

CHAPTER VIII.

THE FIVE ITEMS OF PAYMENT IN CASE OF INJURY TO A HUMAN BEING, INDEPENDENTLY OF THE CRIMINAL LIABILITY. THE LIABILITY FOR ASSAULT WHEN NO INJURY IS SUSTAINED.

MISHNA I.: One who wounds his neighbor is liable to pay the following five things, viz.: damage, pain, healing, loss of time, and disgrace. "Damage."--If he blinds one's eye, cuts off his hand, or breaks his leg, the injured person is considered as if he were a slave sold in the market, and he is appraised at his former and his present value. "Pain."--If he burns him with a spit or with a nail, if even only on the nail (of his hand or foot), where it produces no wound, it is appraised how much a man his equal would take to suffer such pain. "Healing."--If he caused him bodily injury, he must heal him; if pus collected by reason of the wound, he must cause him to be healed; if, however, not by reason of the wound, he is free. If the wound heals up and breaks out again, even several times, he must cause it to be healed; if, however, it once heals up thoroughly, he is no more obliged to heal it. "Loss of time."--The injured person is considered as if he were a watchman of a pumpkin field, as he was already paid the value of his hand or foot. The disgrace is appraised with consideration of the station and rank of the one who causes as well as of the one who suffers it.

GEMARA: Why so? Perhaps it is to be taken literally, for the Scripture reads [Ex. xxi. 24]: "Eye for eye"? This cannot enter the mind, as we have learned in the following Boraitha: Lest one say, if he blinds one's eye or cuts off one's hand, that the same should be done unto him, therefore it is written [Lev. xxiv. 21]: "And he that killeth a beast shall make restitution *for it*; and he that killeth a man," etc. As in case of a beast only the value is paid, so also in case of a man. And lest one say, Does not the Scripture read [Numb. xxxv. 31]: "Moreover, ye shall take no redemption for the person of a murderer, who is guilty of death"? you may say that from this, very verse it may be inferred that no redemption money is to be

taken for a *murderer*, but redemption money is to be taken for one who destroys such members of the body as cannot grow on again.

We have learned in a Boraitha: R. Simeon b. Johi said: "Eye for eye" means its value. You say, its value. Perhaps it means literally? Nay, for what should be done when a blind man blinds another, etc.--how should be fulfilled the commandment "eye for eye"? And lest one say that such a case is an exception, therefore the Scripture reads [Lev. xxiv. 22]: "One manner of judicial law shall ye have"; from which is to be inferred that it means a law which can be applied alike to all human cases.

In the school of R. Ishmael it was taught: The Scripture reads [ibid., ibid. 20]: "So should it be

given 1 unto him"; and by "given" is meant a thing which is given from hand to hand. If so, how are the preceding words in the same verse to be explained? "In the manner he should give a bodily defect," etc. (hence the word "give" is used also for such a thing as is not given from hand to hand)? It may be explained thus: The school of R. Ishmael deduce it from a superfluous verse, thus: Let us see. It reads already in the preceding verse [ibid. 19]: "And if a man cause a bodily defect in his neighbor; as he hath done, so shall it be done unto him." Why, then, the repetition in verse 20? To indicate that it means money. But still the above-stated objection as to the use of the word "give" in the beginning of the verse remains? Because at the end of the verse the Scripture desired to use a term from which it should be deduced that it means *money*. It used the same expression also here.

The school of R. Hyya deduce it from the following: The Scripture reads [Deut. xix. 21]: "Hand for hand" 2--that means something that can be passed from hand to hand, *i.e.*, money.

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It happened that an ass bit off a child's arm. When the case came before R. Papa b. Samuel he said: Go and appraise the sum to be paid for the four items. Said Rabha to him: But we have learned that *five* items are appraised? He answered: I mean in addition to the actual damage. Said Abayi: But this was an ass, and an ass pays actual damage only? He then said: Go and appraise his actual damage. But he must be appraised as if he were a slave? He answered: Go and appraise him as such. Said the child's father: I do not want to submit to such an indignity. He was told: This money belongs to the child (and you cannot deprive him of that). The father then answered: When he shall grow up, I will rather pay him of my own.

It happened that an ox lacerated the arm of a child, and the case came before Rabha. He said: Go and appraise the actual damage as if he were a slave. His disciple said to him: Are not you, master, the one who said that all appraisements which are made as of a slave are not to be collected in Babylon? He answered: The appraisalment may be made, so that in case he should subsequently seize some property of the defendant he will not be compelled to return it. And Rabha in this decision follows his theory elsewhere: "Damages of an ox caused to him by another ox, or damages of an ox caused by a man, are to be collected in Babylon, but damages of a man caused to him by another man, or by an ox, are not to be collected in Babylon." Why are the latter damages not collected? Because it states [Ex. xxii. 8]: "Before the judges," etc., and in Babylon the majority of the judges are not ordained, is it not the same with damages caused by one ox to another, etc.--for they are all mentioned together in the Scripture, where the word "Eloim" is written, which means ordained judges? Rabha speaks of a case when it was caused by the tooth or foot, which are considered vicious from the beginning, and such damage is at any rate to be collected in Babylon.

"*Pain--if he burned him,*" etc. Who is the Tana who holds that pain without damage must be paid for? Said Rabha: It is Ben Azai of the following Boraita: Rabbi said: "Burning" is mentioned in the Scripture first. Ben Azai said: "Bruise" is

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mentioned first. (How is it possible that they should differ as to which is written first and which last, when the verse [Ex. xxi. 25] reads plainly "burning" first and "bruise" last?) The point on

which they differ is whether "burning" without producing a bruise is considered pain which is to be paid for: Rabbi says that the word "burning" could be explained to mean without a bruise, and the word "bruise" mentioned last is only to explain that burning without a bruise is not to be considered. Ben Azai, however, maintains that "burning" means with a bruise; and because "bruise" is repeated again, it may be inferred that when it happened that the burning was without a bruise it is also considered pain which must be paid for. R. Papa opposed: On the contrary, common sense would dictate that Rabba's statement, "Burning is mentioned first," means to say that because usually burning is accompanied with a bruise it is also considered pain and must be paid for; and Ben Azai's statement that bruise is mentioned first means to say that "bruise" is the main point, as burning without a bruise is not considered at all. It may also be explained that both agree that the word "burning" means with or without a bruise, and the point of their difference is: Given a general and a particular which do not follow one after the other (*e.g.*, in the verse in question, where the words "wound for wound" intervene between them), Rabbi holds to the rule "that a general includes nothing but what is stated in the particular" does not apply to such a case, while Ben Azai holds that it does. And lest one say: If "burning" includes also a bruise, why, then, the repetition? Say that the word "bruise" means to increase the payment.

"It is appraised how much one would," etc. When the damage is paid for, how should the pain be appraised separately? Said the father of Samuel: It should be appraised how much one would pay to have his arm, which by the decree of the government must be amputated, severed by a drug 1 instead of a sword. If so, it ought to state "give" instead of "take"? Said R. Huna b. R. Juhoshua: It means that the plaintiff shall take from the defendant what such a man would give.

"Healing."--If he caused him bodily injury," etc. The rabbis taught: If pus collected by reason of the wound and the wound broke out again, he must heal him; and he must also pay for the loss of his time until he shall be healed again. If, however, not

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by reason of the wound, he is free from both. R. Jehudah said: Even if it was by reason of the wound, he must cure him only, but not pay again for the loss of time.

