p. 149

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE PAYMENT OF DOUBLE, AND FOUR AND FIVE COLLUSIVE WITNESSES; THE RAISING OF YOUNG CATTLE IN PALESTINE, ETC.

MISHNA. *I*: The payment of double (in cases of larceny) is more rigorous than the payment of four and five fold; for the former is applicable to animate as well as to inanimate beings, while the latter is applicable to an ox and a sheep alone, as it is written [Ex. xxi. 37]: "If a man steal an ox or a sheep, and kill it or sell it," etc.

The one who steals a stolen article from a thief does not pay double, neither does he pay four or five fold if he afterward slaughtered or sold it.

GEMARA: It does not state that the payment of double is applicable to a thief as well as to one who claims that the bailment was stolen from him, and the payment of four and five fold is applicable to a thief only. Shall we assume from this that this is a support to R. Hyya b. Aba, who said in the name of R. Johanan: One who avails himself, as regards a bailment, of the claim that it was stolen from him, pays double; if he slaughtered or sold it, he pays four and five fold? Does, then, the Mishna state, "there is no difference," etc., "and *only* in this case," etc.? It states only "is more rigorous" and mentioned only one, and did not care to enumerate all.

"*For the payment of four*," etc. Whence is this deduced? From the following Boraitha: The rabbis taught: It is written [Ex. xxii. 6]: "For all manner of trespass"--this is a *general term*; "for ox, for ass, for lamb, for raiment"--this is a *particular term*; "or for any manner of lost thing"--which is again a *general term*. It is, then, a general, particular, and again a general term, in which case it is construed to be limited to the particular term; and as the particular term states expressly a movable subject, the substance of which is counted as money (a value is put on it), so also the others mean only movable subjects the substances of which are counted as money,

p. 150

excluding land, which is not movable; slaves, who are likened to land; also documents, which, although movable, their substance is not counted for money; as well as consecrated articles, because the Scripture reads "his *neighbor's*." (The further discussion which follows here belongs to Mishna VI., Chapter IX. of this volume, and is to be found there.)

R. Ilaa said: If he stole a lamb and while in his possession it grew into a ram, or a calf and it grew into an ox, this is considered a (material) change while in his possession and he acquires title to it; and if he subsequently slaughtered or sold it, it is considered his own (and he is not liable to the payment of four and five fold). R. Hanina objected to him from the following: If he stole a lamb and it grew into a ram, or a calf and it grew into an ox, he is still liable to the

payment of double, and four and five fold, and the payment may be made in such cattle as they were at the time when the theft was committed. Now, if he acquired title by the change, why should he pay--did he not slaughter or sell his own? He answered: But what is your opinion--that the change does not acquire title? why, should he pay as at the time the theft was committed--why not their present value? He answered: Because he may say: "Did I then steal of you an ox? I stole of you a calf!" He rejoined: May the Merciful save us from such opinions! He retorted: On the contrary, may the Merciful save us from such opinions as yours.

R. Zera opposed: Let title be acquired (if not by the change in the body of the stolen subject) by the change in its name? Said Rabha: There was no change of name, for a calf one day old is already called "ox," as it is written [Lev. xxii. 27]: "When an *ox* or a sheep or a goat is *born*," etc., and so also a ram, as it is written [Gen. xxxi. 38]: "And the rams of thy flock have I not eaten." Did Jacob then mean to say that only, rams he did not eat, but lambs he did? Infer from this that a lamb one day old is already termed *ram*. But, in any event, is this not an objection to R. Ilaa? Said R. Shesheth: The, above Boraitha is in accordance with the school of Shammai, who hold that the change does not affect the title of the owner, as we have learned in the following Boraitha: If one give to a harlot as her hire wheat and she grind it into fine flour, or olives and she press them into oil, or grapes and she press them into wine--one Boraitha teaches that it is prohibited (to be used for an offering under Deut. xxiii. 19), and another Boraitha teaches

that it is permitted; and R. Joseph said that Gorion of Asphark explained the above, that those who prohibited their use are of the school of Shammai and those who permitted their use are of the school of Hillel. What is the reason of the Beth Shammai? Because it is written [ibid., ibid.]: "For *both* (••) of them," which means to include also their changed forms; and the Beth Hillel are not very particular about the word "both," and hold that it means only their original but not their changed form.

Now, let us see: The point of difference (between R. Ilaa and R. Hanina) is that one holds that the change does, while the other holds that it does not acquire title; but as to the payment, both agree that the original value must be paid, as further on the Boraitha teaches: He pays double, four or five fold, as at the time the theft was committed. Shall we assume that from this there is an objection to Rabh, who said above that where the principal only is paid the original value at the time the theft was committed is paid, but double, four and five fold, is paid as at the time of the *trial*? Said Rabha: If he makes restitution in specie, he returns lambs; but if he pays money, he pays their present value.

Rabba said: That a change acquires title is both written and taught: *Written* [Lev. v. 23]: "And he shall restore the robbed article [1] that he hath taken violently away." Why did the Scripture mention "that he hath taken violently away"? (is it not understood from the words "*robbed* article"?)--to teach that if it is still in the same state as at the time it was stolen it must be returned in specie; if not, money only shall be paid. *Taught*: if one robbed wood and made it into vessels, wool and made it into garments, he pays as at the time of the theft. "If he had not succeeded in giving it to him (to the priest, the first shorn wool) until he died he is free." Hence we see that change acquires title.

Resignation of hope (when an article was robbed or lost and its owner resigned his hope to

regain it), the rabbis said that it does acquire title for the robber. But we do not know whether they mean that it is so biblically, or rabbinically only. It may be said that it is biblically, because it may be equal to one who found an article of which its owner resigned his hope to regain it immediately after it was lost and before it reached the hands of the finder; and the same can be said of the robber that, when

the robbed one resigned his hope of regaining it immediately after he was robbed, the robber subsequently acquired title. On the other hand, it cannot be equalled to a lost article, for when it reached the finder he took it permissively, while the robber, when he took the article, committed a sin. Therefore biblically he never acquired title; but rabbinically it was enacted that he should acquire title for the benefit of those who might wish to repent (that they might be able to return its value). R. Joseph, however, says that resignation of hope does not acquire title even rabbinically (and the stolen article must be returned in specie), and he objected to Rabba from the following: If he stole leaven and kept it over Passover, he may say to the owner, "Yours is before you as it was" (although the owner can no more derive benefit from it, still the damage is not visible). Now, in this case it is certain that the owner has resigned his hope of regaining it, as it is of no value at all for him even if returned; and if this acquires title, why may he say to him, "Yours is before you"--did not the thief acquire title as soon as hope was resigned? And if he desires to repent, he ought to pay the full value in money? He answered: What I mean is, in a case where the one resigned his hope and the other desired to acquire title to it; but in your case, although the owner resigned his hope, the thief did not want to acquire title, as also to him it was of no value.

Rabha said: The discussion whether change in name or action, or resignation of hope, does or does not acquire title remained unexplained for twenty-two years, until R. Joseph became the president of the college, and explained that the change of name is equivalent to change in act, which surely acquires title, as the reason for both is the same. For instance, change in act--if he made vessels out of stolen wood, there is no more wood, but vessels, and at the same time the name was also changed; consequently the acquisition of title comes from both the change in act and in name. The same theory can apply to a thing where the change in act was slight, scarcely noticed; as, for instance, if he trimmed a hide into a horse-blanket, in which case the principal thing is the change in name; for before it was known as a hide, while now it is known as a horse-blanket, and title is acquired.

But is there not a case of a robbed beam which was built into a house--a case very similar to the above, and in which the principal change was in name; because before it was known as

beam and after as a roof, and nevertheless, if not for the rabbinical enactment for the benefit of those who might wish to repent, biblically he had to take apart the building and return the beam in specie? Answered R. Joseph: In this case there was no change in name, as it was called a beam even after being built into the house (as all the beams together are called a roof, but each one separately still retains the name beam; and we so find it in a Boraitha elsewhere).

R. Zera says: Even if the beam in question does no more retain its original name when built into

the roof, it would still not be considered a change; for as soon as the building is taken apart the original name "beam" is used again, while in the case of the hide, as soon as it was changed into a horse-blanket, it will never be called "hide" again.

