

Jewish Law in the 1st Century

Jewish Law ¹

Following the analogy of the law of Scotland, we may arrange the code of the Hebrews into Statutory or Written (meaning by this the law of Moses) and Customary or Unwritten law (referring to the traditional law of the Mishnah). It is with the latter exclusively that we have at present to do. All jurisdiction was either civil, criminal, or ecclesiastical, according as questions of private right, public morality, or religious duty were to be decided. It requires, however, to be borne in mind, that by the peculiar constitution of the Jewish courts, and by the institutions of the country, a complete separation between these different branches could not be effected. Besides the above, a number of police, sanitary, and public regulations were also enacted by the Rabbins, which we shall notice as occasion offers.

The Jewish law acknowledged rights in every individual, and, with few exceptions, placed all on a footing of equality. We have already referred to some of the rights of women, and shall only supplement our statements. Though a mother could not claim equal respect, she was on the same footing towards her children as the father, and biblical examples of her influence will readily occur. All the forbids of the law applied equally to both sexes, but all those commands whose execution was confined to certain definite periods (for example, the day-time, etc.), were only binding on males. Legal exceptions to the validity of marriages entailed the disqualification of the offspring. In all ordinary circumstances the child inherited the rank of the father. If the mothers had been incapable of contracting marriage, as in the case of female slaves, -the children ranked with the mother. Thus the family of a bastard might become legitimate, if the bastard (father) married a slave (mother). Their children were

¹ extracted from Edersheim, Alfred, *History of the Jewish Nation after the Destruction of Jerusalem under Titus*, Chapter 10, *Progress of Arts and Sciences among the Hebrews*.

then not bastards, but slaves, and, being emancipated, might become legitimate citizens, and intermarry with Israelites.

Of the different relations of foreigners to Jews we have already spoken. They were either passing or resident strangers, or naturalized denizens. An uncircumcised person was allowed to offer sacrifices and tithes (of course according to the Jewish ritual), but not to partake in the Passover, or to marry a Jewess. Jews were allowed to marry the daughters of heathens, except those of the seven Canaanitish nations, and of the Amalekites. The grandchildren of Egyptians and Edomites, who had settled in Palestine, might enter the congregation. The law with reference to the Moabites and Ammonites, as well as to the seven nations and the Amalekites, was, however, repealed by the Rabbins in favor of proselytes, and the sons of all foreigners resident in Palestine, and all proselytes, were allowed to enter into the congregation. Any intercourse with heathens which might either further their idolatry, or issue to the disadvantage of the Jewish nation, was interdicted.

We can hardly suppose that foreigners resident in Palestine troubled themselves much about Jewish regulations; but, according to the theory of the Rabbins, they were obliged to observe the seven Noachic Commandments which we have formerly specified. Finally, it is noticeable, that the Mishnah confines the term bastards to those begotten in incest, to cases where marriage had been legally impossible, and to the children of harlots.

Every householder shared in all the public burdens, such as the keeping up of roads, baths, city walls, gates, etc. Any party who transferred a public road from one part of his property to another, forfeited his right to both. All obstructions were to be removed from streets and roads, and, where they had been the occasion of damage, the person to whom it was traced was liable for compensation. All property consisting of fields was restored in the

jubilee, but the party restoring could claim something for improvements made. Within that period fields could be redeemed by the original proprietor only after a lapse of two years from their disposal. Houses in open (not walled) towns, or in villages, or in fields etc. enclosed within town walls, or built on the city wall itself, were considered as fields, and returned in the jubilee to the original proprietors. Houses in walled or in un-walled towns might be redeemed by the original proprietor within a year after their sale; but after the lapse of a full year, houses in walled towns remained the perpetual property of the purchaser.

