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CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE CONDITIONS UNDER WHICH THE OATH IS GIVES TO THE PLAINTIFF OR TO THE DEFENDANT.--REGARDING A SUSPECT OF PERJURY.--THE DIFFERENCE BETWEEN A BIBLICAL AND A RABBINICAL OATH.--IS OR IS NOT A RABBINICAL OATH TRANSFERABLE?--THE OATH OF ORPHANS (PLAINTIFF OR DEFENDANT), PARTNERS, GARDENERS.--THE CASES WHEN THE SABBATHIC YEAR RELEASES ONE FROM AN OATH.

MISHNA *I.*: All those who are subject to a biblical oath swear and do not pay. The following, however, swear in order to receive pay: The employee, the robbed, the bruised, he whose adversary is suspicious of perjury, and the store-keeper on his business book. The employee, how so? Give me my wages which I have with you, and the employer answers. I have given them to you already, and the former claims: I have received nothing; he swears and gets his claim. R. Jehudah, however, says: Unless there be a partial. confession (the oath is not effective)--viz.: the employed says.. Give me my fifty dinar wages you have in your hands, and the employer replies: You received on this account one gold dinar.

How is it with the robbed? If witnesses testify that one entered his house to seize a pledge without permission, now the householder says: You have seized one of my utensils, and he denies, plaintiff swears and takes it. R. Jehudah, however, says: Unless a partial confession takes place there--viz.: You took two utensils, and he answers: I took but one.

How is it with the bruised? If witnesses testify that one entered the premises of so and so unhurt and went out in wounds, now the plaintiff says to the defendant: You bruised my body, and he says: I did not, former swears and receives pay. R. Jehudah says. Unless a partial confession took place --viz.: plaintiff says: You wrought upon me two bruises, and the defendant says: Only one.

How is the adversary suspicious of perjury? As follows: Be

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it that he became suspicious while under oath as a witness, or under oath for a deposit, or even for merely vain swearing. If one of them is a gambler in dice, a usurer, a dove hunter, or one who is doing business with the fruit of the Sabbathical year, his adversary swears and obtains his claim. In case, however, both were suspicious, the oath returns to its place; such is R. Jose's opinion; R. Mair holds that they divide.

The store-keeper on his book, how so? Not that he say to somebody: It is stated in my book that you owe me 200 zuz, but that when one says to the store-keeper: Give my son two saah of wheat, or: Give my laborer a sela in money, whereupon the store-keeper claims: So I did give,

and the others say: We have received nothing, the two swear; he swears and gets paid, and they likewise swear and get paid by the employer. Said b. Nanan: How is that? Either party will necessarily be committed to false swearing! But both parties receive their respective claims rather without swearing. If one said to the storekeeper: Give me fruit for one dinar, and he, having given him, says: Give me the dinar, whereupon this replies: I have given it to you already and you put it into the cash-drawer, the purchaser is to swear. If, however, the customer gave the dinar and said: Give me the fruit, and the store-keeper says: I have given them to you already and you brought them over to your house, the store-keeper is to swear. R. Jehudah says: He who has the fruit in his possession has the preference.

If one says to the money-changer: Give me change for a dinar, and he was given it, whereupon the changer says to him: Give the dinar, and he answers: I have given it to you already and you have put it into the cash-drawer, the customer has to swear. But if he gave him the dinar and says: Give me the change, and the other one replies: I have given it to you already and you have put it into your purse, the money-changer has to swear. R. Jehudah says: It is not customary with a moneychanger to give out an issar before he has received his dinar.

As it has been established that a woman who damaged her marriage contract can obtain payment only on oath; that, when a single witness testifies that she was paid, she can receive payment only on oath; that she can get paid from encumbered estates or from the estates of the orphans only on oath; and that when she is to be paid in her husband's absence, she is so only on oath: so likewise should orphans be paid only on oath--viz.: We swear that our father had not willed to us nor told

us, and that we have not found among the documents of our father that this note has been paid. R. Johanan b. Buoka says: Even if the son was born after his father's death, he may swear and collect. R. Simeon b. Gamaliel says: If there are witnesses to the effect that the father said while dying: This note has not been paid, the heir collects without an oath. The following have to swear also in the case when there is no claim: Partners, gardeners, guardians, a woman business-manager, and the son of the house. When one of these parties says: What is your claim against me? and the other one answers: My only desire is that you swear, he must swear. If the partners or gardeners have already divided, they are no longer liable to take an oath. However, if an oath is imposed upon one of them from some other source, all other claims may be included. The Sabbathic year releases from an oath.