R. Hisda in the name of R. Jonathan said: Whence is it deduced that a change does not acquire title? It is written [Lev. V. 23]: "And he shall return the stolen article," which means in specie under all circumstances. But is it not also written "that he hath taken violently away" (which may be explained to include the value thereof)? This verse is needed to deduce from it that he pays an additional fifth part for his own theft, but not for that of his father (as will be explained in Chapter IX.).

Ula said: Whence is it deduced that resignation of hope to regain property does not acquire title? It is written [Mal. i. 13]: "And ye brought what was robbed, and the lame, and the sick"--that means that "what was robbed" is equal to the lame in this respect, that as the lame cannot be remedied neither can robbery, no matter whether before or after resignation of hope. Rabha deduced this from the expression [Lev. i. 3] "*his* offering," which means but not what was robbed. If before resignation of hope, it is self-evident--why, then, the verse? We must therefore say that it means even after resignation. Infer from this that resignation of hope does not acquire title.

"*And the payment of four*," etc. Why so? Let it be deduced by an analogy of expression of the word "ox" mentioned here and "ox" mentioned in regard to observation of Sabbath; as there "ox" includes beasts and birds, so also here? Said Rabha: The verse says here [Ex. xxi. 37]: "An ox or a sheep twice, to teach it of only those two, but no others.

"*The one who steals*," etc. Rabh said: This was taught only before resignation of hope; but if after that the first thief

acquired title, and the second thief must pay him double. Said R. Shesheth: "I would say that Rabh said this while he was napping, for we have learned: R. Aqiba said: Why did the Scripture say that if he slaughtered and sold it he must pay four and five fold? Because the sin was deeply rooted in him (and he acquired title to it by his acts). Now, let us see. When? If before resignation, what deep-rooting is there? (he has not acquired title and his acts helped nothing, as no one holds that title is acquired before resignation of hope). We must therefore say that it was after resignation. Now then, if resignation acquires title, why should he pay four and five fold--did he not kill or sell his own? It may be explained as Rabha said (that he must pay four and five fold even before resignation of hope, and the reason is) because he repeated his sin.

(An objection was raised.) Come and hear: It is written [Ex. xxi. 37]: "And kill it, or sell it"; as if killed it can no more return to life, so also in case of sale it must be such that it should not return again. When? If before resignation, it does return? We must therefore say that it relates to after resignation. Now, if resignation acquires title, why should he pay four and five fold--was it not his own when he slaughtered or sold it? It is as R. Na'hman said elsewhere, that even before resignation of hope, if the thief hired it out to a third party for thirty days, although the thief had no title to it, still his act of hiring was valid. So also can our case be explained.

It was taught: One who sells before resignation of hope to regain it, R. Na'hman says that he is liable to pay four fold because he sold it; and the Scripture holds him liable to pay whether before or after resignation. R. Shesheth says that he is free, because it cannot be called sale when the sale is invalid; and therefore his acts were of no effect, and the liability is only where his acts are of effect, as in case of slaughtering. So also was R. Elazar's opinion, that it means after resignation of hope. As R. Elazar said: It must be declared that resignation of hope to regain stolen property comes generally immediately after the occurrence of the theft (and if the thief sold it, his act is valid, because there were both resignation of hope and change of control); and this theory is supported by the Scripture, which holds the thief liable to the payment of four and five fold without fear that the owner might have not resigned his hope; and this is only because generally hope is resigned immediately after the occurrence of the theft. But perhaps the Scripture means even

before resignation of hope? This would not be correct, for sale and slaughtering are written together; and as in case of slaughtering his acts are accomplished and cannot be undone, so also in case of sale. But perhaps this is so when we know for certain that he has resigned his hope? This also would not be correct, for the same reason that sale and slaughtering are written together; and as in case of slaughtering there is no difference whether before or after resignation of hope, so also is the case with sale. Said R. Johanan to him: The case of kidnapping [Ex. xxi. 16], in which there is surely no resignation of hope, for no one gives up hope in such cases, and still the Scripture makes him guilty, can prove that the Scripture does not require any resignation of hope. [From this we see that R. Johanan holds that he is liable before resignation of hope.] But what is the law after resignation of hope? (Does he agree with Rabh's opinion stated above?) Nay, he holds him liable whether before or after resignation of hope. Resh Lakish, however, holds him liable only before resignation of hope but not after that; for after resignation he acquired title, and if he killed or sold it he did so to his own.

R. Johanan said: A stolen thing of which the owners have not resigned hope to regain it cannot be consecrated. By the owner thereof, because it is not under his control; and by the thief, because he has no title thereto. Did, indeed, R. Johanan say so? did not R. Johanan say that the Halakha always prevails according to an anonymous Mishna, and there is a Mishna [Second Tithe, Chap. V., M. 1]: A vineyard in the fourth year of its planting (the fruit of which must first be redeemed before using it) used to be marked with clods (of earth), and this was a sign that benefit might be derived from it after being redeemed, as benefit may be derived from earth. In the third year of its planting, however, in which the fruit must be destroyed without deriving any benefit at all from it, it used to be marked with fragments of broken clay vessels, for a sign that as from such fragments no benefit can be had, so also none must be had from the fruit. Graves used to be marked with limestone (to warn passers-by not to step on them lest they become unclean), which is white, for a sign that therein were interred (human) bones, which are also white; and the limestone was dissolved and spread upon the graves, to be more visible. R. Simeon b. Gamaliel, however, said that the vineyards used to be marked in the Sabbatical year only, because the fruit was

considered ownerless, and therefore warning had to be given not to use it (because of the third and fourth years); but in other years, when the fruit must not be used without the permission of

the owner, it was not marked, but, on the contrary, let the wicked thief eat of it, and suffer the consequences.

The pious man, however, used to place money in the vineyard, declaring: "All that is plucked and gathered of this fruit shall be redeemed by this money." (Hence we see that although not under his control, still it is redeemed--how, then, can R. Johanan say that neither can consecrate a stolen thing?) But lest one say that the above statement regarding the pious one is not anonymous, but is the continuation of the statement of R. Simeon b. Gamaliel (even then R. Johanan would contradict himself), as Rabba bar bar Hana said in his name, that wherever the teachings of R. Simeon b. Gamaliel are mentioned in our Mishnayoth the Halakha prevails according to him, except in three cases? (which are enumerated in Sanhedrin), it may be said: Do not read, The pious man used to place money in the vineyard, declaring, 'All that was plucked,' etc., but read, 'All that *will* be plucked,' etc. (*i.e.*, that the money was placed when the fruit was still attached to the trees, and as in the Sabbatical year all fruit is ownerless, the one who plucks and gathers it becomes its owner and at the same time the money placed there redeems it)." But, after all, could, then, R. Johanan say so--did he not say elsewhere that the declaration of the pious ones and of R. Dosa were of one and the same theory, and in the declaration of R. Dosa it is plainly stated "that *was* plucked," as we have learned in the following Boraitha: R. Jehudah said: In the morning the owner of the ground gets up and says, "All that the poor will pluck and gather to-day is hereby declared ownerless." R. Dosa said: The declaration is made toward evening, and thus: "All that the poor *have* plucked and gathered is hereby declared to have been ownerless"? Change the names in the Boraitha, and read instead of R. Dosa R. Jehudah, and instead of R. Jehudah R. Dosa. Why do you declare that Boraitha incorrect--better correct the statement of R. Johanan and place R. Johanan instead of R. Dosa? It may be said that the names in the Boraitha must be changed in any event, for from this Boraitha is to be inferred that R. Jehudah holds to the theory of choice, [1] and it is known from his statements elsewhere

that he does not hold this theory. But, after all, why do you change the names in the Boraitha--because it would be a contradiction between one statement of R. Jehudah and another one? There would be the same contradiction between one statement of R. Johanan and another, as it is known that also R. Johanan does not hold to the theory of choice [and if we should make his declaration read, "that what the poor *will* gather," it would show that R. Johanan does hold to the theory of choice (as the declaration is made previous to the gathering of the fruit, and whatever had been gathered by the poor had been chosen previously in his mind)]. As R. Assi said in the name of R. Johanan: "Brothers that have partitioned among themselves estates that they inherited, they are considered as vendees, and the estates return in the jubilee year" (and we do not say that the part which came to him by partition was chosen previously to be his part of the inheritance, which, according to the biblical law, does not return; hence he does not hold to the theory of choice?). Therefore R. Johanan's statement above remains unchanged, but his statement that stolen property cannot be consecrated, etc., is based upon our Mishna (*supra*, page 149), which states, "The one who steals a stolen article from a thief does not pay double" (which is anonymous). And why so? It would be correct that he should not pay to the thief, for it is written [Ex. xxii. 6]: "And it be stolen out of the *man's house*," but not of the house of the *thief*. But why should he not pay it to the *owner* of the property? We must say, then, that to the thief he does not pay because it was not his, and not to the owner because it was not under his control; and this is the very statement of R. Johanan. But still, why should he adopt

this anonymous Mishna and ignore the *other*--why not adopt the anonymous Mishna which treats of the pious ones? Because for this statement support can be found in the Scripture [Lev. xxvii. 14]: "And if a man sanctify his house as holy unto the Lord," from which is to be deduced that as "his house" is under his own control, so also other things which are under his own control (but not otherwise).

