

## The Son's Portion in the Oldest Laws known.

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OLD TESTAMENT critics claimed not so many years ago that it was impossible to conceive of a code of laws written in Palestine as early as the time of Moses. It then would scarcely have been thought reasonable if it had been stated that at a much earlier time the Babylonians probably possessed a highly developed code. A little more than a decade ago a code inscribed upon a large and irregular diorite stone was discovered in Elam. It was written prior to 2000 B.C., and contains a code of laws by Hammurabi (or Ammurapi); who, as practically all scholars now agree, is the Amraphel of Gn 14<sup>1</sup>, a contemporary of Abraham.

Scholars familiar with the history of the times and the laws which he codified quite properly assumed that they had been based upon earlier collections of laws. The phraseology employed, and the fact that Sumerian laws were quoted in the contracts of an earlier period, made it clear that such had been the case; but the actual existence of them could not be proved. Recently there was secured for the Yale Babylonian Collection a tablet which was heavily encrusted from being buried for four thousand years in earth impregnated with salts. After the tablet was cleaned, it proved to belong to a period earlier than that of Hammurabi, and to contain laws written in Sumerian, the language of Southern Babylonia prior to its conquest by the Semites or Accadians in the time of Hammurabi.

Jahweh is said to have been the source of Israel's laws. Hammurabi gives Shamash credit for his laws. At the close of this document it is stated that they are 'the laws of Nisaba (a goddess) and Khani (a god).' The exact significance of the interesting order, that of goddess followed by the god, cannot at present be determined.

The special interest of this tablet in connexion with the Code of Hammurabi is that it proves to be a prototype of that Code. While the tablet and the Code treat the same subject-matter, it would be impossible to say that the laws of the Code were dependent on those represented by the tablet if it were not for one striking and conclusive instance. The first law on the reverse of the

Sumerian tablet, which unfortunately is the only side preserved, reads: 'If (a man) push a daughter of a man, and make let fall the possession for her interior, he shall pay ten shekels of silver.' The second reads: 'If (a man) strike the daughter of a man, and make let fall the possession of her interior, he shall pay one-third of a mine of silver (twenty shekels).' These two laws are condensed into one, found in the Hammurabi Code, which reads: 'If a man strike the daughter of a man, and make her let fall that which is of her interior, he shall pay ten shekels of silver for that which is of an interior.' The penalty, namely, the payment of ten shekels in the Hammurabi Code, is taken from the first-mentioned law of the Sumerian Code, in which the accidental injury is referred to; but the act of striking with the intention to injure, found in the Hammurabi Code, is taken from the second section of the Sumerian, where the act is more severely dealt with. Although one code is written in Sumerian and the other in Semitic Babylonian or Accadian, it seems that the details, as well as the phraseology, are such that no other conclusion can be reached than that the former was a prototype of the latter.

The third law covers the loss of a hired ship through carelessness. The fourth legislates with reference to a son who renounces his sonship, and receives his portion. The fifth refers to the repudiation of a child, doubtless one who was incorrigible. The sixth covers the case of elopement; the seventh, the enticing away, or the abduction of a girl, after her parents had refused to give her in wedlock. The eighth deals with the killing of a hired ox by a wild beast; and the ninth, the loss of a hired animal through neglect. It is expected that the translation of these laws will shortly appear in a volume published by Yale University Press, and to be republished by the Oxford University Press; one of the laws, however, follows.

The fourth law reads as follows: 'If a son say unto his father and his mother, "(thou art) not my father, not my mother"; from the house, field, plantation, servants, property, animals he shall go forth; and his portion to its full amount he (the

father) shall give him. His father and his mother shall say to him, "not our son." From the neighbourhood of the house he shall go.' This law legislates with reference to a son who, desiring to venture upon a separate career, renounces his sonship, receives his wages or portion, after which he leaves his home and is thereafter legally separated from his family. In other words, a son in good standing with his family who desires to venture upon a separate career could ask for his portion or wages. This does not imply unfilial conduct, for the child may have had a family of his own, and wished to provide for his own house. Such separations were, doubtless, often suggested by the patriarchal head of the family owing to limited conditions on the estate, or for many other reasons. It is quite easy to understand how such a custom existed among primitive agrarian and nomadic peoples.

The Code of Hammurabi deals at length with the laws of inheritance. The ancient Hebrew law is explicit with reference to the distribution of an estate after the owner's death. The relation of the portion in the present Sumerian laws to the share allowed by the law of inheritance is not stated. The amount received may have depended upon the years of service, or upon the will of the parents. It is reasonable to imagine that the portion of a son who, together with his own family of grown children, had faithfully served the paternal estate for years would be greater than that of a son who had just arrived at manhood. The Hammurabi Code, in providing for an adopted child whom the father desired to repudiate, requires that 'he gave him of his goods one-third of the portion of a son, and he shall go. He shall not give to him of field, garden, or house.' This implies that the portion which an adopted child received upon being sent away differed from that which he would have received as an inheritance.

Several adoption deeds are known, belonging to the same period as the Hammurabi Code, about 2000 B.C., which contain similar provisions; to quote from one, 'If Iltani or Nidnat-Sin say to Mar-Ishtar, their (adopted) son, "thou art not our son," he shall receive his portion as the children of Iltani and Nidnat-Sin, and go away.' But these conditions are provided for only in the case of parents repudiating adopted children. The newly discovered Sumerian Code bearing upon the

portion or wage refers to the action taken by the child; and there is no distinction made as to whether he was an adopted or a real child.

