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BY J. H. PEARSON



ANALYTICAL AND CHRONOLOGICAL

TABLE

OF THE

HISTORY OF SPAIN AND PORTUGAL

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BOOK III — *continued*

THE PENINSULA DURING THE DOMINATION OF THE  
MOHAMMEDANS

SECTION III

POLITICAL, CIVIL, AND RELIGIOUS STATE OF THE PENINSULA  
DURING THE DOMINATION OF THE MOHAMMEDANS

I STATE OF MOHAMMEDAN SPAIN

CHAP I

GOVERNMENT — RELIGION — LAWS — LITERATURE — SCIENCE,  
ETC

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**\* \* \*** The Literary and Scientific Table of Moham-  
medan Spain, which was intended to be placed at the  
commencement of the present Volume, is unavoidably  
postponed to Volume Fifth

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THE  
HISTORY  
OF  
SPAIN AND PORTUGAL.

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BOOK III. CONTINUED.  
THE PENINSULA DURING THE DOMINATION  
OF THE MOHAMMEDANS

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SECTION III  
POLITICAL, CIVIL, AND RELIGIOUS STATE OF THE  
PENINSULA, DURING THE DOMINATION OF THE  
MOHAMMEDANS

---

I STATE OF MOHAMMEDAN SPAIN

CHAP I

GOVERNMENT—RELIGION—LAWS—LITERATURE—SCIENCE, ETC

**H**AVING detailed, with a brevity which may be well termed severe, but which, in a compendium like the present, was unavoidable, the most striking events of the peninsular history during the Mohammedan domination, we proceed to one more useful, and, to us at least, more attractive,—the condition of the various kingdoms from the foundation of the Asturian state by Pelayo to the accession of Carlos I, or, as he is more generally known, the emperor Charles V

Mohammedan Spain originally comprehended nearly



nine tenths of the peninsula<sup>1</sup> Under the viceroys of the caliphs and the immediate successors of the first Abderahman, that is, from the commencement of the eighth century to the fall of Almanzor at the close of the tenth<sup>2</sup>, it was the admiration and terror of Europe The revenues which the kings of Cordova derived from their ample possessions—from Andalusia, Granada, Murcia, Valencia, Toledo, Estremadura, Algarve, from many cities of Leon and Old Castile, from most of Aragon and Catalonia, to say nothing of Africa and the Mediterranean islands—were, doubtless, immense By these means the Mohammedan potentates were enabled to maintain constantly, in fact, not only a considerable native army, but great bodies of foreign auxiliaries According, however, to Abu Bekir, these mercenaries were among the chief causes which hastened the decline of that splendid monarchy The spirit of nationality was not destroyed, it was fostered by transplantation from the original soil the Egyptians in Beja and Lisbon, the Persians in Huete, the Assyrians in Granada, the Berbers and Slavones in most of the great cities, especially about the court, the inhabitants of Damascus, Emessa, and of Old Palestine in Cordova, Seville, Niebla, Medina, Sidonia, and Algeiras, became so many rival factions, all eager in the pursuit of power, and all mutually hostile Their frequent quarrels occasioned great disasters in the state, and allowed the ambitious, no less than the desperate, a long-continued impunity How Muza ben Zeyad, Omar ben Hafs, Calib ben Omar, and other rebel chiefs, contrived to retain and even to extend their governments, has been seen in this history<sup>3</sup> At length Cordova fell from its proud eminence, and the rulers of Toledo, Badajoz, Beja, Seville, Ecija, Malaga, Granada, Almeria, Lorca, Murcia, Denia, Valencia, Lerida, Saragossa, and Huesca, openly aspired to independent sovereignty<sup>4</sup> How

<sup>1</sup> See the beginning of Chapter II in the present volume

<sup>2</sup> Vol I p 299

<sup>3</sup> *Ibid.* p 273 275 282, &c

<sup>4</sup> Vol II p 2

many of these states were annihilated by the king of Seville<sup>1</sup>, how his own, with those which still survived, were swept from the face of the peninsula by Yusef, the first emperor of the Almoravides<sup>2</sup>, how this African dynasty was subverted by that of the still more ferocious Almohades<sup>3</sup>, how, in the decline of the latter, the local governors again endeavoured to establish independent kingdoms<sup>4</sup>, how the Moorish domination was thus circumscribed within the mountainous region bounded by the sea, and by a line drawn from Malaga through Archidona, Loxa, Guardia, the Sierra de Cazorla to the environs of Lorca, and how this small state was still further limited by the succeeding sovereigns of Castile, from Alfonso el Sabio to its final subjugation by Fernando the Catholic, must be sufficiently known to the reader<sup>5</sup>

In all the states of Spain, Mohammedan or Christian, the government was absolute, but not despotic. If the Christian could appeal to the legal code of the country he inhabited, as a protection against arbitrary power, the Mohammedan could also invoke the provisions of the Koran. If that appeal, or their invocation, were some times disregarded amidst the storms of wanton violence, they were but an exception to the general rule. In Cordova the sovereignty was also *hereditary*, from the period of the first and greatest of the Abderahmans, but the application of the right was for some time a subject of dispute. Some of the sheiks and cadis contended that proximity should prevail over representation, in other words, that on the death of the *eldest* son and heir apparent to the throne, the children of that son, as being two degrees removed from the reigning monarch, should be set aside in favour of the *second*

<sup>1</sup> Vol II p 4

<sup>2</sup> Ibid p 18—21

<sup>3</sup> Ibid p 57

<sup>4</sup> Ibid p 51—53

<sup>5</sup> Abu Abdalla, Vestis Acu Picta, necnon Abu Bekir, Vestis Serica (apud Casiri, Bibliotheca Arabico-Hispana Escorialensis tom II passim) Alhomaui, Supplementum, p 200, &c (in eodem tomo) Ximenes, Historia Arabum (apud Schottum, Hispania Illustrata, tom II) Conde, by Mariès, Histoire de la Domination des Arabes et des Maures en Espagne et en Portugal, passim Masdeu, Historia Critica de España, tom. XIII. varis locis —

son, who stood but one degree removed from him. In the plenitude of his power, indeed, no less than of his affection, Abderahman I caused his young son, Hixem, to be declared his successor<sup>1</sup>, but, after his death, many chiefs of the state, struck with the injustice of this proceeding, espoused the cause of the excluded princes.<sup>2</sup> The commotion to which the uncertainty of succession led—whether it should depend on representation or proximity—occasioned the adoption of the legitimate order, viz, that the brothers of a deceased king should be excluded in favour of the grandson.<sup>3</sup>

Next to the king in dignity was the *hagib*, or prime minister, who exercised an uncontrolled sovereignty in the name and by the authority of his master. Then came the *wah*, or governor either of a great city or a province, who had usually one or more *wasirs*, or lieutenants under him, according to the extent of his territory. The *alcald*, or governor of a fortress or fortified town, had also his *wasir*. These three were the chief temporal dignitaries who formed the council of the prince. The *cadí*, or judge, was also frequently admitted, but generally when the subject of deliberation respected the administration of justice. When doubtful points of the law were to be discussed, the *iman*, or chief of each mosque, formed a member of the council, and for the same reason the *faqir*, the doctor or teacher of the law, was often present. These were the chief dignities of the kingdom, for though there was an emir of the sea, the appointment was not permanent, and was rather titular than real. Besides these, there were several distinguished officers in the place, but as these were generally the same as are to be found in the domestic establishments of all Mohammedan princes, neither their names nor functions need be noticed here.<sup>4</sup>

<sup>1</sup> See Vol I p 259

<sup>2</sup> Ibid p 260

<sup>3</sup> Ibid p 269 See also Casiri, Bibliotheca Arabico Hispana, tom II Masdeu, España Árabe, lib II and Condé, by Marls, Histoire de la Domination, &c passim

<sup>4</sup> D'Herbelot, Bibliothèque Orientale, under the respective names. The reader must not expect here to find an enumeration of all the dignities of the Mohammedan world, but the chief only which existed in Spain

As the *laws* of the Mohammedans are founded in their religion, and as some acquaintance with that religion is necessary before the condition of Mohammedan society can be understood, we make no apology for advert-  
ing to such doctrines and duties of the Koran, to such expositions of its teachers, as may throw light on the subject. For much of what follows we are indebted to the Koran itself, to the excellent preliminary discourse of the ablest translator, Sale, and to the *Bibliothèque Orientale* of D'Herbelot.

Islam<sup>1</sup> consists of two great branches, *iman*, faith or theory, and *din*, religion or practice. The former embraces the doctrine, the latter the duties, of Mussulmans. First, the objects of this faith are sixfold: God, his angels, his word, his prophets, the resurrection and judgment, and predestination. Secondly, the points of practice, or active virtue, are four: prayer, alms, fasting, pilgrimage.<sup>2</sup>

1 Islam is founded on a sublime and an eternal truth, THERE IS NO GOD BUT GOD, and on a necessary falsehood, MOHAMMED IS THE PROPHET OF GOD.

2 He who denies the existence of angels, or asserts they have any distinction of sex, is an infidel. They have pure and subtle bodies created from fire, they neither eat nor drink, their office is to praise God, to write down the actions of men, to carry the throne of the Highest. Four hold pre-eminence among them: Gabriel, or the angel of revelations, who commits to writing the divine decrees, Michael, the friend of the Jews, Azrael, the angel of death, Israfil, who will sound the last trump. Every man has two guardian angels, who alternately accompany him, keeping a terrific account, not merely of his actions but of his thoughts. Eblis, or Satan, was once the most shining of the heavenly hosts, but he fell because he refused to worship Adam.

<sup>1</sup> "Islam, ou Eslam, signifie une entière soumission et résignation du corps et de l'âme à Dieu" — *D'Herbelot*. The root *salama* signifies also to be saved: hence, *islam* may mean the state of salvation.

<sup>2</sup> *D'Herbelot*, *Bibliothèque Orientale*, art. *Iman*, *Islam*, &c. Sale, *Preliminary Discourse*, section iv.

Somewhat allied to angels are the *Jin*, or *Genii*, who are also created from fire, but who are of a grosser substance they eat and drink, and propagate their kind, and are moreover subject to death. Some are good, others bad, the effect of their own free-will, for, like men, they are probationary creatures<sup>1</sup>

3 At various periods of the world, Allah has made his scriptures, or revelations, in number amounting to 104, known to mankind. Ten were communicated to Adam, fifty to Seth, thirty to Edris or Enoch, ten to Abraham, and the remaining four, being the Pentateuch or Psalms, Gospel, and Koran, to Moses, David, Jesus, and Mohammed. Of these, all would be required to be believed were they in being, but the first hundred are lost, and of the last four, the text of all, except the Koran, has been so altered by Jews and Christians, that it is impossible to say what portion is the real word of God<sup>2</sup>

4 The number of prophets has been prodigious, no less than 124,000<sup>3</sup>. Among these, 313 were apostles, sent with a special commission to reclaim mankind from error, and of these 313, *six*, *viz*, Adam, Noah, Abraham, Moses, Jesus, and Mohammed, brought new laws or dispensations. The last is the perfect and final law<sup>4</sup>

5 The resurrection, judgment, and future state, occupy a prominent part in the creed of Islam. But the intermediate state must be first considered. When a corpse is laid in the grave, it is received by an angel, who warns it of the approach of the two enemies or two black demons, named *Monkir* and *Nakir*. These order him to sit upright, question him concerning the unity of God and the mission of Mohammed. If his replies are orthodox, his corpse is visited until the resurrection

<sup>1</sup> Koran, chaps 2 7 10 35 72 74. D'Herbelot, *Bibliothèque Orientale*, art. Eblis, Azrael, &c. Sale, *Prel. Disc.* sect. 14.

How much these doctrines agree with those of the Jews, may be seen by consulting the *Jerusalem Talmud* with those of other *Oriental*s, from Hyde, *De Religione Veterum Persarum*, cap. 19 20.

<sup>2</sup> The same authorities. The Mohammedans are most severe on the Jews for falsifying the Scriptures.

<sup>3</sup> Another tradition says 224,000.

<sup>4</sup> D'Herbelot, *Bibliothèque Orientale*, under the six names above given Sale, *Prel. Disc.* p. 99.

by the breezes of heaven, if otherwise, he is immediately beaten upon the temples by iron maces, until he roars in anguish, so as to be heard from east to west by all creatures except men and genii. This is not the worst. The earth is then pressed heavily on the corpse, which is to be stung until the general rising by ninety-nine dragons, each with seven heads. The soul of a good man and true believer is separated gently from the body by Azrael, but violently, if it belong to the wicked. Its state is the subject of much dispute. It is agreed that the soul of a prophet is admitted at once into paradise, and that the soul of a martyr enters the crop of a green bird, which eats of the fruits and drinks of the waters of heaven, but where the spirits of believers pass their *berzakh*, or middle state, is not so clear. According to one account, they remain near the sepulchre, but with liberty of visiting any place they please, another says, that they are with Adam, in the lowest heaven, a third, that they inhabit the well Zemzem, a fourth, that they remain near their graves during seven days only, and afterwards go nobody knows whither, a fifth, that they are hidden in the great trumpet of Israfil, a sixth, that they dwell, in the shape of white birds, under the throne of Allah. As to the souls of the wicked, an orthodox opinion is, that being offered to paradise and rejected, and to earth with the same result, they are carried down to the seventh earth, and thrown into a dungeon called *Sajin*, which lies under either a green rock or the devil's jaw, where they are tormented till the day of doom.<sup>1</sup>

The time of the resurrection is known only to God

<sup>1</sup> Koran, chaps 28, 79, &c. Sale, Prel. Discourse, p. 100. D'Herbelot, art. *Nakir*, *Monkir*, &c.

These opinions are exceedingly consonant with those of the Jews. "When the angel of death sits in the grave, the soul enters the body and raises it on its feet. The departed is then examined, and afterwards struck by the angel with a chain, half of iron and half of fire. The first blow loosens the limbs, the second scatters the bones, which are collected by the angels, the third reduces the body to dust and ashes." (Rib Elias in *Lishbi*, et Buxtorf, *Synag. Judaic. et I. ex. on Talmud*.) One part of the body, says Mohammed, (who here again borrows from the Talmud,) never decays: this is *al'ajb*, the os coccygis, or rump bone.

See the Prayer for the Dead, Vol. II p. 87.

even Gabriel, who sees farther into the divine mind than any other creature, acknowledged that he knew it not. It is to be preceded by several signs, among which are — 1 The sun's rising in the west 2 The appearance of a great beast which shall rise out of the earth in the Temple of Mecca, or in Mount Safa, or in the district of Tayef, or some where else According to one account, this beast is to be sixty cubits high, and the head alone will reach from the earth to the clouds This monster will have the beard of a bull, the eyes of a pig, the ears of an elephant, the horns of a stag, the neck of an ostrich, the breast of a lion, the back of a cat, the tail of a ram, the legs of a camel, the voice of an ass, and the colour of a tiger It will have the rod of Moses, and the seal of Solomon with the former it will mark the faithful with the word *mūmen* (true believer), with the latter it will brand the infidels with the word *cafir* (unbeliever), — that every person may be known for what he really is 3 The coming of Antichrist, who is to be followed by the Jews <sup>1</sup> 4 The descent of Jesus, who will embrace the faith of Islam, marry, and have children, and who, during his continuance on earth, will kill Antichrist. 5 War with the Jews, who shall be nearly all exterminated 6 The irruption of Gog and Magog — called Yajul and Majul — at the head of countless myriads of followers, so many, indeed, that these alone shall drink up the lake of Tiberias, but all shall be destroyed <sup>2</sup> 7 The coming of the Great Mehedi, who shall fill the earth with righteousness <sup>3</sup> 8 A great wind, which shall sweep away all who have faith equal to a grain of mustard-seed When the time of the resurrection

<sup>1</sup> The whole number of signs, as collected by Pocock, are twenty-five. Some of them, as the taking of Constantinople, have already appeared, a circumstance which must puzzle the ingenuity of the faquís

<sup>2</sup> Of Gog and Magog, as they are called by the Hebrews, there are wonderful tales in the Arabian histories. Their people — for each has given name to a fabulous nation — are confined by the barriers of Mount Caucasus, but will one day rush forth to destroy the country. The authorities quoted by D'Herbelot exile them much further to the north. As that learned author supposes, they are probably the Hyperboreans of the Greeks. See Appendix A

<sup>3</sup> See Vol II p 28

actually approaches, the trumpet will be thrice sounded. The first blast, called that of "consternation," will fill with terror all who hear it, in heaven or in earth, except a few whom Allah shall exempt from it. It will shake the earth, level not only buildings, but mountains, melt the heavens, darken the sun, cause the stars to drop from their spheres, dry up the sea. The second, called "the blast of examination," shall destroy all creatures in heaven and earth, except a few, whom God shall preserve from the fate. In forty years afterwards shall be sounded the last blast by Isra'îl, who, like Gabriel and Michael, shall have been raised from death. He shall stand by the temple of Jerusalem, and shall call into his trumpet all the souls of men, which shall be emitted forth by the blast, like bees, filling the space between earth and heaven, and flocking to their bodies, which the earth shall suffer to ascend from its bosom. These bodies shall be raised through the efficacy of a forty years' rain of living water. The day of resurrection and judgment will last, according to some, 1000, according to others 50,000, years. The rising will be general, and extend to angels, genu, men, and animals. The *manner* of resurrection will be different. The good will rise in honour and hope, the bad in disgrace and despair. Mankind will rise naked<sup>1</sup>, as they came out of their mothers' womb. According to tradition, all shall be divided into three classes: those who walk, those who ride, those who creep. The first are believers, whose good works are few, the second are those honoured by Allah, who, on their rising from the grave, will provide them with winged animals, having golden saddles, the third are infidels. Another tradition divides the reprobate into ten classes: the apes, or those who profess Zencicism, the swine, who have wallowed in filthy lucre, the monsters, with their heads reversed and feet distorted, who are the usurers, the blind or unjust

<sup>1</sup> Ayesha, the best beloved of the prophet's wives, somewhere expresses her modest reluctance at being compelled to witness such a sight, but the prophet truly tells her that both men and women will be too much engrossed by other things to notice it.



judges, the deaf and dumb, or they who glory in their own deeds, the tongue-biters, or alfaquis whose actions are at variance with their words, those without heads or feet, who are such as have injured their neighbours, those who are bound to stakes and trunks of trees, or the false accusers and informers, the putrid are they who have indulged the sensual passions, and those who are clothed in pitch, are the proud, the vainglorious, and the unjust. The *place* of judgment is doubtful it may be Syria, or a new world. When mankind have risen, they will be marshalled by the angels, in proper order, until the appearance of Allah, the righteous Judge, and, during this suspense, they shall all be tormented, just and unjust, but in a very different degree the limbs of the former shall shine, those of the latter shall become black, and while the torments of the former shall pass after the recitation of certain prayers, those of the latter shall increase. The wicked shall sweat so profusely, that the liquid shall reach from the ground to their ankles, their knees, their middle, their neck or ears, according to their respective shares of guilt, and the sun, which shall be brought within a mile of them, shall burn so profusely, that their skulls shall boil like a pot. To this must be added such hunger, thirst, and misery, that they shall exclaim, "Lord, deliver us from this suffering, though thou send us into hell fire!" When Allah descends, all the prophets, save Mohamed, shall decline the task of intercession. At this final judgment, to each person will be delivered a book, containing all the actions of his life the righteous will receive it in the right hand, and read it with satisfaction, the wicked in the left, which will be bound behind their backs, while the right shall be tied up to their necks. An immense balance will next be brought, and held by Gabriel one scale shall hang over paradise, the other over hell. Into these scales will the books of men's actions be thrown, and if the scale of good works preponderate, the individual shall be saved, if it rise, he shall be condemned. This is not all the man who has

been injured by another shall receive of the offender's merits, and the offender shall, in like manner, receive of his demerits. *Brutes* will be changed into dust, the unbelieving genu will be sent to hell, and the faithful portion will be admitted—not, indeed, into paradise, but to its happy confines<sup>1</sup>

When the trials are past, both wicked and righteous must pass *Al Sirat*, the bridge which is finer than a hair, and sharper than the edge of a sword, which is skirted by briars and thorns, and which lies over the abyss of hell. The just shall pass it in safety, the wicked shall fall into the dark gulf. Hell is divided into seven regions, each succeeding one lying lower and lower in the vast abyss. The first, called *Gehenna*, is the abode of such Mussulmans as believed in God, but whose works corresponded not with their faith—these shall be purified by suffering, and shall be at length relieved.<sup>2</sup> The second is for the Jews, the third for the Christians, the fourth for the Sabians, the fifth for the magians, the sixth for the idolaters, the seventh and lowest for the hypocrites. Over each will be a guard of demons, in number nineteen, but from none will there ever be egress. The torments sustained by each individual will be in exact proportion to his misdeeds, the mildest even in the first hell will be that in which the sufferer shall be shod in shoes of fire, and in which the heat shall be so intense, that his skull shall boil like a caldron. The abode of the wicked believer, in *Gehenna*, shall not exceed 7000, nor fall below 900 years. Between hell and paradise lies *Al Araf*, an elevated bound-

<sup>1</sup> Koran, in numberless chapters. Sale, Prelim Disc p 101—120. D'Herbelot, *Bibl Orient* art Javious, Mchedi, &c.

The close affinity of these notions with the superstitions of the rabbinical Jews, and the followers of Zoroaster, must powerfully strike the learned reader. A book, which in a popular manner should trace the obligations of the Arabs to the Jews, of the Jews to the Persians and Syrians, and the analogy which both bear to the darker passages of the Scriptures, would be curious, and probably useful. For such a work there are abundant materials in the *Talmud*, the *Targums*, the commentaries of succeeding rabbis, and the works of such men as Sclden, Buxtorf, Pocock, and Hyde.

<sup>2</sup> Hence the prayer to be relieved from the torments of *Gehenna*. See Vol. II p 87.

ary, which is also inhabited, — by whom, has been subject of dispute. Some doctors imagine it to be a sort of limbo, where the souls of patriarchs, prophets, and saints abide until the resurrection, others, that it is inhabited by men whose good works exactly counter-balance the bad, so that neither scale preponderates but we are informed that at the day of judgment they will be permitted to make an act of adoration, which will make the scale of merit to outweigh the other. By some, again, the intermediate space is said to be inhabited by men who have gone to war without their parents' leave, and died for the faith, and by such as have been thrust out of heaven for disobedience.<sup>1</sup> When the righteous have passed the dreaded bridge, they first drink at the pool of the prophet, which is supplied by pipes from one of the rivers of paradise, and the water of which is whiter than milk, more odoriferous than musk, and sweeter than honey. The abode of the blessed is in the seventh heaven, immediately beneath the throne of Allah. The soil is of the finest wheat flour, or musk, or saffron, the pebbles are pearls, the walls of its buildings are of gold or silver, and the trunks of the trees are gold. Of these trees the most famous is the Tuba, or tree of happiness<sup>2</sup>, of which, though it stands in the palace of Mohammed, a branch reaches to the dwelling of every true believer. It is laden with the most delicious fruits, which spontaneously reach the hand of him who wishes to eat them. Nay, such are its virtues, that if the blessed inhabitants wish for meat, or game, or fowls, they will instantly appear ready dressed for his use, if for raiment, the most splendid will be seen at his hand, if for a beast to ride on, it will come forth in the twinkling of an eye, ready harnessed. This tree is so large, that the fleetest horseman, in a hundred years, would be unable to gallop from one extremity to the other. The rivers

<sup>1</sup> The best description of Al Araf, is in the words of Sadi — "Qu'il paroit un enfer aux bienheureux, et un paradis aux damnés" — *D'Herbelot*

<sup>2</sup> The Tree of Life of the Scriptures

of paradise, running with milk, or wine, or honey, spring from the roots of Tuba — But what are these glories when compared with the *hur-al-oyun*, or black-eyed maids of paradise, who are created, not from clay, but from the purest musk, and for the delight of the faithful? Free from the impurities which attend mortal women, endued with the strictest modesty, passing their time in immense pavilions of hollow pearls, they await the arrival of their destined husbands. No sooner does one of the faithful arrive at the gate of paradise, than, having drunk of one fountain, and bathed in another, he is accosted by beautiful youths, of whom one carries the joyful news to his fair future associates. At the same time one angel throws over him the robe of heaven, while a second places a ring on each of his fingers. The degree of happiness he is destined to enjoy will depend on the degree of his merits, the most eminent place will be assigned to the prophets, the second to martyrs, the third to the doctors and teachers of the truth, the fourth to the great body of the saved. The very meanest believer, however, will have his separate mansion, with seventy-two wives, besides those he had on earth, and with 80,000 domestics. According to another tradition, at his meals he will be attended by 300 of his servants, who will place on the table 300 golden dishes, each containing different meats, all equally exquisite, and from as many vessels shall he drink liquors, in like manner differing from each other. And then as to the wine! — though that intoxicating beverage be forbidden here below, in heaven it is not, because it has no such quality, its delicious taste surpasses description. And to increase the measure of felicity for every possible enjoyment, whether of the table or of the hours, the capacity of each true believer will be augmented a hundred-fold, and will never be followed by satiety. If any object to these pleasures of the table, as an impudent Jew did to the prophet, on the ground that so much eating and drinking must give great trouble in

the necessary evacuations, we answer, as the prophet did, that the inhabitants of paradise will not have so much as to blow their nose, for all superfluities will be carried off by a perspiration sweeter and more odoriferous than musk. The magnificence of the garments and furniture cannot be conceived. In short, none of the senses will want its proper delight. If the ear is to be gratified by music, not only will it be thrilled by the singing of the girls of paradise, and by that of Israfil, who has the sweetest voice of all God's creatures, but by the harmony of the very trees, which shall celebrate the divine praises with wonderful melody. Nay, bells attached to the trees will be put in motion by a breeze proceeding from the throne of Allah, whenever the blessed ask for the entertainment, and the rustling of the golden branches shall produce a harmony, of which the fancy can form no conception. But these are only the common enjoyments of the celestial region, reserved for the meanest of the faithful, of those who inhabit the fourth stage of bliss. What must be the honours and enjoyments of such as share a more peculiar degree of God's favour? They cannot be described. One of the most ineffable is the privilege of beholding the divine countenance night and morning<sup>1</sup>, and this is that full and perfect bliss, in comparison of which all the sensual delights dwindle into nothing, and will, in fact, be forgotten.<sup>2</sup>

<sup>1</sup> "L'auteur du Tefsir Keber dit, que lorsque les ames saines sont éclairées d'uns la beatitude des rayons de la lumière divine, leurs substances sont entièrement pénétrées de la splendeur de ce qu'ils connaissent, et c'est la première degré de la félicité qui s'exprime par ce mot du verset Jorzeccoun, Ils sont pourvus abondamment." — *D'Herbelot*

<sup>2</sup> Koran, in a multitude of chapters, too numerous to be cited, amongst which, chap. 2 7 10 15 40 63, &c. *D'Herbelot*, art Al Araf, Génah Akhrat, Gehennem. Sale Prel Disc p 120—133. This last named author is much indebted to *D'Herbelot*, and more still to Maracci.