Abayi said: If it should not be said in the name of R. Johanan that "the pious" and R. Dosa are of the same theory, I would say that the pious ones hold to the theory of R. Dosa, but R. Dosa does not hold to the theory of the pious ones, viz.: The pious ones hold to the theory of R. Dosa because they arrived at their decision to make such declaration by drawing

the following *a fortiori* conclusion: A thief who has committed a sin, the rabbis made an enactment for him not to pay double (to enable him to repent and to make restitution); so much the more an enactment must be made for the poor (to prevent them from sin). R. Dosa, however, does not concur with them, for according to him the rabbis made their enactment for the poor only and not for the thief (and the law that the thief must not pay double to the first thief is not an enactment of the rabbis but a biblical law). Said Rabha: Were it not for the above statement of R. Johanan that the pious ones and R. Dosa, etc., I would say that under "the pious ones" R. Meir is meant, because did not R. Meir say elsewhere that second tithe is consecrated property, and nevertheless as regards its redemption the Law considers it as if it were under the owner's control? [1]

The sages of Nahardea said: No writ of replevin of personal property is granted by the court, the bailee of which denied its possession before the court. This is so when the bailee denied its possession, for it would look as if the court issued a writ the execution of which was not certain; but when he admitted possession but not ownership by the plaintiff, a writ might be issued. The same said also: A writ of replevin which does not contain the following direction: "Investigate, take possession, and retain it for yourself," is invalid; for the bailee can say to him, "The property is not assigned to you, and you are not the proper party plaintiff." Said Abayi: If the direction is contained, but it states only as to part of it, the bailee cannot say that he is not the proper party plaintiff; for if part is assigned to him by the court, he has authority to replevy the whole. Said Ameimar: If the writ did not contain the above direction, and nevertheless he took possession of it, the court cannot compel him to return it. (Rashi explains that according to other commentators it means that if the messenger of the court who executed the writ of replevin has kept the property for himself for a debt due him from one of the parties to the litigation, the court cannot compel him to give it up. Rashi approves of this explanation, saying that he found it in the Decisions of the Gaonim.) R. Ashi, however, says that the court has the right to compel him to return it, because when

the court appointed one to execute its mandates it was upon the written condition that he should obey all the orders of the court; consequently he is only a messenger of the court and he has no right to keep it for himself. And so also the Halakha prevails.

MISHNA *II*.: If two witnesses testify that one stole (an ox or a sheep), and either the same or

other witnesses testify that he slaughtered or sold the same, he must pay four and five fold. If one stole the same and sold it on the Sabbath, or he stole and sold it for idolatry; or he stole and slaughtered it on the Day of Atonement; or he stole from his father and slaughtered and sold it, and thereafter his father died; or he stole and slaughtered it and then consecrated it-in all those cases he pays four and five fold. The same is the case if he stole and slaughtered it in order to use it as a medicine, or to feed his dogs therewith; or he slaughtered it and it was found unfit for eating (*trepha*); or he slaughtered it in the Temple court without consecrating it as an offering. R. Simeon, however, makes him free in the two last-named cases.

GEMARA: "*If he stole and sold it on the Sabbath*," etc. But have we not learned elsewhere that in such a case he is free? Said Rami b. Hama: The Boraitha which says that he is free from the payment of four and five fold treats of a case where the thief sold the stolen property to the owner of a garden and received in payment figs which the thief himself plucked on Sabbath (and thus incurred the penalty of capital punishment, and there is a rule that where there is capital punishment there can be no mention of civil liability). But it may be said that such must not be considered a sale. For if, for instance, the owner of the garden should claim before the court that he has not received from the thief the value of the figs, we would not make him liable to pay for the figs as he has committed a crime, and the above maxim applies also here; consequently there was no sale.

Said Rabha: Even in a case where the court would not entertain the plaintiff's complaint, the sale would still be called a sale as regards the same required by Scripture. As, for instance, the law prohibits the hire of a harlot, even if she was his own mother (and he promised her a sheep as her hire). Now, if she would sue him before a court for failing to pay her the hire, would the court then direct him to pay it--and nevertheless if he had given her the sheep it would be called "harlot's hire" and its use would be

prohibited? The same is the case here: although as regards the enforcement of payment of the claim the court would not interfere, still, because he transferred it to him in this manner the sale is valid.

"*If he stole and sold it on the Day of Atonement*," etc. Why so? It is true that there is no capital punishment; but is he not liable to punishment by stripes--and there is a rule that he who is punished by stripes is free from payment? It may be said that it is according to R. Meir, who holds that stripes do not absolve from civil liability. If so, then let him also be liable if he slaughtered it on the Sabbath. And lest one say that R. Meir holds only that stripes do not free from payment but capital punishment does, have we not learned in the following Boraitha: If he stole and slaughtered it on the Sabbath . . . (although he incurs the death penalty) he pays four and five: such is the dictum of R. Meir. The rabbis, however, make him free? Said the schoolmen: Leave the Boraitha alone, as it was taught in regard to the same: R. Abin, R. Ilaa, and the whole society said in the name of R. Johanan that the Boraitha treats of a case where he slaughtered it through an agent. But is there, then, a case where one commits a transgression and another is liable for it (have we not a rule that there is no agent to commit a sin)? Said Rabha: The case here is different, for the verse reads [Ex. xxi. 37]: "And kill it or sell it." As in case of sale there must be another person (to buy it), so also in case of slaughtering, when it was slaughtered by another under his direction. The school of R. Ishmael inferred this from the additional word "or"; the school of Hezkiah inferred it from the word "for" used in that verse.

Mar Zutra opposed: Is there, then, a case where one, if he did it himself, would not be liable, but if he did it though a messenger he would be liable? Said R. Ashi to him: There the reason is not because he is not liable, but because he is guilty of a capital punishment, and the above rule applies. Now, when you say that the above Boraitha treats of a case where he slaughtered it through a messenger, why do the rabbis make him free of four and five fold? The schoolmen explained that by the "rabbis" mentioned in the Boraitha in question is meant R. Simeon, who holds that slaughtering which is not legal is not called slaughtering in accordance with the requirements of the Scripture.

"*If he stole from his father*," etc. Rabha questioned R. Nahman:

[paragraph continues] If he stole an ox belonging to two partners and slaughtered him, and then he confessed to one of the partners, what is the law? Shall we say that the Scripture [Ex. xxi. 37] meant five *whole* oxen, but not *half* oxen (for every partner has a right only to one-half of each ox), or shall we say that in "five oxen" the halves arc included? He answered him: The Scripture reads "five (whole) oxen," and not *half* oxen. He objected: It states further: "If he stole from his father and slaughtered or sold it, and thereafter his father died (and the thief became one of the heirs), he pays four or five." Now, when he is one of the heirs, is this not equal to the case where he confessed to one partner (and this makes him free entirely for the above reason--"an ox" and not "a half ox"; and the same ought to be here, because he is an heir, and the payment of a "whole" ox does no longer hold)? He answered him: The case here was that his father before he died laid already the matter before the court. But how is it if he had not laid the matter before the court--does he not pay? If so, why should it state in the latter part, "If he stole from his father and he died, and thereafter he slaughtered or sold it, he does not pay"? Let the Tana distinguish in the very first case, thus: This was said only where the deceased laid the matter before the court; but if he had not yet done so, he does not pay? He rejoined: It is really so; but because it states in the first part, "If he stole from his father and slaughtered it, and thereafter the father died," it also states in the latter part, "If he stole from his father, who soon died, and thereafter he slaughtered or sold it." On the next morning R. Nahman said to Rabha: (I have reconsidered the matter, have changed my mind, and came to the conclusion thus:) In the expression "five oxen" halves are included, and what I told you last night was said without careful deliberation. But what difference is there between the first and the last part (why does the latter part make him free)? He answered: The Scripture reads, "*and* killed it," which means that as the stealing was in transgression, so also ought to be the killing, as is the case in the first part. In the latter part, however, the killing was no more in transgression, as it belonged to him.

