies also to crimes and the order of the names in the Mishna is to be reversed. Rabina opposed from a Mishna that places under the category of capital punishment him who enters the sanctuary while he is intoxicated, and this is inferred only from the Scripture's prohibiting one to enter in such a condition, and R. Mair does not oppose in this case? Therefore we must say that concerning crime he holds his theory, and the difficulty regarding the suspected woman is to be resolved, thus: it is a case where money, *i. e.*, a civil matter, is also concerned--viz.: in connection with her marriage contract.

---

## Footnotes

[51:1](#) There are still more significations imputed to this verse, and they have appeared already in Sanhedrin and Maccoth.

[60:1](#) In the text is also repeated what Rabha b. Aithi said above to contradict R. Simeon, which is followed again by a discussion. But it being very complicated and apparently offering nothing new, we omit the few lines.

[62:1](#) The divine names, from *Eil* till *Zebaoth* inclusive, are known, while those from *Hagodal* till *Rabh-chessed* inclusive, mean in order as follows: The Great, Mighty, Awe-inspiring, Glorious, Strong, Omnipotent, Powerful, Gracious, Merciful, Long-suffering, and Abundant in beneficence.

[63:1](#) I Kings xxi. 3.

[65:1](#) Concerning blasphemy repeated here, see Sanhedrin, Chap. VII., Mish. 8.

---

[Next: Chapter V](#)