GEMARA: "*Swear and do not pay*." Whence is this deduced? From [Exod. xxii. 10]: "An oath of the Lord, . . . the owner of it shall accept this," etc.; which signifies that the oath rests upon him who has to pay.

"*The following, however, swear in order to receive pay*." Why have the rabbis enacted the law that the laborer must swear? (For the answer see Middle Gate, p. 300 f.; par. *But it is correct*.) Said R. Na'hman in the name of Samuel: This law holds good, provided he was hired in presence of witnesses, but if without witnesses, the employer is to be trusted, since if he would he could say that he has never hired him. Said R. Itz'hak to him: Thanks, so also said R. Johanan. (Says the Gemara): From this it appears that Resh Lakish differed with the latter; and why is it not mentioned? Some say: Resh Lakish was drinking at that time, according to others R. Itz'hak was then absent from college. The same was taught also by R. Menashia b. Zebid in

the name of Rabh. Said Rami b. Hama: How fair is this Halakha! Said Rabha to him: I do not see its fairness, since according to its theory the four kinds of bailees to whom a biblical oath applies find no practical illustration, for as any of them may say that such a thing (as claimed by the plaintiff) has never occurred, he may be trusted also in case when asserting that the thing has been robbed; and should you say that the object was deposited with such a bailee in the presence of witnesses, he could still say that he has returned it, and as he would be trusted when claiming that he has returned it ` he may likewise be trusted when he says that it has been robbed;

hence there can be here no case unless the plaintiff took a document on his deposit, as only in this case the bailee cannot assert that he has returned the object, for if he had done so he would have taken back the document. [(Says the Gemara): From Rabha's objection we see that both Rabha and Rami b. Hama hold that if one deposits an article in the presence of witnesses, the depositary is not bound to return it in presence of witnesses, while if deposited on a document the depositary must possess evidence that he has returned the deposit.]

Concerning this Rami b. Hama applied to R. Sheshith [I Sam. xxi. 13]: "And David took these words to his heart"; as R. Sheshith, when meeting Rabba b. Samuel, questioned him: Has the master learned something concerning an employee? And he answered: Yea; an employee, at the time of getting his pay, is to take an oath and then receive his pay. How so? If the employee claims: You hired me and did not pay; while the employer says: I hired you and paid you. However, if the former's claim is: You hired me for two zuz and gave me only one; while the employer says that he hired him only for one, then it is incumbent upon the plaintiff to bring evidence. Now, as in the last case the plaintiff is to bring evidence, it is to be assumed that in the first case there was no evidence required (hence, the above theory of Rabh and Samuel is overthrown). Said R. Na'hman b. Itz'hak (this is no objection at all): It may be that even in the first case there was some evidence, and the evidence in the last case is only required with regard to the collection of the payment from the employer, but concerning the oath the Boraitha did not care to teach.

R. Jeremiah b. Aba said: The college sent a message to Samuel, thus: Let the master teach us as to who is to swear in a case where the specialist says, "You have hired me for two zuz to repair something," while the employer says that he hired him only for one zuz; and Samuel answered: In such a case the employer is to swear and the employee loses the case, for as regards price once fixed people remember it well. But has not Rabba b. Samuel said above that in such a case the burden of proof lies upon the plaintiff, and as here he possesses no evidence he should lose the case even without any oath on the part of the employer? Said R. Na'hman: The above Boraitha is to be interpreted as teaching alternatively, *i.e.*, either the employee is to bring evidence and receive his pay, or the employer is to swear and former loses.

An objection was raised from the following Boraitha: If one has given his garment to a specialist for repair and thereafter they contradict each other concerning the price for labor and services, the law is thus: so long as the article is with the specialist the burden of proof lies on owner; and if it was delivered, the time of payment not yet elapsed, the specialist is to swear and then collect, but if that time has already elapsed, it remains for him as plaintiff to bring evidence. Thus we see that if within the time, the specialist is to swear and collect. Why let the owner

swear and the specialist lose? Said R. Na'hman b. Itz'hak: This Boraitha is in accordance with R. Jehudah, who holds that so long as the oath seems to rest upon the owner (and there is a partial admission on his part) the rabbis' enactment is that the employer shall swear and thereupon collect. But let us see which R. Jehudah is meant here? It can not be the R. Jehudah of our Mishna, as he plainly requires a partial admission; it must, then, be the R. Jehudah of the following Boraitha: So long as the time of payment has not elapsed, it is the employee that swears and collects, but after the expiration of said time it is for the employer to swear. Said R. Jehudah: Provided the employee claims fifty dinar for his work, and the employer claims to have already paid one gold dinar (= 20 silver dinar), or they contradict each other regarding the price; but if the employer claims that he has never hired him, or that he has paid his wages to the last pesuta, the burden of proof rests upon the plaintiff.