"*One who slaughtered*," etc., "*and it was found unfit*," etc. Said R. Simeon in the name of R. Levi the elder: It is considered slaughtered only when the act is fully accomplished. R. Johanan, however, says: It is so considered from the very beginning. Said R. Habibi of Husnahah to R. Ashi: Shall we assume that R. Johanan holds that the prohibition to use meat

of cattle slaughtered in the Temple court, which was not consecrated as an offering, is not biblical? (See Kiddushin, p. 58.) For if it is biblical, as soon as the act of slaughtering began it became a forbidden thing from which no benefit must be derived, and the remainder of the act

was carried out on what belonged no more to the owner-why then is he liable to pay four and five fold? Said R. A'ha the son of Rabha to him: The liability is incurred from the very beginning of the act. Said R. Ashi: This is no answer, for it reads "and kill it," which means the fully accomplished act, which would not be so in this case. But then the above question remains? He rejoined: So said R. Gamda in the name of Rabha: The liability is incurred in case he cut part of the trachea and gullet outside, and the remainder of same inside the Temple court (in which case there is the fully accomplished act before it became a prohibited thing).

MISHNA III.: If two witnesses testify that one stole an animal, and those very same witnesses testify that he had thereafter slaughtered or sold it, and subsequently those witnesses are proved collusive, the collusive witnesses must pay the full liability of four and five fold. If two witnesses testify that he stole it and other two testify that he slaughtered or sold it, and both sets of witnesses are proved collusive, the first set pays the double and the second set pays the balance of the five. If the second set is found collusive, the thief pays for two and the collusive witnesses for three. If only one of the second set is proved collusive, the whole testimony of the second set is invalidated. If one of the first set was found collusive, the whole testimony in the case was invalidated; for if there is no theft, there can be no (liability for) slaughtering or selling.

GEMARA: It was taught: A collusive witness--Abayi said that he is considered such from the date on which he gave the collusive testimony (and all the testimony he gave since then is incompetent); for as soon as he gave the collusive testimony he was considered wicked, and it is written [Ex. xxiii. 1]: "Put not . . . wicked to be a witness." Rabha says that he is considered such only from the date on which he was proved collusive; for a collusive witness is an exception in the law, for they are two against two. Why, then, give more veracity to the latter two than to the former? Therefore the law applying to a collusive witness begins only from the date on which he was proved such. According to others, Rabha agrees with Abayi that he is considered collusive from the date on which the testimony

was given; but in case they have in the meantime signed their names to a bill of sale, Rabha does not hold the conveyance invalid, in order that the grantee should suffer no damage. In which case can there be a difference in those two versions? In case two witnesses proved the collusiveness of one and two others proved the collusiveness of the other, or that their testimony was made incompetent by other witnesses testifying that they were robbers: according to the first version the reason of Rabha is because it is an exception. Here there is no exception, because there are four against two; consequently Rabha would agree with Abayi that all their testimony given in the meantime is invalid. According to the others, who say that the reason is that the grantee shall suffer no damages by invalidating the conveyance, there is no difference whether there were two or four. R. Jeremiah of Diphthi said: There happened a case and R. Papa acted in accordance with Rabha. R. Ashi, however, said that the Halakha prevails according to Abayi. There is a rule that always the Halakha prevails according to Rabha when he differs with Abayi, except in the six cases, the case at bar being one of them.

There is an objection from our Mishna, which states: "If two witnesses testified that he stole an animal, etc., they pay the full liability." Shall we not assume that they at one time testified as to the theft and at another time as to the slaughtering, and then they were first proved collusive as to the theft and subsequently as to the slaughtering? Now then, if they were considered collusive from the date on which they gave the collusive testimony, as soon as they were proved collusive

as to the theft, it was established that their testimony as to the slaughtering was incompetent, and why should they pay for the testimony of the slaughtering? It may be explained that the case was that they were proved collusive as to the slaughtering first. But still, when they were subsequently proved collusive as to the theft it was established that they were incompetent, and why should they pay for their testimony of slaughtering? The Halakha prevails that the Mishna treats of a case where their testimony was given at one and the same time, and subsequently they were proved collusive.

Rabha said: Witnesses that testified that one has committed murder and the court found the accused guilty on their testimony, and two other witnesses subsequently denied the testimony, and still another set of two witnesses testified that the first two

were with them at another place at the alleged time of the murder (*alibi*), which testimony makes them collusive (according to Scripture), they must suffer the death penalty, for denial is the beginning of collusion which is subsequently proved by the last witnesses. And he said again: My theory is based upon the following Boraitha: "If two witnesses testify that a certain person blinded his slave's eye and thereafter knocked out one of his teeth, and they also testify that the owner of the slave admitted it, and subsequently the witnesses are found collusive, they must pay to the slave the value of the eye." Now, how is the case? Shall we assume that it was as stated without any other set of witnesses to deny the former testimony, and the slave was manumitted on their testimony, then the expression ought to be "and they pay to *him* (instead of 'to the slave,' for he was already manumitted) the value of his eye, and to his master the value of an uninjured slave"? Another proof is that the case is that there was no denial--that they also testify that the owner admitted it, for what purpose it this? We must therefore say that another set of two witnesses testify that he knocked out one of his teeth first, and then blinded his eye, in which case the owner must pay him the value of the eye; then came a third set of witnesses and testified that he *first* blinded his eye and *then* knocked out his tooth, in which case the owner must pay him only the value of the tooth, because there is a contradiction between the first and the middle sets, and the statement that the owner admitted it means that he is more satisfied with their testimony, as he has to pay only the value of a tooth, and the statement that they were found collusive has reference to the middle set, and nevertheless it is stated that they must pay the slave the value of the eye, hence that denial is the beginning of collusion. (For if it is not, why should the law of collusion apply to them after their testimony became incompetent?) Said Abayi: Nay, not as you say, that because if there would be three sets of witnesses, as soon as the middle one was denied by the first one the third set could not make it collusive. The case, however, was that the set which became afterwards collusive is the first set, and your proof from the fact that the Boraitha does not state that the collusive set has to pay to the master can be explained thus: The second set did not deny the fact, but only reversed the order, *i.e.*, they say to the first set, "On that day on which you claim that the master had blinded his eye," etc., "you were with us and you could not witness the crime; but we did witness on another day that the master first

knocked out his tooth and then blinded his eye." And therefore the Boraitha does not state that they must pay the value of the slave, etc., because the slave becomes free even on their testimony; and I take this from the last part of the same Boraitha: "We testify that a certain

person knocked out his slave's tooth and blinded his eye, and this is just as the slave says, and thereafter they were proved collusive, they pay the value of the eye to the owner." Now, how was the case? If the second set does not admit any wounding at all, then the first set must pay to the owner the value of the whole slave. It is therefore apparent that all admit that he wounded him, but that they reverse the order of the wounding, and thus prove them collusive. Now, as the last part treats of a case where they became collusive through the reversal, the first part must also treat of a similar case. (Says the Gemara:) After all, let us see how the case was: If the second set testify that it happened on a later date, then the first must still pay the full value of the slave, because on the day on which they testify it happened the slave had not to be manumitted? We must therefore say that the second set testify that it happened on an earlier date. But still, even in such a case, if the slave had not summoned him to court before the testimony of the first was given, they must still pay the full value of the slave; for before their testimony the owner was not subject to liability (to manumit the slave)? It must therefore be said that the case was after judgment was given.

R. Zera opposed: Whence do we know that money must be paid? Perhaps when he only blinded his eye he is manumitted because of that, if when he only knocked out one of his teeth he is manumitted because of that, and when he did both-blinded his eye and knocked out one of his teeth-he is also only manumitted and no money is paid. Said Abayi: As to your question, the verse reads, "for the sake of his tooth," which does not mean for the sake of his tooth *and* eye; and also "for the sake of his eye," which does not mean for the sake of his eye *and* tooth.

