CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE CIRCUMSTANCES UNDER WHICH THE COURT GIVES AN OATH TO ONE OF THE CONTESTANTS.--THE NATURE OF THE CLAIM AND OF ITS PARTIAL ADMISSION.--WHICH ADMISSION IS OR IS NOT REGARDED AS CORRESPONDING WITH THE CLAIM.--THE CASES WHERE THE CLAIM IS FOR MOVEABLES AND THE ADMISSION FOR IMMOVABLES, OR *vice versa*.--WHO ARE OR ARE NOT FIT TO ENTER A CLAIM WHICH ENTAILS AN OATH.--THE FORM OF THE OATH AND THE INTRODUCTION THERETO USED BY THE COURT, AS WELL AS THE KIND OF SACRED OBJECT ONE MUST HOLD WHEN TAKING THE OATH.--ARTICLES THE CLAIM TO WHICH ENTAILS NO OATH.--THE CONDITIONS UNDER WHICH EITHER AN OATH MUST BE TAKEN FOR A LOST PLEDGE OR THE VALUE THEREOF MUST BE PAID.

MISHNA *I.*: In the case of an oath before court, the claim must amount to two silver, and the confession, to one peruta; and if the confession is not of the same kind with the claim, he is free. How so? I have with you two silver. You have by me only one peruta; he is free. I have with you two silver and one peruta. You have by me but one peruta; he is liable. I have with you one mana. You have nothing by me; he is free. I have one mana with you. You have by me only fifty dinar; he is liable. My father has a mana with you. You have by me only fifty dinar; he is free, for he is in this case like to him who returns a thing lost. I have with you a mana. Yea. Next day the plaintiff says: Give it to me. I have given it to you already; he is free; but if his answer be: You have nothing by me, he is liable. I have with you a mana. Yea. Give it to me only in presence of witnesses. Next day he requires the money, whereupon the defendant says: I have given it to you already; he is liable, as he was to pay it before witnesses. I have in your possession a litra of gold. Nay; you have by me only a litra of silver; he is free. But if plaintiff says: I have with you a *gold* dinar. Nay; you have by me only a silver dinar, a trecissis, a fundion and a perutah, he is liable, since all the

mentioned coins are of the same kind. I have in your possession a kur of grain. Nay; you have only a lethech of legume; he is free. I have with you a kur of fruit. Nay; you have by me only a lethech of legume; he is liable, since legume is in the category of fruit. If the claim was wheat and the defendant admits barley, he is free. Raban Gamaliel, however, finds him liable. If one requires from another tankards of oil, and latter admits pitchers, he must, according to Admon, take the oath, since it is a case of partial admission; but the sages say: The confession is not of the same kind with the claim. Said R. Gamaliel: Admon's decision appears to me to be correct. If one requires movables and real estate and the other admits movables but denies real estate or *vice versa*, he is free. If he admits but a part of the real estate he is likewise free; but if he admits but a part of the movables, he is liable, for property that is not subject to loss necessitates the taking of the oath with reference to property that is subject thereto. There is no oath to the claim of a deaf-mute, an imbecile, or a minor; nor is a minor to take an oath, but there is an oath to the claim of a minor or of the sanctuary.

GEMARA: How is an oath given? Said R. Jehudah in the name of Rabh: One is made to swear

with the oath of the Scripture [Gen. xxiv. 3]: "And he will make thee swear by the Lord, the God of heaven." Said Rabina to R. Ashi: Is this in accordance with R. Hanina b. Aidi, who said that the unique holy name is required?" Answered he: Nay; this may be even in accordance with the rabbis, who say that a divine attribute is sufficient, and the difference between the two is that he (who takes the oath) must keep in his hand a holy object; and this is in accordance with Rabha, who said that a judge who gives one the oath in the name of the Lord the God of heaven should be considered as he who erred in what was written plainly in a Mishna, so that the oath must be given again. And R. Papa says that a judge who gives one the oath by making him keep the *Tephilin*, is likewise considered erring, as the object kept must be the holy scrolls. (Says the Gemara): The Halakha prevails with Rabha, as there is no oath made without one's holding some holy object; and not with R. Papa, as after all there was a holy object in the hand of the one who took the oath.

One must stand when taking the oath; a scholar, however, may do it while sitting. Furthermore. the oath must originally

be performed with the holy scrolls; a scholar, however, may take the oath even originally with *Tephilin*.

