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CURIOSITIES OF THE LAW

BABYLONIAN PROCEDURE

Self satisfaction is the result of self praise. Much has been written praising the innovations of modern trial procedure and but little cognizance is taken of the fundamentals of the ancient systems of procedure. The modern judicial system has become more complicated but still it is only an emanation of ancient models. There is a strain of resentment coursing through the veins of Christian nations to the idea that we are greatly influenced by Jewish principles, yet Jewish thought is probably more deeply influencing modern civilization than Grecian politics and Roman law. More resentful still is the fact that many of our principles are inherited from the Pagans of Babylon, yet it is also true that Jewish society inherited much from Babylonian peoples. We have no reasons to hang our heads in shame because of something that has been traced back so far, instead we should take pride in our adoption and approval because the Babylonians were people of fine sterling worth.

The Code of (2250 B. C.) Hammurabi, an inscription in stone, is the most important guide to Babylonian and Assyrian law and procedure. From the study of this code the major part of the knowledge of the history of the judiciary, trials and punishments of Assyrian and Babylonian times. The judge was called a Galzu and occupied a position of esteem not unlike those of modern times enjoy. The judge was a person elevated to a noble profession and it is certain he had no other means of livelihood and if he received any remuneration all evidence of such is destroyed. It is most probable that all the judges were appointed by the king because numerous letters refer to them as "the king's judges", but to the contrary there is probative evidence to the effect that the office was hereditary. Each judge had a certain district over which he had sole jurisdiction and woe be to the litigant that asked for a change of venue for these judges were extremely jealous of cases being taken of their jurisdiction. Continuances were common for the purpose of

procuring witnesses. The records do not give any definite information as to the limitations of suffrage but the letters speak of Ishtarum, a lady, serving as a judge on an occasion.

A judge could reverse his decision but above all probability deemed it not expedient. Par. 5 of the Code said, "If a judge has rendered a verdict, granted a written judgment and afterwards has altered his judgment, that judge shall be prosecuted for altering his judgment and shall pay twelvefold the penalty laid down in that judgment. Further he shall be publicly expelled from his judgment seat". It would be interesting to know if any judges exercised the courage of altered convictions and reversed themselves under such conditions! Doubtless some thought it fit to do so because if such revocation resulted and was unjust a right of appeal was given.

The word used to designate a witness is "sibu", which means "grey-headed". There were three classes of witnesses first there were the elders who probably served as notaries, jurors, assessors, and grand jurors. They were approved by the king and were official witnesses. Second there were sibi muri "the witnesses who know" and were examined on their oath and testified for the litigants. The third class of witnesses were called "the establishers". They most probably witnessed deeds and acted as attesting witnesses when instruments were to be established.

The procedure of the Babylonians is much enlightened by the Code of Hammurabi. The judge recorded the pleas and heard the oral statements and witnesses were called whose competency the judge might pass upon. After the evidence was introduced the judge passed sentence or rendered a verdict. If one party was in the wrong the judge, "put the blame upon him". Contracts were annulled and damages were awarded.

The decision was rendered by the words "Quetting the complaint". These decisions were usually irrevocable because of the exaction placed upon such revocation as mentioned before. The judges administered an oath to the parties by which they agreed to abide by the decision, the oath probably being administered only to the unsuccessful litigant.

Before considering the procedure of the courts of Babylon it may be interesting to note that many disputes were settled out of court. If the parties came to an agreement a scribe incor-

porated the agreement in writing and a binding compact was formed called a "duppu la ragami". If however, a judge was deemed essential one person complained and proceeded to literally capture a judge, and usually the defendant submitted to the jurisdiction and no summons was necessary; all quite different than the present situation.

Usually the scribes were the only people who could write, except the educated, and the scribe usually wrote up the complaint so as to make the plaintiff lose for he was ill to prejudge the case. It is well established that our modern vituperative allegations of the plaintiff's petition did not originate in Babylon. The pleas were made by the litigants and no mention is made of advocates or solicitors. Perhaps there were advocates at a later time.

The oath was an important cog in all procedure under the Code of Hammurabi, and the perjurer was punished severely. The judge administered the oath to both parties and to all the witnesses. Depositions are even mentioned in section 9 of the Code. The forms of oath were probably versatile for the Babylonians had many gods. It is not illogical to believe that each judge had his pet god to whom he made the witness swear to the truth, the whole truth, and nothing but the truth. In later times the oath decreased in importance.

Penalties and forfeitures of Babylonian and Assyrian law are irreconcilable with the comment aforementioned as regard to their procedure and judiciary. The punishments as meted out thru the ages are reflections of the ethics, religion and environment of the various nations and the code of Hammurabi was severe and unflinching as to this phase of the law. Its true conception of the law was "An eye for an eye and a tooth for a tooth" with possibly an amplification that it be a good tooth or a good eye. Centuries have changed the world's view in this respect to a great extent, yet fragments of this view dangled along in the form of capital punishment to the present day. We should not be too quick to condemn the penalties of Babylon because perhaps they were the most effective method to deter crime at that period just as capital punishment is today perhaps the best punishment to prevent murder.

In civil suits an unsuccessful litigant was not merely permitted to pay the costs of the suit and proceed to his home. In

Babylon he had been put on his oath and was not able to justify his contention therefore he was to be punished. If it were slander or some lesser offense he was branded and if a suit on a debt he was obliged to pay a penalty to the defendant, the amount he had asked for as damages. Settlements out of court were in the nature of bonds never to sue and if a suit were brought an extreme penalty was inflicted. Something not unlike the ordeal was occasionally imposed. Forfeits took the form of white horses and probably even the barbaric habit of offering the eldest child of the defeated litigant to the gods prevailed.

The death penalty was inflicted for many crimes under the Code of Hammurabi for theft, rape, negligence of officials and for causing the death of another because of a faulty building. Various methods of execution were prevalent and impalement on the stake was the order for murder of a husband by a wife. Death by drowning was inflicted for many crimes including the selling of beer too cheaply.

Mutilations were frequent and assorted. If a son struck his father he was adjudged to have the assaulting member amputated. The eye was put out for unlawful curiosity and letters speak of wholesale blindness. The tongue was cut out for any spoken ingratitude. Scourging was frequent form of punishment and was administered with ox hide. So read the Code of Hammurabi.

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