Foreseeing that the wise would despise his sensual enjoyments, Mohammed was compelled to make the beatific vision a part of its enjoyments. But this spiritual bliss is little felt or understood by the Mussulman, who always dilates on the corporeal pleasures.

Compare the above description of hell, purgatory, and paradise, with Hyde, *De Religione Veterum Persarum*, p 182 245 402, &c, and with the corresponding portion of the Talmud, when it will be seen how much the author of the Koran is indebted to the Magian and Jewish superstitions.

6 The last great article of faith is predestination, which makes all human actions of inevitable necessity, and which, consequently, makes God the author of sin and of misery To reconcile the justice of heaven with the free will of men has sadly puzzled the faquirs, whose interminable and subtle disputes have long distracted the Mohammedan world <sup>1</sup>

Such are the chief doctrines required to be believed by the believers of the prophet let us now briefly advert to the fundamental duties, which, as before observed, are four in number

1 Under the head *prayer* are also comprehended the ablution or purification, which are the necessary preparations to it Of these ablutions, the first is a total immersion of the body, which is necessary after the copula carnalis, after approaching a corpse, in women after the fluxiones menstruales, or childbirth The second is the ordinary one of the face, hands, and feet, before prayer, however and wherever that prayer is offered up to heaven Where water cannot be had, sand may be used It will be readily conceived that this form, however obligatory, is merely typical of internal purity Prayer itself is so necessary a duty, that it is called the pillar of religion, and the key of paradise It takes place five times in the twenty-four hours — 1 before sunrise, 2 at mid-day, as the sun begins to decline, 3 in the afternoon, 4 after sunset, 5 before the first watch of the night At these times the criers ascend the tower of the mosque, and in a loud voice summon the faithful to their devotions While engaged in this rite, every face must be turned towards the temple of Mecca Here human pomp must be laid aside, and no women must be admitted, lest other thoughts than those befitting the place should arise <sup>2</sup>

<sup>1</sup> Koran, chaps 2, 3, 4 D'Herbelot, art Cadha Sale, ubi supr<sup>o</sup>  
D Herbelot is very full on predestination To his great work we refer the more curious reader

<sup>2</sup> Koran, in multis locis D'Herbelot passim Sale, ubi supra.  
Compare with Hyde, De Relig Vet. Pers and with the Talmud.

2 Almsgiving is twofold, legal and voluntary the former of indispensable obligation, and is given for five things,—cattle, money, corn, fruits, merchandise The proportion is usually one fortieth, but when a man obtains much more than what is necessary for the decent support of his family, he should give a fifth part, not merely of his gain, but of his substance, in alms At the end of Ramadan, every Moslem who is not miserably poor must give a measure of wheat, or some other grain, for himself, and the same for each individual member of his family *Voluntary* alms have great merit “Prayer,” said the Caliph Omar Ebn Abdelasis, “carries us half way to God, fasting brings us to the door of his palace, alms procure us admission”

3 Fasting implies not only refraining from food, but from every enjoyment, from every sin, even in thought, from the consideration of any object, except God<sup>1</sup> During the whole month of Ramadan, from sunrise until sunset, fasting is obligatory *Voluntary* fasts have great merit

4 The pilgrimage to Mecca is said to be so essential to salvation, that he who dies without undertaking it might as well die an infidel Into the ceremonies observed on that occasion, we cannot enter, they are to be found described in works of easy access<sup>1</sup>

Besides these practices, there are several negative precepts in the Koran Among these are the well known prohibition of wine, yet, in all Mohammedan countries it has been used, not however to excess, by all except the rigidly righteous,—a small proportion in every state Under this head, tobacco and opium have been included by later casuists, as virtually involved in the prohibition Blood, and swine’s flesh, and the flesh of whatever animal has died by disease or accident, are equally forbidden, and so was also the food offered to idols The prohibition against gaming is better observed,—at least by the more reputable classes of society, but there has been

<sup>1</sup> The same authorities

and still is a dispute, whether the game of chess be not lawful. The reason why most of the doctors exempt it from the prohibition is, that it is not a game of chance, but of skill. It is certainly indulged in without scruple by all but the rigidly righteous. Divining and usury are also forbidden.<sup>1</sup>

But the most important part of our present subject concerns the laws and civil institutions of the Koran. The jurisprudence of the Mohammedans is entirely founded on that book, just as that of the Jews is on the Pentateuch.

*Polygamy* is declared by the Mohammedan doctors to be not only a lawful but a moral institution, but the license has its limits. According to the express words of the Koran, no man should have more than four women, whether wives or concubines, but by many of the Moslems this is understood rather as a recommendation than as a command. Certain it is that the usual interpretation limits the number of *wives* to four, but leaves that of the concubines indefinite. Accordingly we find that while the rich and great confine themselves to the four former, they make ample amends by filling their harems with the choicest beauties under the latter title. But fortunately for domestic peace and the human affections, this is a luxury which is denied to the poor,—that is, to ninety-nine hundredths of the Mohammedan world,—who have but one wife, and who are unable, from the same cause, to maintain female slaves. In accordance, however, with the sensual indulgences of this brutish religion, the poorest man may have a variety of women by the facility of *divorce*, he may at any time repudiate her for any cause or no cause. His own will is sufficient. But the wife has no such privilege. She cannot leave her husband without good cause, such as ill usage, want of proper support, neglect of the *debitum conjugale*, *impotentia naturæ*, and even in these cases she loses her dowry. When divorced, she must suffer three months

<sup>1</sup> Koran, chaps. 2, 5, &c. D'Herbelot, art. Scharab. Sale, sect. v.



to elapse before she can contract another marriage, and, if pregnant, she may continue in her husband's house till delivered. If, at the time of her repudiation, she have an infant she must nurse it until it be two years old, — both being maintained at his expense, — before she is permitted to re-marry<sup>1</sup>

In the commencement of Mohammedanism, *whoredom* was severely punished, both parties being closely confined and left to perish. It was afterwards ordained by the *Sonna*<sup>2</sup>, that the adulteress should be stoned, if a single woman, who sinned with a man, she should receive one hundred stripes, and be banished during a year. A female slave convicted of the crime suffered only half the punishment, viz fifty stripes, and six months' banishment. Before a woman should be convicted, four competent witnesses were required, and if any such accuser could not substantiate his charge, he was to receive fourscore stripes, and be held infamous. Simple fornication was punished with one hundred stripes<sup>3</sup>

The laws respecting inheritance are often allied with those of the Jews. The general rule is, that a son shall have twice as much as a daughter, and the same holds good in other heirs; but there are special exceptions; as, where a man bequeaths a portion of his property to parents, brothers, or sisters, where the division is equal. The children of concubines and slaves are equally legitimate with those born in wedlock, none by the Koran being counted bastards, except such as were the offspring of public women, where the real father could not be determined. When the testator made a written will two witnesses were necessary. In general, a man is compelled to leave his substance to his family, except a

<sup>1</sup> Koran, chaps 2 4, &c. Sale, sect. vi p. 176, &c.

<sup>2</sup> Ce mot Arabe signifie proprement ce que les Hébreux appellent *Mishnah*, la seconde loi, ou la Loi Orale, qui n'a pas été écrite par le législateur, et qui est seulement tirée de ce qu'il a dit au fait, et conservée par tradition, de main à main, par des personnes autorisées — *D'Herbelot*

<sup>3</sup> The same authorities. Compare with the Laws of the Jews, in Levit ch 15., in Deuteronomv, ch 22., and in Selden, *Uxor Hebraica*, lib iii cap 11. and 12

reasonable portion, which he may bequeath to charitable uses, and, so highly is charity in esteem among the professors of this faith, if he die without such bequest, his heirs are expected to bestow something on the poor and the fatherless <sup>1</sup>

Private contracts require two male witnesses, or one male and two females, or where no writer is at hand, to draw up a contract, the debtor must give a pledge; or if a seller take neither writing nor pledge, he cannot insist on the debt <sup>2</sup>

Deliberate *murder* is not necessarily punishable with death. The next of kin may accept a composition, or they may insist on the execution of the culprit, but in the former case, a Moslem must also be redeemed from captivity. Manslaughter, or even accidental homicide, is almost as heavily visited, the unfortunate cause of the deed being compelled to redeem a captive, and pay a fine to the kindred of the deceased, or if too poor to do either, he must fast two months. The fine for a man's blood is fixed by the Sonna at a large amount,—one hundred camels, but out of Arabia a certain sum might be substituted at the discretion of the cadî. Other injuries were compensated by money, or punished by the *lex talionis*. Hence the expression, “an eye for an eye, and a tooth for a tooth.” Originally, there can be no doubt the application of the law was peremptory, but subsequently the offender might be too powerful, or the sufferer too avaricious, to render it any longer so. For crimes of an inferior character, the usual punishment is the cudgel, hence the saying, “that this instrument came down from heaven, so great is its efficacy in restraining the rebellious propensities of human nature.” *Theft* is punished by the loss of the offending member, the hand, but the Sonna forbids the infliction of so severe a chastisement, where the thing stolen falls below a certain value <sup>3</sup>

<sup>1</sup> Koran, chaps 4, 5 Sale, Prel Disc p 182

<sup>2</sup> The same authorities.

<sup>3</sup> Koran, chaps. 2 4, 5 Sale, Prel, Disc p 185, &c

Under the institutions of the civil law may be comprehended the duty of warring against infidels, which is declared to be of high merit in the sight of God they, in fact, who fall in such a strife, are called martyrs, and promised instant admission into paradise Hence the sword is, by some divines, called the key of heaven ; and one night's defence of the Moslem territory superior in the eye of Allah to two months' fast During the infancy of this faith all captives were doomed to death , but humanity soon shuddered at the slaughter, and substituted slavery for it When the Moslems declare war against the infidels, they are enjoined to make three offers, — the Koran, the tribute, or the sword If the first be accepted, the enemy becomes a brother, and cannot be injured in person or substance - if the latter, the submissive nation may continue to profess its own religion, and enjoy its own laws , if both are refused, and the assailants conquer, the vanquished, with their wives and children, become their slaves, or they may be put to death Of the spoil made in war, one fifth went to the caliph, or the kings of Cordova <sup>1</sup>

Like Christianity and Judaism, Islam has its sects, who are usually divided into two grand classes, — the orthodox, and the heterodox

Of these, the former are called Sonnites, or Traditionists, since they acknowledge the authority of the Sonna, which is a collection of traditions relative to the sayings and doings of the prophet, and is a sort of supplement to the Koran They are subdivided into four chief sects, which, though agreeing in essentials, differ in their interpretation of the book The founders are regarded as consummate masters of jurisprudence, and as the glory of Islam The first orthodox sect are called *Hanefites* from the name of their founder, Abu Hanifa al Noman Ebn Thabet, a native of Corfu, who was born in the A H 80 , died A H 150 His last years were spent in prison, at Bagdat, where he is said

<sup>1</sup> The same authorities, with the addition of D'Herbelot, *Bibliothèque Orientale*, art. Mohammed, &c.

— no doubt hyperbolically— to have read the Koran seven thousand times His only crime was his refusal to serve the office of *cadı*, or judge, for which, in the humility of his heart, he thought himself unqualified His disciples are called the followers of reason, since they resolve legal questions by natural equity 2 Malec Ebn Ans, who flourished at Medina, between A H 90 and 170, the head of the second sect, also revered the traditions of the prophet In one case, however, he must have deviated from them, to follow his his own erring judgment, as in his last illness he wept that he had not always been directed by them As the doctrines of his predecessor are professed in Turkey and Tartary, so were his own in Spain and north-western Africa 3 Mohammed Ebn Edris al Shafei, born at Ascalon, A H 150, died in Egypt, A H 204, founded the third sect So famous was he held for learning, that a rival doctor called him the sun of the world, and salutary as health to the body That rival, however, (Ebn Hanbal) at first held him in contempt, and even forbade his disciples to converse with him, but being soon convinced of his own injustice, and resolved to make atonement for it, he followed the sage every where. Being one day surprised by one of his own scholars, as he walked on foot after the mule of Al Shafei, the youth demanded, “How is it that thou, who hast forbidden us to see Al Shafei, followest him thyself?” and he replied, “Hold thy peace! whoever follows even his mule must become wiser!” Al Shafei indeed is said to have been the first who reduced jurisprudence to a system from the *Sonna* His merits were equal to his learning “Whoever,” said he, “pretends to serve the world and its Creator at the same time is a liar” He never swore by the name of God, and never mentioned it without reverence So diligent a student, and so devout a Mussulman, that even the night he divided into three parts — one for meditation, the second for prayer, and the third for sleep His doctrines are spread widely over Arabia and Persia 4 Ahmed Ebn Hanbal, at

first the rival, and eventually the bosom friend, of Al Shafei, was born either in Khorassan or at Bagdat, A H 164 He was the founder of the fourth sect, and was so well versed in the Sonna, that he could repeat, we are told, a million of traditions Belonging to the most rigid order of the orthodox, he believed that the Koran was uncreated and eternal, and subsisting in the very essence of God Another sect, however, with far more reason, contended, that if the Koran was thus co-eternal, there must be two independent and eternal beings, — a manifest heresy The caliph Al Motassem, who assumed the more rational hypothesis, was so incensed at the doctrine of this teacher, that he scourged and imprisoned him Ebn Hanbal died at Bagdat, A H 241, and was followed, we are told, to his grave, by 800,000 men, and 80,000 women a more wonderful, if not miraculous testimony in his person is, that on the day of his death, 20,000 unbelievers, consisting of Christians, Jews, and Magians, embraced the faith of the prophet The sect became exceedingly numerous during the three following centuries At present, however, they are scarcely to be found beyond the confines of Arabia <sup>1</sup>

But, in this as in every other faith, the number of heterodox always exceeds that of true believers while the chief sects of the latter are only four, those of the former are many times that number All, however numerous their ramifications, may be ultimately traced to four arch heresies

I The Motazalites, or Separatists, were the followers of Wasel Ebn Ata, who, in the first century of the Hegira, separated from the orthodox interpretations of the faithful They denied the eternity of the divine attributes, which they considered inconsistent with the divine unity, and taught that God knows every thing by his essence, not by an act of the mind They consequently denied the eternal existence of the Koran, the

<sup>1</sup> D'Herbelot, Bibliothèque Orientale, under the four names above mentioned. Sale, Prel. Disc. sect. viii.

doctrine of predestination, and the temporary duration of punishment in the first hell — the abode of the wicked believers, who, they contend, will be subject to the same everlasting penalty as the other damned, — the same in duration, not in degree. No fewer than twenty sects are said to have originated in the dogmas of this. We can notice only the more remarkable — 1 The *Hodeihans*, or the followers of Hamdan Abu Hodeil, who contended that the divine essence and knowledge are one and the same thing, that his essence is simple, and indivisible, that it has nothing posterior or accessory. 2 The *Jobbians*, from their leader, Al Jobbai, made other subtle distinctions between knowledge and essence. 3 The *Hashemites*, from Abu Hashem, were not behind their brethren in scholastic disputes, maintaining that divine knowledge is an attribute, and therefore posterior, or accessory, but they, at the same time, taught that the faculty itself of knowing was co-eternal, or even identical, with the essence. 4 The *Nodhamites*, from their chief, Ibrahim al Nodham, not only denied predestination, for fear of making God the author of evil, but affirmed that he had not the *power* to do evil. This, however, in a physical sense, was denied by others, who contended that though, as all things were possible to him, he could produce evil as well as good, yet he never did produce a result so contrary to his nature. As to the Koran, this doctor maintained that there was nothing miraculous about it, except its prophecies, that its style and composition had nothing uncommon, but might be equalled, nay surpassed, by the Arabs, if they were allowed to exercise themselves in such subjects. 5 The followers of Ahmed Ebn Hayet held Christ in more honour than Mohammed. they taught that Jesus was the incarnate Word, and will be the Judge of all in the life to come, and that souls migrate from one body to another, but not eternally, the last body being compelled to answer for the misdeeds of the preceding. 6 The disciples of Al Jahed taught that the damned would, in process of time, cease to be tormented, their

substances becoming of the same nature as the fire. They acknowledged no more than the two fundamental tenets of Islam as necessary to salvation, and they taught that the Koran was a body sometimes changed into a man, sometimes into a beast, but in this they doubtless had an allegorical meaning. 7 Al Mozdar, the author of the seventh sect, was by far more intolerant and impious than the preceding. He held that Allah was directly the source of evil no less than of good, and might *possibly* be unjust, though he did not assert that injustice was produced by him. He declared that all mankind, except himself and a few more of the same opinions, were infidels. 8 Bashar, another doctor, carried the free-will of man to an absurd extent, declaring that man was free from all external influence, whether of fate or of the senses. He taught that Allah is not compelled to do any thing for the best, for if he were, why were not mankind all true believers? 9 The followers of Thamama held that sinners should remain in hell for ever, that free actions have no author, that, at the resurrection, all infidels will be annihilated. 10 The Kadars advocated the efficiency of free-will, and the consequent absence of fate, but, like the Magians, to whom they have been compared, they are thought to have taught the existence of an evil independent principle.<sup>1</sup>

II The second grand heretical sect of the Mohammedan world comprises the Scfats, or advocates of the divine attributes, as accessory or posterior to the essence, in direct contradiction to the Motazalites. It was also subdivided into several sects, some of which appear to have removed sufficiently far from the fundamental principles here established. — 1 The *Asharians*, so called from their master, Ashari. This man was at first the disciple of Al Jobbai, from whom he separated on the following occasion. A dispute arose between them concerning three brothers, of whom one lived righteously

<sup>1</sup> D'Herbelot, *Bibliothèque Orientale*, under the respective names. Sale, *Prel. Disc.* pp 205—216

the second wickedly, the third died an infant "What is their fate?" enquired the disciple—"The first," replied the master, "will go to heaven, the second to hell, the third to neither, for he will be neither rewarded nor punished" This orthodox reply did not satisfy the acute enquirer, who observed that the third would have reason to complain, since he might say, "God, hadst thou given me longer life, I might have entered paradise with my believing brother!"—"But," replied Al Jobbai, "might not Allah, with equal reason, say, 'I cut thee off, because I foresaw that thou wouldst be wicked, and in consequence damned?'"—"That," rejoined the disciple, "does not mend the matter, for might not the condemned brother say, 'Allah, why didst thou not call me away while an infant, that, like my brother, I too might have escaped hell?'" To this observation Al Jobbai could make no other answer than that the life of the condemned man was prolonged that he might have the means of salvation "Then," rejoined the pertinacious scholar, "why not allow the infant brother the same advantage?" The master, alike puzzled and enraged, demanded, "Is not the devil in thee?"—"No," replied Ashai, "but I plainly see that the master's ass will not pass the bridge!" (that is, he is posed) Discontented with his teacher, Ashai left him, and established a new sect He allowed the attributes of God to be distinct from his essence, but forbade the doctrine to be pushed further In regard to predestination, he exhibited great subtlety He taught that God creates all human actions, and thereby renders all inevitable, but then, to reconcile this doctrine with free-will, he places two co-existent faculties in man—power and choice, so that the action itself will not start into being, or rather will not outwardly manifest itself, without the contemporaneous exercise of the will Thus, the action, as created, is the work of God, as developed, it is that of man This junction of the will with the pre-existing or predetermined action is called the acquisition of that action.



But here, again, many split on the rock of fatality, for, making the power and choice alike inevitable, by subjecting the very intention, no less than the action, to necessary and uncontrollable influence, they render man the mere instrument of his own destiny. To reconcile these conflicting principles, — to vindicate the justice of God and the free agency of man, — the *cadı* Abu Bekr contends that the essence or substance of the action is from God, but whether that action be obedience, as prayer, or disobedience, as fornication, entirely depends on the power of men. But, said the primitive Moslem, let us not too nicely examine these matters, but leave them to Allah, and do the best we can, knowing, as we do, that the guilt or merit of actions will be imputed to us.

2 The *Moshabbihats*, or assimilators, so called because they assimilated God to creatures, and contended that he fills not all space, but moves about from place to place, with or without form, in a human or any other shape he chooses to assume.

3 The followers of Keram improved on the preceding hypothesis, by contending that Allah is always corporeal, and has a body just like any other creature, and like any other in the object of the senses.

4 The *Jabars*, or the opponents of the Kadars, deny all free agency in man, and subject all actions to God's irrevocable decrees. They contend, farther, that paradise and hell will vanish away after the great judgment, so that Allah will remain the only existing being.

5 The *Mongians* teach that the trial of every true believer guilty of a mortal sin will be deferred to the resurrection, and hold, that if there be true faith, disobedience will not greatly injure the possessor, and, on the other hand, that good works, with unbelief, are utterly inefficacious. Some punishment, indeed, they seem to think, will afflict the wicked believer, as he passes over the dreaded bridge, but he will certainly not fall into the abyss, however much he may be singed by the flames from beneath. This opinion, however, is modified in the writings of other doctors, who, for this reason,

are called sectarians of the Morgian doctrine, but we cannot pursue them into their endless ramifications <sup>1</sup>

III The *Khorejites*, or rebels, were so called because they revolted from Ali, after the battle of Seffin, when their caliph made a disgraceful compromise with his rival Moawia <sup>2</sup> They held that by submitting the things of God to the arbitration of men, he ought to be accounted an infidel, that any Arabian, bound or free, if possessed of the necessary qualifications, might be raised to the dignity of imam, that if the imam sinned, he might be deposed, or put to death, and that if no chief of the religious world existed, the world could sustain no loss These desperate factions were afterwards cut to pieces while fighting against the caliph — some say not one remained alive, while others affirm that nine individuals escaped the massacre, and fled to different parts It is certain that their tenets have survived them down to the present day Six sects sprung from this common trunk, differing in particulars, but agreeing in their rejection of Othman and Ali, and in their duty of resistance to the spiritual power <sup>3</sup>

IV The *Shiites* are the opponents of the Khorejites, and are not merely the adherents, but the idolaters of Ali, they teach that the office of imam must not be considered merely as a point of discipline, but as a fundamental one of religion, since where his succession is not divine no blessing, but rather a curse, must rest on the faith of islam Nay, in the blindness of their hearts, some of them contended, that all religion consisted in the knowledge and obedience of the true imam, and that Ali was either an emanation of the divine nature, or the incarnation of God himself There were, and are, many branches sprung from this abominable root All, however, concur in rejecting and cursing

<sup>1</sup> D Herbelot, Bibliothèque Orientale, sub propriis nominibus Sale, Prel Disc pp 216—230

<sup>2</sup> The learned reader must have perceived that some of the Mohammedan doctors were no strangers to the Greek philosophy

<sup>3</sup> See Gibbon, Decline and Fall Vol iv p 263

<sup>4</sup> The same authorities.

the three first successors of the prophet, Abu Bekir, Omar, and Othman, and either equal or prefer Ali to Mohammed himself. They utterly scorn the Sonnites, who are the reputed orthodox, and who hold the Sonna, a heap of traditions, to be equal in authority with the Koran. Hence the antipathy, at this day, between the Persians, who are Shites, or of the sect of Ali, and the Turks, who are Sonnites.<sup>1</sup>

From these primitive sects have sprung many doctors, and many aspirants to the dignity of imam. Mohammed himself had some rivals, his immediate successors had many. Thus in the reign of Al Mohdi, the third caliph of the Abbassides, the famous impostor Hakem Ebn Haschen, surnamed Al Mokanna, or Al Borkai, *the veiled*, a native of Khorassan, gave himself out as an incarnation of the Deity, in the hope of attracting the Shites. His surname arose from his constantly wearing a veil over his face, from a fear, said his blind followers, that the splendour of his countenance should strike the beholder with death, yet, in reality, lest his deformity should be visible. He contrived to obtain possession of some towns and fortresses in Khorassan; yet in the end his troops were defeated by the caliph, and he himself, fearful of falling into the hands of his enemies, either perished in the flames or in a vessel of aqua-fortis, so that not a trace of him remained.<sup>2</sup> Thus Babec, in the reign of Motassem, assumed the prophetic character in Adherbijam, and for twenty years set at defiance the whole power of the caliph, until he was defeated by the general of that prince. Thus also the Spaniard, Mohammed Ben Abdalla, gave himself out as the long promised Mehedi, and founded the empire of the Almohades.<sup>3</sup>

Spain was behind no part of the Mohammedan world in the number of its faquis, and commentators of the

<sup>1</sup> D'Herbelot and Sale

<sup>2</sup> In the splendid poem of Lalla Rookh, Mr Moore has made this personage well known to the English reader

<sup>3</sup> See Vol II pp 2.—33 See also D'Herbelot, art. Haschen, Babec, Mehedi, &c, and Sale, Prel Disc sect. viii.

faith The MSS preserved in the library of the Escorial, whether of foreign or of native composition, abundantly prove the civilisation of the country Of these most are the production of the Sonna doctors, comprised in the four grand orthodox sects before mentioned, but not a few there are which bear the stamp of heresy, and for the existence of which we should vainly attempt to account, did we not know that it was the policy of the kings of Cordova to attract settlers to the peninsula from all parts of the Moslem world—settlers who could not fail to bring with them not only the most approved editions of the Koran, but the comments of their respective doctors It is no less certain that Arabian Spain could boast of three great schools all presided by faquis differing in some points, though agreeing in the general denomination of traditionists We proceed to notice some of the theological and legal writers—for, as observed more than once, the two subjects are inseparable—who enjoyed the most celebrity the rest will be found in the list at the head of the present volume <sup>1</sup>

Of these commentators the most ancient is Ali ben Mohammed Albagavi, a native of Malaga, who appears to have flourished at the close of the ninth or the beginning of the tenth century The third volume only of his commentary, of which Casiri renders the title by *Sacrarum Literarum Scientia*, is now extant, but that is said to display great subtlety—the most enviable quality in a Moslem divine Abu Said Khalaph ben Abilcassem, an inhabitant of Cordova, is celebrated both for his great learning and for his knowledge of the Mohammedan law His commentary on the Spanish and African jurisprudence is highly prized by his countrymen Abu Abdalla Mohammed, also of Cordova, was so celebrated for his erudition and for his voluminous collection of the canons of the Koran, that he is dignified with the title, “ Doctor of Spain ”

<sup>1</sup> Masdeu, *Fspaña Arabe*, lib. ii. p. 207 Cusin, *Bibliotheca Arabica Hispánica Escorialensis*, passim.