The law under consideration shows that the child who renounced his sonship and received his portion was legally separated by his parents. This legal banishment contained in the words of the law, '(thou art) not our son. From the neighbourhood of the house he shall go,' was a provision of the greatest importance. It was prudential in character, although it was also, doubtless, a source of relief to many families. The son who took this step knew that legally he had no further claim upon the estate. This provision annulled the law which provided a share in the estate for the son after the death of the father. It also protected the parents from any further demands. If the portion was squandered, the son could not legally impose upon them. It was also a wise provision in the interest of the other children. They were really party to the division which had been made. This law protected their interest in the estate which they and perhaps their own children were helping to build up. It was a necessary accompaniment to a law which provided for a son's patrimony, and also for his securing his portion during the lifetime of his father. And although it belongs to the earliest known laws, in this feature it seems to be an advance upon our present-day law, for if a parent during life gives a child what would be his portion, and does not leave a will, or a contract which specifies this, the law of inheritance would grant him another share.

The tenacity of custom among the peoples of Western Asia, which is known in many instances to have survived for millenniums, suggests the idea that this law throws light on the Parable of the Prodigal Son (Lk 15<sup>11</sup>). In accomplishing his purpose, the son in the parable does not make a request, but rather a demand: 'Father, give me the portion of substance that falleth to me.' The Greek word translated 'portion' is no more definite than it is in the codes and deeds referred to above. 'And he divided unto them the living'; after which it is said of the son that he 'gathered all together, and took his journey into a far country.' And in his dire extremity, after he had squandered his portion, knowing that he was legally dead as a son, he decided that his lot would be better if he were one of his father's hired

servants. He knew that he had no right to ask his father for more than this. Upon his return, his brother, the sole beneficiary, who is generally unjustly condemned, who, as the parable shows, had been most economical in his efforts to build up the estate, naturally showed anxiety as to what his father intended to do. Whereupon his father reminded him that all that he had was his, but at the same time he said that it was meet to rejoice

over the return of his brother, who though legally dead was still his own son. This legal aspect of the parable does not seem to have been even surmised by the commentators. It heightens the contrast between the father, who, on the one hand, complied with what the law permitted the son to demand; and on the other hand, the forgiving father, who rejoiced over his return, not as a legal heir, but as a son.

## Contributions and Comments.

### The Woman that was a Sinner.

THAT the judgment of the ages must be reversed with regard to the identification of Mary Magdalen with the woman that was 'a sinner' is true enough; that it must be reversed with regard to the view that the 'sinner' was a woman of notoriously bad character is not so certain. This view seems still to hold the field. That ἀμαρτωλός may have that meaning has been shown by Wetstein, to whom readers of my volume on *St. Luke* are referred.

The division of the Jewish nation into the two classes of οἱ δίκαιοι and οἱ ἀμαρτωλοὶ no doubt existed in our Lord's time, and was emphasized by those who considered themselves to be δίκαιοι. But it is not adequate for the explanation of Lk 7<sup>30-50</sup>. If ἀμαρτωλός had occurred only in the thought attributed to Simon the Pharisee (v.<sup>39</sup>), it might have been probable that the term meant merely one of those who were regarded by the more rigorous Jews as 'sinners' and 'accursed.' But Luke uses it as his own estimate of her; and it is a little improbable that, in such a matter, he would have accepted the Pharisaic point of view.

There is a stronger objection—the passionately penitential and adoringly affectionate behaviour of the woman. Would this have been exhibited if she was merely leaving a careless, but quite common mode of life, and was grateful to Christ for not treating her as the Pharisees did?

And there is a still stronger objection. In the woman's presence, and publicly before the assembled guests, our Lord speaks of this woman's 'sins, her many sins.' They were notorious, and there was no unkindness in thus alluding to them. But would He have used such words if she had been

merely one of the hundreds, or perhaps thousands, in that city who paid little attention to the requirements of the Law?

I make many mistakes, but I am unable to admit that in this particular I have made a mistake through ignorance. If I am in error, I err in good company. I turn to Hastings' *D.B.* iii. pp. 280 f., to an article by a scholar of the first rank, J. B. Mayor. He speaks of her as 'the sinful woman' and twice as 'a notorious sinner.' I turn to Hastings' *D.C.G.* ii. p. 640. There we are told that 'in Mk 8<sup>38</sup> the word (ἀμαρτωλός) is associated with μοιχαλίσ; so also in the story of the sinful woman (Lk 7<sup>37</sup>).' Dr. Bruce in *Expositor's Greek Testament* says that this woman is represented 'as a notorious character; how sinning indicated by expressive silence; a harlot. In what city? Various conjectures. Why not Capernaum?' Dr. Salmon (*Human Element in the Gospels*, p. 482) takes the same view. So also S. J. Andrews (*Life of our Lord*, p. 283), Burton and Matthews (*Constructive Studies in the Life of Christ*, p. 113), Edersheim (*Life and Times*, i. p. 564). In the latest edition of the *Encyclopædia Britannica*, 1911, xvii. p. 814, she is 'the unnamed fallen woman.' One may add Alford, Cook (*Speaker*), F. W. Farrar, Plumptre, Sadler, Wordsworth. Nor is this view confined to English and American scholars or to orthodox theologians. We find it in Burger (Herzog and Plitt), Godet, Hahn, Hase, Holtzmann, Keim, Meyer, De Wette. Strauss suspects confusion with the woman taken in adultery. And some of these writers hold that this woman was not only a notorious sinner and probably of unchaste life, but that no other hypothesis than that of habitual unchastity is adequate.