Regarding witnesses whose testimony was first denied and then proved collusive (as to which Abayi and Rabha differ above), R. Johanan and R. Elazar also differ: One holds that they are put to death, the other holds that they are not. It may be inferred that the one who holds that they are not put to death is R. Elazar, for he said elsewhere that witnesses whose testimony was only denied (but not proved collusive), in a case in which human life was involved, have to stiffer the penalty of

stripes. Now, if we should assume that R. Elazar is the one who holds that they have to suffer the death penalty if proved collusive, why should they be punished with stripes in case their testimony was only denied? is it not a "negative process" that entails the death penalty by the court, and in such cases no stripes are administered? We must therefore say that it is R. Elazar who holds in the above Boraitha that they have not to suffer the death penalty.

"They are punished with stripes." Why so? Are they not two against two? Why should more credence be given to the one set than to the other? Said Abayi: The case is that the supposed murdered person appeared in court alive.

MISHNA *IV*.: If two witnesses testify that he stole it, and one witness, or he himself, testifies that he slaughtered or sold it, he pays only two, but not four and five fold. If he stole and slaughtered it on Sabbath, or sold it for purposes of idolatry; if he stole it from his father and this latter died, and subsequently he slaughtered or sold it; if he stole and consecrated it, and thereafter slaughtered or sold it--in all those cases he pays only double and not four and five fold. R. Simeon says: If one stole consecrated cattle for which the one who consecrated them is responsible, and slaughtered them, he must pay four and five fold; if, however, it is that for which he is not responsible, the thief is free.

GEMARA: The Mishna states, "If one witness," etc. Is this not self-evident? It may be said that it means to teach us that when he himself admits that he slaughtered, it is equal to the case where one witness testifies; as in the latter case, if thereafter another witness conies and testifies to the same thing, their testimony is taken together to make up the requisite number of witnesses, so also in this case the testimony of another witness is added to his own, in opposition to what R. Huna said in the name of Rabh, that one who admits to the court that he has incurred the liability to pay a fine and thereafter witnesses appear, he is free. R. Hisda objected to R. Huna's statement from the following: It happened that R. Gamaliel blinded the eye of his slave Tabi and he was very glad of the occurrence. When he met R. Jehoshua, he said to him: Do not you know yet that my slave Tabi is manumitted because I blinded his eye? Said R. Jehoshua to him: Your statement does not make him free, for he has no witnesses. Hence we infer from R. Jehoshua's answer that if there appear witnesses after an admission of the

incurrence of the liability to pay a fine, the latter must be paid? He answered him: The case of R. Gamaliel is different, for he had not admitted it before the court. But was, then, R. Jehoshua not the president of the court? Yea, but it was not during the session of the court, but only as to a private person. But have we not learned in another Boraitha that what R. Jehoshua said to him was: This is nothing, for you yourself admitted it (from which is to be inferred that even if witnesses appear thereafter he is also free)? And is it not also to be assumed that the reason for the different statements of the Boraithas is: The Tana who says that he told him, "because he has no witnesses," holds that if witnesses should appear after the admission the slave would be liberated, and the Tana who says that R. Jehoshua told him, "because you already admitted," means to say that after admission the testimony of witnesses is of no avail? Nay, all agree that witnesses who appear after an admission count nothing; but the point of difference is this: The one who says, "because he has no witnesses," means that it was not before the court, and the one who says, "because you already admitted," means that he had done so before the court.

It was taught: "One who admits that he has incurred the liability of a fine and thereafter witnesses appear, Rabh says that he is free. Samuel, however, says that he must pay." Said Rabha for Ahilai: The reason of Rabh's theory is because in the verse [Ex. xxii. 31 the word "found" is repeated twice, which means that if it should be "found" by testimony of witnesses, he should be "found" (liable to pay the fine) by the court, excluding the case of self-incrimination. But is this not deduced from the verse [ibid., ibid. 8]: "And he whom the *judges* may condemn"? We must therefore say that the first-quoted verse means to exclude the case where one admits his liability to pay a fine and thereafter witnesses appear.

What does Samuel deduce from this verse? He deduces that the thief himself must pay double, as it was taught in the school of Hezkiah that the double payment applies only when he himself stole it, but not where he claims that it was stolen from him. Rabh objected to Samuel from the following: If on seeing that witnesses were coming the thief admits the theft, but denies the slaughtering, etc,, he pays only the principal. (Hence we see that if he admits before witnesses appear he is free from the payment of double, which is a fine?) He answered him: The case is, that the witnesses withdrew and did not appear. But since it

states in the last part: "R. Elazar b. R. Simeon said: Let witnesses come and testify (after he admitted, so that the fine should be paid)," it is to be inferred that the Tana of the first part holds that he is not liable (although the witnesses came and testify?) Said Samuel: The very same R. Elazar b. Simeon quoted by you, who holds as I do, is the basis of my theory.

According to Samuel, surely Tanaim differ (and the Tana of the first part cannot be explained to be in accordance with him); but according to Rabh is it to be assumed that he explains Elazar's statement to be in accordance with him, namely: Elazar's statement was only where he admits for fear of witnesses; but where the admission is made without such fear, even he would concede that he is free? (Yea, so it is.) Said R. Hamnuna: It seems that Rabh's theory is applicable to the following case: If one confesses to theft and thereafter witnesses testify to the same, he is free from fine, for by his confession he made himself liable to pay the principal; but when he first denies, and after witnesses testify that he committed the theft he confesses to both the theft and the slaughtering, he is liable to pay four and five fold, for he sought to free himself entirely. Said Rabha to him: By your statement you caused grief to all the elders of the college: Did not R. Gamaliel by his confession, "I have blinded the eye of my slave," make himself free from fine, and still R. Huna, who was objected to from this fact by R. Hisda, did not give the reason stated by you (and R. Huna was an actual disciple of Rabh? hence, your statement is not correct)? (Notwithstanding the objection of Rabha, it was taught by R. Hyya b. Aba in the name of R. Johanan exactly as stated by R. Hamnuna.)

Said R. Ashi: From both our Mishna and the above-quoted Boraitha it is also to be inferred that R. Johanan's statement is correct, viz.: The Mishna, viz.: "If two witnesses testify that he committed the theft," etc. Why should it not better state: "If one witness or he himself testifies that he stole and slaughtered it, he pays only the principal" (for all what the Mishna means to teach us is that one's own confession frees him from the payment of fine; and if it should state as just mentioned, it would also include the payment of four and five fold)? We must therefore say that the Mishna comes to teach that only in case he did not make himself liable even for the payment of the principal, as e. g. that witnesses testify to the theft, and he only confessed, or one witness testifies to the slaughtering, etc., then only may it be said that his confession is equivalent to the testimony of one

witness; so that if another witness should come thereafter and testify, his testimony would be added to that of the first witness and he would be liable; so also if after he confessed one witness appears, his testimony should be added to the confession, and he should be liable to pay four and five fold; but when he first confesses to both the theft and the slaughtering, or only one witness testifies thereto, in which case he makes himself liable to the payment of the principal, if even thereafter another witness comes, his testimony is not to be added to the confession, and he has to pay only the principal.

The Boraitha, viz.: "If one seeing witnesses coming confesses to the theft, but denies the slaughtering," etc. Why does the Boraitha state as it does? Let it state, " . . . and he admits that he stole it, *or* that he slaughtered and sold it, he pays the principal only"? (And we would infer from this that also when he even admits only the slaughtering, in which case he seeks to be entirely free, it is nevertheless considered an admission to make him liable for the principal?) We must therefore say that it means to teach us that only when he confess to the theft which makes him liable to the payment of the principal he is free (from fine), but when he does not

confess to the theft, but the same is proved by witnesses and thereafter he admits that he slaughtered and sold it, and subsequently the same is also proved by wit. nesses, in which case he did not make himself liable even to the payment of the principal, he is liable (also to pay fine). Hence, we see that the admission of having slaughtered it (not coupled with the confession to the theft) is not considered an admission at all? Nay, it may be said that it means to teach us this very thing, viz.. Because he confessed to the theft, although he did not admit that he slaughtered or sold it, and thereafter witnesses testify that he slaughtered and sold it, he is nevertheless free from four and five, for the Scripture reads, "four or five," but not "four or three" (and here, when he confesses to the theft, he is liable to the payment of the principal only, and if we should make him liable for the slaughtering, etc., he would have to pay two more for a sheep or three more for an ox, so that it would be "three or four," but not "four or five").