In equal celebrity was held Ibrahim ben Abdelwahid, who wrote on the duties of kings and the art of government Sherefeddin Issa Alzavavi is known as the author of tracts 1 On divorce 2 On wine bibbing. 3 On the use of gold and silver plate at table Abulwahid Hixem ben Abdalla, chief cadí of Cordova, wrote an esteemed treatise on forensic pleading, and the decision of causes Still more eminent in the science of jurisprudence was Hixem ben Ahmed, a native of Toledo, who, according to the testimony of an Arabian biographer, excelled all his countrymen of that age (the fifth century of the Hegira) A work entitled *Stella Lucida*, or the Shining Star, on the political institutions of the Koran, and written by a native of Toledo, Abu Mohammed Abdalla, is highly lauded for its erudition. Another, on the royal revenues, on the branches of national industry from which they arose, and on the mode of collecting them, was composed by a famous cadí of Cordova, Abu Giafar ben Nassir The critical animadversions of Omer ben Ali, a native of Granada, on a celebrated commentary on the Koran, by an Arabian doctor, is said to exhibit remarkable acuteness, but often undue severity <sup>1</sup>

But it was not in theology or jurisprudence alone that the Spanish Mohammedans excelled In other branches of learning, in history, poetry, philology, rhetoric, in the pure and mixed sciences, in the useful and ornamental arts of life, they also obtained great, we had almost said unrivalled, reputation The glory of their literature, the first subject we shall notice, appears to have commenced in the tenth century The early kings of Cordova were certainly enlightened princes, but whether it was owing to the novelty of their situation, or to the troubles which frequently distracted their realm, or the cares of royalty, which, for these times, appear to have been more than ordinarily harassing, they did

<sup>1</sup> Abu Bekir, *Vestis Serica* (apud Casiri Bibliothec tom 11 p 37, & Casiri, tom 1 p 445, &c in multis codicibus. Masdeu, *España Árabe*, ib 11. p. 208.

little for the encouragement of learning until the accession of Alhakem II. That monarch founded an academy in his capital, established public schools in the great towns, invited to his court and kingdom the most learned men of the age, employed some to write the annals of Spain, others on poetry, others on various branches of literature and science, and rewarded all with regal splendour. He caused his governors, whether walis, wasirs, or alcades, to collect the great antiquities of their respective territories, and he purchased, or caused to be transcribed, every work of merit which came to his knowledge.<sup>1</sup> His library is said to have contained 600,000 volumes. The great Almansor followed in his steps, and after this general, succeeding kings, not only of Cordova, but of the separate sovereignties which were established on its ruins, so that, at the close of the eleventh century, Mohammedan Spain could boast of seventy public libraries, of a university in the capital of each province, and of colleges in the other cities. In these libraries, in 1126, were contained the works of 150 writers of Cordova, seventy-one of Murcia, fifty-three of Malaga, fifty-two of Almeria, twenty-five of Portugal, with a great number of Seville, Granada, and Valencia, to omit all mention of the boundless collections of foreign writers. So great, in fact, was the literary reputation of the Spanish Arabs that when the caliph of Egypt desired his library to be arranged and indexes of them to be made, he confided the task to two individuals of that nation.<sup>2</sup>

As an enumeration of the writers of Mohammedan Spain would exhibit nothing beyond a barren repulsive nomenclature, and as to avoid so dry a detail we have affixed a comprehensive list of such writers at the head of this volume, we proceed to notice such branches of

<sup>1</sup> See Vol I p 291

<sup>2</sup> Abu Bekir, *Vestis Serica*, p 7 Ben Alabar, *Chronologia*, p 202. Alhomaidi, *Supplementum*, p 205 (apud Casiri, *Bibl. Arab Hisp tom II*) Casiri in multis codicibus Risco, *Espania Segrada tom xxxi trat 67*. Masdeu, *Espania Arabe*, lib II p 171

literature or science as were cultivated with more than usual success

1 *Historians* — Of these, the most ancient is Ahmed Abu Bekir Alrazi, usually denominated *Rasis*, a native of Cordova, who flourished at the close of the ninth century Besides a geographical work, and a biography of illustrious Spaniards, he wrote a voluminous history of the kings of Spain, and a particular one of Cordova Of the former history two pretended translations remain, — one in Castilian, the other in Portuguese, but, with his usual industry, Casiri has proved that they are not translations from this author, that they abound in anachronisms, and other blunders, not to be found among well-informed authors, and that they are a confused mass of compilations from Christian and Moorish sources To the fragment of *Razis*, published by that learned librarian, which appears to be the only portion of his works now extant, we have been under considerable obligations In the following century, we find the names of Abel Madi ben Abiba, who wrote the life of Abderahman III, and of Abdalla Abu Mohammed, son of that prince, who composed a history of the calphs belonging to the house of Abbas, and whose tragical fate has been recorded<sup>1</sup> Ahmed ben Mohammed wrote, in verse, a history of four kings of Cordova, — from Mohammed I to Abderahman III inclusive So sweet were his strains, that he was the delight of Cordova In the eleventh century, we find the names of eight historians, of whom the most deserving of notice is Mohammed Abu Bekir Almodafar, king of Badajoz, who left behind him no less than fifty volumes of annals and materials for history Abu Abdalla Mohammed, surnamed Alhomaidi, wrote, besides, a historic supplement, which has been frequently quoted in the present work, a biographical account of the most eminent Spanish Moors In the following century, this work was continued to A H 560, by Ahmed ben Yahia

<sup>1</sup> See Vol. I. p 289

Eddubi of Majorca. A similar work was written by Abul Cassim Khalaf of Cordova, which is said by Condé to throw great light on the history of Mohammedan Spain during the middle ages. The same favourable judgment is passed on Meiaudi, whose "Golden Meadows" greatly assisted the author just mentioned in the composition of his invaluable work. That during the perpetual convulsions of the Mohammedan states, from the eleventh to the thirteenth century, writers should yet be found to record them, is honourable to the literature of the people, and the best proof that can be given how little they deserve the epithet of *barbarous*, so lavishly applied to them by the ecclesiastical annalists of the middle ages — The kings of Granada were not without their historians. Lisan Edin, secretary to two of them, wrote in verse on the African and Spanish dynasties, a separate history of Granada, and three volumes of biography. The second of their subjects is no less indebted to Abdalla Algiazami of Malaga, and to Ahmed Almoraxi, who wrote a life of Yussef Abul Hagiag. The "Sweetness of the Rose," by Ismail ben Yussef, and the Holy War by Abdalla Ali ben Abderahman,—both writers on the affairs of Granada,—are mentioned with equal respect. It is to be lamented that the preceding works have not been translated and published, under the title of "Scriptores Arabici Rerum Hispanarum" they would be of inestimable value to the future historians of that country. But the most distinguished place in this list must certainly be assigned to, 1 Abu Abdalla Ben Abi Bekir Alcodai, usually called Ebn, or Ben Alabar, a Valentian, who, in the seventh century of the hejira, wrote the *Vestis Serica*, or a *Bibliotheca* of such Spanish Arabs as were eminent for their poetical talents, no less than their dignities, and also a supplement to other biographical works of a more general nature. 2 Mohammed ben Abdalla Ebn Alkathib, who in the eighth century of the hejira composed the *Granatensis Encyclica*, or a dictionary in the alphabetical order, of the most emi-



nent Moors of Spain, a work which originally consisted of eleven parts, but of which the greater portion is unfortunately lost. The fragments, as preserved in the collection of Casiri, offer the most convincing proof of the extent to which letters and science were cultivated by the Moslems. In the parts remaining, he gives us a list of about 300 authors and men of learning, and hundreds more are to be found in other writers on the subject. A still more useful monument of literature is the *Vestis Acu Picta*, or embroidered garment, which contains a summary of the caliphs and kings, both of Spain and Africa, and which comes down to the year 763 of the *hegira*. It may, perhaps, be doubted, whether the *Splendor Plenilunii*, or brightness of the full moon, may not be a still more useful book. It contains the history of Granada, before its foundation by Mohammed ben Alhamar, to A H 765. During near thirty years the author was laden with honours and riches by the kings of that city, to one of whom he was either *hagib* or councillor. But towards the close of his life he experienced the usual fate of those who trust in royal favour, by Mohammed V, in A H 776, he was thrown into prison on a charge of treason, and beheaded. These were not his only works, he wrote on a multitude of other subjects — on too many, perhaps, to write well.

The preceding are but a few of the writers whose works are actually extant. Many are quoted as high authorities, of whom no record remains. The merit, however, by no means corresponds with the number. Mohammed ben Abdalla and Abdalla ben Abderahman, were the last distinguished historians of the Moors. From a hundred years before the death of the latter, literature had begun to decline, and if we except some ballads, which chiefly turned on the wars between the Moors and Christians, it was now nearly extinct. At no period were the Mohammedans eminent for historic composition. The best of them give us meagre statements of facts, unaccompanied by reflection, and

destitute of method They appear to have sat down to their tasks with the resolution of detailing the most prominent events in the fewest possible words,—to compile mere chronological tables In the whole range of historic literature there are few compositions so meagre, and so repulsive, as those by the Moors of Spain <sup>1</sup>

2 Of *Poets* Mohammedan Spain can produce a far greater number than all the contemporary nations of Europe taken together Poetry, in fact, was the universal passion, from the king to the bondsman Whether here, too, the excellence corresponds with the number, may reasonably be doubted the fragments which have sometimes been published do not exhibit much originality or animation But of their merit no adequate notion can be formed, until some one, possessed of the necessary learning and leisure, and influenced by the hope, not of pecuniary reward, but of fame,—a phenomenon at present scarcely to be expected,—shall unlock the hidden stores of the Escorial, and display them in an intelligible form to the world Nothing can exceed the unsatisfactory manner in which the best writers, in other respects, of Spain, speak of the poetry of the Arabs They give us no information, and are evidently reluctant to speak on the subject at all And well may they be so the fact that such ample stores—whether treasures or rubbish is nothing to the purpose, since neither can be ascertained without examination—lie mouldering in the recesses of that gloomy palace, is little creditable to either government or people Some Pocock, or De Sacy, might surely arise to present us with a Specimen or an Anthologie The poetical compositions of the Arabs are of a light character, such as odes, elegies, epigrams, and satires the epic or dramatic muses they never invoked The series of native poets commence in the ninth century Thus

<sup>1</sup> *Rasis Fragmentum Historiæ Hispanæ cum Dissertatione Casiri* (in *Biblioth Arab Hisp* ii 319 & 329) Abu Bekir Alcodai, *Vestis Surica, passim* (in eodem tomo) Abu Abdalla Fin Alkhatib, *Vestis acu picta, necnon Splendor Plenilunni* (in eodem tomo) Abu Abdalla ben Khalidun, *Vitæ Virorum Illustrium*, p 72 (in eodem tomo) Masdeu, *España Arabe*, lib ii p 188. Condé by Marlès, *Histoire de la Domination, &c* (Introduction to tom. 1)

Mohammed I, who ascended the throne of Cordova in 852, and who sung his own exploits, is praised for his eloquence<sup>1</sup> Four of his brothers were also cultivators of the tuneful art, but two of them, according to the evidence of Abu Bekir, imitate Apolline, and two of his sons, one the restless Alkassim<sup>2</sup>, endeavoured to rival his success, or perhaps to gratify his ruling taste Of this royal poetic family no work remains to show whether some of its members are worthy of the praise awarded to them by the Valentian biographer In the following century, we find the royal names of Mohammed ben Abdelmelec, and Abdalla abu Mohammed, both sons of Abderahman III Some of the ministers, generals, and favourites of that monarch, were the constant worshippers of the muse Thus, Obeidala ben Ahmed ben Yali celebrated the victory which he himself had gained over the Christians at Sotuscobas<sup>3</sup>, A D 938, and another, the great Almansor, twined the wreaths of Apollo with those of Mars<sup>4</sup> But the eleventh century is much more prolific in poets Notwithstanding the troubles of the times, the perpetual disputes for empire, and the consequent vicissitudes in their condition, even the princes of this period indulged in the prevailing taste<sup>5</sup> Thus, at Cordova, Suleiman<sup>6</sup> and Abderahman<sup>7</sup>, at Seville, Mohammed ben Ismail<sup>8</sup>, and Mohammed Almoateded<sup>9</sup>, at Almeria, Mohammed Abu Yahia, and his two sons; at Badajoz, Aben Alaftas, who, even after his deposition, and while in prison, pursued his favourite theme, at Alsalla, Abdelmalec ben Hozail, at Lorca, Abul Hassan ben Elisa,—all sovereigns, with several members of their families,—were assiduous cultivators of the tuneful art Besides these, the same century produced a

<sup>1</sup> See Vol I p 276.

<sup>2</sup> Ibid p 278

<sup>3</sup> Ibid p 287

<sup>4</sup> "Lum multu scripsisse carmina auctor est Ebn Hayan" *Abu Bekir*, *Vestis Serica*, p 50

<sup>5</sup> "Poësis" says LEO Africanus, "maxime ab his complectitur versos describunt elegantissimos quum eorum lingua sit castigatissima atque ornatisissima Siquis alicujus momenti poeta inter eos reperitur, hic ab illius regionis magnatibus summo excipitur honore ac munificentia."

Lib 1

<sup>6</sup> Vol I p 304

<sup>7</sup> Ibid p 307

<sup>8</sup> Vol II p. I.

<sup>9</sup> Ibid. p 4

long list of others less noble in rank, but probably more eminent in talent, whose names will be found in the proper place<sup>1</sup> One of them, Abul Walid ben Abdalla, the suitor of the princess Valadata, herself no mean poetess, is celebrated for a satirical epistle, which jealousy induced him to write against his rivals, and for which he is said to have been as famous among his countrymen as Juvenal among the Romans<sup>2</sup>

In the twelfth century, perhaps the most remarkable instance of poetic taste is to be found in Ahmed ben Alhassan, a native of Silves in Algarve, and in his companion Mohammed This man originally followed the occupation of a merchant, but whether tired with so ignoble a calling, or ambitious of spiritual fame — the sure foundation of temporal authority, — he distributed his wealth among the poor, and retired into the mountains, under the pretext of acquiring sanctity Here he was soon joined by the idle, the dissolute, and the fanatic, whom he formed into a resolute band, and led against the neighbouring villages In A H 539 he was strong enough to besiege and take Mertola, in the province of Alentejo The news of this success rapidly increased the number of his adherents he was joined by a band of the Almoravides, who with shouts and songs elected him to be their imam Evora, Silves, and even Seville, fell before him, feats which need scarcely surprise us, when we consider the troubles which agitated the whole of Mohammedan Spain on the decline of the Almoravidan domination<sup>3</sup> But here his success ended his cruelty was such that his very followers forsook him, and joined the Almohades He obtained succour from Urraca, daughter of Alfonso, the emperor, but it could not avail against the indignant inhabitants of Silves, by whom he was vanquished To escape their fury he swallowed poison — His great ally and support was Mohammed ben Omar, a native of the same city, who,

<sup>1</sup> See the table at the commencement of the present volume

<sup>2</sup> The same authorities as before

<sup>3</sup> Vol. II pp 32—37

after studying the law at Seville, had been associated with the senate of Silves. Under the pretext of religious contemplation, he too had fled from the vicinity of men, wandering on the solitary sea-beach, where he had built himself a hut. He at length joined Ahmed, and shared alike in the excesses and disasters of that enterprising poet and prophet. His actions in the field were even more signal than Ahmed's, whom he sought to establish on the throne of Andalusia and Algarve. After reducing several strong places, among which were Niebla and Huelva, he advanced against Cordova. The place, however, was too strong to be stormed, and he retired, but the inhabitants having soon expelled their king, Aben Abdelmelec, called him to the vacant dignity. But that dignity did not blind him to the insecurity of his situation, and after twelve days' reign, he fled from his capital. Afterwards he marched to reduce a rebellious wasir, by whom he was defeated, cast into prison, and deprived of his eyes. He remained in confinement until the conquests of the Almohades restored him to liberty, and ended his days at Salé, in Africa, A H 558. Of this singular adventurer, several poetical pieces remain in the *Vestis Serica* of Abu Bekir. Next we find Abi Abderahman Mohammed, a native of Murcia, who was made king and general of his countrymen to expel the Almoravides, but, after various alternations of fortune, he was compelled to flee into Africa, where he died, A H 574. His poetic abilities are mentioned in terms of the highest praise by Abu Bekir, and so also is his merit as an historian. Ahmed ben Yussuf, of the royal race of the Beni Hud of Saragossa, who after the expulsion of his family by the king of Aragon, Alfonso I<sup>1</sup>, took refuge in Cordova, the government of which he seized. But having reason to dread the fickleness of the people, he fled to Jaen, and afterwards to Murcia, of which, as well as of Valentia, in A H 546, he was elected king. But the very year of his elevation he was

<sup>1</sup> See his reign in the history of Aragon

signally defeated by Alfonso VIII, and lest he should fall into the hands of the enemy, he was slain by three of his attendants. Of this prince, several songs are still extant in the Escorial. Mohammed ben Hamdan, cadı of Murcia, Ahmed abu Giafar, successively cadı of Granada, Jaen, and Murcia, Ahmed ben Mohammed, wali of Valencia, and Mohammed ben Sad, king of Valencia<sup>1</sup>, of whom all were active in the wars of this troubled period,—found time to make verses, some of which still moulder in the same vast library<sup>2</sup>.

The thirteenth century is no less fruitful in poets, and though these are much fewer in the fourteenth, and fewer still in the fifteenth, from both together a respectable list might be framed. But if even a meagre nomenclature were desirable, we should not have space for its insertion, and we must again refer to the table which we have placed at the commencement of the present volume.

3 Of grammarians, orators, rhetoricians, mathematicians, astronomers, philosophers whether moral or natural, physicians, &c, Mohammedan Spain presents a very numerous list, and at a time, too, when many of the sciences were wholly neglected in the rest of Europe. It was in the physical and experimental sciences that the people most excelled. Their knowledge of *botany* was far famed, that of *chemistry* was more so, so great indeed was their progress in the latter most intricate and then hidden branch of philosophy, that they are universally regarded, if not its founders, at least as its regenerators in Europe, and their works are said to contain the germs of many systems, which in latter ages have been regarded as original. That their skill in *medicine* was not inferior is evident from the journey of Sancho the Fat to the court of Cordova<sup>3</sup>, and the complete reduction of his corpulency. MS commentaries on Dioscorides and Galen are frequent in the Escorial,

<sup>1</sup> Vol II p 39

<sup>2</sup> Abu Bekir, *Vestis Serica*, pp 51—59 (apud Casiri, *Bibl Arab tom II*

<sup>3</sup> Vol II p 141

and hundreds of original works on the subject issued from the pens of the scribes<sup>1</sup> In the *mathematics* and the sciences dependent on them, they were, if possible, still more distinguished The basis of their geometrical studies were the elements of Euclid, which they commented and illustrated with singular acuteness They have preserved in their translations some valuable Greek treatises,—the conic sections of Apollonius, for instance, which would have been otherwise lost To them we are indebted for most of the improvements in *algebra*, which have been made since the time of Diophantus, and for the arithmetical computation by numbers The same may be said of *optics*, and in a still stronger degree of *astronomy* The astronomical tables of Ibrahim Abu Ishac, surnamed Alzarcalli, doubtless served as the foundation of the famous tables of Alfonso el Sabio, who even with them would probably have made little progress, had he not been assisted by two eminent mathematicians of Granada By the Spanish Arabs, the astrolabe was greatly improved, and some other instruments invented, especially one for observing the motions of the heavenly bodies, and called, after the name of its inventor, *Zarcalli* The names of a multitude of mathematicians and astronomers, with their most admired works, are to be found in the valuable though hasty work of Casiri<sup>2</sup> In reading the histories of nations we seldom meet with kings who have obtained much distinction for science or general information, but at every step in the history of the Mohammedan sovereignties of Spain do we encounter monarchs whose researches or talents would have honoured a private individual To render their works more attractive, not a few of the scientific men of the middle ages composed their treatises in verse<sup>3</sup> Thus we have a poem on algebra, another on the ordinary

<sup>1</sup> Tiraboschi (Storia della Letteratura Italiana, tom vi lib 3 cap 4) asserts that, at the period in question, there was not an eminent physician in any part of the world' See the Bibliotheca of Casiri, tom 1 cod 785—892

<sup>2</sup> Tom ii pp 339—444

<sup>3</sup> There are also poems on other subjects, on the laws of inheritance, on various branches of physics, and on medicine

rules of arithmetic, another on judicial astrology, a fourth on astronomy, a fifth on the powers of numbers, a sixth on the most recondite properties of the cone and its sections. That *judicial astrology* was cultivated with great diligence appears from the number of codices in the great work of CASIRI. In one of these it is confidently predicted, that if the religion of Mohammed should remain until A. H. 1000, all Spain must inevitably receive the Mohammedan yoke. For the names of such a multitude we have no space, not even for that of the illustrious Averroes, whose life would lead us into too wide a field, nor need our silence be much regretted, as whatever general information could be expected from such a compendium as this will be found in the proper place.<sup>1</sup>

The useful arts of life were no less cultivated by the Arabs than literature and science. *Agriculture*, horticulture, and plantation, were above all encouraged by the kings of Cordova and Granada. "The delicious gardens," says Masdeu, "which Abderahman I planted in his court, the advantage which the inhabitants of Seville and Cordova derived from the Guadalquivir, whose waters were on every side made to irrigate the soil, and to preserve in activity the mills, the prodigious amenity and fertility of the gardens of Granada, which contained 130 mills, and more than 300 pleasure houses, the excellent agricultural works composed by our Arabs, among whom Abu Zaccaria, a celebrated Sevillian, merits the title of Prince of rustic economy, since, as Casiri well observes, he adapted to the climate of Spain the most useful improvements of Chaldeans, Greeks, Latins, and Africans — all these are convincing proofs of the affection with which the Moors regarded agriculture after their establishment in the peninsula." The consequence was an almost unrivalled fertility — a fact to which ample testimony was borne by the Nubian geographer, who travelled through Mohammedan Spain at the commencement of the twelfth century.

<sup>1</sup> CASIRI, *Bibliotheca Arabico Hispana Escorialensis*, tom. II in multitudines of codices. See the Table at the head of the volume.



If to this consideration we add the amazing abundance of fish every where on the coast, and the easy tenure by which the labourer or farmer held the land, — no one paying more than half, often no more than one third, the produce of the soil to the landlord, — we shall be satisfied that the condition of this much neglected class was not unenviable <sup>1</sup>

The *mechanical arts* and *manufactures* were carried to considerable perfection. Ornaments of gold — a metal which continued to abound in several parts of the country — both for men and women, magnificent habits of silk and furs, the abundance of plate in the houses of the rich, the extent to which wool, cotton, and flax, were wrought in the loom, prove, beyond dispute, the industry, no less than the ingenuity, of the Spanish Arabs. By them the use of writing paper was introduced into Europe. Disputed as this question has been, there can be no doubt that the Arabian historians are right in assigning the original invention to the Chinese, from whom the use passed to the Persians, and from the latter to the Arabians. In A H 30, (A D 651) it was known at Samarcand, in A H 88 at Mecca, and we are authorised in inferring, that it was introduced into Spain in A D 711. The Arabian geographer praises the unrivalled quality of the paper of Xativa, which, as being made of linen, would doubtless be much superior to the cotton manufacture he had seen in the east. In the Escorial there are MSS of *linen* paper as old as the commencement of the eleventh century, yet Tiraboschi, who is absolutely ignorant of every thing that did not happen in his own country, affirms that it was invented in Italy during the fourteenth century — *Commerce* was deemed no less worthy of encouragement than domestic industry. The exports were the same as those in the time of Roman Spain. The use of ships for trade naturally led to the formation of a naval fleet, both to protect the national wealth and to convey troops from Africa to the Balearic isles,

<sup>1</sup> Authorities, the fragments of Casiri and Masdeu

and other parts — The *fine arts* were less cultivated, painting was almost unknown, and sculpture was neglected, except in two or three of the great mosques. And even in these, the extent of the buildings, the variety of the workmanship, rather than its excellency, and the magnificence of the materials, were the only things to be admired. The palace and town of Medina Azhara<sup>1</sup>, the superb mosque of Cordova<sup>2</sup>, and the palace of Alhambra<sup>3</sup>, with other buildings, the description of which, though frequently exaggerated, is to be found in most travellers, convey a high idea of the wealth and enterprise of this people, — unquestionably the most wealthy and enterprising of any in Europe, from the eighth to the thirteenth century, when they began to be fully rivalled by the Christians. In short, all the great cities of Mohammedan Spain, Cordova, Granada, Toledo, Valencia, Ubeda, Coimbra, were deeply indebted to their Moorish inhabitants, a fact sufficiently proved by the still subsisting remains of their past magnificence<sup>4</sup>.

## II STATE OF CHRISTIAN SPAIN

### CHAP II

#### GOVERNMENT—ADMINISTRATION—LAWS

AFTER the fall of Toledo at the summons of Tarik, nine tenths of the Peninsula was subject to the Mohammedans. Murcia, which the Arabs call Tadmîr, though

<sup>1</sup> Vol I p 288

<sup>2</sup> Ibid p 26

<sup>3</sup> See the exaggerated description of this palace, in the Encyclopædia Britannica, and other accessible works. In this, however, as in many other cases, the actual observer is sure to retire disappointed.

