

Bava Metziah 34a

CHAPTER III

GEMARA

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.

Others state, R. Papa said: A borrower too, once he says 'I will pay,' the double repayment becomes his, since he could, if he wished, free himself by [the plea], 'It died on account of its work.' Thereupon R. Zvid observed to him, Thus did Abaye say: As for a borrower, [the twofold repayment is not his] unless he has actually paid. Why? — Since all the benefit [of the loan] is his, he [the lender] does not make over the double repayment to him on the strength of mere words.

It has been taught in accordance with R. Zvid. If one borrows a cow from his neighbour and it is stolen, and the borrower hastens and pays for it, and then the thief is found, he must repay double to the borrower. Now, on the first version of R. Papa's dictum, this is certainly not a refutation; but must we say that it is a refutation of the second version? — R. Papa can answer you: Is this stronger than our Mishnah, which states, **he pays**, yet we interpreted it as meaning, he declares [that he will pay]; so here too, it means that he says [that he will pay]. How compare? There [in our Mishnah] it is not stated that 'he hastens', whilst here it says, 'he hastens'! — What is the meaning of 'he hastens'? He hastens to promise. But since [the teaching] in respect of a hirer is stated, 'and he says' [that he will pay], whilst [that] in respect of a borrower is stated, 'and he hastens'; this proves that it is stated advisedly [so]! — Were they then taught together? The tannaim of the schools of R. Chiya and R. Oshaya were asked, and they affirmed that they were taught together.