To our former remarks on servitude, we add, that only one of two grounds could exist for the servitude of a Hebrew, namely, theft, when, in order to discharge the legal pecuniary punishment, the authorities might order the sale of the culprit; or poverty inducing a Jew to sell himself. His servitude lasted till the jubilee or till the death of his master, or he might obtain freedom by paying the amount for which he was sold, after deduction of the value of his services. Hebrew maids obtained freedom in the seventh year; nor could they have their ears bored. If a Hebrew sold his daughter, the law assumed that it was for the purpose of marriage, and forbade her sale by her master. As she could only be sold during her minority, she attained freedom whenever the marks of puberty appeared. A heathen slave might obtain his liberty by redemption, manumission, or in consequence of ill-usage.

If a slave was sold to a heathen, or beyond the boundaries of Palestine, he obtained by the very act his legal freedom, and, if fugitive, could not be reclaimed. Heathen slaves, however, did not share all the privileges of Jewish servants. Thus, for example, they could not retain possession of anything found by them. If the slave of a heathen became a proselyte through baptism, he received his freedom when sold to a Jew. The daughters of such proselytes enjoyed the same rights as other Hebrew women, and, if their mother had been a Jewess, might even be married to priests. If a man left his fortune to

his slave, he attained with it his liberty also. Regular letters of manumission were given, in which the essential words were "from this time forth be free," or be "thine own master." These letters, if once written, even though not delivered or dispatched, could not again be annulled. Hired servants, if engaged by the day, could claim their wages at night if during the night, on the following day. But while the law respected the rights of the employed, it also carefully protected the employer.

Properly speaking, marriage was considered a purely civil contract, but it was customary to wed the bride in presence of witnesses, and with the pronouncement of certain blessings, or to wed her "according to the law of Moses and of Israel." A bride descended from the family of Aaron had a double dowry (400 dinars) assigned to her. If a young girl had been married while a minor, she was allowed to repudiate her husband on attaining her majority; if the marriage had taken place without her consent, it was necessarily void. In all other cases, from the moment the marriage-contract had been signed the union could only be separated by formal divorce. If sufficient funds were on hand, a bride could insist on having a portion assigned to her conformable to her station in life. A second daughter could claim a portion equal to that of her elder sister.

A mistaken opinion as to the circumstances of the bride, unless she had willfully deceived her intended, formed no valid ground for divorce. If the lady's property had been entered into the marriage contract, the bridegroom was bound to assign to his wife the full value of her portion, and one-half more, or, if it consisted in jewelry, etc., one-fifth less than their value. In such cases the property belonged to the husband, either simply for use the wife retaining her right of disposal or absolutely, the husband being, however, answerable for any loss. If a wife inherited property, the husband enjoyed only the use of it, but a wife could not dispose of any property without the consent of her husband. If the husband's rights were attainted by any vow of his wife, he was at

liberty to absolve her from such obligations. The duties of both parties, and their mutual rights, have already been detailed.

We add, that the claims of the wife upon her dowry, and those of children, did not require to be expressly mentioned in the marriage-contract. The husband was the heir of his wife. In cases of separation (not divorce) he was bound to assign her a proper aliment. In cases of dispute, the law protected chiefly the interests of wives. One witness, even though incapable of giving testimony in other cases, was sufficient to attest the death of the husband, i.e. if no suspicion of collusion existed; but a period of three months was to elapse between a first and second marriage. Before receiving her dowry, the wife had to swear that she had not previously got any portion. We need not detail the laws regulating marriage with the wife of a deceased brother, as even the Mishnah recommends that it should not be performed. An Israelite was prevented from marrying within the prescribed degrees of consanguinity, and priests from uniting themselves with harlots, with divorced or profane persons, i.e. the offspring of marriages forbidden to priests.

To prevent interdicted marriages, every priest was to inquire into the family of his bride (up to four degrees, if she descended from the family of Aaron in other circumstances, to five degrees), except when the bride's father was a priest in active service, or a member of the Sanhedrin. The daughters of proselytes, provided that one of their parents had been an Israelite, and of the daughters of degraded priests, might be married by priests. In a city taken by an enemy, the priests had to divorce their wives, unless special testimony could be borne to their chastity.