The sages, however, say that the healing and the loss of time go together: When he must pay for one, he must also pay for the other, but not for one without the other. What is the point of their difference? Said Rabba: I found the disciples of the college sitting and declaring that the rabbis and R. Jehudah differed as to whether a wound might be bandaged or not (i. e., whether the injured person is permitted to increase the expense of healing by bandaging up his wound and thereby causing high temperature, which produces pus). The rabbis hold that it may be bandaged at the expense of the defendant as regards both healing and loss of time. R. Jehudah, however, holds that it may not be done. But if he does so, for healing, which is plainly written in the Scripture (*thoroughly* healed), he must pay; but for loss of time, for which there is no additional word in the Scripture, he must not pay. Said I to them: If we should come to the conclusion that a wound may not be bandaged, even healing would not have to be paid for. We must therefore say that all agree that a wound may be bandaged; but they differ, if bandaged too much (and this caused high temperature and produced pus), as to who must suffer the increased expense. R. Jehudah holds: That as one must not bandage a wound more than necessary, he is only obliged to pay for healing, because the Scripture insists on it by the repetition of the word "healing"; but regarding the loss of time, about which there is no repetition in the Scripture, he has not to pay

for it. The first Tana, however (of the above-mentioned Boraitha), holds that because he must pay for the increased healing, for the reason stated above, he must also pay for the increase in loss of time, which is equal to healing in all respects.

(Let us see:) According to the rabbis, who hold that he who is liable for loss of time is also liable for the expense of feeling, and he who is not liable for loss of time is not liable for the expense of healing, wherefore the repetition of the word "healing" in the verse? [1](#) It is needed for what the following Boraitha states: "R. Ishmael said: It is written [Ex. xxi. 19]: *Thoroughly healed*," from which is to be inferred that a physician is permitted to heal (although the affliction came from Providence).

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The rabbis taught: Whence do we know that if pus collected by reason of the wound and the wound broke out again he must heal him, and also pay for the loss of time? From [ibid., ibid.]: "Only he shall pay for his loss of time, and shall cause him to be thoroughly healed." Lest one say that it is so also if the pus collected not by reason of the wound, therefore it reads only. R. Jose b. Jehudah said: The above word "only" excludes the case when it collected even by reason of the wound.

The Master said: "Lest one say," etc. If not by reason of the wound, why was there a verse needed? The expression in the Boraitha "not by reason," etc., may be explained as stated in the following Boraitha: If he disobeyed the prescription of the physician and ate honey or other saccharine substances, which are injurious to a wound, and a cancer formed, shall he also be liable to heal him? Therefore it is written *only*.

If the defendant should say, "I will cure you myself," the plaintiff may object, saying: "I fear you as a lion lying in wait." And if the defendant should say, "I will get you my relative, a physician, who will cure you for nothing," he may say: "A physician who cures for nothing is worth nothing." And if he should offer to get a physician who lives at a distance from the plaintiff, the latter may object, saying: "One may get blind before seeing him." And also, conversely, if the plaintiff should demand money to heal himself, the defendant may answer: "You may not comply with the directions of the physician, and thus defer the time of the healing." And if the plaintiff should demand from the defendant to agree upon a fixed sum, the defendant may also object, saying: "You may take the money and not cure yourself, and people will call me 'a vicious ox.'"

It was taught above: "And all those are paid where actual damage is paid." Whence do we deduce this? Said R. Zbid in the name of Rabha: The Scripture reads [Ex. xxi. 25]: "Wound for wound," which means that pain is to be paid for where actual damage is paid. But is this verse not necessary to make an unintentional act equal to an intentional one, and an accidental one equal to a voluntary act? If so, let the Scripture read "wound *by* wound"--why "wound *instead of* a wound"? (See supra, [p. 54](#).) To infer both. R. Papa, however, said in the name of the same: There is a repetition as to healing [ibid., [19](#)], to add healing where actual damage is paid. But can there be a case where one should be liable for all the four things where no actual damage was done? Yea, Pain--as is stated in the Mishna:

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[paragraph continues] "If he burned him with a spit or a nail," etc. Healing--as, for instance, when he had a slight wound and it was healing up, and from the medicines applied the skin turned white, and other medicines had to be applied to restore the natural color. Loss of time--when he must be confined to the house. Disgrace--when he spat in his face.

"*Loss of time*," etc. The rabbis taught: "Loss of time. He is considered as if he were a watchman of a pumpkin field; and lest one say that no justice is done in such a case, for should he be cured he could still do some kind of manual work, or serve as a messenger and get better compensation? There is no injustice, because he has already received the value of his limb."

Rabba said: If one cut off another's hand he pays him the value thereof; and as regards loss of time, it is appraised as if he were a watchman of a pumpkin field. If one breaks another's leg, he pays the value thereof; and as regards loss of time, it is appraised as if he were a doorkeeper. If one blinds another's eye, he pays him the value thereof, and the loss of time is appraised as if he were a miller. If, however, he makes him deaf, he pays the value of his whole body, for he is not fit for any work.

Rabba questioned: In case one cut off another's hand, broke his foot, blinded his eye, at intervals, and each injury was not appraised separately when it occurred, and finally he made him deaf, how shall the appraisement be made? Shall we assume that the appraisement for the deafness will be sufficient, as he has to pay him for the whole body, or each of the injuries must be appraised separately, and the difference would be that he would receive compensation for the pain and the disgrace of each injury separately? I do not question as regards actual damage, healing, and loss of time, for each of which he has not to receive separately, as he receives now compensation for the whole body as if killed, but for the pain and disgrace suffered with each injury? Another question: How is it if each injury was appraised, but the money was not yet collected? Shall we assume that because it was appraised separately each must be paid; or, because he has not yet paid and now he has to pay for the whole body that all the previous appraisements are included therein? Both questions remain undecided. [1](#)

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Rabba questioned: If one strikes another and makes him temporarily unfit to labor, as, for instance, when he strikes him on the hand and it gets swollen, which will pass over, shall we assume that because he will recover he need pay him nothing, or perhaps for the time during which he is incapable to work he must pay? Come and hear: "One who strikes his father or mother, but makes no bruise, and one who wounds his neighbor on the Day of Atonement, is liable to all the five things." Does the first part of this Boraitha not mean a case like the one questioned by you; *i.e.*, that he struck them on the hand, which will soon pass over, and still it states that he must pay all? Nay, it may be explained that he caused him deafness, but makes no bruise. But did not Rabba say that one who causes deafness to his parents is to suffer the death penalty, for deafness is impossible without a bruise, which is a drop of blood that falls into the ear? Therefore the Boraitha must be explained that he shaved off his hair. His hair? It will surely grow on again, and this is Rabh's question (as there is no difference whether the hand will recover or the hair will grow on again?) It can be explained that the Boraitha meant that he applied a depilatory which prevents the hair from growing on again. Pain--because the depilatory entered the grooves (of his head) and caused him pain. Healing--because the pain must be allayed by medicine. Loss of time--as for instance when he was a professional buffoon

who shows different grimaces and gesticulations, and he is prevented from doing so on account of that. Disgrace--there can be no greater disgrace than to be without hair.

And this matter, in which Rabba was doubtful, was certain to Abayi in one way and to Rabha in the opposite way, as it was taught: If he strikes him on his hand, which gets swollen, Abayi says he must pay both the value of his hand in his trade during the time of his sickness and also the loss of time in such labor as he could do without the hand. Rabha, however, says he is paid only what he loses every day by not working. It was taught: One who cuts off the arm of his neighbor's Hebrew servant; Abayi says he pays the value of the arm to the servant and for the loss of time to his master. Rabha, however, says: The whole must be paid to the servant, who should buy therewith land, the usufruct of which should belong to the master. It is certain that where the injury is wholly to the slave, *e.g.*, where he splits his ear or his nostrils (which does not prevent him from work), that all that he gets belongs to him; but where the injury is of such

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nature that he cannot do any work, the difference between Abayi and Rabha concerning the loss of time remains.