The rabbis taught: Also an oath taken by one before the court must be uttered in a language he understands, and the court must say to him the following introduction to the oath: Be aware that the whole world was trembling when the Holy One, blessed be He, spake on the Mount Sinai: "Thou shalt not bear the name of the Lord thy God falsely"; likewise concerning all transgressions mentioned in the Torah it reads: "*Venakkei*" (literally, he will forgive), and concerning a false oath it reads further, "*Lo ienakei*" (literally, he will not forgive); again, for all other transgressions only the sinner himself is punished, while here (in case of oath) the punishment extends also to his family, as it reads [Eccl. v. 5]: "Suffer not thy mouth to cause thy flesh to sin," and by the expression "flesh" one's family is meant, as [Isa. lviii. 7]: "From thy own flesh." Furthermore, for all other transgressions the sinner himself is alone punished, while here the whole world is punished, as [Hosea, iv. 2, 3]: "There is false swearing, etc. . . . therefore shall the land mourn." (But perhaps it means that only when the sinner committed *all* the transgressions mentioned here in Hosea? This cannot be borne in mind, as it reads in [Jerem. xxiii. 10]: "For because of false swearing mourneth the land.") Again, the punishment for all other transgression is, because of the merits of the sinner's forefathers, postponed for some two or three generations, but here he is punished immediately, as it reads [Zech. v. 4]: "I bring it forth, saith the Lord of hosts, and it shall enter into the house of the thief, and in to the house of him that sweareth falsely by my name: and it shall remain in the midst of his house, and shall consume it with its timber and its stones"; "I bring it forth" means immediately; "it shall enter into the house of the thief" means who steal the mind of the people, *e.g.*, he who has no money with his neighbor, claims such and makes latter swear; "into the house of him who sweareth falsely" means literally; "it shall remain in the midst of his house," etc., to learn from this that things indestructible by fire or water are destroyed by false swearing. If after having listened to all this introduction, he says: "I will not take the oath," the court sends him away immediately (that he might not reconsider and take it); but if he says: "I will nevertheless swear," the people present say [Numb. xvi. 26]: "Depart, I pray you, from the tents of these wicked."

Again, when he is ready to take the oath, the court says again to him: Be aware that the oath which you take is not according to your own mind, but to the mind of the Omnipotent and of the court, as we find by Moses, our master, when he made the Israelites swear, he said: You shall be aware that your oath is not by your own mind, but by that of the Omnipotent, as it reads [Deut. xxix. 13, 14]: "And not with you alone, etc. . . . But with him that is standing here," etc., and it is not meant only those were at the Mount Sinai, but all future generations, and all proselytes who will embrace Judaism in the future; and not only regarding the commandments given on that Mount, but also regarding all commandments that will be established in the future and be they lenient, such as the reading of the Book of Esther, as it reads there [Est. ix. 27]: "The Jews confirmed it as a duty," etc., which means they confirmed a duty imposed upon them in the past.

The text above states "also an oath," etc. Why also? It is an addition to a Mishna in Tract Benedictions--viz.: the following are uttered in any language: The portion said to a suspected woman, the confession on tithe, the reading of *Shema*, the saying of the prayer, of the benediction after meals, the witness-oath, and the oath of a depository. So that the "also" from here comes to add yet the oath given by the court.

The master says: The whole world was trembling, etc. But why? Was it because it was ordained on Sinai? Then, all the ten commandments were given there; and if because it is more rigorous, is it indeed so? Is there not a Mishna: Lenient means positive and negative, except "Thou shalt not bear the holy name," etc.; rigorous are those under the category of capital punishment and *Korath*, and the commandment "Thou shalt not bear," etc. belongs to these (hence, we see that it belongs to the same category with these)? The answer is that to all other transgressions *Venakkei* applies, while here *Lo ienakkei* applies, as above. But does it not read together *Venakkei lo ienakkei*? This is explained by R. Elazar, who said: It is impossible to say *Venakkei* (he will forgive) as it is followed by *lo ienakkei* (he will not forgive), nor is it possible to say "he will not forgive" after it reads "he will forgive," therefore it must mean, he will forgive the repenters, but not those who do not repent. (The master says there) further: For all transgressions, etc., while here (in the case of oath) the punishment extends also to his family. But does it not read [Lev. xx. 5]: "Then I will set

my face against this man and against his family." And there is a Boraitha: R. Simeon says, If he has sinned, what has his family done; to teach that a family, where there is a contractor or a robber, is all considered robbers because it supports him? There *he* is punished with the punishment attached to his transgression, but the family with a lenient one; while here the family suffers the same punishment with the perjuror. As we have learned in the following Boraitha: Rabbi said, to what purpose is it written in the above-cited verse, "I will cut him off," after it reads "I will set my face," etc,? To teach that only *him* I will cut off but not the whole family.