<sup>4</sup> Abu Aldalla ben Alkhatib, Splendor Plenilunæ, p 250 (apud Casiri, Bibliotheca, tom 11). Alhomaidi, Supplementum, p 202 (in eodem tomo). Geogr Nubiensis, clim 14 pars 1. Abu Bekir Alcodai, Vestus Sericæ, p 32 &c (apud Casiri, tom 11). Masdeu, España Árabe, lib 11 Cond. by Mariès, Histoire de la Domination, &c, passim.

governed by Theodomir and his successor Athanagild, was as much dependent on them as Andalusia or New Castile. The districts over which the barbarian sway never extended were the mountains of the Asturias, Biscay, Navarre, and an angle of Aragon. From the foundation of the Christian states, the extent of territory comprised by each was usually variable, dependent alike on their conquests over the natural enemy, and among themselves. The relative extent of each, from its origin to its widest amplification, and the gradual removal of the frontier at the expense of the strangers, will appear from a hasty glance at its history — 1. When Pelayo established his little court at Cangas, the *Asturian* kingdom could only have occupied the mountainous district immediately surrounding that humble capital. This place continued to be the seat of government under the reigns of the first five sovereigns, viz from Pelayo to Aurelio, or from 718 to 774. It does not appear that any of these sovereigns, except Alfonso I, made much addition to the original territory, but that conqueror extended his frontier into Galicia westward, and probably to Aragon in the east, and as far south as the confines of Toledo<sup>1</sup>. By Silo the seat of government was transferred to Pravia, which was the residence of his successors, Mauregato and Bermudo I, viz to 791, when, by Alfonso the Chaste, it was removed to Oviedo, where it remained until the death of Alfonso III, in 910. This last-named monarch greatly amplified his dominions, which he extended to the Sierra de Cuenza, in the territory of Toledo, to the Duero, in Estremadura, and Portugal, in one instance, even to the Guadiana<sup>2</sup>. His successor, Garcia, removed the court to the more central situation of Leon, where, with a short interruption, occasioned by the victories of Almanzor, it continued to be held until 1085. The conquests of that famous Arab were recovered by Fernando I, and augmented by his son, Alfonso VI, who took Toledo, and who, like his daughter Urraca, and his grandson Alfonso the emperor,

<sup>1</sup> See Vol II p 125

<sup>2</sup> Ibid p 134

usually resided in that ancient capital of the monarchy. But there was the kingdom of Castile, of which the capital, until the emperor's death, had always been Burgos, and which had extended from Rioja to the Vea, and from Alava to the Dueio. On the accession of Sancho III in 1157, Biscay and Toledo were added to Castile, and, so long as it and Leon were governed by different kings, the capital was either Burgos or Toledo. After the final incorporation of the two kingdoms, and the conquest of Andalusia by San Fernando, the capital of the monarchy was Seville, though Toledo, Madrid, and other places, were frequently honoured by the abode of royalty. From the reign of San Fernando, may be dated the true era of Spanish greatness. Murcia was conquered by his son Alfonso<sup>1</sup>, and by his successors the kingdom of Granada—the only Mohammedan one remaining—was circumscribed within narrower limits, until it was wholly subjugated by Fernando and Isabel<sup>2</sup>—<sup>2</sup> *Navarre*, from its origin to its conquest by Fernando V, underwent little change in its dimensions, and its capital was always Pamplona, though Majorca was honoured by the royal residence so long as Rioja, which Sancho el Mayor had annexed to it, formed a part of the kingdom. After the death of Sancho III, the court was in Aragon until 1134, at Pamplona, until 1274, at Paris, until the accession of Jeanne II and Philip of Evreux, in 1329<sup>3</sup>. From this period until 1512, the native capital enjoyed its ancient honours. We have said that Navarre underwent little change in its dimensions, but this is to be understood only of Spanish Navarre. North of the Pyrenees, Gascony, Foix, Champagne and Brie, Bearne, &c were frequently under the same sceptre. These were, however, far from permanent possessions: they were, in fact, separate fiefs, perpetually changing rulers, at the pleasure of their natural sovereigns, the French kings<sup>4</sup>—<sup>3</sup> *The Lordship of Barcelona*, which for some time continued dependent on the Carolingian

<sup>1</sup> Vol II p 55<sup>2</sup> Ibid pp 116 118<sup>3</sup> Vol III pp 14 31<sup>4</sup> Vol III pp 33 37 48 53, &c

princes, comprehended, anciently, not only all Catalonia, but Septimania, Gothia, or Languedoc. The Spanish march, or frontier, however, was subsequently held as a separate government<sup>1</sup>, on which other lordships, such as Urgel, Gerona, Ampurias, Vique, Cardona, Manresa, Besalu, &c were entirely subordinate. The dependence on France was of short duration, for Wifredo II, who recovered Barcelona from the Arabs<sup>2</sup>, decrees in the sovereign style—*Gratia Dei*,—and is recognised, even by the French, as the founder of an hereditary state. Under Borello<sup>3</sup>, the efforts of the Gallic kings to regain their ascendancy over the province, appear to have been abandoned as hopeless. From this period to the union with Aragon<sup>4</sup>, the counts held as independent a sovereignty as any Christian king in the Peninsula.—4 So long as Aragon was bounded within the mountainous region at the foot of the Pyrenees, the capital was Jaca, or San Juan de la Peña. The conquest of Sobrarve, Ribagorza<sup>5</sup>, and Pallas, by Ramiro I<sup>6</sup>—of the Mohammedan fortresses, from the Pyrenees to the Ebro, by Sancho I<sup>7</sup>—of Huesca, by Pedro<sup>8</sup>—of Tudela, Zaragoza, Calatayud, Daroca, Mequencia, &c, by Alfonso I<sup>9</sup>,—amplified this little lordship into a considerable kingdom, the capital of which, in 1119, was transferred to Zaragoza. When Lerida and Fraga were reduced by the prince of Aragon<sup>10</sup>—the Balearic Isles and Valencia, by don Jayme el Conquistador<sup>11</sup>—Aragon, omitting all mention of her possessions in France, became, next to Castile, the most extensive and powerful of the Peninsular kingdoms.—5 *Portugal*, in its original limits, as governed by Henri of Besançon, the first count, extended only from the Minho to the Duero<sup>12</sup>, and its court was Coimbra. After the conquests won by Alfonso I<sup>13</sup>, who penetrated as far as

<sup>1</sup> Vol. III pp 58 62, 63 66

<sup>2</sup> Ibid p 69

<sup>3</sup> Ibid p 70

<sup>4</sup> Ibid p 77

<sup>5</sup> Part of Ribagorza, however, was the inheritance of the first king of

Aragon

<sup>6</sup> Vol III p 80

<sup>7</sup> Ibid p 81

<sup>8</sup> Ibid pp 82, 83

<sup>9</sup> Ibid p 84

<sup>10</sup> Ibid p 90

<sup>11</sup> Ibid pp 100 102.

<sup>12</sup> Ibid p 177

<sup>13</sup> Ibid pp 180 184

Algarve — by Sancho II, who removed both to the east and south<sup>1</sup>— Lisbon was considered the capital, though the residence of the court was often at Coimbra, or Santarem. From the reign of this last-named prince, Portugal received no increase in the Peninsula, but her settlements in Africa, Asia, and America<sup>2</sup>, were extensive enough to place her on a level with the sister monarchy of Spain<sup>3</sup>.

The *Government* of all the Christian states was absolute but in two it was originally elective, in the rest always hereditary. Until the reign of Wifredo II, the counts of Barcelona were chosen by the French kings<sup>4</sup>, but from this period the sovereignty was as hereditary as in any other part of the Peninsula. Like their Wisigothic ancestors, the early Asturian kings were doubtless elected by the prelates and barons, the recognised heads of the ecclesiastical and civil states, but the hereditary system seems to have prevailed from the accession of Bermudo II in 982 and even from the foundation of the state by Pelayo, the election had been always confined to the same family, and had generally fallen on the next heir in the legitimate order of succession. If, on the death of the monarch, the assembled prelates and barons passed over his children in favour of a brother, or a nephew, or a son-in-law, the reason was, that these children were too young, or in some other way disqualified for the important office, at a time when not merely the welfare, but the security of the people demanded that both the head and arm of the king should have reached their full vigour. For the same reason, it

<sup>1</sup> Vol III p 193

<sup>2</sup> *Ibid* reigns of Joam I, Alfonso V, Joam II, and Manuel

<sup>3</sup> The authorities of the above comprise nearly all the Christian historians of Spain, from Sebastian of Salamanca to Damian a Goes, and are, therefore, too numerous to be either cited or named. Under the first mentioned kingdom, the chief are contained in Flores and Schottus, with the Chronicles of Castile. Under the second, Navarre, Moret, Favyn, Zurita, &c. Under the third, Barcelona, are the Chronicle Vluaneuse and Barconense, the Monachus Ripullensis, the Archbishop Marca, and Baluzio of Tudela. Under the fourth, Aragon, are Zurita, Blancas, &c. Under the fifth, Portugal, are Brito, Brandaon, Ruy de Pina, Vasconcellos, La Clède, Lemos, &c.

<sup>4</sup> See the reign of Wifredo II. in chapter 3 Vol III

doubtless was, that on the death of Ordoño II in 923, his brother, Fruela II, was elected in preference to his four children, and this is confirmed by the fact, that though Fruela had issue, he was succeeded by Alfonso IV, eldest son of Ordoño<sup>1</sup> To avoid the troubles consequent on a disputed succession, the electors sometimes supporting different candidates, the choice was often determined, and the favoured candidate crowned, during the reign of the actual monarch, but this expedient had not always the result expected from it. However clear the right of the designated successor, — if even he were the eldest son, and possessed every necessary qualification for the throne, — he could not anciently enter on his functions, until it had been sanctioned by the assembled electors. In time, however, the kings of Leon and Castile were, in this respect, placed on the same level with their brother potentates of Navarre, Aragon, and Portugal. Though on, or immediately after, his accession, the estates were convoked, they were required not to give their suffrages in favour of the new monarch, but to yield him homage, to receive his oaths of administering the laws with impartiality, and to vote the necessary supplies for the support of his dignity.<sup>2</sup>

For some ages the *titles* and *honours* of the Christian sovereigns were nearly the same as those of the Wisigoths. Each was styled Rex, Princeps, Dominus, or Noster Dominus, and to these titles, the epithets Gloriosus, Pius, Serenissimus, &c, were added.<sup>3</sup> As the Castilian language superseded the Latin, El Rey Nuestro Señor was, as it now is, the most usual designation, and the most usual address was, Señor Rey, or Vuestra Alteza. His *powers* varied at various periods of the monarchy. Anciently his *ecclesiastical* authority resem-

<sup>1</sup> Vol II p 138

<sup>2</sup> Authorities, besides the historians quoted so frequently in Vols II & III, Mondéjar, Advertencias á la Historia del Padre Juan de Mariana, Adv 61, &c Masdeu, España Árabe, lib II Marina, Teoría de las Cortes tom 1, Sempère, Histoire des Cortès d'Espagne, passim, et Considérations sur les Causes de la Grandeur et de la Décadence de la Monarchie Espagnole tom 1

<sup>3</sup> Vol I. p 182.

bled that of the Wisigothic kings. Like them, 1 He could issue general regulations for the maintenance of discipline and the interests of religion 2 He could preside in tribunals of appeal 3 He could nominate to vacant bishoprics 4 He could convoke, preside over, and confirm, national councils<sup>1</sup> But of these prerogatives, he ultimately retained only the third,—the nomination to vacant sees, for from the eleventh century downwards, such high notions of papal supremacy were introduced into the Peninsula, that ecclesiastical jurisdiction was not only wrested from the crown, but all crowns were declared by the more zealous churchmen to depend on the will of the pontiff The *temporal* powers of the sovereign during the five first centuries after the restoration of the monarchy were similar to those held by the Wisigothic kings<sup>2</sup>, but in later times they were doubtless greater The king, says the code of Alfonso el Sabio, represents God on earth, and is therefore God's vicar, he is the soul and head of the body politic, which he directs at his pleasure, his duties are, to preserve internal tranquillity, to humble the proud, to destroy the impious, to defend the Catholic faith, and to vanquish his foreign enemies hence, he can concede or revoke, interpret or abrogate laws, he can declare war or make peace, can appoint judges, levy and exact contributions But the royal legislator, or his scribes, admit that such contributions must be levied or exacted *according to the ancient form*, — that is, according to established usage,—that he cannot seize any thing belonging to his vassals without their consent, unless it be in case of civil delinquency, that he must govern both in peace and war with the advice of good and prudent men in the former, of those who are skilled in the laws, in the latter, of experienced soldiers But, though thus forbidden to injure his people, to visit them with rigorous punishments, to trample on their rights, or to oppress them by harsh exactions, were the laws sufficiently powerful to restrain him<sup>2</sup>

<sup>1</sup> Vol I pp 184 186

<sup>2</sup> *Ibid* p 183.



What power could ensure their efficacy? The nobles? They could be tyrants as well as he, within their respective governments, and were liable to the same abuses. The prelates? Their voice was seldom heard in the temple of violence. The head alike of the magistracy and the army, the interpreter of justice, the king had but too great facilities for exercising arbitrary acts. It is, however, certain that the Spanish kings were seldom tyrannical if they sometimes abused their authority, they were generally the protectors of the people. The true tyrants were the feudal señores, of whose violence and rapacity there are innumerable complaints in the national chronicles, and in the acts of the cortes. It is worthy of remark, that the queens presided with their husbands in the cortes, the councils, and the tribunals of justice, and that not as mere spectators or auditors, but as judges as exercising, on some occasions at least, a conjoint authority, and signing like their royal consorts the public instruments. Thus Elvira presided with Alfonso V in the national council of Leon, thus Sancho el Mayor, in the diploma by which he erected the bishopric of Pamplona, declares that he does so with the assistance and consent of his queen, and thus Raymond of Barcelona issues a decree conjointly with his wife Adalmodis. These instances are but three among hundreds which might be adduced of the influence held in the administration by the wives of the Spanish sovereigns.<sup>1</sup>

The domestic establishments of the king, called by the Wisigoths *curia*, in the middle ages *cohorte*, and now *court*, was composed of the most distinguished, or the most favoured subjects. Of these the chief was the *major domús*, to whom were subject all the domestics of the palace. The *armiger*, or shield-bearer, held the

<sup>1</sup> Authorities, Codex Legis Wisigothorum, lib. xii, &c. Loaisa, Concilia Toletana, iii.—xvi (the laws and canons are too numerous to be quoted) Alfonso el Sabio, Las Siete Partidas, part ii tit. i. Catalani, Collectio Maxima Conciliorum Omnium Hispaniæ, tom. iv. Concilium Legionense, p. 380, necnon Concilium Pampilonense, p. 391. Baluzius Tutelenensis, Collectio Veterum Monumentorum ad Historiam illarum Regionum pertinentium quæ describuntur in libris Marci Hispaniæ, variis scripturis. Masdeu, España Árabe, lib. ii. passim. Salazar de Mendoza, Origen de las Dignidades Seglares de Castilla y Leon, lib. i.

next rank Then came the *æconomici*, or stewards, the *capellani*, or chaplains, the *notarii*, or secretaries and notaries, the *cubicularii*, or chamberlains, the *cellarii*, or victuallers, and some others whose offices are not very clearly defined The heads of each department were styled *comites*, *comitotes*, *condes*, counts, or companions, so called because they were the companions of the king hence, there was the count of the notaries, the count of the stables, the count of the treasury, &c, all which were mere titles of honour, unaccompanied by any fief In the thirteenth century, however, these titles ceased, each individual was called according to the office he filled in the Castilian language, and the chiefs in each department had the word *mayor* added to the common denomination The governors of particular cities and provinces also, in virtue of their office, termed *comites*, or *condes*, were either dependent on the crown, as the count of Bierzo and the Asturias, or hereditary and sovereign, as were those of Catalonia Within their respective jurisdictions these counts were termed *illustrisimos*, they held courts like their liege lord, the king, they appointed judges and other magistrates in the subordinate towns, and in war they commanded the troops raised in their governments Their deputies were the *vizcondes*, or viscounts, who, like them, in time, exchanged the personal into an hereditary title The great body of the nobles were divided into two classes, — those who held seignorial jurisdictions, or some high offices, and those who had no other distinction than the common one, of the order to which they belonged The latter were called *equites*, or *caballeros*, simply from their privilege of mounting and maintaining a horse, and of wearing certain armour, through an especial grant of the king The former were styled *optimates* or *magnates*, *proceres* or *primores*, until the word was superseded, about the time of Juan II, by that of *grandee* Whether this distinction arose originally from their age or possessions, or experience in the affairs of a court, or their influence as advisers of the

crown, or whether it did not arise from the union of all, may, perhaps, admit of some dispute, but certainly it was applied to such only as were frequently at court, or possessed great influence in the state with equal truth we may say, that it was a dignity purely personal and honorific. Honorific, though hereditary, was also the distinction of *marquis* and *duke*, both introduced about the fourteenth century. In ancient times, indeed, the marquis, so called because he was placed over the *march*, or frontier, had extensive jurisdiction, but the dignity existed only in Catalonia, and cannot be considered of peninsular origin. The title of *duke*, as a military dignity, was known to the Wisigoths, but at no time did it ever exist in Spain with feudal jurisdiction, the condes were the only great feudatories of the crown, who exercised a local jurisdiction, as *señores*, *vasos*, or *valvasores*, *prepositos*, *villicos*, *castellanos*, &c. The first of these terms, *señor* (senior), implied dominion, whether over places or persons. *Vaso*, or *valvasor*, was applied to the Catalonian nobles, who enjoyed the usufruct of any city, town, or district, under the obligation of defending the life or possessions of the prince by whom that usufruct had been granted. This word is, probably, derived from *vas*, trust or fealty. It has certainly given rise to that of *vassals*, implying the enjoyment of certain benefits in return for certain obligations. The *preposito* presided over the capital of the kingdom, the *villico* over a town, sometimes over a city, like the modern *alcalde*, the *castellan*, over castles or fortresses. Each of these had a *vicario*, or vicar, who acted in the event of his absence, or indisposition. In process of time, however, many of these terms were disused. From the thirteenth century the governors of provinces were termed *adelantados* (now captains-general), while those of cities, towns, and fortresses were known as *alcaldes*. *Almirantes*, or admirals, were established after the conquest of Seville, where they usually abode. The *condestable*, or constable, had the same power over the land as the admiral

over things of the deep he was the vicar of the king, presided over the military force, and the administration of justice, but this dignity was generally vacant, doubtless, from a fear lest its power should be abused. The first constable was created by Juan I, during the wars between Castile and Portugal<sup>1</sup>

Of the dignities just mentioned,—such as the presides provinciarum, whether condes or adelantados, alcaldes, &c — most were, doubtless, of a mixed nature, partly civil and partly military<sup>2</sup>. Of this nature, too, was the *alferez mayor*, whose duty it was not only to conduct the army when the king was absent, but to bear the high sword of justice. He received the royal orders for the arrest of the great, he presided over their punishment, and was, in fact, the supreme judge of the army. Hence it was required not only that he should be a good general, but of good understanding, and of noble lineage. The *caballero*, or knight, was also of noble birth, but exclusively military, unless he held a civil jurisdiction from the crown, or in virtue of his hereditary possession. He was sometimes called *hijodalgo* (hidalgo) on account of his possessions, and sometimes noble, on account of his lineage. To be an *hidalgo* it was necessary that his father, grandfather, and great grandfather, at least, were so. To be noble, the same qualification on the maternal side was no less necessary. The caballero, or knight, says a law of the Partidas, should be cruel and accustomed to wound, lest he should show mercy to the enemy. No caballero could be knighted by the hand of any one who was not

<sup>1</sup> Yepes, Cronica General de la Orden de San Benito (varius tomis, variisque scripturis). Baluzius Iutclensis, Collectio Veterum Monumentorum (in multis scripturis). Florez et Risco, España Sagrada (varius tomis, multisque locis). Alfonso el Sabio, Las Siete Partidas, part. II tit. 9 16, &c Masdeu, España Árabe, lib. II. Perez, Compendio del Derecho Público y Común de España, tom. III. Salazar de Mendoza, Origen de las Dignidades, lib. I II cap. 14 pp. 60—66, also, lib. III cap. 5—20. The derivation of constable is from *comes stabilis*, or *conde estable*, alluding to the permanency of the appointment.

<sup>2</sup> "Segun esto, el adelantado en la paz es presidente y justicia mayor de algun reyno, provincia, o distrito y en la guerra, capitan general."—Salazar de Mendoza, p. 6.

<sup>3</sup> *Hijo*, son, *d'algo*, of something.

a knight, and he should first have borne the shield of one. The day preceding his admission into the order, says another law he shall fast and pray. he shall then be waited on by the escuderos or shield-bearer, who shall wash him, and place him in a magnificent bed. There he shall be attended by several knights, who shall array him in the most costly attire, and afterwards conduct him to church. When there he shall kneel before the altar, beseech God to pardon his sins, and grant him grace to discharge the duties of his new vocation. He shall then arise, and remain standing all night, absorbed in devout meditation. At dawn of day he shall confess, hear mass, and communicate, and shall be asked if he wishes to become a knight, and if he will faithfully observe the rules of the order? If he reply in the affirmative, he who creates him shall order a knight to bind the spurs on his feet, another the sword to his shoulder, while the rest array him in full armour, the head only being left bare. Then the knight who arms him shall unbind his sword, place it in his right hand, make him swear that he will never flee from death in defence of his religion, his king or natural lord, and his country, and strike him on the shoulders, saying, "God help thee to fulfil thy vow!" Then all the knights who are present shall kiss him on the cheek, both in sign of peace and of mutual fidelity, and the same shall be done by all other knights whom he shall meet for the first time, until a year have elapsed from the time of his military baptism. And when the kiss of peace and troth has been given, his sword shall be again girt round him, either by the knight who creates him, or by another who shall become his sponsor, and answer for his knightly conduct during his noviciate. He shall always honour the man who armed him, as well as his godfather, shall not fight against them, unless in defence of his natural lord, and even then shall forbear to injure him, unless the life of his superior be at stake. He must be possessed of the four cardinal virtues, — prudence, fortitude, temperance, and justice, must be

sparing in his meals, must read and meditate the deeds of heroes, he must always be ready to defend not only his brothers in arms, but all the helpless and oppressed, especially ladies, widows, and orphans. In return, he shall possess many privileges and exemptions, shall be honoured by all, not even excepting his king. But if he stain his knighthood by crimes, if he knight one that is unqualified, if he follow any vile profession, such as merchandise, if he fail in any of his duties, he may be degraded publicly from the order, his spurs and sword shall be taken from him, he shall be declared incapable of holding any public employment or dignity, or even of accusing another at the bar of justice.<sup>1</sup>

Both horse and foot, caballeros and pecheros, had their captains, who, like many other dignitaries, were anciently chosen by the troops they were destined to command. On this subject we have much pleasure in quoting the words of a reviewer, who has evidently applied much attention to it, and who derives, perhaps with very great reason, the whole system of election from the north of Europe, the cradle of the Wisigoths.<sup>2</sup>

“ A king of the ancient Germans could only be raised to supreme authority from a royal line, but the commander of the host was chosen solely for his valour.<sup>3</sup> The free and warlike elections of the Germans, in the days of Tacitus, continued to be the privilege of the Spanish soldiery, even in the reign of Alonso.<sup>4</sup> So discordant to the constitution and prejudices of feudal Europe, this custom is a vestige of the most remote antiquity, and seems to have been retained by the Spaniards alone.<sup>5</sup> Only faint and vanishing traces of elective chieftanship can be found in other parts of Europe. When military tenures of land, even in their simplest state, were adopted by the Teutonic nations, the franchise necessarily fell into disuse. As

<sup>1</sup> Las Siete Partidas, part II tit 21 l 1—25 Perez, Compendio del Derecho, tom IV lib 8 tit 2

<sup>2</sup> Edinburgh Review, No 61 p 113

<sup>3</sup> “ Reges ex nobilitate, duces ex virtute sumunt ”—Tacitus, *De Moribus Germanorum*, c 7

<sup>4</sup> Here the reviewer is incorrect. An attentive perusal of the second partida will soon prove, that noble birth was as necessary as valour

<sup>5</sup> That is, the reviewer must mean, by the early people of feudal Europe. In Scandinavia, such elections were common, down to the twelfth or thirteenth century

long as they warred only for plunder, the leader was but the first among his peers during the foray, exciting their valour by his example, not urging them on by his authority. The lot divided the harvest of the sword. The meed of the soldier did not make him dependent on his general. Each had helped to conquer<sup>(2)</sup> the booty of the camp, or the spoil of the city, and whilst the field was still reeking, and the flames yet playing amidst the ruins, each freebooter huddled up his gold, or drove away the kine, or bound the captive beauty still shrinking from his grasp. But he took his winnings, as the well-earned wages of the day of slaughter, not as the price of his dependence on the captain of the horde, whom his own voice had elevated to a dignity which was bestowed by all for the common good of all. At length they rooted themselves in the soil, and the land itself rewarded the soldier's prowess: the subject of a monarchy lost the liberties of a marauder, and a permanent reward brought along with it a long subjection. The lord of the villain became himself a vassal, a yearly crop arose from the field, as the salary of the oft-recurring campaign, valour, the soldier's virtue, no longer enabled him to aspire to military authority, some were born to command, others to obedience, the king enforced the service of the baron, the vassal was bound to follow the banner which waved on the dungeon tower of the castle, and every one, in his degree, accompanied his superior to the field,—no longer the leader whom he followed from affection and choice, but the liege lord, beneath whom he fought in servitude and fealty<sup>1</sup>.