"Disgrace," etc. Our Mishna is in accordance with R. Simeon of the following Boraitha only: "All those who sustain injury are looked upon as if they were independent men that became poor, as all Israelites are the children of Abraham, Isaac, and Jacob. Such is the dictum of R. Meir. R. Jehudah says: It is according to his rank and station. R. Simeon, however, says: The rich ones are looked upon as if they were independent men who became poor; the poor ones, as if they were the very poorest class." Hence our Mishna, which states that it is according to the station of the party, is not in accordance with R. Meir, who makes no difference, nor according to R. Jehudah, who says further on that a blind person gets nothing for being disgraced, but according to R. Simeon only (who considers rank and station).

According to whom is the following Boraitha: "The rabbis taught: If he intended to disgrace a small one and disgraced a big one, he pays the big one the amount he would have to pay the small one. If he intended to disgrace a slave and he disgraced a freeman, he pays to the freeman the amount he would have to pay to the slave"? It seems to be in accordance with neither of the Tanaim mentioned above. [At the first glance, the Boraitha is to be explained that "small one" means one who is poor in estate, and "big one" means one who is rich in estate, and therefore it is not in accordance with R. Meir, to whom all are equal, nor according to R. Jehudah's theory, who holds no disgrace is paid for to slaves, and, finally, not according to R. Simeon, who holds that no disgrace is paid for unless it was caused to him who was intended. Why so? Because R. Simeon equals it to murder, of which it is written [Deut. xix. ii]: "And he lie in wait for *him*," etc.; and we find also, as regards disgrace [ibid. xxv. 11]: "And *putteth forth her hand*" (which means intentionally), hence in both intention is required.] It may be explained even in accordance with R. Meir, and the terms "small" and "big" should be taken literally: a grown person and a minor. But is, then, a minor paid for disgrace? Yea, as R. Papa said elsewhere, if the minor is of such understanding that he feels ashamed when one says to him, "Be ashamed of yourself," disgrace is paid for to him.

MISHNA II.: One who causes disgrace to a nude, blind, or sleeping person is liable; if, however, one causes disgrace when

asleep, he is free. If one falls down from a roof and causes damage and disgrace, he is liable for the damage but not for the disgrace, as the latter requires intention.

GEMARA: The rabbis taught: "If he disgrace a nude person, he is liable; but still, the disgrace caused to a nude person is not equal to that caused to a dressed one. If he disgrace him in a bath-house, he is liable; but still, such disgrace is not equal to that caused to one in the market." The Master said: "If he causes disgrace to a nude person," etc. If he walks nude in the street--is, then, such a person capable of being ashamed? Said R. Papa: As for instance when a wind rolled up his clothes somewhat, and the defendant rolled them up more and thereby caused him shame. "In a bath-house." Is, then, a bath-house a place for claiming for disgrace? Said R. Papa: It means that he caused him shame while on the banks of a river.

R. Aba b. Mamel questioned: If one causes shame to a sleeping person who subsequently dies while asleep, what is the law (as to the payment for shame)? On what point is the question? Said R. Zbid: It is thus: Is shame paid for, for hurting one's feelings, and here, when he dies while sleeping, his feelings are not hurt, or it is only a fine for the indignity of one in the presence of others, and here was such indignity? Come and hear: "R. Meir says: A deaf-mute, and a minor, disgrace is paid for to them, but not to an insane person." Now, then, if it is a fine for the indignity, it is correct that a minor be also paid, but if for hurting the feelings, has a minor, then, feelings of shame? But even if it is for indignity, why should an insane person not be paid for? Insane? is there any greater shame than this?

R. Papa says: The point of the question is thus: Is the reason because of the hurting of his own feelings--here, when he dies when sleeping, there was none--or because of the feelings of the family? Come and hear, etc. (the Boraitha just quoted). Now, then, if for the sake of the family it is correct that it states also a minor, and if for his own, is, then, a minor capable of feeling shame? But even if it is because of his family, it is not correct that an insane person shall not be paid for? There is no greater shame for a family than the insanity of one of its members. Be this as it may, let it be inferred that the reason is because of his family; for if because of his own feelings, the minor stands in the way? Said R. Papa: A minor is sometimes paid for shame if he is of such understanding that he feels ashamed when one says to him: "Be ashamed of yourself!"

[paragraph continues] We have also so learned plainly in a Boraitha: "Rabbi says: A deaf-mute has, an insane person has not, but a minor sometimes has and sometimes has not, feelings of shame, as explained above."

"*One who disgraces a blind one,*" etc. Our Mishna is not in accordance with R. Jehudah of the following Boraitha, who says: "A blind person has no feelings of shame; so also he used to free him from banishment, stripes, and death punishment by the court." What is the reason of R. Jehudah's theory? He deduces it from the analogy of expression "the eye," which is used in speaking of disgracing a person and also in speaking of collusive witnesses: as in the case of collusive witnesses blind persons are excluded (for if they cannot see they cannot testify). And regarding banishment, as it is stated in the following Boraitha: It is written [Numb. xxxv. 23]: "Without seeing him" (which is to be explained that *here* he has not seen, but he is capable of

seeing), which excludes a blind person (who can never see). Such is the dictum of R. Jehudah. R. Meir says: (On the contrary,) it includes a blind person. What is the reason of R. Jehudah? It is written [Deut. xix. 5]: "And he that goeth into the forest with his neighbor to hew wood." Should we assume that this includes even a blind one? Therefore the Scripture says, "without seeing him," to exclude him. And R. Meir? (He may explain it thus:) The Scripture reads "without seeing him," to exclude something, and it is written [ibid., ibid. 4], "without knowledge," which also means to exclude something; and there is a rule that where there is one exclusion after another it means to include. Hence it includes the blind. R. Jehudah, however, maintains that "without knowledge" means to exclude the one who does it intentionally (who is guilty of a crime). "From death by the court." It is deduced by analogy of the expression "murderer" used here and in case of banishment. (In case of one killing a person the expression "murderer" is used [Numb. xxxv. 31], and so also in case of banishment.) "From stripes." It is deduced by the analogy of the expression "Rasha" [ibid. xxv.] (the wicked, the guilty one) used here, and in case of death by the court [Numb. xxxv. 31].

We have learned in another Boraitha: "R. Jehudah says: A blind person has no sense of shame. He also relieved him from the performance of all the commandments contained in the Scripture." Said R. Shesheth b. R. Idi: What is the reason of

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his statement? It is written [Deut. vi. 1]: "And this is the commandment, with the statutes and the ordinances"--from which is to be inferred that only those who can be ordained as judges have the obligation of observing the commandments, but not those who cannot be ordained (and as a blind person cannot be ordained a judge, he is exempt).

R. Joseph said: First I used to say: If there should come one and tell me that the Halakha prevails according to R. Jehudah, who says that a blind person is exempt from the performance of commandments, I shall make a feast for the rabbis, because I, who am under no obligation to do so, still do perform them; but since I heard of what R. Hanina said, that there is more reward for him who performs a commandment which he has an obligation to than for him who performs it without such obligation, I changed my mind, and I say that I shall make a feast if one should come and tell me that the Halakha does not prevail according to R. Jehudah; for if I am required to perform the commandment, the reward will be greater.