Concerning the punishment of the whole world (mentioned before), does it not read [ibid. xxvi. 37]: "And they shall stumble one over the other," which is explained elsewhere to mean "one because of the sin of the other," as all the children of Israel are mutually responsible one for the other? The reason then is that they could have prevented the sin by protesting, but did not do so. But is not one's family included in the "whole world"? There is a difference in the nature of the punishment--viz.: his family is punished more rigorously than the rest of the world.

The text says: If he says, "I will swear, the people say: Depart," etc. Why are both the parties called wicked? Let only him who swears have this name. It is in accordance with R. Simeon b. Tarfon, who says in the following Boraitha [Exod. xxii. 10]: "Then shall an oath of the Lord be between them both," infer from this that the oath rests upon them both. It states there further on: "Not according to your own mind." To what purpose is this? Because of a case that happened in Rabha's court (where the defendant put up the money claimed from him in a case and, while going to swear, he gave it to the plaintiff to hold, and swore then that he has returned the money, thus convinced that he had made a true oath).

"*I have with you two silver*," etc. According to Rabh the denial must be for two silver; according to Samuel the claim must amount to two silver, while the denial or the confession may be even for one *peruta*. Said Rabha: Our Mishna seems to be in accordance with Rabh, as it states that the claim must amount to two silver and the confession to one *peruta*, but it does not state the denial to be of one *peruta*; the Scripture, however, seems to be in accordance with Samuel, as it reads [ibid. ibid. 6]: "If a man do deliver unto his neighbor money

or vessels to keep," and as "vessels" is used in the plural, so is money (silvers) here in the plural; and as silver is a valuable, so everything that is a valuable; and [ibid. 8]: "Of which he can says this it is" signifies however little it may be, hence, the confession must be to a claim that is no less than two silver.

There is an objection from the following Mishna: I have with you two silver. Nay; you have only one peruta; he is free from an oath. Now, is it not because the denial here is less than of two silver, and it is an objection to Samuel? Nay; it means particularly: He claims two *silver*, and the answer is, *peruta*, which is in *copper*, consequently the confession was not of the same kind with the claim. But if so, how is the second part to be understood--viz.: I have with you two silver and a *peruta*. Nay; you have with me only one *peruta*; he is liable. Now, if the claim was for the *value* of two silver, it is correct that he is liable, for the confession concerned the same kind as the claim; but if it is a claim particular on silver, then the other confessed to what was not claimed, and what this one claimed was not confessed? But is not the objection concerning Samuel, and R. Na'hman said that Samuel holds one liable for confessing one of the articles embraced in the claim; and it seems to be that the Mishna was particular regarding the kind, and not the value, of the metal, as it states in its last part: I have with you a *litra* gold. Nay; you have with me a *litra* silver; he is free. Now, if it is particular with regard to the kind of metal, then it is correct; but if it means the value of the metal, why should he be free, when the value of gold is so many times more than that of the same quantity of silver? Hence, as this last part is indisputably particular with regard to the kind of metal, so also is the first part. But if so, let this be an objection to Rabh? Rabh may say: All the Mishna treats of the value, but in the case of the *litra* gold it is different, as here the main point is the weight; and a support to this view may be found in its concluding part, which states: "I have with you a golden dinar." Nay; you have with me only a silver dinar, a trissis, a pundium and a peruta, he is liable, as they all are coins. Now, if it speaks of value, it is right that he is liable, as the claim was for coins and the confession, too, was for coins; but if it is particular, why should he be liable when he confesses to silver or copper, the claim being for gold? Said R. Elazar: It treats of a claim that is made for coins amounting to the value of a dinar, and this is stated to teach that a peruta is also considered a coin.

And so it seems to be, since it adds that "they all are each a kind of coin." But Rabh reads the Mishna to mean "to them all the law of a coin applies."

Come and hear: "I have with you a gold dinar in gold." Nay; you have with me only a silver dinar; he is liable. Now, we see that only because the claimant added specifically "in gold," the kind of the metal is particular; but if this were not added, the value of the metal would be understood? Said R. Ashi.. Nay; the Boraitha intends to teach that if one says "a gold dinar," it means a dinar in gold.

R. Hyya taught a Boraitha in support of Rabh: I have with you a *sela*. Nay; a *sela* less two silver; he is liable. But if the answer is. A sela less a *maäh* (= 2½ silver), he is free (because the denial was for more than two silver).

Said R. Na'hman b. Itz'hak in the name of Samuel: All that was said hitherto concerns only the claim of the lender and the confession of the borrower, but if there was one witness, the borrower is liable even if the claim amounted only to one peruta; as it reads [Deut. xix. 15]: "There shall not be one witness to any sin or transgression," which signifies that to a transgression one witness shall not be considered, but concerning an oath one witness may be considered; and there is a Boraitha that whereever two witnesses cause the payment of money, one witness causes an oath.