Although divorce was lawful, the various regulations to be observed must, in practice, have considerably limited it, and its practice was generally reprobated. Besides, it was always first sought to bring about a reconciliation. If a wife had transgressed “the

law of Moses” (in her duties as wife), “or that of Israel” (by immodesty or forwardness, etc.), and in other exceptional cases, she had no claim on her dowry. A letter of divorce had to be signed by witnesses, and expressly stated that N. N. was now regularly divorced, and free to marry any other. In prospect of a distant journey, or of death, the mere order of the husband to draw up a letter of divorce was deemed sufficient, except when he had specially been solicited to do so. Letters of divorce might be transmitted by messengers, provided they had been delivered by both parties in the presence of witnesses. The messenger was not allowed to marry the divorced party. Where the doubtful fame of a woman was the ground of separation, she could never be taken back again.

The mutual rights and duties of parents and children have been already referred to. While the sons were in measure independent, the father could dispose of his daughters during their minority, either by marrying or by selling them. However, the disposal of a daughter was deemed improper, except in cases of urgent necessity. Although the father was bound to have his son circumcised, redeemed, educated, trained to a trade, and even taught to swim, some maintained that he was under no legal obligation to maintain his daughters.

The first-born son inherited a double portion of the property actually left by the father (not by the mother), and on hand at the time of his decease. Sons and their descendants, though these descendants were females, were considered the sole heirs, when even the right of primogeniture extended to the daughters of the deceased eldest son in preference to their father's brothers. Failing direct heirs, the property passed to the father of the deceased, and then to his brothers or sisters, and so on upwards. Bastards, or the offspring of illicit connections, with the exception of the children of heathen or slave mothers, were not excluded from sharing in the inheritance. Crimes of any kind did not disqualify from the above rights.

The Rabbinical law makes provision for disposal by testament. It distinguished between the disposition of persons in good health and of those in prospect of death. The latter might either leave or dispose of their property, if such disposal did not run contrary to the law of Moses. Only an inheritance could never go wholly beyond the circle of the rightful heirs, nor could any of them be excluded by name, though they might be tacitly passed by.

If a person in good health gifted away any portion of his property, actual possession on the part of the recipient was requisite to complete the transaction. If a patient recovered, he could recall the donation, provided he had not, by retaining part of his original property, indicated that he had at the time anticipated recovery. The claims of the widow have already been referred to. The duty of burying a widow devolved upon her legal heirs.' A widow could only claim payment of her dowry from what was actually left at the time of her husband's decease. Daughters had to be maintained by their brothers, even though this would have thrown the latter upon public charity. Where the father had not chosen tutors or curators, such were appointed by the authorities. The wife was not heir to her husband, nor a mother to her children. The husband might formally renounce his right to his wife's property, whereupon she was at liberty during her lifetime to dispose of it.

A farmer was obliged to keep the ground in good order, and to make all customary improvements. If a crop was destroyed by locusts, fire, or any public calamity, the damage was borne by the landlord. Leases were generally for seven years, but flax might only be sown or wood cut during the first year, as the former exhausted the ground, and the latter took long time to grow. If any person let his house to another in winter without fixing a term, he could not dispossess the occupant between the Feast of Tabernacles and that of the Passover (the end of autumn and the end of spring). In summer, thirty days' notice of removal had to be given, and, to the occupants

of shops or of town-houses, a full twelvemonth. The occupants of manufactories and large works had to receive three years' notice. The proprietor was bound to execute any repairs which required a tradesman.

The law distinguished between movable and immovable property. The latter afforded security to creditors even where such had not formally been stated; the former did not. Claims upon movable property could only be substantiated if such property had actually been delivered, else neither the fact of payment nor the statement of witnesses could make the transaction legal. Immovable property was acquired by payment, document, or actual possession. In cases of exchange of one article for another, actual possession by one of the parties was sufficient.' A deaf and dumb person might conclude a bargain by signs, and if a transaction had been concluded, no after-agreement could annul it.