R. Sheshith b. R. Aidi, however, opposed thus: Would you say that a contradiction regarding the price is in accordance with R. Jehudah and not with the rabbis; bear in mind that where R. Jehudah is in our Mishna more rigorous (as he demands a partial admission) the rabbis are lenient; should the rabbis be more rigorous in the Boraitha where R. Jehudah is more lenient? But is it possible to explain the Boraitha in accordance with the rabbis, has not Rabba b. Samuel taught, in case of contradiction regarding the price, that the plaintiff is to bring evidence, which teaching could be neither in accordance with the rabbis nor with R. Jehudah? Therefore said Rabha: Their point of difference is as follows: R. Jehudah holds that, concerning a biblical oath which applies to the employer, the rabbis have enacted for the sake of the employee to reverse the oath to the latter, so that he may, upon swearing, collect; but where there is a rabbinical oath (as where there is no partial admission) which is

itself merely an enactment, they do not impose another enactment upon it; the rabbis, however, are of the opinion that the said enactment (that the employee swear) applies also to the case of a rabbinical oath, and as to the contradiction about the price, it may be said that, as a price usually remains in memory, the rabbis leave in this case the oath to the employer.

"*Entered his house to seize*," etc. But perhaps he has not taken any pledge? Has not R. Na'hman said that he who, hatchet in hand, says, "I will go to cut down the tree belonging to so and so," and thereafter the tree is found cut down, we nevertheless do not say that he did cut it down? Hence we see that a man may sometimes merely exaggerate or affect to do something and in reality does not do it; why then not say the same in our case? Read, then, in the Mishna that he actually did seize a pledge. But if so, let the witness testify as to what the pledge was? Said Rabba b. b. 'Hana in the name of R. Johanan: The Mishna speaks of the pledger as claiming that the defendant seized some small utensils which he concealed under his garments (so that the witnesses could not see them, according to Rashi; according to Tasspheth, however, plaintiff claims that the defendant took more than the part the witnesses could see).

R. Jehudah said: If witnesses saw one concealing utensils under his garments when coming out from a house, and he claims that he had bought them, he is not trusted (in case the owner of said house claims that he only loaned them to the defendant), provided the owner of the house was not wont to sell his utensils, but if he was so, the defendant may be trusted; and even in this case he is not trusted if such utensils are not as a rule to be concealed, but if they are so he may, again, be trusted; and even when they are not ordinarily hidden, but the defendant was of such a standing as would not allow him to carry things publicly, it may be assumed that such is his

usage and therefore he may be trusted. All this refers only to a claim of hiring and loaning; if, however, the claim concerns stealing, the plaintiff is not trusted when he makes one a thief who is not suspicious of being such (but the defendant has to swear that he bought them). Furthermore, even in the case where the defendant is not reliable he is not to be trusted only with regard to utensils not used for loan and hire, but in case the utensils are loaned or hired out, he is trusted; as concerning this R. Huna b. Abin once sent a message (see Middle Gate, p. 306 f).

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Rabha said: In case one was going to seize the goods of another, even the watchman of the house or his wife is trusted on an oath, and the defendant must pay. Questioned R. Papa: Is a laborer who was doing some work in the house at that time trusted in this case on an oath? This question remains undecided.

R. Yemar said to R. Ashi: If the claim is for a silver goblet, may the defendant be trusted with an oath or not? (and R. Ashi answered: We have to inquire into the position of the man; if he is wealthy or so much respected that people deposit with him valuables of this kind, he is trusted, otherwise he is not trusted).

"*How is it with the bruised*," etc. Said R. Jehudah in the name of Samuel: The oath applies only in such a case when the plaintiff could himself cause a wound, but if it was not possible for him to do so, he recovers his claim without an oath. But why not fear that he may have hurt himself against a wall or a stone? Taught R. Hyya: It speaks of this case, the wound is found on his shoulder or under the arm. But it may have been inflicted by someone other than the defendant? There was nobody else in the house.