R. Na'hman said again in the name of the same authority: If the claim was for wheat and barley, and the confession was to either one, he is liable. Said R. Itz'hak to him: Thanks, so also said R. Johanan. Was he thanking because someone differed with R. Johanan? Yea., it was Resh Lakish who kept silent when R. Johanan said so, only because he was drinking at that time.

An objection was raised; come and hear: If the claim comprised both personal and real estate, and the confession was to either, he is free; if, however, the confession was regarding but a part of the real estate, he is free; but if to a part of the personal estate, he is liable. We see, then, that only in a case of real estate to which an oath does not apply, he is free; but if the claim were for vessels of two kinds similar to personal and real estate respectively, and he would confess to either kind he would be liable? Nay; he would be free in this case also; and the case of personal and real estate is to teach that, when the confession was only to a part of the personal, he has to swear

even for the real estate, too. But what is there new in this teaching: that one can include in the oath also another claim? This has been already stated in Middle: Gate? Here is the main teaching, while in Middle Gate the point is touched on merely by the! way. R. Hyya b. Aba, however, said in the name of R. Johanan: If the claim was wheat and barley, and the confession was only to either of them, he is free. But has not R. Itz'hak expressed his thanks to one for quoting R. Johanan as saying the very opposite? The Amoraim differ regarding R. Johanan's statement.

R. Aba b. Mamal objected to R. Hyya: If the claim was for an ox, and the confession was for a

lamb or *vice versa*, he is free; but if the claim was for an ox and a lamb, and the confession only for one of them, he is liable? And he answered: This Boraitha is in accordance with Admon; and you shall not take this answer as mere argument, since it is a fact that R. Johanan taught so explicitly.

R. Anan said in the name of Samuel: If one was about to claim wheat and the defendant hastened to confess barley, if it seems to the court that he did so with a view to elude the court, thereby escaping an oath, he is liable; but if only to justify the claim, he is free. He said further in the name of the same authority: If the claim was for two needles, and the confession was to one, he is liable; as for this purpose the Scripture mentions vessels, that they remain what they are. R. Papa said: If the claim was for vessels and a peruta and the confession was for the vessels and the denial for the peruta, he is free; but if *vice versa* he is liable. The one case is in accordance with Rabh, who holds that the denial must be of a claim of two silver, while the other case is in accordance with Samuel, who holds that of the claim comprised two articles and the confession was to but one, he is liable.

"*I have a mana with you*," etc. Said R. Na'hman: He is free from a biblical oath, but he is subject to a rabbinical one. (Here follows a repetition from Middle Gate and also from First Gate concerning the law that he who denies a loan is fit to be a witness, while he who denies a deposit is unfit.) According to others the saying of R. Na'hman concerned the latter part of the Mishna--viz.: I have a mana with you. Yea. And the next day when he refuses it, he says: "I have already given it to you"; he is free, to which R. Na'hman said: He must, however, take a rabbinical oath. To him who teaches this regarding the

first part of the Mishna, is obvious that it belongs also to its latter part; but he who limits this to the latter part reasons thus: In this latter part money was avowedly involved, but in the first it is doubtful.

What is the difference between a biblical and a rabbinical oath? The reversibility of the oath: a biblical oath we do not transfer from one contestant to the other, while a rabbinical we do. And according to Mar b. R. Ashi, who says that a biblical oath is also reversible, what is the difference between the two oaths? The collecting from the property: where there is a biblical oath, the collection may be made from his property, which is not the case with a rabbinical oath if he refuses to take such.

And according to R. Jose who says that a rabbinical oath is also attended with collection, what is the difference between the two? In the case where one of the parties was suspected of an oath: if this was a biblical oath it is transferable to the other party, but if it is a rabbinical oath, which is only an enactment by the sages, it is not transferable, for the transferring is itself but an enactment and we do not impose one enactment upon another.

Now, what is to be done according to the rabbis, the opponents of R. Jose, who hold that in case of a rabbinical oath no collecting from the property takes place? We place him under ban. Said Rabina to R. Ashi: This is like holding one up for his throat till he takes off his clothes (*i.e.*, it is still worse than collecting from his estate, as he remains under ban until he pays)! But what shall be done? Place him under ban for one month, and if he does not come then for absolving he is,

as it is customary, punished according to Rabh's practice, after which punishment he is left alone.