MISHNA III.: The law is more rigorous in regard to a man than in regard to an ox in this respect, that a man pays the five certain items, and also the value of the aborted children, while an ox pays only for actual damage and is free also from paying for the aborted children. One who assaults his father or mother, but does not bruise them, and one who wounds another on the Day of Atonement, is liable to pay all the above items. One who wounds a Hebrew servant is liable to pay all, but for loss of time when he is his own. One who wounds a heathen slave of another is liable to pay all. R. Jehudah says: There is no disgrace to slaves. A deaf-mute, an insane person, and a minor, one who meets with them is in a bad position, for the one who wounds them is liable, while if they do so to others they are free. The same is the case with a slave and a (married) woman, with the difference that they must pay when they become independent; namely, when the woman is divorced and the slave is liberated. If one, however, assaults his father or mother and bruises them, or, on the Sabbath, any person, he is free from payment of the above-enumerated items, for he is guilty of a capital punishment. One who wounds his own heathen slave is free from everything.

GEMARA: R. Elazar questioned Rabh: One who wounds the minor daughter of another, to whom is the compensation to be paid? Shall we assume that as the Scripture granted the

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income of a minor daughter to her father, the same is the case with the compensation for a wound inflicted upon her, for her value is diminished thereby; or perhaps the Scripture granted him only the income so far as she is under his control; for instance, if he wanted to marry her to one afflicted with scabies he could do so, but as to wounding, if he himself wanted to wound her he must not do so; hence it is an income which is not under his control, and therefore he does not acquire title to it? He answered: The Scripture granted him only the income first stated.

He objected to him from our Mishna: "But for the loss of time when he is his own?" (Hence we see that the loss of time is considered; and as the income from the labor of a minor daughter belongs to her father, he shall at least collect for the loss of time?) Said Abayi: Rabh concedes, as far as this is concerned, that her father gets it up to the age when she becomes *vigorous*. He objected again from the following: "One who wounds his grown son, he pays him at once; if he wounds his minor son, he makes an investment with the money he has to pay; if he wounds his minor daughter, he is free; and not only he, but even if others have done so to her, the father gets the payment?" He answered: This also has reference to loss of time only.

There is a contradiction to the above statement that in case of a grown son he pays him at once, from the following: One who wounds another's children--if they are grown persons, he pays them at once; if they are minors, he makes an investment with the money due; if his own children, he is free? This presents no difficulty: The one case treats of where he provides their board, and the other case treats of where he does not. Now, let us see: You interpret the first Boraitha that it treats of where he does not provide their board; then the last part of same: "If one wounds his minor daughter, he is free, and if others do so to her the payment belongs to him," also treats of where he does not provide her with board--why, then, should the payment belong to him? must she not pay for her board? As Rabha b. R. Ula explained elsewhere that it refers to that part which is in excess of what she needs for her board, so also is it to be explained here, that it relates to the excess. If so, then the second Boraitha treats of where the father does provide their board--why should they get the payment? does it not belong to the father? It maybe said that one is particular only

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about money of his own pocket, but about an income that comes from the outside one is not particular.

But is, then, a found article not an outside income, and still one is particular about it? An outside income which comes without any pain to the body, one is particular about; but an income which comes by reason of a wound, where she suffers bodily pain, is different. But does not the Boraitha state that if others wounded her they must pay to her father? It may be said that, as the Boraitha was interpreted that the children were not on his board, it is to show that the man is so penurious that he does not even provide board for his children, and such a man is certainly particular even about such an income; but in our case, where it is explained that they are on his board, it may be assumed that he is not particular about such an income.

What kind of investment (mentioned in the above Boraitha) should he make? R. Hisda said: He should buy with the money the Holy Scrolls. Rabba b. R. Huna said: (An article which brings benefit, *e.g.*) a date-tree, the benefit of the fruit of which should belong to the minor.

And Resh Lakish is also of the opinion that the Scripture granted to the father only the benefit derived from the labor of a minor daughter. R. Johanan, however, says: Even the money gotten for a scratch. A scratch? How can this enter the mind? Even R. Elazar questioned only in case of a wound, because her value was reduced; but in case of a scratch, which does not reduce her value, he did not question at all? Said R. Jose b. Hanina: The case is that the scratch was on the face, and in such a case it causes a reduction in her value.

"A *heathen slave*," etc. What is the reason of R. Jehudah's theory? Because it is written [Deut. xxv. 11]: "When men strive together, one with his *brother*," 1 which signifies one with whom there can be a fraternity, excluding a slave. The rabbis, however, maintain that the word "brother" can also mean a slave, as there is a fraternity with a slave, because he is obliged to perform many commandments which an Israelite is obliged to perform. Now then, according to R. Jehudah, who is particular about the word "brother" mentioned in the Scripture, let witnesses who were found collusive in their testimony against a slave (to convict him of a crime punishable by death) not be

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put to death, for it is written [ibid. xix. 19]: "Then shall ye do unto him as he had purposed to do unto his brother"? Said Rabba in the name of R. Shesheth: The verse reads [ibid., ibid.]: "And thou shalt put away the evil from the midst of thee," which means under any circumstances.

Now, according to the rabbis, who maintain that a slave is also considered a "brother," let a slave be qualified to become a king? According to such a theory the same question could be put as regards a proselyte (who according to all is named brother, and nevertheless he is not qualified)? But both are excluded by the following verse [ibid. xvii. 15]: "From the midst of thy brethren shalt thou set a king over thee," which signifies from the best qualified of your brethren. The question can, however, be put thus: Let, according to the rabbis, a slave be eligible as a witness, for it is written [ibid. xix. 18]: "He had testified a falsehood against his brother"? Said Ula: Even as regards witnesses he must be excluded by the following *a fortiori* argument, thus: An Israelitish woman is not eligible as a witness--a slave, who is not an Israelite and cannot even intermarry with an Israelitish woman, is it not logical that he should not be eligible as a witness? And if you should say that a slave has the preference, for he is circumcised, which is not the case with a woman, the case of a minor can prove it, who is circumcised, and still he is ineligible as a witness; and if you should say that a minor has no obligation of performing commandments, while a slave has, the case of the woman can be cited who has such obligation and still she is ineligible as a witness, and the former argument will be reinstated; from which it is to be seen that in some respects one has preference and in others the other has preference. In one thing, however, they are all equal, in that they are not fit to perform all the commandments to which an Israelite is subject and they are eligible as witnesses; the same is the case with a slave, who is not fit to perform all the commandments and is also eligible as a witness.

"A *deaf-mute*," etc. The mother of R. Samuel b. Aba of Hagraunia married R. Aba, and she

transferred her estates to her son R. Samuel. When she died, he went before R. Jeremiah b. Aba and he installed him in the possession of the estates. His stepfather went and told this to R. Hoshiya, who in his turn told it to R. Jehudah, and the latter said to him: So said Samuel: A woman who sells her estates to some one with a condition that her husband shall have the fruition of same during

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his lifetime, and thereafter she dies, her husband can recover the estates from the buyer (for he inherits from his wife, and because he had the usufruct of the estates he is considered as if he were the first buyer). When this was stated before R. Jeremiah, he said: I, however, know of a Mishna (Third Gate, Chap. VIII.) which states: "One who transfers his estates to his son, after his decease . . . If the son sell them, the buyer has nothing in them until the father dies." We see, then, that if the father die the buyer acquires title in them, and even in case the son dies when the father is still alive, in which case they never came into the possession of the son. As R. Simeon b. Lakish said, there is no difference whether the son dies during the lifetime of the father or the father dies during the lifetime of the son, in both of which cases they never came into the possession of the son, the buyer nevertheless acquires title. [1](#)

When the answer of R. Jeremiah was repeated before R. Jehudah, he said: So said Samuel: This is not equal to the case of our Mishna. Why so? Said Abayi: On account of the enactment of Usha, which is in accordance with Samuel's statement. (See Khethuboth, p. 20.) Said R. Idi b. Abin: We have so also learned in the following Boraitha: If witnesses say: "We testify that that person divorced his wife and paid her the amount of her marriage contract," and it was found that she was still with him, and cohabited with him, and those witnesses were found collusive, they must not pay the full amount of the marriage contract (because she may die before her husband and nothing will be collected, but it must be appraised how much she would get in cash now if she should transfer her right in the marriage contract, so that if she should die before her husband the buyer would lose), but only the benefit of the same; and if she dies, her husband inherits also this from her. Now then, if the enactment of Usha should be of no effect, why should her husband inherit the amount of her marriage contract--let her be able to sell her right in the marriage contract and collect the full amount of it? Said Abayi: What comparison is this: If the enactment was made regarding a woman's estate which she sells reserving the benefit, should the same enactment apply to guaranteed estates?

