

CHAPTER III

Bava Metziah 34a

GEMARA

"Said Rava: It becomes as though he [the bailor] had said to him, 'If it be stolen, and you are willing to pay me [for it], then my cow be yours from this moment [of delivery] If so, even its shearings and offsprings too [should belong to the bailee] Why has it been taught: Excepting its shearings and offsprings? — But. said R. Zeira, it is as though he had said to him, 'Except its shearings and offsprings.' And why make this an absolute assumption? It may be taken for granted that one gives over those improvements which come from elsewhere, but not those which come from the stock itself. Others state, Raba said: It becomes as though he said to him, 'If it is stolen, and you are willing to reimburse me, then it is yours from just before the theft."

Wherein do they [sc. the two versions of Rava's reply] differ? — They differ in respect of the difficulty posited by R. Zeira; or if it was standing in the meadow.

And he [the bailee] pays [for them], declining to swear etc. R. Chiya b. Abba said in R. Yochanan's name: **He pays** is not literally meant, but once he said, 'I will pay,' even if he has not done so, [the law of the Mishnah holds good].

We learnt: **And he pays, declining to swear;** [this implies,] only if he actually pays, but not otherwise? But consider the second clause: **If he swears, not wishing to pay;** [which implies] only if he did not consent, but if he consented, even if he had not actually paid [the double repayment is his]! Hence no inference can be drawn from this.

It has been taught in accordance with R. Yochanan: If one hires a cow from his neighbour and it is stolen, and he declares, 'I will pay and not swear,' and then the thief is discovered, he must pay double to the hirer.

R. Papa said: If a gratuitous bailee merely says, 'I was negligent,' he [the bailor] assigns the twofold repayment to him, since he could have freed himself by [the plea of] theft. If a paid bailee merely says, 'It was stolen', the twofold repayment is made over to him, since he could, if he wished, have freed himself by pleading that it was hurt or had died. But if a borrower says, 'I will pay,' he [the bailor] does not assign him the twofold repayment; for how could he have freed himself? By [the plea], it died on account of its work? That is a rare occurrence.