The drawing up of documents for various purposes presupposed such minute acquaintance with the forms of law, the smallest neglect of which destroyed their validity, that professional writers, were soon required.

It was customary for them to keep the formulas requisite for divorces and other legal transactions written out and ready for immediate use. Documents were either plain or folded. In plain documents the contents were recorded consecutively, and the signatures of two witnesses followed at the end. In folded documents a fold succeeded after every few lines, and was always attested by three witnesses. Any informality, or the absence of proper signatures of witnesses, rendered the document invalid.

A letter of divorce might be drawn up in the absence of the wife, and her receipt for the dowry in the husband's absence an acknowledgment of debt in the absence of the creditor, and a letter of purchase in that of the buyer. Documents concerning marriage, farms, arbitration, or judicial findings, could only be

written with the consent of both parties, and the latter were valid even if drawn up by non-Jewish authorities.

Property professedly bought or received, consisting of houses, fountains, baths, slaves, fields, and anything else from which continual profit might be derived, was indisputable if the original proprietor had not, during three years, objected to the validity of the rights of the holder of the property. The holder of the property was not bound after that term to produce documents to prove his right of tenure, provided he had, during that period, given the original proprietor sufficient intimation of his claims. But the burden of proof might rest on the defender in the case of tradesmen or workmen, of part proprietors, farmers who shared in the fruits of the ground, of curators, or in questions between husband and wife or father and son. If a property was too small for division, or such division was inconvenient, neither party could insist on it unless prepared to purchase the whole.

Where flats belonged to different parties, the proprietor of the upper storey could, if the house fell, insist on the rebuilding of the lower, or take possession of the ground. A wall had to be removed at least four cubits from the windows of a neighbor, and if broad enough to allow a person to stand upon it, required to be built either four cubits higher or lower than such windows. Where a neighbor's wall was in danger of being injured by any operation, a distance of three spans was to intervene, and the wall to be protected. It was not allowed to cultivate in a field what might injure the crop or property of a neighbor as to cultivate mustard if a neighbor owned beehives.

Trees had to be removed four cubits from the property of a neighbor, and the branches, if they overhung the wall, might be cut off. If two gardens, of which the one was higher than the other, bounded, the declivity belonged in part to both, so that the proprietor of the higher ground claimed so much as he could reach from

his property with his hand, while all the rest went with the lower ground.

Sequestration of an insolvent required legal permission. A curious legal provision, strongly indicative of the altered times and views, was made by the Rabbins to prevent the cessation of monetary obligations in the Sabbatical year. It was not only declared lawful to accept payment during that year (if proffered), but such conduct on the part of the debtor was declared meritorious. It was also enacted that debts contracted upon pledges, or secured by written documents deposited in court, or containing an express reservation of the right of reclaiming on the part of the creditor, technically termed *Prosbol*, did not come within the range of the Sabbatical remission.

The *Prosbol* was introduced by Hillel as a means of restoring public credit. If a debtor died, the claims of heirs took precedence of those of the creditors, and the claims of the widow upon her dowry were those of a creditor. Various provisions were made for the protection of either party from fraud. Acknowledgments of debt did not require to contain the name of the lender, and were payable to any party who possessed the document. If a dying person declared in general terms, that one amongst many outstanding loans had been repaid to him, all obligations to him became thereby invalid (on account of the doubt), but if more than one had been incurred by one creditor, only the largest was held to be discharged. In cases of part repayment a special receipt was granted. If a party wholly denied a debt, he could not be constrained to swear, as the law assumed his innocence, and the burden of proof rested with the pursuer. It was otherwise when the defender admitted part of the debt. Notices of orders, etc., in a merchant's books, were admitted as partial proofs.

The Jewish law arranged all occasions of damage under four classes, as those by cattle, by pits, by grazing, and by fire. If a person dug a pit ten span deep, he was responsible for deterioration or loss of any animal which had

fallen into it; otherwise, only for the former, Anything left or spilt on the street which occasioned damage, involved responsibility. The person last engaged with an object causing damage, was held responsible, and the amount computed by competent judges. If any object had been lost, or received damage, while in the temporary possession of a stranger, the law made several distinctions.