Said Abayi: As we have come to speak about benefit, let

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us say something regarding it: The above-mentioned benefit belongs to the wife; for if it should belong to the husband, let the collusive witnesses say to her: What loss did you sustain--if you had sold them, the benefit would anyhow have belonged not to you, but to your husband? Said R. Shalman: It does not matter: This benefit, although it would go to the husband, would be a benefit for her, as it would be used to increase the luxury of the household.

Rabha said: The Halakha prevails that the benefit in case of a woman who sells her right in the marriage contract belongs to herself; and if she bought estates therewith, her husband has nothing even in their income. Why so? The rabbis enacted that he should have the direct income

of his wife's estates belonging to her before marriage, but not the income of her estates which she acquired after her marriage in which her husband has no share (*e.g.*, estates bought with the money paid her for disgrace caused to her, etc.). When R. Papa and R. Huna returned from Rabh's college, they questioned: On account of the enactment made in Usha, it was taught of a slave and a woman, one who meets with them is in a bad position, etc. Now, if the enactment of Usha should be of no effect, why should the compensation for her wound be paid to her husband, let it be paid to her and let her buy estates the usufruct of which shall belong to her husband? (What question is this?) Even according to the theory that the enactment of Usha is of effect and she cannot sell the right in her marriage contract absolutely, let her sell, however, her estates of which her husband has the fruition for any benefit she could derive and pay to him whom she wounded? We must then say that she does not possess any. The same is the case here.

MISHNA IV.: If one blow 1 into the ear of another, he pays one sela (as a fine for the disgrace he caused him). R. Jehudah, however, in the name of R. Jose the Galilean says, one manah. If he strike him with the palm of his hand on the cheek, he pays two hundred zuz; if, however, with the back of his hand, he pays four hundred. If he pull or cut his ear, or pull his hair, or spit in such a manner that the spittle fall on him, or strip him of his garment, or he bare the head of a woman in the market, four hundred zuz is to be paid. This is the rule:

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[paragraph continues] Rank and station of the parties are taken into consideration. R. Aqiba, however, says: Even the poorest of Israel must be considered as if they were independent men who had lost their estates, for they are the descendants of Abraham, Isaac, and Jacob. And it happened that one bared the head of a woman in the market, and when the case came before R. Aqiba he imposed a fine of four hundred zuz. Said the defendant to him: "Grant me time for payment," and he did so. The defendant then watched her when she was standing at the gate of her courtyard, and broke her pitcher containing oil of the value of one issar: she bared her head, dipped her hand in the oil, and rubbed it into her hair in the presence of witnesses. The defendant then brought the witnesses before R. Aqiba and said: Rabbi, do you command me to pay this woman four hundred zuz? R. Aqiba answered: Your pleading is of no avail, for one who wounds himself, although it is considered a crime, he does not pay a fine, but if others wound him he must be paid. The same is the case with one who cuts off his plants; although it is unlawful, still he pays nothing, but if others do so (to the same property) it must be paid for.

GEMARA: The schoolmen propounded a question: The manah stated in the Mishna, does it mean a manah of the city of Zur, 1 which contains one hundred zuz, or does it mean the manah of the country, which is one-eighth part of it? Come and hear: "It happened that a man blew into the ear of another and the case came before R. Jehudah the Second, and he said: I saw you doing it, and I hold with R. Jose the Galilean; and there are also other witnesses who saw you doing it, therefore go and pay him a manah of the city of Zur." 2 There was a man who did so to his neighbor, and when the case came before R. Tubiah b. Mathna he sent a message to R. Jose, questioning him whether the sela mentioned in the Mishna meant a sela of Zur or one of the country, which is only of the value of one-half of a zuz, and he answered: This is to be inferred from the end of Mishna I., Chap. IV., where it states "the first two a golden dinar"; and if the Mishna treated of a sela of the country, it would state one more case, viz.: "If the ox still gore another ox worth two hundred zuz, the owner of the ox and the owner

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of the first ox that was injured take each twelve dinars and one sela." Said R. Tubiah: Should the Tana enumerate all the possible cases as a peddler does his wares? How was the case decided? It was decided from the statement of Rabh, which R. Jehudah said in his name, that all the moneys mentioned in the Scripture mean those of Zur, and those mentioned by the rabbis mean those of the country. (Hence one-half of a zuz.) Said the plaintiff: As I have to get only one-half of a zuz, let it be for the poor, as I do not want it. Thereafter he said again: Give it to me and I will use it for improving my health. Said R. Joseph to him: The poor have already acquired title to it, and although they were not here, we the treasurers of charities are considered the hand of the poor.

Hanan the Bisha (the bad) blew into the ear of another. When the case came before R. Huna, he said: Go and pay him one-half of a zuz. Hanan had in his possession a bad zuz that he could not pass, and he tendered it to the plaintiff, asking for one-half zuz change. When he refused, he blew in his ear again, and paid him the whole zuz.

(It is said above, "I saw you doing it.") May a witness be a judge in the same case? Have we not learned in a Boraitha: If the Sanhedrin saw one murdering another, they shall be divided; viz., some of them shall appear as witnesses and the others shall perform the function of judges. Such is the dictum of R. Tarphon. R. Aqiba, however, said: As they are all witnesses, none of them can perform the function of judges? Did R. Aqiba indeed say so? Have we not learned in another Boraitha: It is written [Ex. xxi. 18]: "And if men strive together, and one smite the other with a stone, or with the fist." Said Simeon the Timani: As in the case of the fist it must be investigated whether the blow of the fist was of such violence as to make him ill, confined to his bed, the same is the case with the stone; but if the stone was lost from the hand of the witnesses, no judgment can be granted. Said R. Aqiba to him: "Did he strike him in the presence of the court, so that they could testify how much, for what, and at what place he struck him; and secondly, in case one pushes his neighbor from the top of the roof of a house or palace and he dies, are, then, the court obliged to go and investigate if the height was such as to kill a man, or shall the house or palace be brought before the Beth Din? And if you should say, 'Yea,' how should be the case if in the meantime the palace were destroyed--shall we

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wait until it be rebuilt of the same height, so that it can be measured? Therefore we must assume that as in the case of the fist (which is always there) it depends upon the testimony of the witnesses whether the blow was of such violence, etc., the same is the case with the stone, except where the stone was lost before the witnesses have seen it." We see, then, that R. Aqiba said that the court can testify how the striking was, hence that a witness can act as judge? He said it only to R. Simeon: According to your theory, should the court, etc., but he himself does not allow a witness to be a judge under any circumstances.