The mutual relation of lords and vassals will illustrate the preceding extract. A señor, says a law of the Partidas, is he who exercises power and command over all in his jurisdiction, and a vassal is a man, who receives benefits or honours, such as knighthood, land, or money, as the creditor of service to be performed. When the contract was formed, the vassal did homage by kissing the hand of his superior. With that superior, however, he was not compelled to abide longer than a year, but, though he took leave of the lord by kissing his hand as on the former occasion, renouncing his vassalage in clear terms, and entered the service of another, he was still expected to show respect to his first master, nor could the moral obligation be

<sup>1</sup> Edinburgh Review, No 61 p 114. The colouring is somewhat poetical, in one or two places slightly overcharged, but it may enliven our duller accuracy.

destroyed, except by injustice on the part of the first, on whom the life or honour of the second was concerned. These barons were also vassals of the king, by reason of the towns, fortresses, or castles, territories or revenues, they held from him. Their possessions were called feuds or fiefs, and were received by the vassal on his knees before the king, in whose hands he swore homage, to be always loyal and true, to give him good counsel, never to betray his secrets, to aid him against every enemy, &c. In token of conferring possession, the king delivered to the vassal a ring or glove, according to the form prescribed in the country. Not only kings, but the great nobles, the nobles of seignory, and the prelates could confer fiefs. The obligation between lord and vassal was mutual: the first was bound to love and protect, the latter, no less than *vice versâ*. As fiefs were held by the tenure of military service, they could be held only by men, for when they became hereditary, and a daughter only remained, it was the monarch's privilege to marry her with whomsoever he pleased, so that the original obligation of military service might be continued, and if she refused the husband proposed, she was compelled to resign the possession into the royal hands. If either lord or vassal killed the son, grandson, or brother, or had carnal knowledge of the wife, daughter, sister, &c., of the other, the obligation ceased: in the one case the fief was taken from the holder, in the other the lord for ever lost all interest in it, and it became the hereditary property of the tenant. So long as the conditions of the contract were observed by both, the fief remained in the power of the other, but if the baron was exiled for some crime, his vassals could accompany him into another country, and "aid him to gain his bread," in the service of another.<sup>1</sup>

"History does not record the early mode of electing the Teutonic captains, but it is clear that these elections took place in the popular meetings in which the German nations exercised their autonomy. The laws of Edward the Confessor

<sup>1</sup> Las Siete Partidas, part 17 tit. 25



show that the heretoch was chosen by the people of the shire, in full folkmote assembled <sup>1</sup> The military dukcs or heretochs of the Bavarians were originally chosen by the people of each district, but when the Lex Bauvariorum was compiled, the emperor had acquired the right of nominating the heretoch, whose authority was declared to be the same with that of the elected herctoch, and it is probable that the people had lost their right From this source, descending low indeed in the scale of authority, we derive the choice of our constables in the hundred court of the wapentake That the constable, by whatever name he was at first truly called, was a military officer in his origin, is indubitable <sup>2</sup> He may have been the conservator of the peace in the time of Alfred, yet surely it was by force of arms, and by laying the staff of his brown bill about the head of the unruly Saxon The statute of Winton, which gave the chief constable the use of armour, proves that he was cognisant of similar matters before its enactment New duties imposed on old officers are always analogous to such as they have been accustomed to perform It is not known in what manner Scandinavian nations chose their military leaders <sup>3</sup>, but there is a remarkable uniformity in all their customs, and we may be allowed to conjecture that the war-king was invested with his office by proceedings similar to those which afterwards placed the folk-king on the throne When the royal authority became permanent, the chief of the state was the head of the army, and their civil and military policy coalesced and corresponded Now, it appears that if the throne of Norway was forfeited or vacant, a new king was returned by the verdicts of the juries of the shires <sup>4</sup> Twelve of the wisest men were chosen from each province, who swore that they would name him most deserving of the dignity Such was declared to be the law of Norway, in the laws collected by Haco, the foster-son of Athelstan, who gathered together the ancient customs of his people from the mouths of the hereditary deemsters <sup>5</sup>, and afterwards revised by Olave, the hallowed king, and, in deference to this the ancient

<sup>1</sup> Leges Eaduardi, p 206

<sup>2</sup> Vehementer dubito

<sup>3</sup> The writer must be aware that there was seldom any choice in the case The man, who, as a pirate, had obtained celebrity on the deep, never departed on an expedition without publishing his intention, and inviting others to join him All who arrived, naturally obeyed his authority, from the sailing of the armament, until their return See the Heimskringla Saga of Snorro Sturleson

<sup>4</sup> This is not exactly correct The writer should have said, *if one of the thrones of Norway* The custom, prior to the incorporation of the petty kingdoms into one, by Harold Harfager, was, doubtless, as represented in the text, but not afterwards Sometimes each province sent twelve deputies, to do homage to the new king

<sup>5</sup> They were certainly *not hereditary*, in the usual acceptation of the term The office, or profession, was open to all who chose to exercise it — to all at least who were qualified for it

privilege of the Northmen, Prester-Swerre, the usurper, obtained a confirmation of his title from the twelve men of each shire, who, according to the abbot of Thingore, 'adjudged the name of King to him' In every branch of the polity and jurisprudence of the Gothic nations, we observe the veneration in which the decisions or determinations of TWELVE men were held We have lost the intermediate links of the chain, but, when the constable is returned in the court leet of an English manor by the oaths of the leet jury, it is certain that this humble, though ancient, constitutional officer derives his annual reign from the voices of such a band as, in days of old, placed the<sup>1</sup> monarch of Norway on the throne As to the ancient elections in the hundred courts and wapentakes, great uncertainty prevails respecting them, yet there is reason to suppose that, in many instances, the chief constable was not chosen by the body of the suitors, but returned by a jury"<sup>2</sup>

All this, however distinct in appearance, is strictly connected with the subject It is intended to show that though, in the *written* or statute laws of Spain, there is little allusion to such elections by jury, whether to civil or military offices, they were yet recognised by the *common* or *unwritten* law, the law which had been brought from the shores of the Baltic, which had been tacitly obeyed during the Wisigothic monarchy, and which had again sprung up with the local *fueros* The hypothesis is not only ingenious, but it derives probability from many isolated, though sometimes obscure, passages, in the codes of Spain, especially in the municipal charters

"So much for the North But we must now flit again to the sultry realm of Spain, where we shall find our old Gothic juries employed in electing the chief officers of the army and navy of the Castilians, the Adalid, the Almocaden, the Alfaqueque, and the Comitre, whose qualifications were ascertained by a jury of twelve wise men, and whose promotion was consequent on the verdict Who was to be the *adalid*? The question must be answered in the words of the wise king Alonso He has given us a portrait of the ancient Castilian army, in all the brilliant tints of ancient chivalry"<sup>3</sup> It was

<sup>1</sup> For *the read a*

<sup>2</sup> Edin Review, No 61 pp 114, 115

<sup>3</sup> This description is too brilliant to be strictly just 1 Did Alfonso el Sabio, and no other, write the laws of the Partidas relating to the Adalid, &c? 2 Where are the brilliant tints in tit 22. partida 11? The whole title is dull as a discourse of Seneca

held by the wise ancients, 'that the adalid should be endowed with four gifts—the first is wisdom, the second is heart, the third is good common sense, and the fourth is loyalty'—'And when a king or any other great lord wishes to make an adalid, he must call unto himself twelve of the wisest adalids that can be found, and these must *swear*, that they will *truly* say if he whom they wish to choose to be an adalid hath the four gifts of which we have spoken, and if they answer *ya*, then they are to make him an adalid'<sup>1</sup> Here we have clearly an inquest by twelve men giving their verdict upon oath. If it happened that twelve adalides could not be found, then a kind of *tales de circumstantibus* was added to this special jury of adalides. The king or lord was to make up the full number of twelve, with other men well accord in war and deeds of arms, and their verdict was as good as if they had been all adalides, and he who dared to act as an adalid without having been lawfully elected, was to suffer death. 'It was advised in ancient times,' says Alonso, 'that they were to have the qualities before mentioned, because it was necessary that they should possess them, in order to be able to guide the troops and armies in time of war, and therefore they were called adalides, which is equivalent to *guides*'<sup>2</sup> 'The adalid was the *dux*—the leader, the general, of the Almogavar troopers. His duties are detailed at great length in the *Partidas*. Alonso had seen, and could well estimate, the services rendered to his father at the beleaguering of Seville by the doughty adalides, Domingo Munoz, Pedro Blasquez, Diego Martinez, and Iope Garcia de Cordova. The important command of the almogavares, a numerous and certainly the most efficient portion of the Castilian cavalry, devolved upon the adalid, and all his four gifts were constantly called into action'<sup>3</sup>

All this is correct enough, with the exception of the *dignity* of the officer. Not satisfied with asserting that he was a *dux*, or general of the troops, the writer adds, in a note, "We *insist* on the dignity of the adalid, because a writer of very high authority<sup>4</sup> seems to have considered him merely as the guide of the soldiers, and not as their commander." Merely their guide he was, and no more, notwithstanding the dogmatic tone of the assertion,—an assertion which would never have been

<sup>1</sup> Las Siete Partidas, part ii tit 22 l 1, 2

<sup>2</sup> Que quiere tanto decir como *guadores*

<sup>3</sup> Edin Review, No 61 pp 115, 116.

<sup>4</sup> Meaning, we suppose, Dr Southey, notes to the Chronicle of the Cid

made, had the writer been acquainted with the Castilian chroniclers. Omitting the express declaration of the first law in the twenty-second title of the second Partida, which clearly shows that this officer was merely a scout, or spy, or guide of the army,—not of the almogavares merely,—the following extracts from one of the first chronicles on which we can lay our hands must set the dispute at rest —“ E mandaron a los adalides que los *guasen* para salir de aquellos lugares asperos ”—“ Los adalides a quien cometieron *la guia*, para llevar la gente por lugar mas seguro,” &c<sup>1</sup> “ Este desbarato que ovieron los Cristianos, fue grande loqual en lo publico pareccio’ haber seydo per *la mala guia de los Adalides* ”<sup>2</sup> “ El marques, visto el destrozo de los suyos, tomo otro caballo, porque el suyo ya estaba cansada y mal ferido, y *quandole un adalid* por una sierra alta,” &c<sup>3</sup> “ Los adalides era gente de caballo, y su nombre quiere decir lo mismo que *quadores*, porque *quaban la gente de guerra*, y este era su principal officio ”—“ Y escogian para este (the office of adalid) la gente mas ligera para huyr y alcançar,” &c<sup>4</sup> It is impossible for language to be more explicit than this, in defining the functions of this officer. A much stronger one, however, is present to our memory, though we cannot recall to mind the work in which it is contained. It is to the effect, that the leader of an army, being wroth with his adalides for guiding it into an unfavourable position, put most of them to death. If this office, indeed, were of so high a dignity, where could *twelve* of his peers at any time have been found to inaugurate him into his office? and why should *lightness of foot* have been required in a general of cavalry? It is true that his advice was solicited on the eve of an attack, but this was only because, from his professional habits, he must necessarily be better acquainted with the localities, and with the enemy’s position, than the generals themselves. He was, in fact,

<sup>1</sup> Hernando del Pulgar, Cronica de los Señores Reyes Catolicos Don Fernando y Doña Isabel, p 205

<sup>2</sup> Ibid p 207

<sup>3</sup> Ibid p 206.

<sup>4</sup> Zurita, Anales de Aragon, tom 1 fol 250

barely suffered on the table of the cavalleros, and was so far from being of noble birth, that he was always chosen from the inferior ranks of the army

“ The singular ceremonies with which the office was conferred on the adalid are evidence of the high honours which he had, and the power which he exercised <sup>1</sup> The king was to bestow upon him rich garments, and a sword and a horse, and arms of wood and iron, according to the custom of the country By a *rico-home* — a lord of knights — the sword was to be girt, and then a shield was placed upon the ground, the future adalid stepped upon it, and the king drew the sword out of its scabbard, and put it naked into his hand and now as many of the twelve adalides as can assemble round the shield grasp its edge, and lift him up as high as they may, and they turn his face towards the east ‘ In the name of God,’ exclaims the adalid, ‘ I defy all the enemies of the faith and of my lord the king, and of his land ’ And thus speaking, he lifted up his arm, and struck a stroke downwards, and he then struck another stroke across, thus describing in the air ‘ the sweet and holy sign of man’s redemption,’ and he repeated this challenge four times towards each of the four quarters of the world Thus lifted on the shield were the kings themselves of the Goths and Franks inaugurated The challenge resembles the defiance of the enemies of Hungary, hurled forth by the king on his coronation day Then the adalid sheathed his sword, and the king placed a pennon in his hand, saying, ‘ I grant unto thee that henceforward thou art to be an adalid ’”<sup>2</sup>

“ Who is the *almocaden*? ‘ We must call those *almocadenes*,’ says the sage Alonso, ‘ who were *anciently* called captains of the peones, or foot soldiers ’ The name is Arabic, but Alonso was well aware that it was less ancient than the office Like the adalid, the *almocaden* was returned by the verdict of a jury Being of an inferior estate to the *almogavar*, the peon did not gain access to the king in the first instance, but the candidate was to present himself to the adalides, and to show them his deserts and pretensions Twelve *almocadenes* were then to be summoned by the adalides, and they were to be sworn that they would say the truth, if he who claimed the office was gifted with the four necessary qualifications He was to be wise in war, stout-hearted, and loyal as the adalid, but good common sense was not to be required of him he

<sup>1</sup> They are evidence of no such thing, but merely that the office was one of responsibility, and of indispensable use Every general in the British service knows the importance of a guide

<sup>2</sup> *Las Siete Partidas*, part. 2 tit. 22 *Edin Rev*, ubi *suprà*.

was to be light of foot, which stood him in equal stead. When the verdict was given, he was conducted to the king, or captain of the host, by whom he was to be clothed anew, according to the custom of the country. Honours he had, allotted to his degree, a lance, with a little pennon, and on this pennon he might bear such device as liked him best, in order that he might be known and guarded by his companions, 'and also that it may be known whether he doth well or ill.' After the twelve almocadens had sworn for the candidate, they themselves took two lances, on which he placed his feet, and he was to be lifted up towards the four quarters of the world, like the adalid, and, like him, he was to defy the enemies of the faith, the king, and the land, always presenting the point of the lance towards the part of the world which he defied. It might happen that a peon was so valiant as to deserve the rank of an adalid, yet, notwithstanding his merit, he could not obtain this promotion until he had served as an almogavar trooper. Due subordination was to be observed, for, 'as the wise ancients have said, that which is to be good must always rise from one good degree to a better degree, so that a good peon may become a good almocaden, and a good almocaden may become a good almogavar trooper and then a good adalid.' A provision is added worthy of note. Any one who created an almocaden, without the intervention of the jury, was to be punished for the mischief which might arise from the acts of the illegitimate almocaden, but if the formalities of the law had been observed, the almocaden himself only answered for his faults."<sup>1</sup>

These almogavars, of whom mention has so frequently been made, "lived only under arms," says Zurita, "and never inhabited either cities or populous communities, but in the mountains and forests." The etymology of the word, has, as usual, been much disputed. One says it signifies men of the earth, probably because they lay on the earth, another, that it is derived from *Avars*, from whom he makes them to be descended. A third, that it simply meant *warrior*, or fighting-man, and that an incursion into the enemy's territory was called *almogauria*. But leaving these hypotheses, the almogavars were extraordinary warriors. Winter and summer, they lay on the bare ground, they herded only with their fellows, seldom spoke, were generally sullen, but when summoned to battle, their eyes

<sup>1</sup> *Las Siete Partidas*; and *Edn. Rev.*, ubi supra

sparkled, and their countenances kindled with joy they were, in fact, like wild beasts let loose on their prey. Winter and summer they wore the same dress, skins fastened round the waist, with cap and shoes of the same material. Their arms were spear, sword, and dagger, sometimes a mace, but they had no defensive armour. They fought generally on foot, but if they killed a horseman, and captured the horse, they could use it in battle. Their way of fighting, when assailed by the cavalry, was, to place the handle of the lance against their feet, to hold out the sharp part against the horse, to spit the animal, and then with the rapidity of lightning to fall on the encumbered horseman, and despatch him.

“ In the Sicilian wars between Pedro III of Aragon and the French<sup>1</sup>, a party of the almogavars fell in with a large body of the enemy, and fled. One of them was taken, and the French thought him such a monster, that, instead of killing him, they took him to the prince of the Morca, their commander, as a curiosity. His dress was a short frock, girt round him with a rope, a bonnet of undressed leather, with buskins and shoes of the same, and this was all. He was lean and sunburnt, his beard long, and his hair black and bushy. He was asked who he was, and he answered, an almogavar of the king of Aragon's army. The prince thinking little of him, because of his wretched appearance, observed, that it was not possible there could be any worth or courage in such a miserable, poor, half-savage race, if they were all such as this. The almogavar was offended at this, and said, in truth he thought himself the meanest of his fellows, yet such as he was, if they would restore him his weapons, and any knight was there who would venture to fight him, armed at all points, and on horseback, he would undertake the combat, on condition that he should be set at liberty if he were conqueror, or otherwise put to death. The prince expressed so great a wish to see this challenge accepted, that a young French knight presented himself, and they went out to the field. The knight couched his spear, and ran at him. He leaped aside from the encounter, and at the same time threw his dart with a sure aim, and drove it half-way to the hilt in the horse's breast. The horse fell, and in an instant the almogavar was upon his

<sup>1</sup> See Vol. III. p. 113, &c.

enemy, knife in hand, had cut the lace of his helmet, and in another instant would have had his head off, had not the prince interfered. The prince then ordered him to be clothed, and sent to Messina. When the king of Aragon heard this, he ordered ten Frenchmen to be clothed, and sent them to the former, saying, that for every one of his people whom he would set at liberty, he would give ten Frenchmen in exchange."<sup>1</sup>

That such troops should inspire the enemy with great fear, need not surprise us. They were generally useful, however, in skirmishes and reconnoitring parties, and could do little harm in a pitched battle.<sup>2</sup>

"A third officer, returned by the verdict of a jury, was the *alfaqueque*. Alonso thus explains the word — 'In Arabic, it means a true man, who is employed to treat for the ransom of captives.' Incessant warfare rendered this office of considerable importance. Great trust was reposed in the *alfaqueque*, 'and warily should he be chosen who follows this calling of piety,' — 'for if he bears any spite against the captives, or against their relations, or against their friends, he may cause them to suffer death, or great tribulation, or at least may be the means of keeping them long in captivity.' And if he was not a true man, he might do much harm to both parties, as well to the captive as to the other who kept him in captivity, and it was fitting that the *alfaqueque* should be a man of good substance, in order that, if he absconded from justice, his property might make good the injuries which he might have occasioned to the captive. The *alfaqueque* was necessarily on a good footing with the Moors, and he would naturally have greater facilities, if he chose to secrete himself among them, than other debtors or defaulters, who were strange in the ways of the Saracens. And it was also required that he should be of a family of good fame. Qualifications like these could only be ascertained by strict enquiry, and Alonso, in full conformity with the maxims of the English common law, directs, that the facts are to be enquired after by a jury of the visne, by whom the truth might be better known, or, as is expressed in the *Partidas*, 'the election is to be made by twelve good men, who are to be summoned by the king, or his commissioner, or the magistrate of the town wherein those who are to be chosen *alfaqueques* dwell, and who are to be well acquainted with the matter, in order that they may be able to swear on the holy gospel book that those whom they shall choose to be *alfaqueques* have all

<sup>1</sup> Southey's Notes to the Chronicle of the Cid.

<sup>2</sup> Zurita, *Anales de Aragon*, tom 1 fol. 250



the qualifications which we have mentioned in the foregoing law' The alfaqueques, when returned, were to be sworn to the due performance of their office, and the grant thereof was to be made by letters patent under the seal. And the alfaqueques received a pennon with the device of the king, in order that they might travel on their vocation with peace and dignity" <sup>1</sup>

"These juries were found in the navy as well as the army. The *comitres*, or captains of ships, 'who were captains of the sea under the admiral,' were required to have all his good qualities, and when a scaman thought that he was fit to be a comitre, he came unto the king or the admiral, who summoned twelve men well experienced in scaman-ship, and who knew the man, and he made them swear that they would truly say whether or no the candidate had in himself the qualifications which the law required. The verdict being given, he was clad in scarlet, and he received a pennon with the arms of the king, and entered the galley which he was to command, whilst the trumpets blew, and the clarions were sounding. Until the kings of Castile extended their dominions from sea to sea, they had no navy <sup>2</sup>. From the existence of these juries of seamen, we therefore learn the strong attachment which the Castilians had to this ancient mode of election. The custom of returning officers by the oath of twelve men was inherent in their military system, just as trial by the oath of twelve men is inherent in our legal system, and when they created a naval army, they gave it the organisation which the defenders of their country possessed as their birthright on the land" <sup>3</sup>

Among the officers of administration, those of the law must have occupied a prominent place. The judgment, in civil or criminal cases, properly depended on the counts or viscounts, who sometimes decided themselves, sometimes in concert with men learned in the law, called counsellors, and at other times left the duty to the ordinary judges. These counsellors, or judges, were expressly educated for the office, especially after

<sup>1</sup> Edin Rev No 61 pp 120, 121 Las Siete Partidas, part. II tit. 30

<sup>2</sup> This assertion is very incorrect. By "sea to sea," the writer doubtless means, from the Bay of Biscay to the Straits of Gibraltar. This extension of territory took place in the reign of San Fernando, but if the Castilians had no fleet, how could that monarch have so powerfully invested Seville by sea? He had even then a fleet, and a formidable one, which he had constructed in the ports of Biscay. In fact, the inhabitants of that region had ships enough, from time immemorial.

<sup>3</sup> Las Siete Partidas, part. II tit. 24 Edin Rev No 61 pp. 121, 122

the foundation, by Alfonso IX, of the university of Salamanca, were of good family and customs, and of a suitable age. Though, sometimes at least, originally nominated by the local governors, they were, in fact, royal judges, acting in the name and by the authority of the monarch, to whom, on their appointment, they swore obedience and fidelity. By the Wisigothic code, ecclesiastics could fill the office, but by a law of the Partidas they were declared ineligible, though in extraordinary cases they could be called in to give a deliberative voice. Having taken the usual oaths, previous to opening the business of the session, the judge — who, if he was the royal deputy, was necessarily migratory, and if he had a certain fixed jurisdiction, he was yet compelled to move from place to place, that in every part of that jurisdiction justice might be administered, — was compelled to give surety that he would remain in the same place fifty days after the expiration of his labours, to satisfy any complaints that might be brought against him. The whole process was conducted, and the sentence delivered in public. The witnesses were examined by the *actores*, or *procuradores*, or advocates, and the evidence carefully taken down by the *notarios*, or *escribanos*. The forms of proceeding were simple and brief, the citation having been served by the *sayones*, now called *alguazils*, the plaintiff and defendant appeared immediately in court, the pleadings commenced, the evidence, whether written or oral, was confirmed by oath, the case was shortly but equitably discussed, and sentence pronounced. It must not, however, be forgotten, that, in criminal cases, torture could be applied to the accused, but the judge was answerable not only for his life, but for the soundness of his limbs. To preserve the purity of justice, judges, during the middle ages, as in the time of the Goths, were punished for corruption, or passion, or tyranny, with unsparing rigour. No judge could preside in a cause that affected either himself, or his immediate relatives, or even his friend, nor in any in which he had been previously an advocate,

nor could receive money or presents previous to the trial, and after sentence was given, none could receive more than the accustomed regulated fees. In cases where he had any doubt as to the meaning of the law, or where certain circumstances required a mitigation of punishment, — and in such he was always enjoined to prefer mercy to justice, — it was his duty to consult the king, or, which is the same thing, the royal tribunal usually presided by the king, and perpetually sitting at court. In like manner, the party which had reason to consider itself aggrieved, could appeal from the decision to the same tribunal, and, at the close of his labours, while remaining in the same place his term of fifty days, a public crier went among the people, and proclaimed, that whoever had any cause to be dissatisfied with his decision, might hasten to the court, where another judge was now sitting, and where the case could be again tried. On this second occasion, however, the process appears not to have been formally renewed. The written evidence was weighed, new witnesses were, if necessary, examined, *and a jury of good men*, in number, generally, perhaps, amounting to twelve, aided the new judge in determining how far his predecessor had been guided by natural equity or acknowledged law. If in the preceding trial the accused had been maimed by torture, the case lay beyond their jurisdiction, both it, and the predecessor, in fetters, were sent before the king. Sometimes, generally when they were too much burdened with business, or where the integrity of their decision might be suspected, the ordinary judges (of whom alone we have been hitherto speaking) could delegate the hearing of a cause to a substitute. The same jealousy marked the proceedings of the latter as of the former. He could exercise no jurisdiction without the express consent of both plaintiff and defendant. Before the trial commenced, he could be challenged by either party, yet neither was compelled to show reason for such challenge, but merely to swear that it was not dictated by malice. The ordinary

judge, however, could not be challenged, but one or two good men — in other words, jurors — might, in doubtful or suspicious cases, be associated with him. When the deputy was challenged, he compelled the parties to choose a third species of judges, called *arbitrators*, and if the parties, within three days, could not agree in the choice, the new judges might be nominated, not by the deputy, but by the judge ordinary. These arbitrators were not lawyers, nor compelled to observe the forms of law — they were men of good repute, and bound by natural equity. If only one arbitrator were selected, and his decision were considered prejudiced or erroneous, several could be nominated for that disputed case by the judge. But to prevent the possibility of endless litigation, the new arbitrators, before entering on the case, generally obtained from the disputants a written engagement to submit to their decision, or to incur certain penalties. These arbitrations were confined to minor offences, or to disputes where the interests involved were not of great magnitude.<sup>1</sup>

From the decision, as before observed, of all the ordinary judges, lay an appeal to the royal tribunal, which also took cognisance of certain offences and cases. Anciently but one grand judge, the prefect, or *adelantado*, presided in this court, but the number during the middle ages was increased at the will of the king, who was joined in their deliberation, and pronounced their decision. In every province, too, there was a court of appeal, presided by the *adelantado*, or captain-general, who was assisted by a council of professional men. His *escribanos* took minutes of the trials in the provincial courts, from which appeals had been brought before him, and if the parties appealed also from his decision to the supreme tribunal, he forwarded those minutes, with the opinion of his *ayuntamiento*, or council, respecting the circumstances and justice of each

<sup>1</sup> Alfonso el Sabio, *Las Siete Partidas* part 111 tit 4 l 1—24 Perez, *Compendio del Derecho*, tom 111 pp 63—67 Masdeu, *España Árabe*, lib. 11 p 75, &c

case, to the king. Besides these ordinary and provincial courts, there were many others in the district of each adelantado, filled by a class of magistrates, whose functions are not very clearly defined. They were called *merinos*, and the territory over which their jurisdiction extended, *merindad*. Sometimes it was confined to a single village, or a town, sometimes it extended over many. That the merinos were intrusted with twofold powers, — with the execution of the sentences awarded by the provincial tribunals, and with the cognisance of certain offences, such as rape, public robbery, insurrection, notorious violence, or high treason, — is indubitable, from the tenour of many ancient documents. The difficulty is to determine whether they were intended to supply or to supersede the ordinary tribunals, whether they subsisted subordinate to, or held a jurisdiction commensurate with them, whether both existed at the same time, and in the same place. The most probable hypothesis is, that they constituted a distinct and peculiar branch of legal administration, immediately dependent on the crown, and that the cognisance, as well as the punishment, of certain offences, — of such especially as concerned the peace of society, — was delegated to them. Possibly, too, their original institution was intended to meet some extraordinary state of things, and their services having been found efficient, the institution was allowed to continue in force. — The *merino mayor*, or *mayorino*, was a distinguished personage, sometimes he presided over a province, with the same judicial authority as the adelantado, but, unlike that president, who was both civil and military chief, he had no soldiers at his call. He seems to have been originally the head of the sayones, or alguazils, whose chief duty was the apprehension of criminal offenders, (in civil suits he had certainly no jurisdiction, unless by especial delegation of the king,) and at a subsequent period to have been invested with the judicial attributes. The ordinary merinos were nominated

sometimes by their mayorino, and sometimes by the adelantado <sup>1</sup>

But the titles, functions, and jurisdiction of the judges, and the proceedings of the tribunals, will be best understood by an examination of the LAWS Of these, Spain can boast—if, indeed, the subject be one of boast—of a greater number, during the middle ages, than any country in Europe, except the Greek empire They are contained in various codes, the chief of which we proceed to notice And here we may observe, that none of these codes have been abrogated, that at this very day such laws as have not been repealed in the more modern “recopilacions” are virtually in force, and are appealed to as authorities by modern advocates in the Spanish tribunals <sup>2</sup>

The first and most curious of these is the Wisigothic code, called anciently Liber Judicum, afterwards Forum Judicum, and corrupted by the Castilians into Fuero Juzgo To what has been already said <sup>3</sup> about the origin of this famous compilation, little need be added The Breviarium Aniani, a collection of traditionary 466 usages and of laws modified from the Theodosian code, to formed its groundwork, and the superstructure was 483 raised by succeeding Wisigothic sovereigns In the 568 code of Enric and Alaric, considerable improvements to were made by Leovigild some of the laws were cor- 586 rected, some abolished, but many more were added Recared, Gundemar, and Sisebut contributed something 587 to the stock What share Sisenand and St Isidore had to in the collection, whether, as some assert, they intro- 621 duced a better method into it, or only made such addi- 631 tions to it as bear their names, has been matter of much to dispute The zeal of the former for legislation is suf- 636 ficiently apparent from the preface to the canons of the

<sup>1</sup> The same authorities

<sup>2</sup> Illorente, Discurso Preliminar á las Leyes del Fuero Juzgo Peres, Compendio del Derecho Publico y Comun de España, Discurso Preliminar, passim Masdeu, España Arabe, lib u p 74 Sempère, Histoire des Cortès d'Espagne, passim.