If a party had been entrusted with an article, he could not be sued for damages; if he had borrowed it, he was obliged to pay damages; if it had passed out of the proprietor's hands in the way of business, the temporary owner, who had remained within the conditions of the contract, was only responsible if it had been stolen or lost. A party was allowed a certain percentage for waste, if the article entrusted had been wheat (2| per cent.), barley (5 per cent.), or flax (10 per cent.). A vessel must not be needlessly removed, nor any money entrusted diminish through negligence. A banker, but not a private party, was allowed to use money entrusted to him. The proprietor or keeper was answerable for damage caused by his cattle, if the party injured had not exposed himself; but where such injury could not have been foreseen, only half the actual damage could be claimed, and that only from the value of the injuring animal.

If a flock had been properly secured, the proprietor was not answerable for its breaking loose and causing damage. If a fire originated from the spark of an anvil, the party causing it was answerable. The master was not answerable for any damage caused by his slaves. An article found in a public place, if possessing any value, and characteristic marks by which it might be recognized, was publicly described during three festive occasions, and for seven days after the third of these feasts. But letters of divorce, of manumission, testaments, conveyances, and receipts, were not to be returned, as probably they had been purposely thrown aside.

The criminal law of the Hebrews contrasts favorably, not only with that of heathen, but also of many professedly Christian nations. Much stress was laid by the Rabbins on the removal of ulterior consequences from the criminal, so that the punishment was transformed from a harsh reprobation and haughty exclusion into a kind and parental correction. The death of the criminal or the infliction of forty stripes, which in law took the place of the biblical threat of "being cut off," was supposed to atone for the crime of the penitent criminal, and to remove the crime, both in this world and in that which is to come.

The crime ceased with the punishment. Hence the attempt to induce the culprit to confess, the solemn and mournful conduct of the judges, and the beautiful practice, on the part of the relatives of a felon, to wait on the judges and witnesses, in order to show that they harbored no ill-feeling towards them. Another equally peculiar provision of the law was that by which no person could be executed or receive forty stripes, unless the witnesses to the deed had warned the criminal, and he had persevered in his sin.' The punishments awarded by the Jewish law were upon the life, body, and property of the criminal. Incarceration was not a Jewish mode of punishment.

The law of Moses is explicit in the mention of those crimes to which the punishment of death was to be awarded, but the Rabbinical statutes limited its execution in various ways. In fact, every legal device was employed to avoid this unpleasant necessity, and it was expressly stated that the court which inflicted capital punishment more frequently than once in seven, or, according to some, in seventy years, was cruel. Rabbins Tarphon and Akiba declared they would never have consented to such a sentence.

The Jewish law recognized four modes of execution. The party to be **stoned** was cast by one of the witnesses from a height, after which (if he was not dead) a second witness threw the first stone at him. If this punishment had been

inflicted for blasphemy or idolatry, the body was hung up till even. There were different places of interment destined for criminals, and their relatives were not to mourn for them.

Burning was generally executed by pouring boiling lead into the criminal.

Decapitation was performed with the sword.

Strangulation was the ordinary punishment, and executed with a cord wrapped in a cloth, and drawn together by two persons.

From the punishment threatened in John 8:5 we gather that the adulteress there accused had not been actually married, but was only a bride. When the criminal was led to the place of execution, which always took place on the day of his condemnation, a herald going before him called upon all who might be able to say anything in his favor to appear before the judges, and the criminal was allowed to urge anything in his own behalf. When near to the place of punishment, he was admonished to confess and repent. On Sabbaths or feast-days, and on the days of preparation, capital offences could not be tried. If the punishment of forty stripes had been twice inflicted, the criminal was on a third occasion confined into a narrow prison, and fed first upon very spare diet, then on barley bread, until "his bowels gushed out." Spare diet was also used when a murderer escaped capital sentence through non-observance of any legal form.