The rabbis taught: "A non-vicious ox who killed a man and has also caused damages to another, he must be tried for the crime but not for the damages (because a non-vicious ox pays for damages from his body, and in this case his body is to be stoned); a vicious one, however, who did the same is tried first for the damages and subsequently for the crime. If, however, he was sentenced to death first, he cannot be tried again for the damages." What is the reason? Why shall he not be tried again for the damages. (In such a case the payment is to be made from the estates of the owner?) Said Rabha: I found the disciples of the college sitting and discussing about this case, and they came to the conclusion that the Boraitha is in accordance with R.

Simeon the Timani's theory, that in all cases the appraisal of the court is necessary also concerning damages; and in our case, as it was already decided that the ox must be killed, the execution must not be postponed for the purpose of appraisal. Said I to them: The Boraitha can be explained also in accordance with R. Aqiba, namely, that the case was that the owner of the ox ran away (and he cannot be tried when he is not present). If so, even if the ox was not first tried for the crime, can a civil case be tried in the absence of the parties? The case was that he ran away after the witnesses testified in his presence. But if he ran away, from whom shall the payment be collected? If he was not yet tried for the crime, the appraisal of the damages can be made and the ox may be hired to do work with him until the compensation for the hire equals the amount of the payment, and subsequently he shall be tried for the crime. If so, let also a non-vicious ox be tried for the damages and then hired until the hire shall equal the amount of damages, and thereafter he shall be tried for the crime? Said R. Mari bar Kahana: From the fact that it does not state so,

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it may be inferred that the hire paid for an ox is not considered as its body, but as the estates of the owner.

The schoolmen propounded a question: Is investigation (before appraisal) necessary in case of damages, or not? Shall we assume that only in case of a crime it must be investigated whether the blow was enough to kill, but in case of damages he must pay at any rate, or there is no difference and investigation must be had? Come and hear: It is stated above (p. [118](#)), "As a pit of ten spans depth, which is capable of killing, so also other things, etc. If, however, it was less deep, he is liable only for damages but not for killing." Is it not to be assumed that it means from the bottom to the top--namely, ten spans deep is for killing, less than ten is for damages? Hence we see that investigation is not necessary, as it must be paid even if it was only two or three spans? Nay, it means from the top to the bottom--namely from one up, but not including ten, is investigated for damages, but it must be investigated how many spans deep are necessary for such damage (but if it was ten or more, then we follow the tradition that from ten up it kills).

Come and hear: Concerning the five certain things it must be investigated, appraised, and collected at once, including healing and loss of time, which are also previously appraised as how long it will take before he will be cured. If, however, it was not so--for instance, during that time he grew worse, or, on the contrary, he was cured in a shorter time, it does not matter, and the appraisal remains the same. Infer from this that there is appraisal in damages. (From this the question of the above schoolmen cannot be decided yet, as) they were not in doubt that appraisal was necessary of the time needed for the injured person to be cured, etc., but they still doubted if the article which caused the damage must be investigated whether it was capable of causing such damage or not. Come and hear the decision of Simeon the Timani stated above, from which is to be inferred that investigation is necessary also for damages. And so it is.

The Master said: If he was examined, and it was concluded that the healing must take a certain time, and he was healed before the time, he gets nevertheless the full amount. This will be a support to Rabha, who said that he who is examined, and it is concluded that his sickness will continue the whole day, and he becomes cured in half a day, so that the other half day he is doing some work, he is nevertheless paid for the full day, as it

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is considered that his sickness was shortened by the mercy of Heaven.

"*If he spat in such a manner,*" etc. Said R. Papa: On those parts of his body which were not covered, but not if the spittle fell on his garments. But let it be considered as if he caused him shame by words? In the West it was said in the name of R. Jose b. Abin that from the above explanation of the Mishna by R. Papa is to be inferred that if one disgraces another by mere words he is free.

"*Rank and station,*" etc. The schoolmen propounded a question: The statement of the first Tana, shall it be construed leniently or rigorously? Leniently, if he was a poor person he must not be paid so much as if he were a rich one, or rigorously, that if he was of higher station he is paid more for the disgrace caused him? Come and hear R. Aqiba's statement in the same Mishna, that even the poorest man must be considered as an independent man, etc., from which it is seen that the first Tana meant leniently. And so it is.

"*It happened that one bared,*" etc. Do we, then, allow time for payment in such a case? Did not R. Hanina say that in cases of wounding no time is given? Yea. We do not allow time in cases of pecuniary damage, but in cases of disgrace, where there is no pecuniary damage, time is allowed.

"*He watched her when she was standing,*" etc. But the Boraitha states that R. Aqiba said to him: You dived into deep waters and brought up a fragment of a clay vessel: one may wound himself, but if others wound him they must pay (and in our Mishna it states that a man must not do so)? Said Rabha: This presents no difficulty. The Boraitha speaks of a wound which is not allowed, while the Mishna speaks of disgrace, which one is allowed to cause to himself.

But the Mishna speaks of disgrace only, and still R. Aqiba said, "Although he is not allowed," etc.? R. Aqiba meant to say thus: It is not only in case of disgrace, which one may do to himself, and still if caused by another he is responsible; but even in case of wounding, in which he is not allowed to do it to himself, and after he himself did it others came and caused him other wounds, they are nevertheless responsible.

"One who cut off his plants," etc. Rabba bar bar Hana taught in the presence of Rabh: "If the plaintiff says, 'You killed my ox,' or, 'You cut off my plants,' and the defendant answer, 'You ordered me to do so,' he is free." Said Rabh to

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him: If so, you would not leave life to the people-must he then be believed that he was ordered to do so? Rabba bar bar Hana answered: Then ignore it. Said Rabh to him: Why should you not explain your Boraitha that it treats of an ox which was sentenced to be killed, or of a tree which the court ordered to be cut off? He rejoined: If so, then what is the complaint of the plaintiff? The complaint is thus: I wanted to do this commandment myself, as we have learned in the following Boraitha: It is written [Lev. xvii. 13]: "Then shall he pour out the flood thereof, and cover it up," etc. This means that the covering up must be done by the one who pours it out (if he desires to do so); and it happened of one who slaughtered a fowl and another anticipated him and covered its blood with dust, that R. Gamaliel made him pay ten golden zuz. (Hence one has the right to complain for a meritorious deed which he was prevented from doing.)

Rabh said: A tree that contains a kabh of fruit is prohibited to be cut off. Said Rabbina: If, however, the tree be worth more in wood, it may be done. We have learned so also in the following Boraitha. It is written [Deut. xx. 20]: "Only those trees of which thou knowest"--that means, a tree which bears fruit; "that they are not fruit-trees" 1--that means, a wild tree. Now as, according to this explanation, every tree which is needed may be cut off, why, then, the words "that they are not fruit-trees"? To teach that if there are both wild trees and fruit-trees, the wild trees have the preference to be cut off. But lest one say that even when the fruit-tree is worth more in being used for a beam in a building than for its fruit, the wild tree must be cut off first, therefore it is written "only."

The gardener of Samuel brought him dates in which Samuel tasted a taste of wine, and to the question why it was so the gardener answered that the dates were growing in the vineyard, and Samuel said: If they absorb so much sap of the vines, uproot them and bring me their roots to-morrow.

R. Hisda, when he noticed young date-trees in his vineyard, told the gardener to uproot them, saying: Vines are valuable and date-trees may be bought from their income, while date-trees

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are only of slight value, and from their income vines cannot be bought.