"*Even for merely vain swearing*." Why even? It means to say: not only; *i.e.*, not only if suspicious of an oath where denial of money is involved, but also even if suspicious of such where only a denial of words is involved, he is not trusted. But if so, let an uttered oath, too, be taught? The Mishna teaches but oaths which are made falsely, while an uttered oath may be made for the future and may therefore be fulfilled. But again, let it include an uttered oath for the past? In teaching vain swearing it indeed includes all that is equal thereto.

"*A gambler in dice*," etc. To what purpose is this statement? The Mishna classifies first those who are unfit biblically and then also the rabbinically unfit.

"*In case both are suspicious*," etc. Rabha questioned R. Na'hman: How should we read in the Mishna, R. Mair holds, they divide or R. Jose holds so? Answered he: I do not know. How then shall the Halakha prevail? Answered he again: I do not know. However, it was taught that R. Joseph b. Miniumi said in the name of R. Na'hman that R. Jose was the one who said they divide; likewise taught R. Zebid b. Oshia, or R. Zebid in the name of Oshia. And R. Joseph b. Miniumi said that such a case happened in the court of R. Na'hman and the decision was to divide.

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"*The oath returns to its place*." To which place? Said R. Ami: According to our masters in

Babylon, it returns to its place, the Mount Sinai; and our masters in Palestine said: It returns to him who was obliged to take it (and as he cannot swear, he must pay). Said R. Papa: "Our masters in Babylon" means Rabh and Samuel--viz.: our Mishna states that orphans shall not pay without an oath, and it was discussed as to what it means: shall we assume that the orphans cannot recover from the borrower unless they take an oath; is this possible, since their father, if alive, could recover without an oath, why should they swear? It must then be explained to mean orphans that have to recover from other orphans; and both Rabh and Samuel said provided the lender died while the borrower was still alive, but if the borrower died first the lender was already obliged to swear in order to recover from the orphans of the borrower the latter's debt, and as a man cannot bequeath an oath to his children the oath returns to the Mount Sinai (*i.e.*, there is no oath here); as to the masters of Palestine, it is R. Aba in the case of a robbed piece of metal mentioned above and tried before him when he decided that as the defendant is obliged to swear but cannot, he must pay. Said Rabha: The Halakha seems to prevail with R. Aba; as it reads [Exod. xx. 10]: "The oath of the Lord be between *them*," etc., but not between their heirs. Now, let us see the nature of the case: if the heirs of the plaintiff claim that their father had a mana with the defendants' father and the others answer: We are aware that he had only fifty dinar, then it is a partial admission; what difference then is there whether the plaintiff himself or his heirs appear in the case? We must then say that the defendant orphans say that they are aware of fifty dinar, but are not aware of the other fifty dinar; now, if you say that such answer if put in by the defendant himself would oblige him to an oath, it is correct that the above-cited verse is needed to free the heirs from an oath; but if the defendant would not have to swear, then what is the verse for? Hence, whoever is obliged to swear but cannot swear (as in the case of the orphans) he must pay, as R. Aba decided in the case before him.

But what do Rabh and Samuel infer from the above-cited verse? What was said above by Simeon b. Tarfon: The verse comes to indicate that the oath rests upon both the contestants.

"*The storekeeper*," etc. There is a Boraitha: Rabbi said, why should these be troubled with an oath? Said R. Hyya to

him: We have learned that both the storekeeper and employees have to swear (the employees that they have not received goods in the value of such and such an amount on account of their employer; and the storekeeper that he has not yet been paid for the goods), and both storekeeper and employees collect from the employer. Has Rabba accepted R. Hyya's theory or not? Come and hear the following: Rabba said that the laborer has to take an oath that he has received nothing from the storekeeper; now, if Rabba had accepted R. Hyya's theory, it would have been stated here that the oath must be taken with reference to the employer. Said Rabha: This Boraitha intends to say thus: the laborer takes an oath with reference to the employer and in the presence of the storekeeper that he (the laborer) has taken nothing from the latter.