The different degrees of ecclesiastical censure were called *Neziphah* or reproof, which lasted only for seven days, *Niddui* or *Shammatha*, denoting a temporary excommunication, and *Cherem* or bann, that is, permanent exclusion from the congregation. The punishments executed on the body of the criminal consisted in the infliction of stripes, the largest number being forty, or in practice thirty-nine, from a dread of inflicting one in excess, it being always first ascertained that the culprit was able to bear his sentence.

The instrument used was a scourge of leathern thongs. The hands of the criminal, who was in

an inclined position, were tied to a pillar, and two-thirds of the stripes inflicted on the shoulders, the rest on the chest. During the infliction, Deut. 28:58, 59; 29:9, and at the close Ps. 78:38, were read to the criminal. Later Jewish writers recount 207 cases in which forty stripes were to be inflicted. The fines prescribed in the law of Moses were so far modified by the *Mishnah*, that no actual fine (only simple restitution) was required when the criminal confessed his fault of his own accord. However, under no circumstances was an individual incriminated by any statement of his own, nor could such be used against him.

As a general principle, severe punishments were only inflicted where amendment, restitution, etc., was in the nature of the thing impossible. The Rabbins recount thirty-four breaches of forbids and two of commands which expose to the threat of "being cut off," a punishment in their opinion more severe than that of sudden death by the hand of God. Corporal punishments were inflicted by the officers of the various synagogues. In exceptional cases, the law warranted those present at the perpetration of a crime to execute summary vengeance. In general, the Jewish law assumed the innocence of every party till actual and intentional guilt had been established, nor, while declaring the rendering of testimony meritorious, did it oblige any person to lay information.

The most fearful crime was that of blasphemy, which was only then supposed to have been committed if the ineffable name of Jehovah had been used. That name had originally been generally known, and was, in certain defined circumstances, still pronounced. In cases of accusations of blasphemy all present were removed, and the judges asked the worthiest amongst the witnesses to repeat what they had heard; the others simply assented. The judges then rent their garments in token of mourning, and the convicted party was stoned.

The Mosaic law, which ordered the extermination of a city whose inhabitants had

become idolaters, was limited by the Rabbins to instances in which the majority of the inhabitants had been seduced by parties belonging to the same town and tribe. Direct acts of idolatry, witchcraft, or having a familiar spirit, were punished by stoning; intentional profanation of the Sabbath deserved stoning; the breach of other ritual ordinances, forty stripes. A false prophet, i.e. one who prophesied without having received a divine message, or who delivered what had been sent by another prophet, or spoken in the name of a strange god, was to be strangled.

The Rabbins also distinguished between casual and unintentional homicide; manslaughter, where there had been an intention to hurt but not to destroy; and murder, which implied premeditation and the infliction of blows or wounds in themselves mortal, and from which escape would have been impossible. Only in the last-mentioned case was the murderer executed. During the investigation every party accused had a right to go for safety to one of the cities of refuge, under the escort of two Rabbins. If death issued in consequence of a quarrel and fight, the murderer was executed if the blow given was in itself sufficient to induce immediate death. Any person about to commit murder, unnatural crimes, or to violate a bride, might lawfully be killed.

Where fatal injury had been sustained from an animal, the animal was stoned; and the proprietor, if previously warned of its dangerous character, had to pay the computed value of the party killed, and, in the case of slaves, thirty shekels, whatever might be the real value of the slave. If a murder was committed, and the perpetrator unknown, a deputation, consisting of five members of the Sanhedrin, performed, along with the elders of the township nearest to the place of murder, certain prescribed solemnities, after which the latter were declared free of the blame of official negligence. In cases of suicide the body remained un-interred till even. Persons guilty of men-stealing were strangled, if the party

stolen had actually been brought within the domain of the accused.