MISHNA V.: All that which is said regarding payment for disgrace is only for the satisfaction of the pecuniary damage, but the hurt feelings of the disgraced are not forgiven, unless he prays and secures forgiveness from the plaintiff, as it is written [Gen. xx. 7]: "And now restore the man's wife," etc. And whence is it deduced that if the defendant does not forgive he is considered cruel? From [ibid., ibid. 17]: "And Abraham prayed unto God, and God healed Abimelech," etc. If one says to another: "Blind my eye, cut off my hand, break my foot," he (the defendant) is liable, even if he told him so on the condition that he should be free. If he told him: "Tear my garment, break my pitcher," he is liable. If, however, he told him so on the condition that he should be free, he is so. If one says to another to do such damage to a third person, even on condition that he should be free, the defendant is liable whether it be personal injuries or injuries to property.

GEMARA: The rabbis taught: All that which was said concerning disgrace is only for the civil court, as to how much the plaintiff should receive, but there can be no satisfaction for the injury to the feelings, for which, if he would even offer all the best rams of the world, they would not atone for it, unless he prays the plaintiff for forgiveness, as the verse quoted in the Mishna reads farther on: "For he is a prophet, and he will pray for thee." For he is a prophet! Must, then, only a prophet's wife be restored, and not that of an ordinary person? Said R. Simeon b. Na'hmani in the name of R. Jonathan: Read thus: Restore the man's wife; (and) because he is a prophet, he will pray for thee--which means that another's wife must be restored. And your claim [ibid., ibid. 4 and 5]: "Lord, wilt thou then slay also a righteous nation? Said he not unto me, She is my sister?" etc., is of no avail; for if a stranger comes to a city, he is usually questioned only what he would eat or drink, but not who is his wife or relatives, as your habit is; and because he was a prophet and he knew what you were going to ask him, therefore he and Sarah were compelled to say so. Infer from this that one is punished even when he commits a crime through ignorance,

because he ought to learn and know.

It is written [ibid., ibid. 18]: "Every womb." Said the disciple of R. Janai, even the hen of Abimelech's household did

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not lay its eggs. Said Rabha to Rabba bar Mari: 1 Whence is the following saying of the rabbis deduced: He who prays in behalf of his neighbor for a certain thing which he himself needs, he is answered first? He answered: From the following verse [Job, xlii. 10]. "And the Lord brought back the captivity of job, when he prayed in behalf of his friends." He said to him: You deduce it from this, and I deduce it from the following verse [Gen. xx. 17]: "And Abraham prayed unto God, and God healed Abimelech, and his wife, and his maid-servants," etc.; and immediately thereafter it is written [ibid. xxi. 1]: "And the Lord visited Sarah as he had said," etc., which means, as Abraham prayed in behalf of Abimelech.

Said Rabha to Rabba bar Mari: Whence do we deduce the following people's saying: With the thorn the rose is also beaten? He answered: From the following verse [Jer. ii. 29]: "Wherefore will ye contend with me? *all* of you have transgressed against me, saith the Lord." ("All," although there were some who were righteous, as the prophets, etc.) Said he to him: You deduce it from this verse, and I deduce it from the following [Ex. xvi. 28]: "How long refuse *ye* to keep my commandments," etc. "ye" includes Moses and Aaron also).

The same said again to the same: It is written [Gen. xlvii. 2]: "And he took some of his brothers, five men." Who were the five? He answered: So said R. Johanan: Those whose names were mentioned twice in the benediction of Moses [Deut. xliii.] (Zebulun, Gad, Dan, Asher, and Naphtali). But is not Jehudah's name also mentioned twice? Jehudah's name was mentioned twice for another purpose (explained in Tract Makkoth, 10). He questioned him again: What is the origin of the following people's saying: "One misfortune follows the other"? He answered: In the following Mishna: "The rich bring the first-fruit in golden or silver baskets (and take the baskets back), while the poor bring it in willow baskets, and the baskets remain with the fruit for the priests." He said to him: You find it in the Mishna, and I find it in the Scripture [Lev. xiii. 45]: "And

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the leper. . . . Unclean, unclean, shall he call out." (Hence, it is not enough that he is afflicted, he must himself call it out.)

He said again: Where is the origin for the rabbis' saying: Arise early in the morning and eat something, in the summer because of the heat and in the winter because of the cold; and people say: Sixty men were running after one who used to eat early in the morning, and could not overtake him? In the verse [Is. xlix. 10]: "They shall not be hungry nor thirsty, and neither heat nor sun shall smite them." Said he: I, however, find the origin in the following [Ex. xxiii. 25]: "And ye shall serve the Lord," which means the reading of Shema and prayer; "And he will bless thy bread, and thy water," which means the bread and salt and the pitcher of water one takes immediately thereafter; [and then he may be sure that] "I will remove sickness from the midst of thee."

He said again: What is the origin of the rabbis' saying: If your neighbor calls you "ass," put on a saddle (*i.e.*, do not answer him)? He answered: In [Gen. xvi. 8]: "And he said, Hagar, Sarah's *maid*. . . . And she said, From the face of my *mistress*."

He said again: And wherefrom is the people's saying: "When talking to a stranger, tell him first of all the position you are in"? He answered: From [ibid. xxiv. 34]: "And he said, I am Abraham's *servant*." And wherefrom is the people's saying: A duck while it keeps its head down, its eyes still look at a distance? He answered: From [I Samuel, xxv. 31]: "And when the Lord will do good unto my lord, then do thou remember thy handmaid." (While praying to save her life, she hinted that he should marry her.)

And wherefrom. the following people's saying: For the wine furnished by the host to his guests thanks are due; the main thanks, however, receives the man who takes care of serving the same in a nice manner? He answered: From [Numb. xxvii. 19]: "And thou shalt lay thy hand upon him"; and also [Deut. xxxiv. 9]: "And Joshua the son of Nun was full of the spirit of wisdom; for Moses had laid his hands upon him, etc." (Hence we see that the whole credit is given to Moses.) And wherefrom the following people's saying: A tree bearing bad fruit usually keeps company with trees which do not bear fruit at all? He answered: This is written in the Pentateuch, repeated in the Prophets, mentioned a third time in the Hagiographa, also learned in a Mishna

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and taught in a Boraitha: *Pentateuch* [Gen. xxviii. 9]: "And Esau went unto Ishmael." *Prophets* [Judges, xi. 3]: "And then gathered themselves to Yiphthach idle men, and they went out with him." *Hagiographa* [Ben Sira, xiii.]: "Every fowl associates with its kind and man with his equal." *Mishna*: "All that is attached to an unclean article is unclean and all that is attached to a clean article is clean." *Boraitha*: "R. Eliezer said: Not in vain did the cuckoo go to the crow, because it is of its kind." He said again: And wherefrom the following saying: If you advise your neighbor and he does not heed your advice, press him to the wall and let him suffer? He answered: From [Ezek. xxiv. 13]: "Because I endeavored to cleanse thee, and thou wouldst not be clean, thou shalt not be cleansed from thy uncleanness any more." And wherefrom the following saying: Do not spit in the well from which you drank water? He answered: From [Deut. xxiii. 8]: "Thou shalt not abhor an Edomite; for he is thy brother; thou shalt not abhor an Egyptian; because thou wast a stranger in his land." And wherefrom the following saying: If you will help me to lift the burden, I will carry it; and if not, I will not touch it? He answered: From [Judges, iv. 8]: "If thou wilt go with me, then will I go; but if thou wilt not go with me, I will not go." And wherefrom the following: When we were young we were considered as men, and now when we are old we are considered as children? He answered: It is first written [Ex. xiii. 21]: "And the *Lord* went before them . . . and by night in a pillar of fire, to give light to them"; and thereafter [ibid., xxiii. 20]: "Behold I send an *angel* before thee, to keep you on the way." And wherefrom the following: If you keep in touch with oil, your hands will become oily? He answered: From [Gen. xiii. 5]: "And Lot also, who went with Abram, had flocks, and herds, and tents." R. Hanan said: Whoso calls down divine judgment on his neighbor is punished first, etc. (See Rosh Hashana, p. 22. There, however, it is said in the name of R. Abin.) R. Itzhuk added to this: Woe to him who cries for such, more than to him upon whom the judgment is called down. We have so also learned in the following Boraitha: "Both are punished (by the Divine Court), but the one who calls down the judgment is punished first." The same said again: Do not hold light the curse of a common man, etc. (See Vol. VIII., Tract Megila, p. 38.) R. Abahu said: It is

better for one to be of the persecuted than of the persecutors as there are no more persecuted birds than doves and