R. Papa said: If one holds a document in his hand and the defendant says: the document is already paid up, he is not trusted and must pay. But if he requires that the plaintiff take an oath that it has not been paid, the court is to give him an oath. Said R. A'ha b. Rabha to R. Ashi: Why should this case be different from a marriage contract where she has to take an oath only when she impairs the contract (*i.e.*, she claims that only one mana has been paid on it)? And he answered: In that case where the document is impaired, and the defendant does not require an oath, the court requires such; in this case, however, the court would tell him to pay and not exact an oath, but execute the requirement of the defendant that the plaintiff take

an oath; and if the plaintiff was a scholar no oath is to be given. Said R. Yemer to R. Ashi: Is a young scholar given the liberty to strip men of their clothes? Say only that if he was a scholar, we do not compel him to swear, so that it should not seem that the court suspects him, and on the other hand if he refuses to swear we do not collect his claim from the defendant.

Again: "*I have a mana with you*." Said R. Jehudah in the name of R. Assi: If one has made a loan in the presence of witnesses, he must also return it in presence of witnesses. And when, he continued, I recited this before Samuel, he told me that the defendant can claim, "I have paid you in the presence of such and such witnesses, who are now away in the sea-countries." An objection was raised from our Mishna: "I have with you a mana. Yea. . . . I have returned it to you," he is free; now, if he required the money in presence of witnesses, it is a case similar to making a loan in the presence of witnesses, and nevertheless he is free, which contradicts R. Assi's statement? R. Assi may say: This is no comparison, as I speak of a case where the plaintiff has never reposed on confidence in the defendant, as he did not trust him without witnesses; but here he trusted him money without witnesses.

R. Joseph taught the same in the name of the above, as follows: If one makes a loan in presence of witnesses, the borrower is not obliged to return it in presence of witnesses, unless he was told not to repay otherwise than in presence of witnesses; and it is to this that Samuel told me: the defendant may none the less claim to have paid the debt in presence of such and such who are now in the sea-countries.

An objection was raised from the following. I have a mana with you. Yea. You shall not return it to me without the presence of witnesses. The next day, on being asked to return the money, he answered: I have returned it, the defendant is liable, for he had to return it as he was told, *i.e.*, in the presence of witnesses; and this contradicts Samuel's statement? Samuel may say that concerning this law Tanaim differ in the following Boraitha: I have given to you my money in presence of witnesses, and you must return it under the same conditions; then the defendant must either pay or adduce evidence that he has paid already; R. Jehudah b. Bathina, however, says: He may claim to have returned the money in presence of witnesses that are now in the sea-countries. R. A'ha (one of the Saburaërs) overthrew all this argument by saying: Whence do we know that

the above Tanaim differ in case he lent him before witnesses, perhaps it means in case of demanding when he says to him: Have I not lent you in presence of witnesses, so that you ought to pay me also in the presence of witnesses; but in case he told him when making the loan that he should return it in presence of witnesses, all agree that he is liable? Said R. Papi in the name of Rabha: The Halakha prevails that he who borrows in the presence of witnesses must pay also in the same manner. R. Papa, however, said in the name of the same authority that be is not obliged to do so, unless he was expressly told not to pay otherwise but in the presence of witnesses; and if the defendant claims to have paid it in the presence of such and such who are now in the sea-countries, he is trusted (Maimanides, however, reads: He is not trusted).

There was one who told his neighbor: When you will pay me my debt, you shall do so in the presence of Rubin and Simon; he, however, has paid it in presence of two other witnesses (and thereafter the plaintiff says that they are false witnesses). Said Abayi: What is the difference, he was told to pay before two witnesses, and so he did? Said Rabha to him: The plaintiff has purposely specified two witnesses by name that the defendant may not be able to say that he paid in presence of some other witnesses!

There was one who said to the borrower: You shall pay me only before two persons who are able to learn Halakhas; he, however, paid him without any witnesses present. It then happened that this money was violently taken away from the plaintiff, and he came to R. Na'hman saying: It is true, I have received. the money not as a return of the loan, but as a deposit, until there will happen two witnesses who learn Halakhas and then he will repay me. Said R. Na'hman to him: As soon as you admit to have taken the money it is a repayment, and if you want the defendant to comply with the stipulation regarding the -witnesses, go and bring the money here in the presence of myself and R. Sheshith, who are learned not only in Halakhas but also, in *Siphra*, *Siphri*, *Tosephtha* and in all the *Gemara*.

In another case one demanded a 100 zuz which he lent to him, to which the defendant answered that such a case has never taken place; the other party, however, brought witnesses that the loan took place, but that it was returned; said Abayi: What is to be done, as the same witnesses who testify that the loan took place, testify also that it has been returned? Said Rabba

to him (follow this rule): If one asserts not to have borrowed, it means he asserts not to have paid (hence, as the statement "that it has never taken place" is false, according to the evidence of these witnesses, we must take his word as though meaning: "I have never paid," which must be taken for granted in spite of all witnesses).