In cases of theft the punishment was restitution, with the addition of double or five-fold the value of the article stolen. In order to constitute theft, the article must have actually been lifted up or removed from the boundaries of the owner. Thus a thief who killed and then sold an animal on the property of its rightful owner was only bound to make restitution. Nor did the law of compensation apply to the theft of slaves, documents, immovable property, or things dedicated. A thief who voluntarily confessed, under whatever circumstances, was only bound to make restitution. If perjury had been committed to conceal the theft, when the article stolen was restored, it must be accompanied by an addition of one-fifth of its value, and handed to the proprietor in person, and that however trifling the article or distant his place of residence, so that his forgiveness might be obtained.

Tradesmen, as tailors, carpenters, etc., were interdicted from retaining any of the material entrusted to them. To prevent temptation, it was also forbidden to buy wool, milk, or young animals from a shepherd; fruits or trees from a hired gardener, etc. If the thief had not the means of paying the legal fine, he might be sold, but not beyond the bounds of Palestine. Females could not be sold.

The witnesses who intentionally bore false witness were ordinarily visited with the punishment which would have been awarded to the accused party. In exceptional cases this was converted into a fine or the infliction of forty stripes. Where the charge was capital, and sentence had actually been pronounced, the witnesses were liable to death. The various crimes connected with oaths were arranged into inconsiderate, needless, and criminal swearing the latter when a party either denied his knowledge of, or refused to mention a favorable circumstance and perjury; all of which were more or less severely punished. In

all these cases a simple "Amen," in answer to adjuration, was deemed an oath.

Rabbinical ordinances, as in all other crimes so in respect of adultery also, tended to lighten the law of Moses. The evidence of two witnesses was requisite to establish the crime. If a woman had married again, after having received false tidings of her husband's death, both her first and second husband had to divorce her with the loss of her dowry, and the offspring of her second marriage was deemed illegitimate. Rabbi Jochanan ben Saccai abolished the practice of administering the waters of jealousy, on account, as he said, of the frequency of adultery.' This mode of detection, which was supposed not to act immediately when the woman's merits partly atoned for her guilt, could only be used after the husband had, in the presence of two witnesses, admonished his wife to abstain from intercourse with a suspected party. One witness, even a slave or a maid, was sufficient evidence in cases of actual adultery after admonition, when a woman might be divorced with the loss of her dowry, except when the witness against her was a near female relative of her husband. In cases of seduction a threefold, in rape a fourfold fine had to be paid. While the seducer was free, the father of the damsel might in the latter case insist also on marriage, which could not again be dissolved.

The strict biblical law concerning criminal resistance to parents was almost rendered nugatory by Rabbinical additions. Thus the parents were to be perfectly agreed in their accusation; neither of them was to be decrepit, blind, deaf, lame, etc. The son must once before have been judicially punished by stripes, and have reached the age of puberty; finally, the law could only be applied during a period of about three months. Cursing parents whether living or dead was punished by stoning; striking, if traces of the ill usage had been left, by strangulation. Insubordination to magistrates was severely punished, and, if committed by a judge who had taught or acted against the decision of the Supreme College, he was to be

executed in Jerusalem, and at the time of one of the feasts.

The office of judge was generally filled by the learned and doctors of the Law. It had no immediate or necessary connection with the office of teaching, and probably in small towns the judges were often men who had been chosen through the confidence of their fellow-citizens, but who had never attained the position of a regularly ordained Rabbi.

Nevertheless, from the nature of the case, the ablest teachers were generally selected as judges.

[After the fall of the Jewish State the influence of the Rabbins greatly increased; and though there was no external power to enforce their authority, it became more than ever the custom to appeal to their decision in matters of dispute.]

The law distinguished three classes of judges, according to the size and importance of the place in which they resided. The lowest court was that of three, or possibly seven judges,' the next that of the Sanhedrin of twenty-three, and the highest that of seventy-one, or the Great Sanhedrin. The judges of the highest court were regularly ordained by the imposition of hands. This solemnity was performed by an ordained Rabbi, in the presence of at least two others. The number of judges in the various colleges of justice was uneven, in case of diversity of opinion.