<sup>3</sup> Vol I pp 107 190

fourth council of Toledo that the latter was celebrated for his legal labours, we have the unquestionable testimony of his disciple, St Branlio <sup>1</sup> It is probable that the Castilian translators of the Wisigothic code,— a translation effected at the command of San Fernando in the thirteenth century,— who assign such laws in the original as have no rubric, to him or to the king Sisenand, may be right In the following national councils, additions continued to be made to the collection, yet, though the names of certain kings are boldly placed over certain laws in the Castilian translations, to criticism would vainly attempt to fix the paternity

642 That Chindaswind, Receswind, and Wamba added to the stock, is beyond dispute But the glory of all preceding legislators since Alaric was eclipsed by Ervigius

680 In the twelfth council of Toledo, he earnestly exhorted to the fathers to correct whatever was absurd or unjust, to supply whatever was defective, and to explain whatever was obscure, in the existing code That this recommendation was followed, appears from the acts of the thirteenth and fourteenth councils of Toledo The same

694 recommendation, and with the same success, was made by Egica, in the seventeenth national council held in the Wisigothic capital This prince is usually esteemed the last compiler of the code it is, however, certain

697 to that his son Witiza enacted some laws, but whether he did so during his father's life, or during his own sovereignty<sup>2</sup>, can never be decided It is also thought that

709 to five or six were introduced by the unfortunate Roderic, but this is doubtful <sup>3</sup>

The authority of this celebrated code is beyond dispute Enacted by the great national councils provided

<sup>1</sup> Vol I p 217

<sup>2</sup> Vol II p 149

<sup>3</sup> Sanctus Isidorus, *Historia de Regibus Gothorum*, No 19—30 (apud Florez, *España Sagrada*, tom vi) Aguirre et Catalani, *Collectio Maxima Conciliorum Omnium Hispaniæ Concilia Toletana*, iv to xvi I indenbrog, *Prolegomena in Codicem Legum Antiquarum Morales*, (ronica General de España, lib xii Perez, *Compendio del Derecho*, tom 1, *Discurso Preliminar Llorente, Leyes del Fuero Juzgo, Discurso Preliminar*, § 1 Sempère, *Histoire des Cortès d'Espagne*, chap in, *necon Considérations sur les Causes de la Grandeur*, &c tom 1 chap 1

by the king, and made obligatory on the Wisigoths, to the exclusion of every other compilation<sup>1</sup>, it not only continued in full force during the existence of the Wisigothic monarchy, but it was the only collection received during the three first centuries after the restoration by Pelayo Nay, after the promulgation of the local fueros, which commenced in the year 1000, and of which enough will be said in the present chapter, that code was in no respect superseded if a different state of society required new laws, they were conceded only to supply the deficiencies of the old legislation, never to supersede it. In the cortes of Leon, held in 1003, Alfonso V confirmed the Wisigothic code in 1051, Fernando I did the same, and it was granted by succeeding monarchs (subject, however, to such alterations and additions as were judged necessary for the circumstances of the times), as the fuero or code of several cities peopled after the expulsion of the Mohammedans. Thus, Alfonso VI, in 1086, to the city of Toledo, and Fernando III, in 1235, to that of Cordova. But the example of the latter monarch, who, for its more extended knowledge and consequent utility, caused it to be translated from the original into the Castilian, is the best proof that can be adduced of the authority it continued to hold. Neither was it abrogated by his son, the learned promulgator of the Siete Partidas, nor by any subsequent king of Spain. On the contrary, it is often invoked in the royal pragmáticas and cédulas of the last three centuries, and where, as is frequently the case, posterior laws are silent, it is no less operative in the tribunal than any subsequent code.<sup>2</sup>

<sup>1</sup> "Alienæ gentis legibus ad exercitium utilitatis imbuti, et permittimus et optamus ad negotiorum vero discussionem, et resultamus et prohibemus — *Codex Legis Wisigothorum*, lib ii tit 1 19. The prohibition was renewed by the authority of San Fernando — "Bien sofrimos e bien quereimos que cada un home sepa las leys de los extraños por su pro, mas quanto es de los pleytos juzgar defendemoslo et contradecimoslo que la non usen" — *Fuero Juzgo*, lib ii tit 1 18.

<sup>2</sup> Aguirre et Catalani, *Collectio Maxima*, &c. *Concilium Legionense*, anno 1003. Cortegano, *Cronica del Santo Rey Don Fernando Tercero*, passim. Perez, *Compendio*, et Llorente, *Fuero Juzgo*, ubi supra. Masdeu, *España Arabe*, p 74 3.



The Wisigothic code, like its Castilian translation, contains between five and six hundred laws, which are comprised in twelve books, each book subdivided, in imitation of the Justinian, into titles, each title including a greater or smaller number of laws, according to the importance of the subject, or the necessity of the occasion <sup>1</sup> Book I relates to the duties of the legislator, and the nature of the laws, Book II to the judges, the administration of the laws, and the form of processes, Book III to marriage, adultery, fornication, &c, Book IV to the degrees of consanguinity, to the rights of inheritance and of wardship, Book V to ecclesiastical successions,—to donations, exchanges, sales, loans, pledges, debts,—to freedom and slavery, Book VI to crimes against the person, Book VII to thefts, robbers, the forgers of legal instruments and of the current coins, Book VIII to violence and wrongs, Book IX to fugitive slaves, to negligent or cowardly warriors, and to the rights of sanctuary, Book X to partitions, boundaries, limitations, and titles, Book XI to the sick, physicians, and foreign merchants, Book XII to the oppressions of the powerful, to heretics, Jews, schismatics, and terms of reproach. From this summary, the reader will perceive, that whatever may be the excellence of the code, it cannot boast of method or of natural connection. We will, however, proceed to examine it, sometimes in its present order, but generally according to the connection of the subjects, and will advert to certain of its provisions, the consideration of which, in the first volume of this compendium, we postponed to the present opportunity <sup>2</sup>

In forming laws for the government of society, the first consideration regards the legislator. He must be mild, good, good, not so much in words, as in heart and

<sup>1</sup> To these twelve books there is an exordium, relating chiefly to the legal election of Wisigothic kings.

<sup>2</sup> *Codex Legis Wisigothorum, necnon el I uero Juzgo*, lib 1—xii. See, also, Vol I pp 192—208. It must be here observed, that the division of the titles, and the number of laws, is not strictly the same in the original and translation. Here we chiefly follow the latter, as we followed the former in the history of Wisigothic Spain.

deeds<sup>1</sup>, must be merciful, and have God continually before his eyes<sup>2</sup>, and must aim only at the public utility<sup>3</sup> But to be useful, a law must be clear, brief in its terms, and free from subtleties and contradictions<sup>4</sup> It must not only be clear, but adapted to places and times<sup>5</sup>, and enacted for all classes of people, and every individual of each class<sup>6</sup> If so composed as to show the things of God, and to explain the conduct of life, if it produce good customs, good government, and a love of justice, if it be the teacher of virtue, and the safeguard of the people<sup>7</sup>, the land must necessarily be restrained from evil, and the good allowed to dwell in peace<sup>8</sup>, all contentions must cease, and the internal harmony must strengthen the people to oppose and overcome all foreign enemies Hence we deduce these important conclusions if the legislator have the requisite qualifications, the law cannot fail to be good, from good laws spring good customs, from good customs harmony and social happiness, and on these is based the only security of states<sup>9</sup>

When laws are thus established, they are obligatory on every member of the community, high and low, rich and poor God is the first lawgiver, his commandments are imperative not only on men but on angels, and if the celestial hierarchy itself is thus submissive to his decrees<sup>10</sup>, with what reason can the most powerful of mortals refuse obedience<sup>11</sup> Where knowledge is to be acquired, ignorance can be no excuse<sup>12</sup> The prince is the heart of the body politic, but if the heart be diseased, the members cannot be sound, if he disregard the laws, he cannot rely on obedience from others As he is more interested than any other in the well-being of the state, so ought he to be more diligent in fulfilling

<sup>1</sup> Tit. 1. 1. 4. El facedor de las leis mas debe ser de bonas costumes que de bela fabla.

<sup>2</sup> Tit. 1. 1. 5.

<sup>3</sup> Tit. 1. 1. 3.

<sup>4</sup> Tit. 1. 1. 2. Tit. 11. 1. 1. 4.

<sup>5</sup> Tit. 11. 1. 4.

<sup>6</sup> Tit. 11. 1. 3.

<sup>7</sup> Tit. 11. 1. 2.

<sup>8</sup> Tit. 11. 1. 5.

<sup>9</sup> Tit. 11. 1. 6. The laws in the preceding paragraph are in el Fuero Juzgo lib. 1.

<sup>10</sup> The Castilian expression is curious "A quien obedece la caballeria celestial."

<sup>11</sup> Tit. 1. 1. 2.

<sup>12</sup> Tit. 1. 1. 3.

his share of the social compact. If he deprive any subject, by force or false pretences, of that subject's substance, he shall restore it. And, lest he should allege that this substance were voluntarily given him, no such allegation can be received, unless accompanied by a written document distinctly affirming the fact, and signed by the giver. And to pluck up the evil of avarice by the roots by removing the temptation to it, whatever a king require shall be inalienable, and pass with the regalia to the successor, but he may transmit to his sons, or other heirs, the property which he has hereditarily obtained.<sup>1</sup> But if the prince be thus deterred from pursuing his own advantage at the expense of his people, neither should they have the power of injuring him if he knows, sanctions, and abuses the laws which thus restrain him from arbitrarily interfering with their persons, their liberties, or their substance, it is no less reasonable that their duties towards him should be also defined, and, as the hurt of the king is not that of an individual, but of the whole community, the common weal requires that to *them* the penalties of disobedience should be more severe. Hence, if any one conspire against his life or authority, if any one join the public enemy in an invasion of the realm, he shall suffer death, or if the royal pity spare him, he shall lose his eyes and lead a life of penitence, and his substance be confiscated to the royal treasury.<sup>2</sup> Nay, if any one falsely accuse or curse the king, he shall forfeit, if a person of honour, half his possessions, if a rich person, both his substance and his liberty.<sup>3</sup>

But the duties of subjects towards each other, the preservation of their natural rights, and the vindication of their injuries, constitute by far the most important subject of legislation, and that which most materially affects the well-being of society. And here the law ought not only to be good, but well administered. To secure such administration it must be confided to a properly constituted

<sup>1</sup> Tit. 1. 1. 5

<sup>2</sup> Tit. 1. 1. 6

<sup>3</sup> See Vol. I. p. 186. El Fuero Juzgo, lib. 11. contains the preceding laws

and responsible authority, which alone shall take cognisance of all suits<sup>1</sup> The judges are appointed by royal authority, or by the governor of the city or province, and are therefore of two classes the latter are local, and subject to the former, whose mission is migratory<sup>2</sup>, but both classes may depute fit persons to hear and decide cases in their stead<sup>3</sup> If any one, however qualified, assume the office without the necessary authority, or if any judge, even duly constituted, undertake the cognisance of any case beyond his proper jurisdiction, he shall pay one pound of gold, and be responsible for his decision, and the sayon, or officer of justice, who, in either case, obeys, shall be punished with one hundred stripes<sup>4</sup> The judicial responsibility must be defined, and the magistrate thereby deterred from evil-doing If a plaintiff apply to a judge for a process against any one, and the latter, through favour to the defendant, or any other cause, neglect to issue it, let the said plaintiff prove the neglect, and the judge shall pay the very same penalty that the defendant would have been compelled to pay in the event of a conviction<sup>5</sup> If a judge, by an unjust sentence, deprive any one of any thing, that thing shall be restored, and its value at the same time paid to the injured person by him if the damage exceed his means, he shall, by way of satisfaction, give all he has, and if he have nothing, he shall receive fifty stripes in public<sup>6</sup> Whatever expense he occasion by wilful delay, he shall repair from his own substance<sup>7</sup> If a client suspect his judges, or conceive himself obnoxious to them, he may insist on the case being tried in conjunction with the bishop of the diocese, and even then, if he complain of the decision, he may appeal to the governor of the province or the king if the decision be found unjust, the judge shall answer for it<sup>8</sup>, but, if the complaint be groundless, the appellant shall be subject to the same penalty, or receive one hundred lashes before the tribunal

<sup>1</sup> Tit. 1. 1. 13<sup>2</sup> Ibid<sup>3</sup> Tit. 1. 1. 15<sup>4</sup> Tit. 1. 1. 16.<sup>5</sup> Tit. 1. 1. 18<sup>6</sup> Tit. 1. 1. 19<sup>7</sup> Tit. 1. 1. 20<sup>8</sup> That is, he shall pay the same penalty as in tit. 1. 1. 18, above

he has calumniated<sup>1</sup> The fees of no judge shall exceed five per cent on the value of the property under litigation, if he take more, he shall restore it twofold, and forfeit all claim to reward The share of the sayones shall be one tenth, and, in the event of the same avarice, they shall be subject to the same penalty as the magistrate<sup>2</sup> But the judge must be independent, as well as impartial, and if, through fear of the king, he pass a wrong judgment, it shall be repaired, but he himself shall escape on swearing that he committed the injustice against his will, and through fear<sup>3</sup> The bishops of God are the natural guardians of the poor, they may require the judge who has decided unjustly (whether wilfully or through fear) to re-hear the case with them, and if the judge refuse, they may re-hear and decide without him, but they shall forward a written statement of the case, and of their amended judgment, to the king, who shall confirm the righteous cause, and any judge may be bound to appear before another judge, or any one deputed by the king, to answer whatever complaint may be brought against him<sup>4</sup>

The regulations respecting the plaintiff, witnesses, and defendants, and the process of civil suits, are no less necessary to be known Still further to ensure the independent administration of justice, no prince or prelate who is plaintiff in a cause shall conduct it in person, but by his advocate<sup>5</sup>, and that advocate shall not be superior in civil rank to the defendant<sup>6</sup> A married woman (*femme couverte*) may plead in her own person, or by her husband, or by any other advocate, but if that husband plead for her without her consent, or if he appear with her consent, yet conduct her cause inadequately, she may demand a new trial<sup>7</sup> In certain cases, a slave may be the plaintiff in an action, as when he is beaten by a freeman, and his owner is *above* fifty miles distant from home, but if the

<sup>1</sup> Tit. i l 22<sup>4</sup> Tit. i l 23, 29<sup>7</sup> Tit. iii l 9<sup>2</sup> Tit. i l 24<sup>5</sup> Tit. iii l 1<sup>3</sup> Tit. i l 26<sup>6</sup> Tit. iii l 9

owner be less than that distance from home, *he* shall institute the suit, not the slave, since the injury sustained by the slave must fall on him. The gain or loss of the suit shall lie with the client, not with the advocate<sup>1</sup>, but the latter shall be responsible for undue delay<sup>2</sup>, and for negligence or want of zeal, or even want of experience<sup>3</sup>. The more simple the process, the more pure the course of justice. The plaintiff, either in person, or by his advocate, whom he has legally empowered, shall wait on the judge, and state his complaint. The judge shall immediately commit the accusation to writing, summon the defendant to appear and answer, and consign the citation for delivery into the hands of a sayon, who shall serve it in presence of witnesses on the defendant<sup>4</sup>. If the defendant hide himself instead of appearing, he shall pay a fine of five golden solidi, or receive fifty stripes, but if he do not hide himself, and is merely averse to appear, he may either pay the money, or receive thirty lashes. If any defendant persist in his refusal to appear, either in person or by his representative, he shall be constrained to pay a fine of fifty golden solidi, of which twenty shall go to the judge, and thirty to the plaintiff, and after the expiration of a few days, judgment shall be pronounced against him as if he had appeared and been convicted. If the defendant, who refuses to obey the judge's warrant be an ecclesiastic, he shall pay the same fine, or, if he have no money, a complaint shall be made to his bishop, who shall compel him either to come, or be subject to a fast of thirty days<sup>5</sup>. When a suit is once commenced, it must be continued to the end, nor must any compromise be allowed between the parties<sup>6</sup>. The witnesses called to prove the charge contained in the accusation, or declaration, must be unexceptionable. Homicides, robbers, ravishers of women, those who consult soothsayers, those who have committed perjury, and

<sup>1</sup> Tit. II. 1. 10, and Tit. III. 1. 7

<sup>3</sup> Tit. III. 1. 3

<sup>5</sup> Tit. I. 1. 17

<sup>2</sup> Tit. III. 1. 5

<sup>4</sup> Tit. II. 1. 18

<sup>6</sup> Tit. II. 1. 5

slaves, in criminal cases cannot give evidence <sup>1</sup> But if the evidence of freemen cannot be obtained, that of slaves may be received, where the interests of the action are trifling, and where the owner can vouch for their morals and principles and even in criminal cases, the royal slaves, who are overseers or chiefs of other slaves, may depose, provided their testimony is approved by the king <sup>2</sup> All evidence must be given on oath, and the witness who either deposes falsely, or conceals the truth, shall receive one hundred stripes, shall suffer defamation, and be for ever incapable of testifying in a judicial court <sup>3</sup> All witnesses must appear in person, unless detained by indisposition, or by distance of place in either case, their depositions must be taken down by order of the local judge, must be signed, and the instrument thus signed may be received in evidence, provided it be confirmed by eye-witnesses <sup>4</sup> But it is not sufficient that the man who deposes falsely should be beaten, and branded with infamy, if he swear falsely, not so much through fear or favour, as through malice against the person whom his evidence is intended to affect, he shall, if rich, sustain the same loss as that person would have sustained in the event of conviction, if poor, he shall become the slave of that person <sup>5</sup> And if any one prevail on another to give false evidence, each shall pay what that false evidence was expected to gain for the client, and if neither have the means to satisfy the penalty, both shall become the slaves of the person whom they intended to injure <sup>6</sup> Relatives to the fourth degree cannot give evidence in favour of each other, unless both plaintiff and defendant are of the same family <sup>7</sup> If the accusation made by any plaintiff cannot be proved by the law of evidence, the defendant may justify himself by oath, and the plaintiff shall be fined five solidi in gold <sup>8</sup> The preceding provisions chiefly regard *oral* evidence, but *documentary* is no less the

<sup>1</sup> Tit. iv. l. 1  
<sup>4</sup> Tit. iv. l. 5

<sup>2</sup> Tit. iv. l. 4. 10  
<sup>5</sup> Tit. iv. l. 6

<sup>3</sup> Tit. iv. l. 2, 3  
<sup>6</sup> Tit. iv. l. 9

object of legislation Such documents must be properly dated, and signed, and witnessed, and must be read by the witnesses before they affix their signatures to them<sup>1</sup> Contracts are valid unless made through fear<sup>2</sup>, or against justice<sup>3</sup>, or by minors, or persons of weak intellect<sup>4</sup>, or where the condition of failure subjects the party to the loss of liberty, and all his substance<sup>5</sup> Wills are valid in four cases first, if written and confirmed by the testator and witnesses, secondly, if, where the testators are two, it is written and confirmed by one of them and the witnesses, thirdly, if not written by the testator, but dictated by him, in the presence of witnesses, and, fourthly, if declared verbally in presence of such witnesses Within six months, however, the will must be proven before the bishop, in accordance with the necessary formalities<sup>6</sup> The soldier or pilgrim may write or declare his will in presence either of freemen or of slaves<sup>7</sup> He who hides, or neglects to produce a will before the bishop within the stipulated six months, shall be liable for the amount of the bequest to the lawful heir<sup>8</sup> Secret protests against the provisions of acts in donations publicly and voluntarily made, shall not avail, and the public instrument shall remain in force<sup>9</sup>

If, in civil cases, where the rights of property only are concerned, the laws and their administration are thus clearly defined, double caution ought to be used in criminal suits, where the life or liberty of the defendant is involved Whoever proposes to accuse a noble of a grave offence, must first consider whether he can support the accusation by proof, and he must even engage in a written instrument to receive the same penalty if he cannot establish its truth And the same caution shall be used when the accusation regards theft, or

<sup>1</sup> Tit. v l 1, 2, 3.<sup>2</sup> Tit. v l 9<sup>3</sup> Tit. v l 7<sup>4</sup> Tit. v l 10<sup>5</sup> Tit. v l 8.<sup>6</sup> Tit. v l 11 16 The formalities are nearly the same as required by the canon law<sup>7</sup> Tit. v l 12.<sup>8</sup> Tit. v l 13.<sup>9</sup> Tit. v l 17 Here ends the second book Compare cum Institutionibus lib iv, necnon cum Pandectis, pars vii. tit. 2, De Accusationibus, &c.



other criminal offences, as when it regards homicide <sup>1</sup> If the presumption of guilt be strong, the accused must then be put to the torture if the crime be proved, he must suffer the penalty, if not, the accuser must suffer it for him, or become his slave If the offence be not capital, such as theft, the accused shall not be tortured, and shall be allowed to clear himself by oath And even when torture is admitted, the accused shall not suffer in life or limb if he die in consequence of the torture, and if it be proved that the judge was privy to the cruelty, that judge shall become the slave of the family of the deceased, and if even death happened not so much through design as through ignorance or want of care, the judge shall pay 300 solidi to the family, or, if he have them not, he shall incur slavery, the accuser shall also fall into the power of the relations, who may either put him to death, or retain him in slavery <sup>2</sup> Where the theft or injury amounts to 300 solidi, in the absence of evidence, the accused shall have leave to purge himself by the ordeal of boiling water, but if the presumption be strong against him, he shall be tortured by the judge if he confess, he shall make the compensation decreed by law, if he escape by the ordeal, his accuser shall not be punished <sup>3</sup> If a slave be accused of a crime, he shall not be tortured until the accuser engage, in the event of his innocence, to present his owner with another slave in his stead if he die, or even be only maimed under the torture, the accuser shall present two slaves to the owner in the former case, the judge also shall furnish the owner with another slave, in the latter, the tortured slave shall be made free The rich liberto, or freedman, may also be tormented if the injury amount to 250 solidi, and the poor freeman where it is only 100, but if the former be maimed in the torture, the judge shall pay him 200 solidi, the accuser 300 if he die, the money

<sup>1</sup> Pandectarum pars vii. tit. 2, De Accusationibus et Inscripturibus, § 163

<sup>2</sup> Lib vi. tit. 1. l. 2, and lib vii tit. 1

<sup>3</sup> Lib vi. tit. 1. l. 3

shall be paid to his heirs, if the latter be maimed or die, half the above sums shall be paid to him or his relatives<sup>1</sup>

The crimes which call forth the vengeance of the law should be carefully particularised, that they may be avoided through fear of the punishment. He who administers poisonous herbs to another shall, if the victim die, be tortured and put to death, if the other recover, he shall be put into the power of that victim<sup>2</sup>. He who administers to a pregnant woman poisonous herbs, which produce abortion and kill the child, shall suffer death, and the woman, if a slave, shall receive 200 lashes, if free, shall be reduced to slavery<sup>3</sup>. If the pregnancy be at any early stage, and if abortion of fœtus only is produced, the man (if free, and the woman also free) shall pay 150 solidi if the fœtus were formed, 100 if not formed. If the woman die, he shall suffer death<sup>4</sup>. If the woman be a slave, he shall pay twenty solidi to the owner, and if a free woman make another free woman miscarry, she shall be subject to the same penalty as the free man<sup>5</sup>. If a slave cause a free woman to miscarry, he shall receive 200 stripes, and become the woman's slave<sup>6</sup>, and if the pregnant woman be also a slave, the owner of the male slave shall pay to the owner of the female slave ten solidi, and the offender shall receive 100 stripes<sup>7</sup>. If the woman of her own accord take herbs to destroy the living fruit of her womb, or if she destroy her offspring after birth, she shall be condemned to death. The same fate shall await the husband guilty of the same act<sup>8</sup>. If one freeman strike another freeman in the head, and blood do not flow, he shall pay five solidi, if the blow penetrate to the bone, twenty, if the bone be broken, 100. If the sufferer be a slave, half the sums shall be paid to the owner,

<sup>1</sup> Lib vi tit i l 6 Compare with Pandect., pars vii. 47 et 48, ed Henneccius, tom v

<sup>2</sup> Lib vi tit ii l 2.