"*If he stole and consecrated it, and thereafter slaughtered or sold it*," etc. This would be correct in case of slaughtering, for at the time of the slaughtering it was already consecrated property and not that of the owner, But why should he not be liable for the consecration itself--is this not considered a transfer from one

owner to another, and what difference is there whether he sold it to a human being or to the sanctuary? Nay, there is a difference: In the first case its name is changed, for before the sale he is the ox of Reuben and after the sale he is the ox of Simeon, while when he consecrated him he still continues to be known as "*Reuben's* consecrated ox."

"*R. Simeon says*," etc. Now, when R. Simeon holds that there is no difference whether he is sold to another person or sold to the Sanctuary, then the reverse should be the conclusion: If his responsibility still continues after the consecration, he should be free, because it is still under his control; and if his responsibility ceases upon the consecration he should be liable, for by the act of the consecration he placed it under the control of the Sanctuary; and according to him, it is the same as if he sold it to a commoner? R. Simeon's statement has reference to the following Boraitha: "It may be said that the payment of four and five fold applies neither to one who steals stolen property from a thief, nor to one who steals consecrated property from the house of him who consecrated it, because it is written [Ex. xx. 6]: 'And it be stolen out of the *man's* house,' which means but not out of the house of the Sanctuary." [1] R. Simeon says: If he is responsible for the consecrated property, he is liable, for the reason that it is still under his control, and the verse, "be stolen out of the *man's* house," is still to be applied, but not when it is not under his control. Rabha questioned: If one makes a vow to bring a burnt-offering and sets aside an ox for such offering, and thereafter the ox is stolen, may the thief make restitution by returning a sheep, according to the rabbis, or a dove or a pigeon, according to R. Elazar b. Azariah, as we have learned in the following Mishna: "If one say, 'I oblige myself to bring a burnt-offering,' he may bring a sheep; R. Elazar b. Azariah, however, says that he may bring a dove or a pigeon." Now, how is the law in our case: Shall we assume that the thief may say, "You obliged yourself to bring a burnt-offering, and here it is," or the owner may say, "My wish is to do this merit in the best manner possible"? After he questioned, he himself answered: The restitution of the thief is acceptable according to the rabbis if it is a sheep, and according to R. Elazar b. Azariah if it is a fowl. R. A'ha the son of R. Iqa taught that the above

saying of, Rabha was not questioned and answered as stated above, but was originally said so by him.

MISHNA *V.*: If the thief sells all but one-hundredth part of it, or he is a co-owner of it, or he slaughters it illegally so that it becomes a carrion, or he lacerates it (from the nostrils to the heart), or he tears the trachea and gullet, he pays only double, but not four and five fold.

GEMARA: What is meant by one-hundredth part of it? Said Rabh: It means of the meat which is made permissible for use by the legal slaughtering of the animal. Levi, however, holds even of the wool which is to be shorn. So also was taught plainly in a Boraitha. But according to whom, then, is Rabh's statement? According to R. Simeon b. Elazar of the following Boraitha, who said: "If he sells all but one of its fore or hind legs, he does not pay four and five fold; if, however, he sells all but its horns or its wool, he does pay four and five fold." On what point do they differ? The first Tana holds that "and kill it or sell it" [Ex. xxi. 37] means, as in case of slaughtering, it must be the whole, so also in case of sale. R. Simeon b. Elazar, however, holds that the fore and hind legs, which require legal slaughtering, if he excluded them from the sale, it is considered a sufficient remainder, and he is free from payment of four and five fold; but the horns and wool, which require no slaughtering, are not considered a sufficient remainder.

The rabbis taught: "One who steals an animal one leg of which is missing, or which is lame or blind, or one who steals an animal belonging to a co-partnership, is liable. But partners that steal together are free." But have we not learned in another Boraitha that partners are liable? Said R. Na'hman: This presents no difficulty: The first Boraitha treats of a case where one partner stole of his co-partner (and therefore it is not considered a sale of the whole, for he himself is entitled to halo, and the other Boraitha treats of a case where one partner steals from a third party. Rabha objected to R. Na'hman: "Lest it be assumed that a partner who steals from his co-partner, or two partners that steal together (from a third party), should be liable, therefore it is written [ibid]. 'And kill it,' which means the *whole* of it, which cannot be the case here?" Therefore said R. Na'hman: This presents no difficulty: The Boraitha which states that he is liable means a case where he slaughters it with the knowledge of his co-partner (in which case he is considered the agent of the other partner, and the act is that of both partners),

and the Boraitha which states that he is free means a case where he slaughters it without the knowledge of his co-partner (in which case it is considered that he slaughters the part stolen by his co-partner, which he did without permission, and it was said above that if one slaughters the animal stolen by another one is free from four and five fold; for his own half, however, he cannot be liable, for it is not considered the slaughtering of the whole).

The Rabbis taught: "If he steals it and gives it to another party who slaughters, sells, or consecrates it; or he steals and sells it to another party on credit, or exchanged it, or makes a present of it, or gives it to his creditor in payment of a loan made to him, or he gives it to his creditor in payment for merchandise sold to him on credit, or makes it a bridal-gift--in all those cases he pays four and five fold." What new thing does this mean to teach us? The first part, which states the case where he gives it to another who slaughters it, means to teach us that in this particular case he is liable for the act of his agent, although in other cases one who appoints a messenger to commit a transgression is not liable for the act of the messenger (see above, p. 120, and the latter part, which states that he consecrates it, means to teach us that there is no

difference whether he sells it to an ordinary person or to the Sanctuary.)

MISHNA *VI*.: (The liability to the fine of four and five fold applies only where the thief slaughters it after he acquired title to it, or he slaughters it outside of the owner's premises, namely:) If he steals it within the premises of the owner and slaughters or sells it outside of it, or he steals it outside of the owner's premises and slaughters or sells it within the premises, or the stealing, slaughtering, and sale are outside of the owner's premises, he pays four and five fold. If, however, the stealing, slaughtering, and sale are within the owner's premises, he is free.

If while the thief is leading the animal out it dies, still within the premises of the owner, he is free. If he lifts it up or leads it out of the premises, and it dies, he is liable. If he redeems his first-born son with it, or he gives it to his creditor, or to a gratuitous bailee or to a borrower to do work with it, or to a bailee for hire, or to a hirer, and the other person is drawing it forth and it dies while still on the premises of the owner, he is free. If, however, he lifts it up or he leads it out of the premises and it dies, he is liable.

GEMARA. Ameimar questioned: Was it enacted that a

bailee should not be liable unless he should first draw (see above) the bailment, or not? Said R. Imar to him: Come and hear the statement of our Mishna: "If he redeems his first-born son with it, or he gives it to his creditor, etc., he is free." Does this not mean that the bailee drew it? Infer from this that there is such an enactment. We have so also learned in the following Boraitha: "R. Elazar said: As it was enacted that a buyer has to acquire title by drawing the article he buys, so also was it enacted that the bailee should draw the bailment when he takes it under his control." So also we have learned in a Boraitha with the addition: "And as title to real property can be acquired by money, conveyance, and occupancy (*hazaka*), so also title to rents can be acquired by those three." What kind of rents? Shall we assume rent of personal property--can, then, personal property be rented by a conveyance? Must it not be drawn? Said R. Hisda: Rent of real property is meant.

R. Elazar said: If it was noticed that the thief was hiding himself in the forest (for the purpose of stealing an animal) and he slaughters or sells it therein, he pays four and five fold. Why so--he had not drawn it? Said R. Hisda: The case was that he drove it on with a stick. But if he did it so openly that it could be noticed, then he is a robber (and not a thief, and according to the Scripture he is free from the payment of four and five fold)? Nay, because he tried to hide himself, he is considered a thief. Under what circumstances, then, can he be considered a robber? Said R. Abbahu: As, for instance, Benayahu the son of Yehoyada, of whom it is written [II Samuel, xxxiii. 21]: "And he snatched the spear out of the Egyptian's hand and slew him with his own spear." R. Johanan says: As, for instance, the men of Shechem, of whom it is written [Judges, ix. 25]: "And the men of Shechem set persons to lie in wait for him on the top of the mountains, and they robbed all that passed by them on that way."