It was taught: If there were two parties of witnesses contradicting each other, each party may, according to R. Huna, appear and testify for itself (although either of the parties is surely false, for the court in default of evidence cannot decide which one is true or false). R. 'Hisda, however, maintains that we have nothing to do with false witnesses (and consequently neither party be trusted). Illustration: If there were two cases with two lenders, two borrowers, and two documents, and one witness of each of the two parties of witnesses was signed on the document of the other contestant, R. Huna and R. 'Hisda differ: according to former both the documents

are valid, and according to R. 'Hisda they are both invalid as they are both false. On the other hand, if there was but one lender with two documents against one borrower, all agree that the lender has to suffer; but if there were two lenders with two documents against one borrower, it is a case treated of in our Mishna--(viz.: the employees say they have received nothing and claim their pay from the employer, and the storekeeper asserts to have given goods to the employers and claims his pay also from the employer, in which case the Mishna decides that both the claimants swear and recover from the employer); but what is the law in case there were two borrowers and one lender with two documents signed by the two mutually contradicting parties of witnesses, according to R. Huna? Shall we assume that as there are two borrowers we should regard each of the documents as though it were the right one and collect thereupon the two, or as one of the documents is doubtless false the two should be regarded invalid? This question remains undecided.

"*If he said to the storekeeper: Give me fruit for a dinar*." There is a Boraitha: R. Jehudah said, provided the fruit is lying there in a heap and each of the parties is claiming that it is his, but if the customer has the fruit in his basket and put latter upon his shoulders the burden of proof lies upon the plaintiff.

"*If he says to the money changer*," etc. These two cases are necessary, since if only the former is stated, one might say that because fruit decays the storekeeper was in haste to put it into the basket for his customer before yet receiving the money; therefore he may be trusted; while, this not being the case with money, it is usual not to give the change before receiving the money, hence, the rabbis, too, would agree with R. Jehudah. On the other hand, if only the second case were stated one might say that only for this reason R. Jehudah differs with the rabbis, while concerning fruit he agrees with them, therefore the two cases are necessary.

"*And also the orphans*," etc. (This has been explained above to mean orphans versus orphans, and what Rabh and Samuel have to say on this point is all recapitulated.) This statement was sent to R. Elazar accompanied with the question as to the purpose of this oath, and he answered: The heirs have to take the usual oath of heirs (explained further on), and thereupon to collect the bequest. This statement was then again sent to R. Ami, who said: They do not cease sending questions again and again! If I found something worthy of notice in it, would I not notify you thereof, without waiting for your messages? However, continued he, as this question has reached us already yet we have to say something thereabout viz.: If the lender was already summoned and it was decided that he has to take an oath, and he died in between, so that he was already obliged to swear to the orphans of the borrower, and as one cannot bequeath an oath to one's children, they are free from oath; if, however, he has not yet been summoned, and hence not yet obliged to take an oath, the orphans of the lender have to swear the oath of heirs and thereupon collect the debt.

R. Na'hman opposed: Does the court find one liable to an oath? With the death of the borrower the lender is by law liable to an oath with relation to the heirs; therefore, said he, it depends on whether or no the law, laid down above by Rabh and Samuel, is established; if yes, they are free, if not, they have to take an oath and collect. We see from this that R.

[paragraph continues] Na'hman was in doubt; but has not R. Joseph b. Miniumi said above: that R. Na'hman decided in a similar case that the contestants divide? R. Na'hman's explanation here is in accordance with R. Mair, who holds, the oath returns to its place, but he himself holds with R. Jose: if one upon the death of his wife remarries and then dies, the widow and her heirs have the preference over the heirs of the first wife concerning their respective marriage contracts. We see then that the heirs collect without an oath? It speaks of the case they swore before dying. Come and hear the second part: But his heirs may adjure the widow, her heirs, and all empowered by her. (We see then that as his heirs may give an oath to her heirs, the widow who has not sworn has bequeathed, as it were, to her heirs the power of taking an oath, and this is objecting to Rabh and Samuel?) Said R. Shmaia: The Boraitha here speaks alternatively--viz.: his heirs adjure her if she was a widow, and they adjure her heirs if she was but a divorced woman (his heirs may adjure her though he himself could not have done so, as he gave her a document freeing her from all oaths). R. Nathan b. Hoshia, however, objected from the following: Preference was given to the son over his father, in that the son may collect from the orphans if he holds a document against the borrower, provided he has evidence that his father before dying told him that the document has not yet been paid, and if he has no evidence he has to swear to this effect; on the other hand, his father can under no circumstances collect without an oath; hence, the son may collect without an oath in relation to the defendant orphans, if the borrower died when the lender was still alive? Thus we see that it is in accordance with R. Simeon b. Gamaliel from our Mishna? Said R. Joseph: This Boraitha is in accordance with the school of Shamai, who holds that a document which is to be collected is to be regarded as already collected (as the estate is encumbered to the document), hence: the rule that the son collects upon presenting evidence of his father's statement.