<sup>3</sup> Lib vi tit iii l 1 See also Pandect vii 8 § 208, 209

<sup>4</sup> Lib vi tit iii l 3

<sup>5</sup> Ibid l 3, 4

<sup>6</sup> Ibid l 5

<sup>7</sup> Ibid l 6

<sup>8</sup> Ibid l 7

if both be slaves, the third part of the fine shall be paid by the owner of the offender, and the offender himself shall receive 150 stripes. If the sufferer be a freeman, the owner of the offending slave shall pay as much as the freeman would have paid for striking a slave, and if the owner refuse to pay, he must surrender the slave<sup>1</sup>. If one freeman wound another freeman, and death ensue, the crime is capital. If the sufferer recover, the penalty shall be seventy solidi, or, if the prisoner have not the money, he shall receive 100 stripes, and make such other satisfaction as the judge may decree. If an armed man forcibly enter another's house to destroy the master, and if he meet his death, of that death the law can take no cognisance. If the former kill any one in the house, he shall suffer death, if he steal any thing he shall restore it, and pay a heavy fine, and if he have not the means of compensation, he shall become a slave of the master of the house. If he do no injury in the house, yet for his violent entrance he shall pay 100 solidi, and receive 100 stripes, or 200 if he have no money, and the same punishment shall await those who accompany him, if even they are mere spectators<sup>2</sup>. If one freeman pluck another by the hair, and strike him in the face or body, bind or otherwise affront him, he shall receive the same treatment in return, provided no injury be inflicted, and shall also be fined. But if injury be apprehended, the offender shall receive a certain number of blows, according to the offence, — for a smack in the face with the open hand ten stripes<sup>3</sup>, with the fist, twenty, for a wound, without blood, in the head, thirty, and if the offender prove that the hurt was accidental, or arose from an unexpected quarrel, he shall pay the sufferer, for the loss of an eye, 100 solidi, or a pound of gold, if the sufferer can see a little, for the loss of a nose, 100 solidi, or, if the nose be slit,

<sup>1</sup> Lib vi tit iv l 1

<sup>2</sup> Lib vi tit iv l 2 8

<sup>3</sup> Many of these laws were, doubtless, brought by the Goths from their northern cradle, and incorporated by Euric or Alaric into the national code. This will be abundantly proved in Appendix B.

something less, according to the decision of the judge, and the same with respect to the ears or lips, or the hand, or a broken rib. The loss of the thumb shall be compensated by fifty solidi, of the forefinger by forty, of the long finger, by thirty, of the fourth, by twenty, of the little finger, ten and the same rule shall apply to the toes of the foot. The loss of a tooth shall be compensated by ten solidi, and lameness by a pound of gold. If it be a slave who shall thus treat a freeman, he shall be resigned into the hands of the sufferer, to be dealt with as the latter may please. If the offender be free, and the sufferer a slave, the former shall pay ten solidi to the owner, if the slave be *vilus*<sup>1</sup>, if *bonus*, he shall in addition receive 100 stripes. And if a freeman deprive a slave of a limb, he shall furnish another slave to the owner, and receive 200 stripes. If the libertus strike, or kick, or bind, or maim the freeman, he shall receive the like, and 100 lashes in addition, and if *vue versa*, the freeman shall be subject to one third the penalty he must have paid had the sufferer been also free. If both are slaves, the offender shall receive the same, and 100 stripes, but if the offender's owner were conscious of the injury, he (the owner) shall pay the same penalty as he would had he been the offender in person. The freeman who shall seize or bind another's slave without cause shall pay three solidi to the owner. If a slave bind another slave, unknown to his master, let him receive 100 stripes, if with the knowledge of the owner, the latter shall pay what he must have paid (three solidi) had he been the active offender. And if a freeman bind and detain another's slave during a whole day, he shall pay three solidi, and for every day the same sum, and the same sum in addition for every night. And for every blow which a freeman gives a slave he shall pay one solidus to the owner, and if the slave be maimed or die, the damage must rest with the discretion of the judge. And if one slave in like man-

<sup>1</sup> For the condition of these slaves, see Vol. I p 193.

ner treat another slave, let the owner of the offender pay to the owner of the sufferer what the judge may deem equitable<sup>1</sup> If a slave reproach, or insult, or dispute with a freeman without cause, he shall, if bonus, receive ten stripes, if vilis, fifty<sup>2</sup> If one freeman detain another, who owes him nothing, on the highway, he shall pay five solidi, or receive fifty stripes for the violence, but if the man be his debtor, both must be brought before the judge<sup>3</sup> For involuntary or accidental homicide, where no previous malice existed, there shall be no punishment<sup>4</sup>, but, if one man be struck by another, who resents the blow, and a battle ensues, in which the offender is slain, the homicide shall pay a pound of gold<sup>5</sup> If in a duel one man attempt to kill the other, and kills a bystander through mistake, though the death was accidental, yet, as he had a murderous intention, he shall pay fifty solidi to the kindred of the deceased, and he who commenced the affray 100 more<sup>6</sup> If one of the disputants strike and kill a peacemaker who interferes between them, if he can prove that he had no intention to commit the homicide, he shall pay one pound of gold to the family of the victim<sup>7</sup> If one man kick another, and death ensue, the crime is capital, but if he threw a stone, without design, and that stone killed some one (a freeman, of course), though he purge himself, by oath, from a murderous intention, he shall pay a pound of gold for his folly<sup>8</sup> If a master shall chastise his pupil, or a patron his freedman, or an owner his slave in attendance, so that death ensue, if he can prove that the chastisement was more severe than he intended, he shall not be punished or defamed<sup>9</sup> If a freeman kill a slave without design, he shall pay half the penalty he must have paid had the victim been free<sup>10</sup> And if a slave, in the same unpremeditated manner, kill a freeman, either his master shall pay the

<sup>1</sup> Lib vi tit iv l 3 The above provisions are of undoubted antiquity

<sup>2</sup> Ibid l 7      <sup>3</sup> Ibid l 4      <sup>4</sup> Tit v l 1, 2      <sup>5</sup> Ibid l 3

<sup>6</sup> Tit. v l 4      <sup>7</sup> Ibid l 5      <sup>8</sup> Ibid l 6, 7      <sup>9</sup> Ibid l 8

<sup>10</sup> Ibid. l 9

same sum, or he shall become the slave of the surviving kindred <sup>1</sup> And as owners are often guilty of deliberately killing their own slaves, without any crime having been proved against their slaves before the judge, in future the owner shall be banished, and his property pass to his heirs And if a señor kill, *by design*, the slave of another, he shall pay two slaves to the owner of the deceased, and be also banished But if the slave first insulted the señor, the latter shall only be fined If one slave kill a man, and say the deed were done by his owner's order, he shall receive 100 stripes, and be branded, but the owner shall escape if he contradict the charge by oath, for, unless there is evidence to prove it, no slave must be believed in contradiction to a freeman And if one slave kill another of his own will, he shall be delivered up to the relatives of the deceased, to do with him what they please But if it can be proved that a slave killed another by his owner's order, he shall receive 200 stripes, with a brand on the forehead, and the owner shall die, for he who forces another to commit homicide is worse than he who actually commits it <sup>2</sup> If a señor pluck out the eye, or cut off a limb, or lips, or nose, or tongue of his slave, he shall be banished for three years, and, for the time, deprived of his possessions, in favour of his heirs, provided these heirs were not consenting to the cruelty And if freemen take counsel together to ill-treat a man, he or they who execute it, so that the victim die, shall suffer death, and the advisers of the deed, though they be absent, shall each receive 200 stripes, and be branded, and in addition shall each pay fifty solidi to the kindred of the deceased, or become their slaves <sup>3</sup> He who kills a parent or relation, or the father, mother, &c, who kill a son or other relation, shall suffer death without delay, but if one relative kill another in defending his own life, he shall escape punishment <sup>4</sup> No deliberate homicide must be left without chastisement, and if the re-

<sup>1</sup> Tit v l 10<sup>3</sup> Ibid l 12, 13<sup>2</sup> Ibid l 12<sup>4</sup> Ibid l 17, 18, 19

latives of the deceased are unwilling to prosecute, any man may do so, or the judge may, of his own authority, seize the delinquent<sup>1</sup> Nor, in such a case, shall the sanctuary avail the guilty, for though he may not be put to death, he may be forced from the altar, deprived of all his substance, delivered into the hands of the kindred of the deceased, and by them either reduced to the most rigorous slavery — to any thing short of death — or banished<sup>2</sup>

The laws regarding *thefts, bodily injuries, violence, coinage of false money, damage by man or beast, &c*, are no less clearly defined than those which concern homicides. The offence may be generally compensated by fines, by stripes, or by servitude. Thus, if a freeman steal any thing, he shall pay nine times, if a slave, six times, the value, and each must receive 100 stripes, or, if the owner of the slave refuse to pay the damage, that slave must be transferred to the person robbed<sup>3</sup> In like manner, the freeman, if he be unable to pay the mulct, must be reduced to slavery<sup>4</sup> If a freeman and a slave, in concert, effect a robbery, each shall pay half the mulct, and be publicly whipped<sup>5</sup>, but if the freeman be also the señor of the slave, he alone shall pay the whole mulct, and he alone shall receive the 100 stripes<sup>6</sup> If a slave rob his owner, and by that owner be afterwards enfranchised, or if he commit the robbery after the enfranchisement, he shall return to his former state<sup>7</sup> If a freeman persuade a slave (not his own) to steal, he shall pay the value sevenfold to the owner of the slave, but, inasmuch as the slave was so foolish as to be persuaded, he shall receive 100 stripes<sup>8</sup> They who concert, or have a criminal knowledge of, a robbery, shall be subject to the same punishment as he by whom the theft was actually done<sup>9</sup> If a freeman purchase goods which he knows

Tit v l. 14, 15

<sup>2</sup> Ibid l. 16. Compare these punishments with the provisions ad Legem Cornelianam, on which they are often founded

<sup>3</sup> Lab vii tit. ii l. 13

<sup>4</sup> Ibid l. 13, 14.

<sup>8</sup> Ibid l. 6

<sup>5</sup> Ibid l. 4

<sup>9</sup> Ibid l. 7

<sup>6</sup> Ibid l. 5

<sup>7</sup> Ibid l. 2

to have been stolen, he shall be compelled by the judge to produce the seller, and both shall be punished as thieves, and if he cannot produce the seller, he shall pay the penalty both for himself and the seller <sup>1</sup> If the buyer knew not that the article had been stolen, he shall, in like manner, be required to produce the seller, and, on so doing, shall receive half the mulct <sup>2</sup> If a robber be detected in the act, by day or night, and killed, no enquiry shall be made into his death <sup>3</sup> Whoever protects a thief, if the protector be a person of distinction, he shall receive 100 stripes, and shall produce the culprit, or, if he do not produce him, shall be subject either to the same mulct, or to the same number of stripes as the thief himself but if the protector of the thief be a freeman of inferior station, he shall suffer *both* the same mulct and the same punishment, and if he be a slave, he must receive 200 stripes, and either be delivered to the injured party, or the mulct must be paid by his owner <sup>4</sup> He who kills an animal not his own shall be mulcted in the same fine as if he had stolen it, and the fine shall be the same if the act were perpetrated by his slave, in obedience to his orders But if charged with being an accomplice, he may justify himself by oath, and his slave must be tortured, but if the slave be innocent, compensation shall be made to the owner <sup>5</sup> The freeman who sells another's slave shall make compensation to the owner, and receive 100 stripes<sup>6</sup>, and if the sale be effected in another territory or estate, he shall pay four times the value, and receive the same chastisement <sup>7</sup> If a freeman sell the son or daughter of free parents, he shall become the slave of these parents, or of the nearest relatives, or, if they prefer it, they may receive from him the same mulct as in the case of homicides, viz 300 solidi <sup>8</sup> And if the seller of a slave be himself a slave, he shall receive 150 stripes, and shall restore the slave, or be transferred to the owner

<sup>1</sup> Lib vii tit. ii. l. 9<sup>2</sup> Ibid l. 8<sup>3</sup> Ibid l. 15, 16.<sup>4</sup> Ibid. l. 20<sup>5</sup> Ibid l. 23.<sup>6</sup> Tit iii l. 1<sup>7</sup> Ibid l. 2<sup>8</sup> Ibid l. 5.



by his own señor <sup>1</sup> If a slave sell a freeman by his owner's command, the owner shall pay the mulct and receive the chastisement, and the slave shall not be punished <sup>2</sup> If a slave effect the sale without his señor's knowledge, he shall be delivered into the power of the relatives, to do with him what they please, except to kill him <sup>3</sup> He who forges the royal decrees, or letter, or seal, shall, if a man of distinction, lose half his substance to the king, if a poor man, his right hand <sup>4</sup> If the forgery do not concern the king, the former shall forfeit one fourth of his substance, the latter shall become the slave of the injured party, and each shall also receive 100 stripes, and the same punishment shall await those who steal or alter as those who forge such instruments <sup>5</sup> He who coins false money, if a slave, shall immediately lose his right hand, and be sent before the king for further punishment, if a rich man, he shall lose half his substance, and if a poor man, he shall become the slave of whomsoever the king shall appoint <sup>6</sup> Whoever commits violence towards persons or animals, shall be punished thus, if one man lock another in his own house, or prevent another from entering his own house, he shall pay a certain sum, and receive 100 stripes for the folly, —if a slave, without his master's knowledge, 200, and the same chastisement shall be visited on all who aid and abet them <sup>7</sup> He who sets fire to another man's house in a city, let him be taken and burnt too, and his substance seized for satisfaction of the injury If the arson be committed by a slave, let him receive 200 stripes, and be beheaded, unless his master choose to repair the damage <sup>8</sup> If fire be put to trees, or houses, in the country, the incendiary, if free, shall receive 100 stripes, and make good the damage, or become a slave, if a slave, 150 stripes, and the damage shall be repaired by his owner, or he shall be transferred to the sufferer <sup>9</sup> If a man cut down a tree, without the

<sup>1</sup> Lib vii tit iii. l 4<sup>4</sup> Tit v l 1<sup>7</sup> Lib viii tit i l 4<sup>2</sup> Ibid l 5<sup>5</sup> Ibid l 2<sup>8</sup> Tit. ii l. 1<sup>3</sup> Ibid l 6.<sup>6</sup> Tit. vi l 1<sup>9</sup> Ibid. l 2

owner's consent, he shall pay so many solidi, according to the description and value of the tree <sup>1</sup> Whoever does damage in another's garden, shall pay for it, and if the offender be a slave, he shall receive fifty stripes <sup>2</sup> If the damage be done in a vineyard or orchard, or in a field of corn, barley, oats, &c, the offender shall repair it, and pay a fine in addition, and if a slave, he must be striped, and the damage repaired by the owner, or he must be transferred to the injured party <sup>3</sup> If a man turn his horses, or oxen, or sheep, or any other animals, into the meadow, garden, or orchard, of another, he shall, if rich, pay much more than the value of the damage, if poor, he shall just repair it, or become a slave, and, in addition, receive sixty stripes <sup>4</sup> If any man find horses, flocks, or herds, in his meadow, orchard, garden, &c, he may confine the animals, acquaint the owner with their detention, and, at a meeting of both parties, in the presence of honest neighbours, the damage must be estimated and repaired <sup>5</sup> And if the owner of the cattle forcibly rescue them, he shall, if rich, pay the damage twofold, with a fine of five solidi, if poor, he shall pay just the damage, and receive fifty stripes, if a slave, the stripes shall be 100 <sup>6</sup> And if the owner of the cattle do not come forward to repair the damage, the beasts shall be dismissed the third day, but he shall be responsible for twofold the damage <sup>7</sup> The injuries which any one inflicts on horses, mares, oxen, cows, sheep, &c, shall be repaired according to the laws of equity, and the same reparation shall be exacted where a thing is borrowed and abused <sup>8</sup> Thus, if a dog bite an inoffensive man, so that he die or is lamed, or if it worry flocks, if the master incite the dog, he shall be punished or mulcted, according to the laws, if the dog do the mischief unknown to the master, it must be destroyed, or the master must repair the damage <sup>9</sup> Even damage occasioned by bees must be

<sup>1</sup> Tit. iii 1 1<sup>4</sup> Ibid 1 10, 11, 12.<sup>7</sup> Ibid. 1 15<sup>2</sup> Ibid 1 2<sup>5</sup> Ibid 1 13<sup>8</sup> Tit. iv 1 1—18<sup>3</sup> Ibid 1 5, 6<sup>6</sup> Ibid 1 14<sup>9</sup> Ibid.

repaired by the owner, unless, when complaint is made to him, he remove them to a place where they can commit none <sup>1</sup> If a hunter dig pits, or lay nets or traps, for wild animals, and domestic animals are injured by them, he must repair the injury, and unless he affix a warning to the place, he must be responsible for the accidents that may happen to travellers <sup>2</sup>

The laws respecting *slavery*, and the crimes of slaves, &c, form a prominent portion of the Wisigothic code How much severer their punishment than of the free-men, has been seen in abundant provisions <sup>3</sup> The slave, according to the Roman and Wisigothic law, was not a person, but a thing, he had therefore no rights <sup>4</sup> If they fled from oppression, vengeance eagerly pursued them The freeman who harboured a fugitive, was compelled both to restore him, and find another of the same value, and if a slave harboured another slave, he received one hundred stripes <sup>5</sup> If a freeman assisted a slave to escape, he was compelled to pay ten solidi to the owner, and recover the fugitive, or if such recovery was impossible, either to pay the value of the slave, or to become one himself <sup>6</sup> If one slave showed another the way to any place, whether the fugitive were recovered or not, he received two hundred stripes <sup>7</sup> All men were obliged to arrest the fugitives, and bring them before the judge of the place <sup>8</sup> And if the slave effected his escape, gave himself out as free, and married with a free woman, the children of that marriage were, like him, the slaves of his owner, whenever his residence could be discovered <sup>9</sup>, and the profits of the industry of such fugitive devolved of right to his señor <sup>10</sup> But as cases of flight became more and more frequent, it was

<sup>1</sup> Tit. vi See Appendix B

<sup>2</sup> Tit. iv l 2; Compare cum Pandectis, pars vii lib. 47 De Furtis, necnon cum Abigeis, aliisque titulis

<sup>3</sup> Besides the foregoing laws, see Vol I pp 192—194

<sup>4</sup> "Servi e personis res fiebant" (Instit lib 1 tit 3) "Servi sunt homines, non personæ" (Pandect lib 1 tit v § 132) "Quum sitque servi non sunt personæ, consequens est ut sint res" Ibid 133

<sup>5</sup> Lib ix tit 1 l 1

<sup>6</sup> Ibid l 2

<sup>7</sup> Ibid l 7

<sup>8</sup> Ibid. l 12, 13

<sup>9</sup> Ibid l 14 and 16

<sup>10</sup> Ibid. l 15

enacted by Egica, that every fugitive arriving at any place, whether he called himself free or a slave, should be taken before the local judge, and the freeman who neglected to do so received 100 stripes, and paid a pound of gold to the owner, or, if he had not the money, 200 stripes,—the slave received more lashes. This punishment fell on all the inhabitants of the place,—men or women, free or bondsmen, who did not combine for the restoration of the fugitive, and who did not pursue him if he fled, they were even empowered to torture him, until he confessed who and what he was, whence he came, and whither he was going. If the judges or bishops did not see the punishment applied to all the inhabitants compromised in the negligence, they were to perform a rigorous penance, like persons excommunicated, during thirty days, and to live on one meal daily of bread and water. This penance was to be inflicted by the local governors, under the penalty of paying three pounds of gold to the king<sup>1</sup>. If the fugitive visited a place in the disguise of a pilgrim, he might be received in any house for a day and a night, but if he abode there a week, the owner would be compelled to take him before the judge, by whom he was to be rigorously examined<sup>2</sup>. Slaves could be enfranchised, either verbally, or by instruments, before witnesses<sup>3</sup>, but, as observed in a former chapter, the manumission was not irrevocable—the privilege could be lost by insult or ingratitude<sup>4</sup>, and the liberto or freedman, nay, even his children and grandchildren, were under legal obligation towards the family of the patron<sup>5</sup>. Half the profits of his industry devolved to the patron, and if he died without children, his whole substance was inherited by his former señor<sup>6</sup>.

<sup>1</sup> Lib ix tit. 1 l 20

<sup>2</sup> Ibid l 21

<sup>3</sup> Lib v tit vi l 1. See also Vol I p 194

<sup>4</sup> Ibid l 9, 10

<sup>5</sup> Ibid l 11. Quandoquidem patroni in loco parentum sunt, consequens est utrisque paria fere debeantur *obsequia* (Pandect. pars vi tit. 15 § 42) "Exque consequitur, ut parentum ac patronorum persona liberis ac libertis semper *sancta* videri debeat" (Ibid § 43)

<sup>6</sup> Ibid l 12. "Quum patronus liberto loco agnati esset, non abs re cautus fuerat a duumviris, ut liberto intesto mortuo, nullis relictis suis hæredibus, patronus succederet" (Pandectarum pars vi tit 2 De Bonis Libertorum.)

In fact, the enfranchisement was but half effected, since the liberto could neither marry into the family of his patron without being condemned to his former servitude<sup>1</sup>, nor avoid accompanying that patron in warlike expeditions<sup>2</sup>. We may here add, that as feudal service was not unknown among the Wisigoths, it was carried to its perfection during the middle ages<sup>3</sup>.

To the chief laws concerning marriage, fornication, respecting the heretics and Jews, and the privilege of sanctuary, allusion has been made in the course of the present work<sup>4</sup>. Those respecting inheritance (Book IV) are substantially the same with those of ancient Rome, and are evidently founded on similar provisions in the Theodosian and Justinian codes, and those respecting limitations, &c (Book X) have little to interest a modern reader. But there are some laws concerning physicians and surgeons, in Book XI, and nicknames, in Book XII, sufficiently curious, because characteristic of the fierce Wisigoths, and of their no less fierce Asturian descendants. No medical man could bleed or prescribe for a free woman, unless one of her immediate relatives were present<sup>5</sup>, nor visit criminals in prison, lest he should poison them, and defraud justice of her due<sup>6</sup>. He was enjoined to be careful and cautious<sup>7</sup>, and if a patient died under his hands, he could claim no reward for his attendance<sup>8</sup>. If he weakened a freeman by too much bleeding, he was fined 150 solidi, if the patient died through loss of blood, he became the slave of the relatives, and if the victim were a slave, he was compelled to provide the owner with another<sup>9</sup>—The *Fuero Juzgo* is, of all other codes ever framed by man, the most minute in graduating, not only the privileges of rank, but the scale of punishment. It has been seen how the penalty varied according to the effect of a blow, and the

<sup>1</sup> Lib v tit vi l 16

<sup>2</sup> Ibid l 19

<sup>3</sup> Tit. iii l. 1—4 See, also, Vol I p 194 Compare Instit lib i tit 3 De Jure Personarum, necnon Pandect lib i tit 5 § 133, &c De Statu Hominum, item De Stipulationibus, Instit. iii tit 18 § 848, &c

<sup>4</sup> Vol I p 199 and 206—210

<sup>5</sup> Lib xi tit. i l 1

<sup>6</sup> Ibid. l 2.

<sup>7</sup> Ibid l 3

<sup>8</sup> Ibid l 4

<sup>9</sup> Ibid. l. 6. What would Sangrado have done in those times?

part of the body which received it, from a contusion on the skin, or the loss of a tooth, to the loss of life We may add, that terms of abuse, and nicknames, occupied a place in the scale corresponding with their reputed discredit He who falsely called another *scabby head*, received 50 stripes before the judge<sup>1</sup>, if he called him a *glutton*<sup>2</sup>, or *circumcised*<sup>3</sup>, or a *sarracen*<sup>4</sup>, or a *cuckold*<sup>5</sup>, 150, if a *drunkard*, only 30<sup>6</sup> Drunkenness was, therefore, the lightest and most common of the vices Lastly, there were severe laws against soothsayers, enchanters, &c, and those who consulted them, and the violators of sepulchres Thus, "they who made the hail to fall among vines and corn, they who held converse with devils, they who constrained the wills of men or women, and they who made a circle by night, and sacrificed to demons," were to be seized, to receive 200 stripes, to be branded on the forehead, and be reduced to the most abject and filthy condition, so as to deter others from consulting them<sup>7</sup> such as did, were punished with 100 or 200 stripes, or even with slavery, according to the circumstances of the case<sup>8</sup> Whoever broke into a sepulchre, to despoil the dead, if free, was to pay a pound of gold to the heirs of the deceased, besides making restitution, and, whether free or enslaved, to receive 200 stripes, and to be burnt alive<sup>9</sup> And he who stole a monumental stone, if free, paid a fine of twelve solidi, if a slave, he received 100 stripes<sup>10</sup>

Such are the chief provisions of this famous code, the similarity of which with that of the Justinian must have struck the learned reader In fact, most of the laws which regard civil penalties and obligations, at least the more humanised portions, are founded on the Roman jurisprudence But the dark and bloody parts are derived from a northern source Little does this

<sup>1</sup> Lib xii tit 1 1 1<sup>2</sup> Ibid 1 2<sup>3</sup> Ibid 1 4<sup>4</sup> Ibid 1 6<sup>5</sup> Ibid 1 5<sup>6</sup> Ibid 1 3<sup>7</sup> Lib vi tit ii 1 4<sup>8</sup> Ibid 1 1 and 3<sup>9</sup> Lib xi tit 2 1 1<sup>10</sup> Ibid 1 2 Compare Cod Just. Ad Legem Corneliam, necnon De Sepulchro violato, &c

code deserve the outrageous commendations which some national writers have passed on it, — outrageous alike to truth and common reason. It every where draws the most insulting distinction between rich and poor, between the high and the low. It apportions punishments, not to the gradation of the crime, but to the comparative respectability of the criminal. That punishment ground the poor and the unfortunate to the very earth, but ascended not to, or but imperfectly reached, the distinguished, and therefore the more guilty classes. The humanised portions are attributable, after the Roman laws, to the spirit of Christianity which pervades the code, yet only so as to exhibit the savage barbarism of the Goths in a more hateful light. We cannot be surprised that the people, the oppressed portion of the nation, showed little disposition to defend such a government, that they should seek to evade military service, that they should witness the Mohammedan invasion with apathy, or perhaps with joy, since any change must benefit them. It is certain that the Mussulman domination was a great relief. The monarchs of Cordova generally required no more than one tenth of the territorial produce, while the Gothic kings were not contented with less than a third. It may be added, that, while the Gothic nobles looked with contempt on the useful arts, especially on agriculture which they abandoned to their slaves, the Arabs afforded great encouragement to that surest, and, in general, only basis of national prosperity.<sup>1</sup>

But though this code continued, during three centuries after the restoration of the monarchy, to be the only recognised guide of the Asturians and Leonnese, a different state of society, and the altered circumstances of the times, must have rendered applications to the throne, for the extension or limitation of the existing laws, and for the declaration of new ones, almost per-

<sup>1</sup> Loaisa, Concilium Toletanum XII. Sempère, *Considérations sur les Causes de la Grandeur et de la Décadence de la Monarchie Espagnole*, tom. 1. chap. 2, necnon *Histoire des Cortès d'Espagne*, passim. See, also, Vol. I. p. 157 of the present compendium.

petual In no country are laws the pure dictates of the understanding if we except those which are founded on the unchangeable principles of right and wrong, and which ought to be everlasting as that foundation, they are the natural growth of time and circumstances, and are, consequently, adapted to a particular state of society It is impossible for the wisest legislator to predicate what form of government, or description of laws, may suit an infant state, and when such as experience has demanded are incorporated in the national code, it is equally so to say how long their obligation may continue According to the bishop of Tuy, Alfonso I re-established at Oviedo the ancient government and code of the Wisigoths<sup>1</sup> but the feudal system, which now began to strike its roots deeply and widely into the soil, demanded new provisions We have before observed, that feudal service was not unknown to the Wisigoths Any freeman could choose a señor, and receive lands from him, under the sole condition of aiding him in war, and, on forsaking his service for that of another, the vassal was compelled to restore both the land and whatever had been received from him As, from the foundation of the Asturian state, both religion and patriotism enjoined the recovery of the country from the Mohammedans, and as the warlike virtues were, in consequence, the most in repute, the power of the nobles, in other words, of the great warriors who brought their armed retainers to the field, daily increased Not satisfied with the influence they possessed as the pillars of the monarchy, and natural chiefs of the army, they wrung from their sovereigns concessions which their Wisigothic predecessors had never dreamt of claiming. They not only raised troops from among both their tenants and slaves, but led them, wherever they pleased, under their own banners, and dependent on them alone they built fortresses, which they intrusted to their vassals, under the oaths of fidelity and obedience, they

<sup>1</sup> *Omnem Gothorum ordinem, sicut Toleti fuerit, cuncta in Oveti restituit.*



were the governors of the cities and towns, either in proper seignory, or as feudatories, they were exempted from contributions, and the only service they were required to pay for their domains and privileges was a certain number of lances whenever their king went to war. As their power increased, they insensibly usurped the civil as well as military authority, which they administered either in person or by their own judges. In most of the towns which they founded, or repopled after the expulsion of the Moorish authorities, they assumed the *merum et mixtum imperium*, the high and low jurisdiction, that is to say, the powers of sovereignty. They imposed whatever contributions they pleased on the inhabitants, without their consent no branch of industry could be established, and theirs was the chief profit arising from all. While they thus secured their dominion over their vassals, — such were all who lived within their jurisdiction, — they recognised none, not even that of the laws, except in so far as concerned their allegiance to the king. In time, even those who held no fief or seignory, but who were related by blood to the local sovereigns, were admitted to extraordinary privileges. They could suffer death for one offence only, — high treason, for other crimes, such as murder, or rape, or violence, they could compound with the injured party. If one noble slew another, the relations of the deceased generally pursued the quarrel, and either defied to mortal combat, or compromised with the homicide. The ravisher of a woman (if that woman belonged not to the privileged caste) paid an insignificant fine. But whoever encroached on their honours or rights was visited with a terrible revenge. He who killed one of their dogs was fined as heavily as he who plucked out the eye or tongue of a freeman. They were the natural counsellors of the king, who could do nothing important without their sanction. They sat in the cortes, from which the people were long excluded, and they filled all the great offices in the administration, and all the high dignities in the church. And it is

worthy to remark, how different their authority in the national councils — so the assemblies were called, which, at a subsequent period, were known by the name of cortes,— under the Wisigothic and the Leonnese kings in the former they appeared but as witnesses, while in the latter they voted and sanctioned the public acts <sup>1</sup>

The necessity of repeopling the waste lands recovered from the Moors, and the encouragement demanded by the new system of colonisation, introduced no less a change into the relations of society, and, consequently, into the laws. Waste we may call them, for victors and vanquished sometimes equally concurred in destroying towns and villages, and consuming the produce,— the former, because they could not always retain them, and were unwilling that they should be held by the enemy, the latter, to retard the advance of the foe. Thus, according to the monk of Albelda, Alfonso in one campaign laid waste the Campos Godos as far as the Duero <sup>2</sup>, and in the chronicle of Alfonso VII we read, that before he could encounter Taxfin ben Ali, he had to march fifteen days through a continued desert. To repopulate these regions became an object of great anxiety to the Christian kings, and that object could be attained only by holding out extraordinary encouragement to the settlers. During the Wisigothic domination, and in the middle ages, the cultivators of the soil were a poor and a despised class. On them fell the whole weight of taxation, they were but the serfs of the military nobles, and their origin was generally servile. The few artisans and mechanics required in such a state of society were not much superior in condition. The lure held out to both,— that if they would undertake the cultivation of the unoccupied wastes, form themselves into “poblaciones,” or societies, build villages and towns, and defend their possessions against the common enemy, they should

<sup>1</sup> Codex Legis Wisigothorum, lib v tit 3. El Fuero Viejo de Castilla, liv tit 5. Alonso el Sabio, Las Siete Partidas, part iv tit 24, &c Mas deu, España Arabe, lib. ii. Sempère, Histoire des Cortès d'Espagne, chap. iv

<sup>2</sup> Campos quos dicunt Gothicos, usque ad fumen Dorum cremavit

enjoy certain social privileges, in addition to the profits of their industry,—could not fail to attract numerous settlers. Of these privileges, the most highly prized were those which rescued the people from the jurisdiction of their feudal tyrants, which empowered them to elect their own magistrates, to form municipal juntas, and to dispose of certain revenues arising from forests and other possessions<sup>1</sup>,—privileges, in short, which elevated them from the rank of serfs to that of citizens. Hence the origin of many *fueros*, or provincial laws, which varied in nature and advantage according to the liberality of the monarch, and the relative importance of the localities. These colonies became flourishing, villages were soon expanded into large towns, and the new communities became so tempting, that nobles are known to have renounced the privileges of their caste, and enrolled themselves among the plebeians, for the purpose of obtaining municipal posts<sup>2</sup>.