The disciples questioned R. Johanan b. Zakkai: Why did the Scripture treat more rigorously with the thief than with the robber? He answered them: Because the robber put the honor of his Creator at least on the same level with that of His servant, while the thief did not do so, but, on the contrary, considered the eye and car of Heaven as if it would not see and hear; as it is written

[Is. xxix. 15]: "Woe unto those that seek to hide deeply their counsel from the Lord, so that their works may be in the dark, and they say, Who seeth us?" etc.; and it is also written [Ps. xliv. 7]: "And they say, The Lord will not see, and the God

of Jacob will not take notice of it"; and it is also written [Ezek. ix. 9]: "For they have said, The Lord hath forsaken the land and the Lord seeth not."

R. Meir said: The following parable was related in the name of R. Gamaliel: To what is the above equal? To two persons who lived in one and the same town. One made a feast and invited all the inhabitants of the town, but not the princes; the other one made a feast and invited neither the inhabitants nor the princes. Whose punishment ought to be severer? Surely that of the first one.

The same said again: Ponder over the greatness of labor: In case of stealing an ox which he prevented from laboring, the thief pays five; in case of a sheep which does not perform any work, he pays only four. R. Johanan b. Zakkai said: Ponder over the greatness of the honor of creatures. For an ox who walks with his feet, he pays five; but for a sheep, for which he had to humiliate himself by carrying it on his shoulders, he pays only four.

MISHNA *VII.*: No tender cattle must be raised in Palestine, but they may be raised in Syria and in the deserts of Palestine. No cocks or hens must be raised in Jerusalem (even by laymen), because of the voluntary offerings (the meat of which may be eaten in any part of the city, and as the habit of the named fowls is to peck with their beaks in the rubbish, they may peck into a dead reptile and then peck in the meat of the offerings). In all other parts of Palestine priests only must not raise them, as they use leave-offerings for their meals, and they must be very careful about cleanliness. Swine must not be raised by Jews at any place. One shall keep no dog unless on a chain, and no noose is to be laid out for trapping pigeons unless fifty riss distant from inhabited places.

GEMARA: The rabbis taught: "No tender cattle must be raised in Palestine but in its forests; in Syria, however, even in the inhabited places, and, of course, in all other places." Another Boraitha states: No tender cattle must be raised in Palestine but in the deserts of Judea, and in those of the village of Achu; and although no tender cattle must be raised, still large cattle may, for no restrictions are made for the community unless most of the people can observe them. Tender cattle may, but large cattle may not be imported from other countries. And although they must not be raised, still they may be kept during the thirty days immediately preceding a feast day, or the celebration of the wedding of one's children. But this shall not be construed to mean

that they may be kept for thirty days, and that if some cattle were bought less than thirty days before the feast day that one may continue keeping them after the feast day until the expiration of the thirty days, but that as soon as the feast day is over he must not keep them any longer. The butcher, however, may buy and slaughter them at once, or keep them (until the market day), provided that the cattle he bought last shall not be kept after the market-day to complete the thirty days.

The disciples once questioned R. Gamaliel, whether it was permitted to raise tender cattle, and he answered: "Yea." But have we not learned in our Mishna that it is not? It must be said, therefore, that they questioned him whether it was permitted to keep them, and he answered them: "Yea, provided they are kept locked in the house, so that they shall not go out and pasture with the flock."

The rabbis taught: It happened that a pious person was suffering from a severe cough, and the physicians declared that he could not be cured unless by drinking every morning fresh-drawn milk which was still warm. He obtained a goat, which he tied to the leg of his bed, and drew her milk every morning. Once his colleagues came to visit him, and on seeing the goat tied to the leg of the bed they turned back, saying: There are armed robbers in the house of this man (for the habit of a goat is to stray upon other's fields), and shall we visit him? They sat down and examined into his conduct, and found no other transgression in him except that one. The pious one himself before he died said: I know that there can be no other transgression found in me except the one of the goat, that I disregarded the prohibition of my colleagues.

R. Ishmael said: My father's family was of the citizens of upper Galilea, and why was that locality destroyed? Because they pastured their young cattle in the forests and tried civil cases by one judge; and although their forests were near their houses (in the immediate neighborhood, and they were pasturing their cattle in their own forests), still, a small-sized field was between those forests (which belonged to strangers), and they used to pass their cattle over that field.

The rabbis taught: "A shepherd (who raises tender cattle) that repented, we do not compel him to sell out all his cattle at once, but he may do so by degrees. So also is the case with a proselyte who inherited dogs and swine; we do not compel him to sell out all at once. So, also, one who made a vow to buy a

house or marry a woman in Palestine; we do not compel him to do so until he finds one fit for him. It happened once with a woman whom her son used to annoy, that she swore that she would marry the first one who would propose to her, and unsuitable persons came forward with propositions. When this came before the sages, they declared that her intention was only for a suitable person.

As it was said that no tender cattle must be raised (in Palestine), so also was it said that no tender beasts should be raised. R. Ishmael, however, said that hunters' dogs, cats, monkeys, and weasels might be raised, for they are kept for the purpose of keeping the house clean. R. Jehudah said in the name of Rabh: We follow in Babylon the practice prevailing in Palestine regarding tender cattle. Said R. Ada b. Ahba to R. Huna: But do not you raise tender cattle? He answered: Mine are taken care of by Haubah my wife. According to others, R. Huna said: We follow in Babylon the practice prevailing in Palestine regarding tender cattle since Rabh settled in Babylon (whom many followed from Palestine and who bought or rented all the land in Babylon). Rabh, Samuel, and R. Assi happened to meet at a circumcision feast, and according to others at a redemption feast. Rabh declined to enter the house before Samuel, and Samuel declined to enter before R. Assi, and the latter in his turn refused to enter before Rabh. It was then decided that Samuel should wait until Rabh and R. Assi had entered. (But why did Rabh refuse to enter before Samuel, he was surely greater than Samuel?) Rabh simply paid this

courtesy to Samuel on account of his cursing him (see Sabbath, pp. 221-222). While they were so discussing a cat came and bit off the arm of the child, after which Rabh lectured that it is permitted to kill a cat and prohibited to keep it and that there can be no robbery in respect to it, and that if a cat gets lost no one need return it to its owner. If it is permitted to kill it, is it not self evident that it is prohibited to keep it? Lest one say that there is no prohibition to kill it but it may also be kept, hence the statement. Again, if it says that there can be no robbery in respect to it, why, then, the statement that it need not be returned to its owner if lost? Said Rabhina: It means even as far as its skin is concerned. An objection was raised from our Mishna: "R. Simeon b. Elazar said: Dogs, cats, etc."? This presents no difficulty. A black one may, but a white one may not. But in the case of Rabh, was it not a black one? It was a black descending from a white one.

R. A'ha b. Papa said in the name of R. Hanina b. Papa [1] the following three things: (*a*) In case of a plague of the itch a fast day with the blowing of the horn may be ordered on the Sabbath; (*b*) if the door of success is closed to one, it will not open soon; and (*c*) if one buy a house in Palestine, the deed may be written and executed even on Sabbath. What does the statement, "if the door of success," etc., mean? Said Mar Zutra: The granting of a diploma for a rabbi [2]. R. Ashi said: It means that when one falls into misfortune he cannot soon recover. "If one buy, etc., the deed, etc., on Sabbath." Does it really mean that the Sabbath may be violated in such a case? Nay, it means as Rabha said, that a Gentile may be told to do it, although in ordinary cases the rabbis prohibited it on account of Sabbath-rest; still, in this particular case they did not. R. Samuel b. Na'hmani said in the name of R. Jonathan: One who buys a town in Palestine is compelled also to buy a tract of land around it to make it accessible from all four sides, in order to promote settlement in Palestine.

The rabbis taught: "Upon the following ten conditions did Joshua divide the land to the settlers: (*a*) That one may pasture his cattle in the forest of another; (*b*) he may gather wood upon another's field; (*c*) grass may be gathered on another's field at any place, except that of the carob-bean; (*d*) a branch may be cut off a tree at any place, except of an olive tree; (*e*) the townspeople may use the water of springs even newly opened by strangers; (*f*) nets may be spread in the Tiberian waters by every one for fishing purposes, provided he does not stake them so as to interfere with navigation; (*g*) one may evacuate behind a fence even of a field of saffron; (*h*) one may walk the cross way (opened on a field) until the second quarter of the season; (*i*) one may walk the side road when the main road is cloddy; (*j*) one who lost his way in a vineyard might raise and lower the tree branches in trying to find it; and, lastly, (*k*) a stranger who dies in a field should be interred in the place where he dies (see Erubin, p. 38)." Are there only ten, are there not eleven enumerated? The condition that one may walk the cross-walks was not made by Joshua but by Solomon, as we have learned in the

following Boraitha: When all the fruit is gathered in from the field and the owner still permits no one to enter his field, do not people murmur and say: What benefit does that man derive from it and what injury would the people cause him by crossing his field? Of him the verse says: When you can afford to be good, do not cause people to call you bad. Is there, then, such a verse to be found in Scripture? There is a verse similar to it, viz. [Proverbs, iii. 27]: "Withhold not a benefit from him who is deserving it, when it is in the power of thy hand to do it."