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pigeons, and the Scripture made them fit for the altar. "Blind my eye," etc. Said R. Assi [1](#) to Rabba: Why in the first part the condition that he should be free is of no effect, and in the second part it is? He answered: Because no one will ever forgive for the loss of the principal members of his body. Said he to him: Does, then, a man easily forgive for pain-and nevertheless a Boraitha states: "If one say to another, 'strike me,' or 'wound me, upon condition that you should not be liable for it,' and if he does so, he is free? Rabba remained silent. Thereafter he said to him: Do you know how to explain this? He said: So said R. Shesheth: The reason is for the indignity caused to his family. It was taught: R. Oshiya said: For the reason just mentioned; and Rabha said: Because one does not forgive for the loss of the principal members of his body. R. Johanan, however, said: One may forgive for all that was done to him; and our Mishna, which makes him liable, although it was on the condition that he should be free, is because there is sometimes a "nay" which means "yea" and a "yea" which means "nay" (explained in the following Boraitha). We have learned also in the following Boraitha: If one says to another, "Strike me," or "wound me," and the other asks, "On condition that I should be free?" and he answered "Yea!" (*i.e.*, if so, you would like to do so)? Hence this "yea" means "nay." "Tear my garment," and he says, "And thereafter I should pay for it?" And he answers, "Nay." which means "Yea, you may do so." [2](#)

"*Break my pitcher,*" etc. There is a contradiction from the following Boraitha: It is written [Ex. xxii. 6]: "If a man . . . to keep," etc., for preservation; but not when he says to him keep it for destruction or for charity. (Hence we see that if he told him to keep it for destruction, although he did not say on the condition of being free, he is nevertheless free?) Said R. Huna: This presents no difficulty: The Boraitha speaks of when it was delivered to the bailee for, and he accepted it for,

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destruction--then certainly he is free; and the Mishna speaks of when he told him to break the pitcher when the same was yet in the hands of the owner. Said Rabba to him: The words "to keep" in the Scripture mean certainly that it was delivered to the bailee; and nevertheless, if thereafter he told him to destroy it, without making the condition to be free, he is liable, unless he told him to keep it for destruction at the time of the delivery? Therefore said Rabba: Both cases treat of destruction after the delivery; but the Mishna speaks of when he told him to destroy it after he received it for safe-keeping, and the Boraitha speaks of when he told him at the time of the delivery to keep it for destruction.

There was an $\bullet\rho\nu\bullet\chi\bullet\sigma$ of charity which was sent to Pumbeditha, and R. Joseph deposited it with a certain man who did not take good care of it, and it was stolen from him. R. Joseph held him responsible. Said Abayi to him: Did not the Boraitha state, to keep it for preservation, but not for charity? He answered: The poor of Pumbeditha receive each a fixed sum from charity, so that this money belonged to them, and they can be the claimants thereof (and the reason why the Boraitha holds the bailee free, if it was given to him to keep it for charity, is because where the poor do not receive fixed sums at certain periods they cannot claim a certain fixed amount, and

there. fore it is considered that there are no claimants).

END OF VOLUME II. (X).

[NOTE.--The last two chapters of The First Gate will be printed in the succeeding volume.]

Footnotes

[183:1](#) The verse reads: "Yithain . . . Kain yinothen," of which the literal translation is "should give . . . so should be given and the Talmud takes it as it is, and infers from this that the expression "give" means money, which is given from hand to hand. The preceding verse (19), however, reads: "Osso . . . Yeosseh," the literal translation of which is, "did . . . should be done." Leeser translates in both instances "done," according to the sense.

[183:2](#) The Gemara continues with similar questions: Is it not written, "foot for foot"; and similar answers, "There is a superfluous verse," etc., are given. It also proceeds to cite other schools and individuals who deduce it from other Scriptural sources, with a lengthy discussion, and finally arrives at the same conclusion, that this law must not be understood literally. We have omitted all this, as all the explanations are as complicated as the one translated in the text. And it seems to us [p. 184](#) that all those who participated in this discussion well knew that at the time the Thora was given the law was literal in its meaning, as it was also at that time among other nations; but with the change of time it was positively necessary to change this law, and if it could not be deduced from the Scripture it would not be accepted.

[185:1](#) It probably means the use of a drug as an anodyne or anæsthetic during the amputation.

[186:1](#) The word "healing" is repeated in the text. Leeser translates it "thoroughly healed"; literally, it would be, "concerning healing he should be healed."

[188:1](#) The codifiers of the Halakhoth, as the Alphasi, Maimonides, etc., have decided in accordance with the rule that all undecided questions found in the Talmud must be decided rigorously; *i.e.*, that in both of the above cases the defendant pays for each injury separately and then for the whole body.

[195:1](#) The text reads "Ish v'ochiv," which literally means "a man and his brother." Leeser, however, translates it according to the sense, "one with the other."

[197:1](#) Here follows a discussion as to whether the usufruct is equivalent to the principal, which is omitted here, but will be translated in its proper place.

[198:1](#) According to others, it means "boxing the ear." We, however, have translated it in accordance with our method, after the second interpretation of Rashi.

[199:1](#) One manah of Zur is 25 selas, each sela containing four zuz. A country manah is one-eighth of a manah of Zur, and also contains 25 selas, so that a country sela is one-half of a zuz.

[199:2](#) From here to end of paragraph is transferred from Chap. IV., Text, 36*b*.

[204:1](#) The Talmud divides this verse into two parts, which in reality reads well as it is, and Rashi tried to explain it that because there are a few superfluous words it ought to read "only a tree that bears no fruit," why, then, the words, "which thou knowest"? And this is the reason why the Talmud infers from this that even a fruit-tree may be cut off when needed.

[206:1](#) The following series of questions is placed here because of the verse quoted, "and Abraham prayed unto God," etc., from which Rabba bar Mari delivered his statements in the text differing from Rabha; and at the same time he mentions here all other statements which each of them deduces from different verses, and casually also others. They wanted also to find the origin of even the ordinary adages of the people in the Holy Writ, on account of what is stated elsewhere in the Talmud, that there is nothing in the world for which there can be found no hint in the Scripture. (See vol. viii., Tract Taanith, p. 9.)

[209:1](#) This name is correct, according to Alphasi, as the name mentioned in the text would be incompatible with the time in which R. Assi b. Hama lived.

[209:2](#) R. Johanan explains that our Mishna speaks of when there was a question and an answer between the plaintiff and the defendant, and it was not clear whether it meant yea or nay; the Boraitha, however, speaks of when the plaintiff made the condition that the defendant should be free without any question by the other. This is Rashi's explanation. The text, however, of R. Johanan's saying mentioned above seems to us to be very simple: It must be investigated how the condition is to be understood--whether it is in the absolute affirmative form or in the form of a question.