R. Na'hman happened to be in Tura; both R.' Hisda and Raaba b. R. Huna came to visit him, and asked him thus: Let the master conjoin with us in nullifying the statement of Rabh. and Samuel; whereupon he answered: Have I troubled myself to make a journey of so many *parsas* to nullify the statement of these sages! It will suffice if I will agree with you not to add to their statement (*i.e.*, not to deduce therefrom any other cases). (Asks the Gemara): What other cases? *E.g.*, such as were

decided by R. Papa: He who impairs his document (by saying that he collected a part thereof), and thereafter dies, his heirs may take the oath of heirs and collect the money (which oath could not be taken according to Rabh and Samuel).

It once happened that *B*, who had borrowed money of *A* through a surety and on a document, died, *A* being still alive; thereafter *A* also died and his heirs claimed the debt from the surety. R. Papa, before whom the case was tried, was about to say that this is a case included in the decision of R. Na'hman that nothing be added to Rabh and Samuel's ruling, and in this case the heirs are to collect not from the orphans but from the surety. Said R. Huna b. R. Jehoshua to him: Are they indeed collecting from the surety for his debt and not for that of the orphans?

In another case the lender died childless, leaving a brother, and Rami b. Hama was about to say that R. Na'hman's decision includes this case, too. Said Rabha to him: Is there any difference between the heir's saying "my father told me" or "my brother told me"? Said R. Hama: As there is no ultimate decision as to whether the Halakha prevails with Rabh and Samuel or not, we should leave it to the judges; he who decides in accordance with Rabh and Samuel should not be

objected, nor should protest be raised against him who follows R. Elazar's decision as a precedent. Said R. Papa: If such a case happens in our court, we shall not destroy the document, nor collect it, for fear the Halakha may prevail with Rabh and Samuel; however, not destroy it, in order to give the contestant the benefit of doubt and enable him to bring his case in another court.

Once a judge followed in his decision R. Elazar; a young scholar interested in this problem came to the judge and told him that he is able to produce a letter from the west attesting that the Halakha does not prevail with R. Elazar; and the judge said to him: Well, produce the letter and we will then see. The scholar, however, came to complain in the court of R. Hama, and latter answered that it is already decided thus: He who follows R. Elazar's ruling as a precedent cannot be protested against.

"*The following have to swear*," etc. Does the Mishna speak of idiots? It means to say that these persons have to swear if they say they are not certain of the claim.

There is a Boraitha: The son of the house mentioned in the Mishna is not he who frequents the house, but he who is taking

care if the estate: he engages and discharges laborers, buys and sells, etc. And why should such persons take an oath? Because as a rule they allow themselves more than what is due to them. Said R. Joseph b. Miniumi in the name of R. Na'hman: Provided there was a denial made to the claim of two silver, according to the decision of Rabh.

"*If the partners and gardeners*," etc. The schoolmen propounded a question: May one include in a rabbinical oath a claim from another business? Come and hear: If one has borrowed on the eve of the Sabbathic year and at the end of the year he become the partner or gardener of the lender, no inclusion can take place in the partner-oath if he has to take such. Thus we see the reason here to be that he borrowed on the eve of the Sabbathic year as this year released him from the oath also, but in a simple year such an oath may be inclusive? Nay; do not say that in a simple year the oath may be inclusive, but if he becomes a partner or a gardener (of the lender) on the eve of the Sabbathic year and at the end of the same he borrowed money from him, he may in his oath include also the partner-oath from the Sabbathic year; as the second part of the Boraitha states it so plainly, hence, a rabbinical oath is inclusive.

R. Huna said: All the oaths are inclusive except the oath of an employee, as this oath is given merely for the purpose of gratifying the employer. R. 'Hisda said: No oaths are to be made lenient in this respect except the oath of an employee, toward which we have to act leniently. And what is the difference between these two opinions? The requiring by the court: according to R. Huna the court itself may declare the oath inclusive independently of the plaintiff, while according to R. 'Hisda the court has no jurisdiction unless the plaintiff requires so.

"*The Sabbathic year releases*." Whence is this deduced? From [Deut. xv. 2]: "And this is the *verbum* (*debar*) of the release," *i.e.*, it releases even words.

Next: Chapter VIII