In still another case the plaintiff claimed 100 zuz, and the defendant answered: Have I not paid you in the presence of so and so? And so an so upon being quoted said: They know of no such case; and R. Sheshith was about to say that this defendant must be declared a liar; said Rabha to him: He was not obliged to repay in the presence of witnesses, and therefore he was not heedful enough to know the names of them in whose presence he repaid.

In another case the plaintiff was claiming 600 zuz, and the defendant answered: Have I not repaid this claim with 100 kabs of gall-nut, the value of each kab being six zuz? To which the plaintiff said: Nay; each was worth only four zuz, and brought witnesses to this effect,

demanding the remaining 200 zuz. The defendant, however, said: I have paid you all the same, if not with this said stuff, then I gave you 200 zuz in cash. Rabha decided that the defendant in this case be recognized as a liar. Said Rami b. Hama to him: Have you not said that a thing to which one pays little attention, may easily escape one's memory (why not say that he paid him the 600 zuz but did not remember the price)? Whereupon Rabha answered: A fixed price can never be forgotten.

In another case one demanded 100 zuz on a document, whereto the defendant answered: "Have I not paid you"? Whereupon the plaintiff claimed that this payment was made to meet another claim. According to R. Na'hman the document lost its value, according to R. Papa, it did not. But why should R. Papa's decision here differ from what he decided in the following similar case, where the defendant's answer was: Have you not given me that money to buy oxen for slaughtering, and I returned you that money in the slaughter-house? And where the plaintiff asserts that this was for another debt; in which case R. Papa declared the document invalid? In this case R. Papa thus, decided, because the money was actually taken to buy oxen and then received in that very place where they were slaughtered; in our case, however, the plaintiff may be right in his claim. But how should such a case be ultimately decided? According

to R. Papi the document is valid, and according to R. Sheshith b. R. Aidi it is invalid, and so the Halakha prevails, provided the defendant paid in presence of witnesses and the document was not mentioned at all; but if the payment was made between themselves, the plaintiff may be trusted when he says that it was to cover another debt, because were he willing to tell a lie he would simply deny the payment.

A borrower said to the lender: "You are trusted so long as you will say that I have not paid you"; thereafter he paid him in the presence of witnesses, but the plaintiff continued his claim, saying that this payment was for another debt. Both Abayi and Rabha said that the defendant himself has trusted him, hence, he is to be trusted; R. Papa, however, opposed, saying: The defendant trusted in this case more to the plaintiff than to one's self, but did he trust him more than two witnesses?

In another case the defendant said to the plaintiff: "You are trusted like two so long you say that I have not paid you;" thereafter he paid in the presence of three, and the plaintiff still claimed his debt; in which case R. Papa said: He was trusted as two, whereas here there are three witnesses. R. Huna b. R. Jehoshua, however, opposed, saying that concerning witnesses their number whether two or 100 matters not (according to the biblical law); however, if he said to him: "You are trusted like three," and then paid him in the presence of four, it is different, as the number three was intended here not for witnesses but for the *minds*, and in this respect four minds are more than three.

"*There is no oath to the claim of a deaf-mute*," etc. For [Exod. xxii. 6]: "Unto his neighbors," etc.; and the delivery by a minor is not considered.

"*But there is an oath to the claim of a minor*." But has it not just been said that there is no oath to such? Said Rabh: It means the minor claims that his father has given this or that to the defendant, and it is in accordance with R. Eliezar b. Jacob, who said in the following Boraitha:

There is a case where one has to swear for his own claim--viz.: "Your father had with me a mana, but I paid him a half," then he has to swear for his own claim; the sages, however, say that here he is but returning a lost thing, hence, he is free. And to the question, Does not R. Eilezar agree that the defendant here is returning a lost thing, Rabh said: It treats here of a claim made by a minor after the death of his father. But again, the Mishna states expressly that there is no oath to the claim of minors? Rabh

meant to say: He was as a minor in his father's business, but already of age when putting in the claim. But then how is the expression above "for his own claim" to be understood, as here it is not his claim but that of the plaintiff? It must, therefore, be said that they differ concerning what was said by Rabha (Middle Gate, p. 4) with regard to a biblical oath that "one is not so bold as to deny the whole," etc.: R. Eliezar holds that one is not bold concerning the son (of the deceased) also, and therefore he is not regarded as returning a loss, while the rabbis hold that one is not bold only in face of the party himself, but is so with relation to the son of same, and therefore he is considered as returning a loss.