In a capital conviction, which could only be passed by a Sanhedrin, a majority of at least two was requisite, and sentence was only pronounced after a night spent in solemn deliberation had passed. In cases of dubiety assessors might be chosen. Besides these colleges of regular judges, parties might choose three judges or arbiters to decide in cases of dispute. In Jerusalem, besides the Great Sanhedrin, there are said to have been two other Sanhedrins of twenty-three. The power of appealing to higher courts lay with the judges, if they were not sure of their sentence, or in

pecuniary matters with the accusing party. The judges were not in receipt of any regular salary, but were compensated for any loss of time.

Any communication with the parties, or favoritism, disqualified a judge from pronouncing sentence. The candidates for the senatorial office were required to be of good report, learned, grave, not engaged in any degrading or sinful occupation, to be married and to have children, not to be either too young or too old. Even the high-priest was subject to the jurisdiction of the Sanhedrin, but kings were neither members of the Sanhedrin nor subject to its authority. The regular times for meetings of the local courts were the second and the fifth days of the week, but it is not known whether this was also the case with the supreme Sanhedrin at Jerusalem

The ordinary hours for the sitting of the court were from after the morning sacrifice till the time of the meal. The judges were not allowed to communicate to parties on which side they had voted.

Perfectly distinct from ordination to the office of judge was that to the office of Rabbi or teacher, or, as it was expressed, for "loosing and binding." Sages set apart for one office were indeed generally supposed to be qualified for the other also, but in theory and in practice a distinction was made between the two. The Rabbi set apart "to loose or bind" might authoritatively declare what was binding on the conscience and what not, and in Talmudical writings the phrase continually recurs by which a teacher or a school is said to loose or to bind, i.e. to declare something obligatory or non-obligatory a license or ordination which was afterwards conferred by the Savior upon all His disciples, acting under the guidance of His Holy Spirit.

In all criminal, and even in most civil cases, the testimony of at least two witnesses was requisite. Parties interested, enemies, men or women related to parties, minors, slaves, heathens, robbers, felons, usurers, gamblers, and publicans, as well as idiots, etc., were

incapable of bearing witness. Witnesses were adjured by the parties at the bar; they were strictly examined concerning the time, place, and circumstances of the crime, and the slightest disagreement between them annulled the whole testimony. If the judges did not understand the language of any of the witnesses, they were not allowed to engage the services of an interpreter, and, if dubious concerning their veracity, the case had to be heard again before another court.

The law distinguished three kinds of oaths which might be exacted from the parties at the bar, that according to Biblical, according to Mishnic, and according to Gemaric ordinance. The **first** was made by a party suspected of unfaithfulness, by a defendant who had admitted a claim in part, and by one against whom only one witness had testified. The **second** was made by the pursuer in a cause where other sufficient proof was wanting. The **third** form of oath was introduced at a later period for all other disputed cases, and for testing witnesses.

Finally, a legal provision denominated "Miggo," in consideration of, declared that a favorable presumption attended the party who admitted a fact, which, if fraud had been intended, might have been concealed by him.

We have already hinted that the priests themselves attended to the duties of temple police, and decided in all purely priestly questions. Any further details on this subject would necessarily lead us to an extended sketch of a former period. We therefore close this account of the state of the Hebrew nation by a brief exposition of their Theology, with its kindred sciences.

It has already been hinted more than once that the law laid down in the Mishnah frequently represents the theories and speculations of the Jewish doctors of the second century, and not the actual practice of any given period. Several of their regulations deal accordingly with obsolete customs, and have little regard to the actual circumstances of the time. The truth of

this statement may be illustrated by sundry passages in the above sketch of the traditional law, as, for example, the principles laid down respecting the nations of Canaan and the Noachic Commandments, the jubilee, the cities of refuge, the king, and the penalty of death. When Judea became a Roman province, the power of life and death was taken away from the Jewish courts.
