

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING THE FOUR KINDS OF BAILEES: THE CONDITIONS UNDER WHICH THEY ARE TO PAY OR TO TAKE AN OATH.--WHAT IS AN UTTERED OATH, A VAIN OATH, A FALSE OATH.--CASES ILLUSTRATING THE VARIOUS CLAIMS REGARDING THE FOUR KINDS OF BAILEES.

MISHNA I.: There are four kinds of bailees: gratuitous, on hire, borrower, and hirer. The gratuitous bailee swears to every claim; the borrower pays every claim; the paid bailee as well as the hirer swears in case the cattle broke its leg or was seized or died, but both pay when it got lost or stolen. If one asks his gratuitous bailee: Where is my ox? He is dead, while in reality he is only leg-broken, or seized, or stolen, or lost; or he answers: He is leg-broken,, while in fact he is dead, seized or lost; or he answers: He is seized, while he is dead, leg-broken, stolen or lost; or he answers: He is lost, while in fact he is dead, leg-broken, seized or stolen, to which the other rejoins: I adjure you; and the answer is: Amen, he is free. Where is my ox? And the other one answers: I know not what you talk about, while in reality the ox is dead, leg-broken, seized, stolen or lost. I adjure you. Amen, he is free. But if he asks: Where is my ox? Lost. I adjure you. Amen, but witnesses appear to testify that he consumed him, he must pay the full value; if he confesses it of his own will he must pay the value plus one-fifth, and is to bring a trespass-offering. If he asks: Where is my ox? And the answer is: Stolen. I adjure you. Amen, and witnesses appear to testify that he himself stole the ox, he must pay double amount; on self-confession, however, he pays the value plus one-fifth, and brings an offering.

If one says to a man in the street: Where is my ox that you have stolen? And the answer is: I have not stolen, but witnesses testify that he did steal. him, he is to pay double amount; and if he has slaughtered or. sold him, he must pay four and five-fold. However, if, on noticing the approach of witnesses against him, he says: I have stolen him, but not slaughtered or

sold, he is to pay but the principal amount. If one asks the borrower: Where is my ox? And he answers: He died, while in reality he is leg-broken, seized, stolen or lost; or: Leg-broken, while he is dead, seized, stolen or lost; seized, while he is dead, leg-broken, stolen or lost; stolen, while he is dead, leg-broken, seized or lost; Lost, while he is dead, leg-broken, seized or stolen, whereupon the other one says: I adjure you, and the answer is: Amen, he is free. Where is my ox? I know not what you are talking about, while in fact the ox is dead, leg-broken, seized; stolen or lost. I adjure you. Amen, he is liable. If one says to a paid bailee or to a hirer: Where is my ox, and he answers: He is dead, while he is leg-broken or seized; Leg-broken, while he is dead or seized; seized, while he is dead or leg-broken; stolen, when he is lost or seized; lost, while he has been stolen, whereupon former: I adjure you. Amen, he is free. But if the answer be: He is dead, leg-broken or seized, while he has been stolen or lost, former: I adjure you. Amen, he is liable. But if he says: he has been stolen, or: lost, while he is dead, leg-broken or seized; I adjure you. Amen, he is free. This is the rule: Whoever tends to commutate, by his

oath, liability to liability, unliability to unliability, or unliability to liability, is free; but if liability to unliability, he is liable. This is the rule in brief: Whoever takes an oath in order to make his case lenient, is liable; but if *vice versa*, he is free.

GEMARA: Who is the Tana of the four classes of bailees? Said R. Na'hman in the name of Rabba b. Abuhu: It is R. Mair. Said Rabha to him: Is then there a Tana who does not hold so? And the answer was: I mean to say who is the Tana that maintains that the hirer of a thing is under the same rule with a bailee for pay? and this is R. Mair, according to Rabba b. Abuhu. But is there not a Boraitha that R. Mair holds a hirer under the law of a gratuitous bailee, and R. Jehudah is, the one who places him under the law of a paid bailee? Rabba b. Abuhu has reversed in the Mishna the order of the names (by tradition). But after all, according to both R. Mair and R. Jehudah there are but three classes of bailees, why then four in the Mishna? Said R. Na'hman b. Itz'hak, the Mishna means to say: There are four classes of bailees but their laws are three.

"*I know not what you talk about.*" Said Rabh: All the expressions "free" used in the Mishna free only from the liability of a trespass-offering, attaching to a depositary, but not from that of a sin-offering, attaching to an uttered oath. Samuel,

p. 108

however, maintains that it frees them even from the last. mentioned liability.

And what is here the point of difference? Samuel holds that as such an oath can not refer to the future, one is not liable even for the past; while Rabh does not share this opinion. But this their difference has already been pointed out above in connection with the oath made by *A* that *B* threw a stone into the sea, why then again? It was necessary, as in the case of throwing a stone Rabh holds *A* liable because he takes the oath on his own accord, but here, where the court compels him to swear, one might say that Rabh agrees with Samuel, which would be in accordance with R. Ami, who said elsewhere that one is not liable for an uttered oath when made by the judges, to swear; on the other hand, if only this were stated one could say that only in this case Samuel differs with Rabh, but in the other one he agrees with him.

What is the reason of R. Ami's statement? It is the verse [Lev. v. 4]: "Or any person swear," which means he swears voluntarily.

R. Elazar, however, said with reference to the expression "free" the Mishna uses: all are free from a depositary-oath but are liable for an uttered oath, excepting, however, the following: a borrower answering "I know not what you talk about," the paid bailee who claims stolen or lost, the hirer claiming stolen or lost, in which cases the Mishna makes them liable to depositary-oath, because here a denial of cash money is involved.

[Next: Appendix to Page 13](#)