But are there no more than those enumerated? Is there not another one, of which R. Jehudah speaks in the following Boraitha: "R. Jehudah says: During the manuring season, etc., for on this condition did Joshua, etc. (supra, p. 66)?" Again, there are those enumerated in the following Boraitha: R. Ishmael the son of R. Johanan b. Broka says: The court declared the following conditions to have been made by Joshua when he distributed the land among Israel: (*a*) That one may enter his neighbor's orchard to cut off a tree branch and use it in saving his bee-hive, paying the owner of the orchard the value thereof; (*b*) one shall empty his vessel containing wine and save therewith his neighbor's honey (if one carrying wine and one carrying honey met together and the vessel containing the honey broke), and receive from him the value of the wine; (*c*) one shall unload his wood and load on his neighbor's hemp (under circumstances similar to those stated above), and get from him the value of his wood? The Boraitha enumerated only those which were declared to have been so unanimously, but not those that were stated by individuals without being supported by their colleagues.

But did not R. Abin upon his return (from Palestine) say in the name of R. Johanan that one more condition was made by Joshua, namely, that whether it be a tree branching over into a neighboring field or one standing near the boundary, he may bring the first-fruit to Jerusalem and read the scriptural passages [Deut. xxvi. 51; and if the above-enumerated ten conditions were a Boraitha, R. Johanan, who was (not a Tana but only) an Amora, would not contradict it? Therefore it must be said that the phrase, "The rabbis taught. Ten conditions," mentioned above does not mean that it was a Boraitha (as it usually indicates), but that it was taught by R. Jehoshua b. Levi (who was also an Amora, and R. Johanan may differ with him). R. Gebiah of the city of Khthil taught so plainly: R. Tanhum and R.

[paragraph continues] Brice said in the name of the certain elder who was R. Jehoshua b. Levi, that ten conditions did Joshua make with the settlers.

Ten enactments were enacted by Ezra, viz.: (*a*) That portions of the Scripture should be read at the Saturday afternoon prayer; (*b*) on Mondays and Thursdays; (*c*) the court should be open on Mondays and Thursdays; (*d*) clothes should be washed on Thursdays (for the honor of the Sabbath); (*e*) garlic should be eaten on the eve of Sabbath; (*f*) a woman should do her baking early in the morning (so as to have fresh bread for the poor who should ask for it); (*g*) a woman should wear underwear; (*h*) a woman should comb her hair before immersing (in the legal bath); (*i*) vendors should travel from town to town and peddle their wares unmolested. He also enacted immersion (in a legal bath) for those who see Keri (wet-dreams). Ten things were said of the city of Jerusalem (when it was the capital of Palestine): (*a*) Real property should always be redeemed by the seller; (*b*) if a slain person is found in the neighborhood of Jerusalem, the ceremony of the heifer [Deut. xxi.] should not be performed; (*c*) it should never be declared a condemned town [Deut. xiii. 14]; (*d*) the laws of plagues [Levi. xiv. 35] should not apply to the houses of Jerusalem; (*e*) no beams should be permitted to protrude, nor any corner boards (Erubin, p. 40); (*f*) no dumping places for rubbish should be permitted therein; (*g*) no potter's kiln should be permitted to be constructed therein; (*h*) no gardens or orchards should be permitted there except those of roses, that existed since the time of the first prophets; (*i*) no hens or cocks should be raised; and (*j*) no dead body should remain over-night in the city (but should be carried out of the city).

"*No swine is permitted to be raised at any place*." The rabbis taught: "During the civil war of the Maccabees, Hurkanoth was within and Aristobulos was without the city wall, and every day those within lowered by means of a chair a basket full of dinars from the top of the wall to those outside, and the latter sent them up cattle for the daily sacrifices. Among the outsiders was an old man who was learned in Greek science, and he said to them: So long as your enemies continue to perform the holy service you will not subdue them. On the next day, when the basket of dinars was lowered, they sent them up a swine. When the swine reached the centre of the wall he fastened his feet in the wall, and Palestine trembled for a distance of four hundred square parsa. At that time it was declared that cursed be he who raised swine and cursed be he who taught his sons Greek

science. Of that time it was taught (Tract Mena'hoth, p. 64*b*) that the omer was brought from the gardens of Zriphin and the two loaves from the valley of Ein Sokher."

But is, then, the study of Greek science prohibited--have we not learned in the following Boraitha: "Rabbi said: In Palestine there is no use for the Syriac language, which is not clear, when there are the Holy language (pure Hebrew) and the Greek language, both of which are very clear; and R. Jose said: In Babylon there is no use for the Aramean language, for there are the Holy language and the Persian language"? It maybe said: Greek language is one thing and Greek *science* is another. But is, then, the study of Greek science prohibited--has not R. Jehudah said in the name of Samuel: So said R. Simeon b. Gamaliel: It is written [Lam. iii. 5 I]: "My eye affected my soul because of all the daughters of my city. There were a thousand young men in my father's house, five hundred of whom studied Scripture and five hundred *Greek science*, and of all of them only two remained--I here and my nephew in Assia"? R. Gamaliel's house was an exception, for its proximity to the government, as is stated in a Boraitha: "He who cuts his hair χο μ η imitates the ways of the Amorites, which are prohibited [Lev. xviii. 3]. Abtulmus bar Reuben, however, was permitted to do so, for he had stood near the government. The house of R. Gamaliel was permitted to study Greek science for the same reason."

"*No dog shall be kept*," etc. The rabbis taught: No one shall raise a dog unless he is kept on a chain, or unless in a town adjoining the frontier, in which he is permitted to keep him without a chain only in the night-time. There is a Boraitha: R. Eliezer the great said: The raising of dogs is equivalent to the raising of swine. For what purpose is this equivalence? That the curse said of him who raises swine should apply also to him.

R. Joseph b. Maniumi said in the name of R. Na'hman: Babylon [Nahardea] is considered a city located at the frontier.

R. Dosthai of Biri lectured: It is written [Numb. x. 36]: "And when it rested, he said, Return, O Lord, among the myriads of the thousands of Israel." Infer from this that the Shekhina does not rest on Israel unless they number two myriads two thousand. If it should happen that this number should be one less and there should be a pregnant woman whose child when born would complete it, and a dog should bark and cause the woman to miscarry, it would appear that he caused the Shekhina to withdraw from Israel.

It happened with a woman that entered a house to bake there, etc. (See Sabbath, p. 124).

"*No nets are spread*," etc. But do we go as far as that? Have we not learned in the following Mishna: "Dove-cots may be located at a distance of fifty ells from a town"? Said Abayi: They fly for a much longer distance, but as to pecking up food they do so only within fifty ells. But do they fly only thirty ris? [1] Have we not learned in the following Boraitha that nets should not be spread out in the neighborhood of inhabited places, even at a distance of one hundred mil? R. Joseph said that "inhabited" means where vineyards are laid out, Rabba said that it means where dove-cots are kept. If so, let him say that it must not be done for the doves themselves, in order that they should not be caught in? If you wish, it can be answered that the doves are ownerless; and if you wish, it can be answered that he himself is the owner of the doves.

Footnotes

151:1 Leeser does not translate this word literally.

156:1 This is explained in Section Moed.

158:1 R. Meir's statement and the full discussion of it will be found translated in the forthcoming tracts at the proper place.

170:1 Because it now belongs to the Sanctuary and not to him who consecrated it, it is considered as if it would be stolen from the house of the Sanctuary.

177:1 Papa had many children, and the Gemara is not certain who of them was the author of this statement.

177:2 There were many sages who were worthy of this honor, but circumstances prevented them from getting the diploma. The well-known Samuel was one of them, (See Vol. XI., Tract Baba Metzia.)

181:1 Seven and a half ris equalled one Palestinian mile.

Next: Chapter VIII