But how can you explain the Mishna in accordance with R. Eliezar b. Jacob, does not the Mishna state in its first part: If one claims, my father had with you a mana, and the answer is, I have no more than 50 dinar, he is free because he only returns a loss? There it speaks of a case when the heir did not claim: "I am certain," while in the case of our Mishna the minor is supposed to claim that he is certain. Samuel, however, says: Our Mishna's case is when the minor has real estate and one puts in a claim that his father owes him money, in this case even if the plaintiff has a document, he must swear that the minor's father has not paid it; the same is the case with the sanctuary. [1]

MISHNA *II.*: One does not swear to the following: To slaves, written documents, arable lands, and sanctified objects; nor is thereto applied the payment of double amount, or of four and five-fold. The gratuitous bailee need not swear, the bailee on payment need not pay damages. R. Simeon holds that one is obliged to swear to objects of the sanctuary, for whose security he is liable, but not to those for which he is not responsible. R. Mair says: There are things attached to the land and yet not considered land; but the sages do not agree with him therein. How so? I have transferred to you ten vines laden with grapes. Nay; there were only five; and he must swear according to R. Mair, while the sages hold that everything attached to the soil is to be regarded as the land itself.

One swears but to things capable of being measured, weighed, and counted. How so? I have transferred to you a house full of fruit, or, I have handed you a purse full of money. I know

not how much there was, but you are at liberty to take back whatever you left there; he is free; but if plaintiff says: They were reaching the cornice, and the defendant rejoins: Only up to the window, latter is liable.

GEMARA: Whence is this deduced? From [Exod. xxii. 8]: "For all manner of trespass": general, "ox, ass, lamb, raiment"; particulars, "for any manner of lost thing"; again general, and there is a

rule that wherever particulars appear between generals. it must be judged in the sense of the particulars: and as these are movables each having in body a value, so also all other cases must be equal to these; except real estate, which is not movable, slave, who are equalled to real estate, documents which though movable are in body of no value, and finally the sanctuary which is excluded because of the verse "his neighbor."

"*Double-amount, four and five-fold*," etc. The reason here is that the Scripture speaks of four and five-fold, and as in the case of double-amount an oath does not apply; it remains only the case of three and four-fold which is not mentioned in the Scripture.

"*A gratuitous bailee need not swear*." Whence is this deduced? From what the rabbis taught [Exod. xxii. 9]: "If a man deliver unto his neighbor": general, "an ass," etc.; particular, "to keep"; general, and on the basis of the above-mentioned rule the particulars appearing between generals render the whole to be judged in their sense: as the particulars here are movables each having in body a value, etc. (as above).

"*A bailee on pay*." Also this is deduced from the just-cited verse and on the basis of the same rule regarding particulars appearing between generals.

"*R. Mair says: There are things attached*," etc. From this we see that R. Mair does not hold that what is attached to the land is itself considered land. Now, why is here the point of difference illustrated by laden vines, and not by vines as such? Said R. Jose b. Hanina: The Mishna speaks of grapes that were ready for the press. R. Mair holds: As they are ready for pressing they are no longer considered attached to the soil, but as already pressed in which case an oath applies, while the sages do not share this opinion.

"*One swears but to things capable of being measured*," etc. Said Abayi: Provided he says "a house full," etc., but if he says, "*this* house was full," then his claim is definite and recognized. Said Rabha to him: If this were so, why the illustration

in the last part of the Mishna with "cornice" and "window" stated by plaintiff and defendant respectively, and not with it *a* house "and" *this* house"? Therefore, says Rabba, there is no liability of an oath unless the claim concerned a certain measure or weight, and the confession was made also to measure or weight. There is a Boraitha in accordance with Rabba: "I have a kur of grain with you." Nay; you have nothing with me; he is free. "I have with you a big chandelier." Nay; you have only a small one; he is free. However, if he says: "I have with you a kur of grain," and the answer is: Only a lethech; "or a chandelier of ten pounds," and the answer is: One of only five pounds, he is liable. Because the rule underlying this judging is: One is not liable unless the claim was for a certain measure, weight or number, and the confession was to the same effect. Now, what is the addition of the rule for in the Boraitha? To indicate that "this house full" means also a measure. But why is it not a partial confession if he confesses to a small chandelier when the claim is for a big one? Because to the claim as it is, there is here no confession, nor is the claim made for what is confessed (as the big and small chandelier are two different things); but is not the same the case when the claim is for one of ten pounds, and the confession for one of five pounds? Said R. Samuel b. R. Itz'hak: It speaks of a chandelier made of separable pieces, and the confession was to five pounds of the same chandelier; why, then, is

not the same the case with the girdle that may have been of separable pieces? And as this is not so, we must say that it does not speak of pieces in the other case of the chandelier either! Therefore, said R. Aba b. Mama], it speaks of a whole chandelier, but when the claim is for a big and the confession for a small one, then are two wholly different things involved; but if it speaks of the weight, one could by rubbing reduce the weight of such from ten to five pounds, the only object thus remaining the same.

MISHNA *III*.: If one lends to his neighbor on a pledge, and the pledge got lost, whereupon the plaintiff says: I lent you on it a sela, but it was worth only a shekkel; the other party says: No, truly, you lent me a sela. on it, but it was worth a sela, he is free. But if the plaintiff claims: I lent you on it a sela, but it was worth only a shekkel; whereto the other replies: Nay; you did lend me on it a sela, and it was worth three dinar, he is liable. If the debtor says: You lent me on it a sela, while it was worth two selas, whereto the creditor: Nay; I gave

you on it one sela, its value only, he is free. But if the former says: You lent me a sela on it, it was, however, worth two, and latter says: Nay; I lent you thereon a sela, and it was worth only five dinar, he is liable. Who is to take the oath? The depository, as he could meanwhile produce the pledge if the other one were to swear.

GEMARA: The concluding sentence of the Mishna belongs to which part? If to the last, there is a rule that the oath rests with the lender? Said Samuel and also R. Hyya b. Rabh and also R. Johanan, it belongs to the middle part: I lent you a sela and it was worth a shekkel, and the other says it was worth three dinars, in which case the borrower confesses to owe yet one dinar, hence, it is a partial admission to which an oath applies; the rabbis, however, have transferred this oath from the borrower to the lender. [1] And now that R. Ashi has decided that both depositor and depositary must each take an oath, he latter: that he does not have the pledge any more, and the former: that its value amounted to so and so much, the Mishna is to be explained thus: Who is to take the oath first? The depositary, since if the depositor swore first the other could meanwhile reconsider and produce the pledge.

Samuel said: [2] If one lends to his neighbor 1,000 zuz, and pledges for them the handle of a scythe only, if the handle is lost the 1,000 zuz are lost, but if the pledge consisted of such two handles the case is different, as we do not assume that he gave 500 zuz for each handle, but for the whole, and as only one of them was lost the lender loses nothing; R. Na'hman, however, maintains that the same is the case with two, *i.e.*, if one is lost the lender loses 500 zuz, and if both are lost he loses the whole 1,000; but the same is not the case if the pledge consisted of a scythe handle and a piece of metal. The opinion of the sages from Nahardea is that the same is the case with the last mentioned pledge: If either the metal or the handle is lost, 500 zuz are lost, and the loss of both entails the loss of all the 1,000.

An objection was raised from our Mishna--viz.: From the case where defendant says it was worth but three dinar. Why is he liable in this case? Let the depositor say: You have taken it for a sela? The Mishna has in view the case where the depositary

expressly took upon him responsibility for its value only, which is not so in Samuel's case. 1

Concerning the last mentioned case shall we assume that the following Tanaim differ: If one had made a loan on a pledge and the Sabbathic year entered, the pledge, though worth only the half value of the loan, the year does not release the loan [Deut. xv. 2]; R. Jehudah the Nassi, however, maintains that if the pledge amounted to the value of the whole debt, the year does not release, but if not to this value, the year does release. Now, let us see what does the first Tana mean by his saying "it does not release"? If he means, it does not release the half debt and R. Jehudah comes to teach that it releases even this half, then of what use is a pledge? We must then say that the first Tana means it releases the entire debt, as he agrees with Samuel's theory that as soon as it was accepted for this amount it must be considered only as such, while R. Jehudah differs! Nay; they differ with regard to the worth of the pledge and still R. Jehudah maintains that the entire debt is released, for the pledge which is not worth the amount of the debt he considers as mere memorandum.

Footnotes

88:1 The further discussion on this point appears in its proper places.

91:1 A Talmudic sela was of two shekkels, each shekkel of two dinars; hence 3 dinar = 1½ shekkel.

91:2 This is a repetition from Tract Middle Gate, p. 206, which is reproduced here because R. Na'hman's part is not mentioned there.

92:1 Here follows the discussion from Middle Gate, p. 206:

"*On a pledge*," which paragraph is followed by the statement of R. Itz'hak that a creditor acquires title in a pledge (ibid., p. 207). Also the discussion concerning the question as to whether he who takes care of a found object is considered a gratuitous bailee, or a bailee for hire (ibid., p. 65), all which we deem unnecessary to repeat here

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Next: Chapter VII.