But the new societies had often much to fear from the licentious habits of the nobles. Themselves and vassals did not always confine their irruptions to the territories of the natural enemy, but were frequently attracted by the riches of the new establishments. Thus, Diego Perez made a predatory irruption into the district of Castro Xeris, whence he returned to Silos, with abundance of cattle and other spoil. The injured inhabitants mustered their disposable force, and marched on Silos, which they took and destroyed, and recovered their cattle. The governor of Palencia complained to the king, who, instead of listening to him, confirmed the privileges of Castro Xeris. But the nobles were as disposed to quarrel with each other as with either the plebeians or the Mohammedans. For their own security they were compelled to enter into leagues, which they called *confraternities*, and the object of which was to control the licence of the violent. This diminished

<sup>1</sup> To these, as we shall soon perceive, was added the more extraordinary one, of sending deputies to the cortes.

<sup>2</sup> The same authorities.

the evil, but enough still remained to induce the prelates, in imitation of their brothers of Italy and France, to propose the Pax Dei, or a prohibition of killing and robbing on certain days in the year. In 1124, the council of Compostella ordered all nobles to abstain from violence during Advent, Lent, Easter, and the chief festivals, and the ecclesiastics during the whole year, and no less a doom than excommunication was pronounced against all who refused to take the oath of observing the peace. And lest spiritual thunders should fail of their effect, it was also decreed that those who violated the pax should be pursued by the troops of the church, and either forced to make reparation, or suffer the abstraction of their possessions, and even extermination, and all who fell in an expedition against the refractory were declared entitled to the same indulgences as the crusaders. But even these precautions were not effectual, the rising communities were still subject, though in an inferior degree, to the incursions of the nobles, and as neither the king nor the church could protect them, they resolved to protect themselves by forming leagues or confraternities similar to those of their enemies. The number of towns and villages which constituted one of these associations for self-defence varied according to their contiguity and comparative strength. We know that such societies were numerous, that they were recognised by several kings, and that in time they arose to the dignity of being incorporated in the municipal legislations.<sup>1</sup>

From these observations, it will readily be supposed, that the privileges of the fueros chiefly concerned the independence of the people on the royal governors, the enjoyment of personal liberty, and of the profits of their industry. These provincial codes were not only designed to supply the defects, but to soften the severity,

<sup>1</sup> Monachus Albeldensis, *Chronicon*, necnon *Chronicon Adefonsi Imperatoris* (apud Florez, *España Sagrada* tom xiii et xxi). *Historia Compostellana*, lib 1 (apud eundem, tom xx) Sempère, *Historie des Cortès d'Espagne*, chap vii et viii, necnon *Considérations sur la Grandeur*, &c, tom. 1. ch 6

of the Wisigothic, which was dictated by the worst spirit of oppression, and the observance of which was inconsistent with individual freedom or happiness. Of these fueros, the most ancient was probably that of Castile, which was granted by the count don Sancho, son of Garcia Fernandes, who, as before observed, rebelled against the king of Leon<sup>1</sup>, and who, apparently about the year 1000, granted his subjects a new code of laws, better adapted to their circumstances and habits, and more favourable, if not to general liberty, at least to military valour,—the virtue that, above all others, he wished to foster. It is, however, certain, that all the cities and towns of Castile did not acknowledge Sancho; some, perhaps, through the concession of still more favourable fueros, remained faithful to the king of Leon. It is no less certain, that the two courts contended, by rival liberality, for the supremacy over the communities; hence, to such as were entreated to declare for either, the offer of privileges more or less favourable, according to the circumstances of each pueblo, was made; hence, too, the various and numerous codes enjoyed by the different towns. If the inhabitants of any place found by experience that the new privileges were less advantageous than they had been led to expect, they never hesitated to select another master,—to exchange a Castilian for a Leonnese feudal superior, and *vice versâ*. It is possible, also, that by royal grant they were as often under the protection of some local governor as under that of their own magistrates, and that they transferred their obedience according to their interests or caprice, but the former hypothesis is by far the more probable. However the fact may have been, there can be no doubt that to this policy must be assigned the origin of the *behe-trias*. The etymology of this word has been much disputed, the most probable supposition is, that it is derived from the Basque *bere-tiria*, city within itself, or independent. It was applied to a community held of

<sup>1</sup> Vol. II page 148

some noble or warrior, who, in return for certain concessions, whether of revenue or of troops, agreed to assist them in repelling the frequent assaults of the common enemy. Sometimes the people of a particular poblacion took their superior or protector from the same family, choosing whatever member they pleased, and sometimes they chose one from any family, or any part of Spain, or, as they expressed it, *from sea to sea* (*de mar a mar*). Hence, though the establishment of communities was a prerogative of the crown, the power was sometimes either delegated to, or assumed by, the nobility, and even the clergy. They were distinguished into three classes, besides the *behetria*. Thus, the *realengo* was a community which held immediately from the crown, the *abadengo*, holding of some ecclesiastical dignity, and the *solariego*, holding of any nobleman. — The second of these local codes in point of antiquity is that of Leon, so called, because it was granted in that capital at a council held in 1020, presided by Alfonso V. It originally consisted of no more than forty-seven laws; a proof that it was intended only to aid, not to supersede, the Wisigothic code. Fernando I, in 1037, made some additions to it, so also did Alfonso VI in 1091, whose example was imitated by some of his successors. The same Alfonso VI granted, in 1085, another body of laws, in number no more than twenty-eight, to the town of Sahagun, and its royal monastery of San Benito. About the same time, three more such charters were granted to the newly recovered conquest of Toledo — one to the Muzarabs, or ancient Christian inhabitants of the city, one to the Castilians, whom he settled there, a third to the Franks and other strangers, who preferred remaining in the new conquest to returning into their own country. In short, almost every poblacion formed during the eleventh and twelfth centuries had a different charter, — different in form or phraseology, but nearly the same in substance, the same at least, so far as respected communities on an equal, level in regard to circumstances. These charters were not codes, they

were mere grants of privileges necessary to the prosperity, in some cases to the existence, of the new establishment, for, as before observed, the Wisigothic code remained binding, however some of its provisions might be suffered to decay, and some directly superseded by others better adapted to the altered circumstances of the times<sup>1</sup>

As these communities were established for a two-fold object,—for the cultivation of the ground, and the common defence,—they had their caballeros and pecheros, the former fighting on horseback, the latter on foot, for the purpose, and all were obedient to the constituted authorities of the place, the alcaldes, and the consejo or ayuntamiento of the inhabitants. If the place were governed by one of the king's nobles, or by its own selected chief, he was no less subject to the local tribunals than any other inhabitant. When the inhabitants marched to battle, they followed their own pennon, and their own señor or governor<sup>2</sup>, in conjunction with their magistrates. The interests of the community required that each of its members should be resident, hence, none could dispose of his substance to a stranger, unless that stranger engaged to settle in the place, and he who absented himself for a whole year, or a year and a day, no matter how urgent the business which led him away, forfeited all claim, not only to the privileges of the rest, but to all his immovable property. Generally, during the first year, the new colonists were exempted from all military service, except what might be necessary in their own defence, and always from contributions other than those necessary for the support of their local institutions. Many of the regulations in the municipal charters had reference to

<sup>1</sup> Masdeu, *España Árabe*, lib 11 Sempère, *Histoire des Cortès*, chap 7 —10, et *Considerations sur les Causes*, &c, tom 1 Aguirre, *Collectio Maxima Conciliorum omnium Hispaniæ*, tom iv (*Concilium Legionense*, &c) See, also, a generally just, though not very comprehensive article, on the subject, in the forty third number of the *Edinburgh Review*, p 64, &c

<sup>2</sup> It is certain, however, that some towns had no governor, no constituted authority, beyond their municipal officers, whom they obeyed in war or peace. No doubt they hired the service of the neighbouring caballeros, if they had none located among themselves.

the increase of the population, and consequently to the strength of the place. The means dictated for this purpose were sometimes sufficiently reprehensible, as when any community held out encouragement, not only to debtors, but criminals, to escape from justice and resort thither. Now, Alfonso VIII, in his charter to Cuenza, grants commission to every man—Christian, Moor, or Jew, free or enslaved—to take up his abode in that colony, guaranteeing to him perfect security, and a full exemption from every penalty which he might previously have incurred<sup>1</sup>. With the same view, great privileges and exemptions were made in favour of the married who had children, and celibacy was not merely stigmatised, but punished. Thus, in the fuero of Placentia, it was provided, that whoever abode there eight months without wife or children, should not have the common right of suing another at the law, though any one might sue him. Hence, too, it was, that *barraganas*, or concubines, of whom mention will be made when we come to the code of the Partidas, were tolerated<sup>2</sup>. These fueros were devised with jealous care to preserve the inhabitants from feudal domination. No baron, or noble, could settle in a community, unless he abandoned his birthright, and enrolled himself among the citizens, and consequently assumed the obligation of obedience to the local fuero, just like the plebeians. No citizen could be punished, or his property seized, without a previous sentence, according to his fuero. If the king issued an ordinance contrary to the privileges guaranteed in the charter,

<sup>1</sup> Omnibus etiam populatoribus hanc privilegiam concedo quod quicumque ad Concham venerit populari cujuscunque sit conditionis, id est, sive Christianus, sive Morus, sive Judæus, sive liber, sive servus, veniet securè, et non respondeat pro inimicitia, vel debito, aut fidejussurâ, vel herentiâ vel majordomiâ, vel merindatico neque pro alia causa quamcumque fecerit antequam Concha caperetur, et si ille qui inimicus fuerit antequam Concha caperetur, Conchæ venerit populari, et ibi inimicum suum invenient, det uterque fidejussores de salvo ad forum Conchæ ut sint in pace.

<sup>2</sup> A reviewer says that they were *encouraged*. This is not correct, at least, it wants proof. Neither is it true to say, that the children of such connections could succeed with their legitimate brothers and sisters. Still less is it true, "that illegitimacy was no reproach, or bar to advancement." The whole history of the Peninsula proves, that even kings could not advance their bastard children, until these children had been rendered legitimate.



summary vengeance could be inflicted on the agent who carried it into execution. And if a baron, or *rico-nombre*, violated, as he frequently did, the territory of any given community, the people could rise and kill him, without incurring any penalty, yet if any of themselves fell by his followers, the *fuero* compelled him to compound for it. But laws, however excellent, are a dead letter, unless there exist an extrinsic force to ensure their execution. We shall soon see, that, with all their safeguards against the tyranny of the great, the *poblaciones* had much to endure from them.<sup>1</sup>

It is exceedingly probable, that, besides the written or statute law, the *Wisigoths* and their successors, down to the 13th century, had their peculiar observances, which may be termed their common or unwritten law, and no less so, that this latter has left traces behind it in the numerous municipal charters enjoyed by the *poblaciones* of the country. Perhaps, too, this common law sometimes spoke when the written one was silent. These traditionary observances may, apparently, be discovered in the *Fuero Viejo de Castiella*, which is based on the particular charters granted by succeeding kings to the communities of that country. "Consisting of different usages, neither refined by the learning of the councils, nor restrained by the power of the kings, the *fueros* of Castile and Leon bear a nearer affinity to the jurisprudence of the Teutonic nations than the written codes. Nor must it be forgotten that the *Suevi*, who peopled Galicia, and great part of the country which constituted Old Castile, continued independent of the *Wisigoths*, till the usurper *Andeca* was subdued by *Leovigild* and it may be doubted whether such an incorporation of the two nations then took place as to deprive the *Suevi* of their ancient customs, and these, probably, became blended with the traditionary Gothic common law. No law or decree of council from which the *jus retractus* could arise is extant, but this mischievous restriction, so consonant to the Teutonic respect for real property, pre-

<sup>1</sup> The same authorities

vailed universally in Castile, and the right of the next heir was barred in the market place at Baeza, by nearly the same formalities as were employed in the shire court of Dronthem<sup>1</sup> This relation between the fueros and the traditionary customs, or common law, seems to acquire some confirmation from the fact, that though the prueba caldaria, or watery ordeal, is the only one mentioned in the Fuero Juzgo, other forms of compurgation existed from the 10th to the 13th centuries It has indeed been contended, and not without appearance of justice, that these superstitions were derived from a country to which a Spaniard ascribes every ill his nation has suffered,—from France, but as it is impossible to fix the period when such an innovation was effected, and still less to account for the facility with which such a custom was propagated from the heart of Gaul into the recesses of the Leonnese mountains,—at a time, too, when the only intercourse—and that not very frequent—between the two countries lay between Catalonia and the southern province of France, reason appears to decide for the native origin of the superstition Yet, on the other hand, as we find no mention in the Wisigothic code of any other form of compurgation than that of boiling water, we might infer, with equal appearance of reason, that no other form existed The subject is beset with difficulties, which, from the defective state of our information in regard to the ancient customs of Spain, cannot now be set at rest — We proceed to notice these forms of compurgation<sup>2</sup>

Of these “judgments of God,” as a blind superstition termed them, the most ancient used in Spain was probably the pena caldaria, or trial by boiling water, which was permitted by the Wisigothic code in grave cases, where the interests of the action amounted to 600 crowns That it continued to be used immediately after the restoration of the monarchy, may be presumed from some laws in the fuero of Leon, and from an ac-

<sup>1</sup> Edin Rev No lx: p 112

<sup>2</sup> Masdeu, España Árabe, lib 11. p 89

count of a remarkable case in which it was tried in the reign of Bermudo II. At that time there was a dispute between the clergy of Lugo, and the monks of Sobrado, in Galicia, with which of the two bodies rested the title to certain property. The case was brought to a trial many witnesses were examined on both sides, but the evidence was so unsatisfactory, that both parties agreed to decide the contention by the ordeal. The cathedral nominated the abbot Alonso, the monastery the presbyter Innocent, to make the trial. In presence of the bishop of Santiago, the latter, on the appointed day, bared his arm, and plunged it ten successive times into the boiling element, each time bringing up a stone or pebble to prove that he had touched the bottom. The arm was then bandaged, and, according to custom, sealed with the bishop's signet. On the fourth day the priest again appeared, in presence of the whole people, and when his arm was bared, it was sound as the other. In two different laws does the fuero of Leon speak of this ordeal, which it permits to be used by persons accused of homicide, theft, &c. The permission soon gave rise to abuse, when the sayones or alguazils could not discover the author of such crimes, yet knew that it had been committed by the inhabitant of some particular town, they compelled that town to nominate some one of their body to undergo the ordeal, and if even Heaven declared for the representative, they often mulcted the whole town as a composition for the penalty. To remedy the grievance, Alfonso VI, in 1072, commanded that the trial should thenceforth be used only in the cathedral of his court (Leon), and that in no case should the mulct be enforced after the ordeal had been successfully tried. This prohibition, however, had no permanent effect. long after his time we meet with innumerable instances, in which the pena caldaria was applied, and even sanctioned by the local fueros. — The proof by *defiance* was equally admitted, and is to be found for the first time written in the fueros of Leon. In the twentieth law of this charter, Alfonso permits

the citizens, even after conviction of homicide or treason, to clear themselves by oath, and by combat. In disputes among knights, it was also confirmed, as we shall hereafter perceive, by the code of the Partidas, and the same Alfonso, in the fuero of Sahagun, granted some years after that of Leon, permitted any inhabitant, accused of treason or homicide, to purge himself, first by his oath, and next by fighting with his accuser. If he was vanquished, he was to pay 200 crowns as compensation for the crime of which he was thus convicted. This sum was independent of 120 to be paid for the expenses of the field. Besides these proofs, there was that of burning iron, but the proof by *bread and cheese*, which was so common in France, and of which mention so frequently occurs in the capitularia of Charlemagne and Louis the Pious, was never used in the Peninsula.<sup>1</sup>

On the subject under discussion, we again borrow the words of the writer before quoted

“ After the recovery of Spain, ordeal, both by fire and water, was in frequent use. Pope Honorius had forbidden them, and the council of Leon, in 1288, repeated the prohibition of the holy see. In many towns, the fire and water ordeals were reckoned among the bad customs, or *fueros malos*, and exemptions from them were granted by the kings as marks of favour; yet in others such ordeals were considered as valuable privileges, and the rules for the trial were laid down in the charters with great minuteness. When the church no longer sanctioned this appeal to Providence, they defied its censures with heretical boldness. ‘ Let there be a chaplain to bless the pebbles and the water, although by Rome it has been prohibited that any clerk in orders should bless the pebbles or the burning iron, and if they cannot have a clerk, let the pebbles be blessed by the alcaldes, or by the merino, and if *they* will not give the blessing, let the fieles bless the pebbles, and fulfil the trial.’<sup>2</sup> If the blessing of a priest could not be had, it was thought by the men of San Juan de la Peña, that a layman’s benison,

<sup>1</sup> Aguirre, *Collectio Maxima Conciliorum omnium Hispaniæ*, tom iv Concilium Legionense, cap 19 et 40. Florcz et Risco, *España Sagrada*, tom xix *Judicium Petri Episcopi Compostellani* (apud eundem, tom xxxvi. p. 375). Baluzius, *Capitularia Regum Francorum*, passim. Masdeu, *España Arabe*, lib ii p. 90, &c.

<sup>2</sup> *Fueros of San Juan de la Peña*.

though of a quality somewhat inferior, would answer the purpose very nearly as well. An extract from the ritual is given by Berganza: it does not materially differ from the forms of consecration in use in France and England. Amongst many curious regulations, the charter of Sar Juan de la Peña provided, that if the alcalde and trusty men were in doubt whether the accused had been burnt or not, they were then to call in the assistance of two trusty blacksmiths, because these knew more about burns than any other men. The blacksmiths were sworn, and on their evidence the alcalde was to give judgment. In other places a blacksmith, who was probably considered as having too hard a hoof, was not allowed the privilege of the fire ordeal. Generally, the ordeal was merely the affirmation of disputed facts. In Leon, single women fathered their children by bearing the burning iron. 'If she is burnt, she is not to be believed, but if she escape, let her give the infant to the father.' According to the fueros of Oviedo, the ordeal was employed to assist presumptive or doubtful evidence. If a man suspected his neighbour of theft, and the neighbour was 'leal,'—a true man, who had never been convicted of this crime before,—and his good fame could be avouched by the council, then he cleared himself by his oath, but if he was not 'leal,' and this fact was proved by the council, then he was to purge himself by battle, or if he was faint-hearted, he might decline battle, and bear the iron."<sup>1</sup>

"Compurgation is directed, in express terms, in all the Teutonic laws, but it does not appear to have been admissible in trials conducted according to the forms of the Fuero Juzgo. When sufficient evidence was not produced, the oath of the defendant alone dismissed the plaintiff out of court, in a civil suit, or subjected the accuser to the severe punishment with which the law visited a calumnious charge. Yet afterwards this ordeal was widely spread as a fuero, both in civil and criminal trials. Though discountenanced by the legislature, it was retained in practice, and a forcible illustration is thus given of the stubbornness with which the Goths adhered to their usages and customs"—"As an ancient and general usage of Castile, the trial is sanctioned in the Fuero Viejo, as a local custom or by-law of the cities of Castile and Leon, and their dependencies, it was very frequently established, or rather *declared*, by the charters granted by their founders. Accompanied by many marked peculiarities of the Spanish character, and adapted to Spanish polity and habits, it nevertheless agrees wholly, in effect, with the customs so universally adopted by the other nations of cognate race, thus proving its antiquity in Spain by its

<sup>1</sup> Edm. Rev. No. lxi. p. 122.

conformity with those customs — its nationality, by its variations from them. Three thousand sueldos, according to the *Fuero Viejo*, were paid for dishonouring the palace of the king, or spoiling his cattle, and 500 sueldos was the price of the head of the *morino*, or the composition for scandalising him, and every man who wished to save himself from the payment of these mulcts was to defend himself by the oath of *twelve* men, 'for such was the usage of Castile in the old time' 'When accused of the death of another *fijo d'algo*, the suspected noble defended himself by the oath of eleven other *fijos d'algo*, himself the twelfth, and, as true knights, they were all sworn upon the Gospel book, with their spurs upon their heels' There were two insults only which gave a *duçña*<sup>1</sup>, or a squire, the right of complaining that a *fijo d'algo* had scandalised them,—*viz* a blow or wound, or the robbery of their mules or garments. Within three days, the party so injured by a *cautiff* knight was obliged to complain of the offence, and to disclose the injury to the *fijos d'algo* of the town, to the *labradores*, and to the inmates of the *fijos d'algo*, if there were any, and to cause the town bell to be rung, saying, 'Such a one has thus dishonoured me' These formalities having been observed, the *fijo d'algo* was to answer the complaint. Reparation was made, if he confessed it, by forfeiting 500 sueldos — the price of his own head, but if he denied it, he was to clear himself by the oath of eleven other *fijos d'algo*, himself the twelfth. But a *labrador*, accused of injuring a *fijo d'algo*, was not admitted to defend himself by his peers, and he was unfairly compelled to serve with eleven *fijos d'algo*, himself the twelfth."<sup>2</sup>

"These customs are taken from the general code. In peculiar districts, compurgation was so much in vogue, that compurgatrices were allowed to female culprits. At Anguas, as well as in other towns, a woman charged with theft could defend herself by the oaths of a jury of twelve other women. More whimsical was the *fuero* of Cuença, which is passing strange, both for the spirit of the law, and the terms in which it is expressed. 'If perchance any husband suspected that his wife had planted horns on his head,' although he was not able to prove the fact by evidence, the wife was to justify herself by swearing with twelve *good wives* of the neighbourhood, and if they pronounced her to be pure, her husband was bound to be persuaded that she was so, maugre all the suggestions of the green-eyed monster. The jealousy of the Castilian required the unanimity of a jury of matrons, from whom his consort, if

<sup>1</sup> *Dueña*, in those days, signified the wife of a *rico-hombre*.

<sup>2</sup> *Edin Rev LXI* pp 123—125. These laws are extracted from the *Fuero Viejo*, lib i. tit. ii. c. 3, and tit. v. c. 9 12.]

either frail or fair, could scarcely hope to obtain an acquittal <sup>1</sup> This is a curious variation from the Gothic custom, by which the oaths of men alone were received in these delicate enquiries. In Jutland, for instance, the law of Hensburg required that a woman who was accused of adultery should justify herself by the oaths of twelve men of her husband's guild. At present, we can only recollect one instance of compurgation by females in the northern laws. Haco orders the *witch* to repel the charge of sorcery by the oath of sixteen women, but they were such as men *knew* to be good queans, so that these jurywomen must have been often exposed to pre-emptory challenges. The customs of San Sebastian, in Guipuscoa, allowed of an odd kind of proceeding, resembling the assessment of damages by the verdict of a jury. The ravisher was to pay the price of virginity, or he was to marry the object of his ungovernable passion, which punishment, as the charter wisely observes, is fully equal to a fine. But if she who had been a maid was unworthy of becoming his wife, he was to provide her with such a husband as she might reasonably have expected to obtain previous to her mishap, 'according to the estimation of the alcalde, and of twelve good men of San Sebastian.' This, however, was rather a decision by twelve chevins, than an ordeal, but it demonstrates their adherence to the ancient custom of appealing to the judgment of twelve men" <sup>2</sup>

"We have seen the cases in which compurgation was allowed by the Fuero Viejo of Castile. How far the general custom was received in the chartered towns, is a question which we are not prepared to discuss, but in many of them the ordeal received a more extended application. The fullest directions concerning it are contained in the charter of Molina. Don Manrique de Lara incorporated the town of Molina, the seignory of the noble house of Lara, in the year 1152. His charter may be quoted as the most valuable record concerning the ancient municipal jurisprudence of Castile which has yet been published, as it displays the entire constitution and government of a Castilian town. At Molina, the mode of compurgation was singularly, and, we think, judiciously, varied with the nature of the offence, and in no other ancient law which we have had an opportunity of consulting, is the principle upon which this trial proceeded more clearly enunciated. Fines, according to the old Gothic law, were exacted at Molina for wounds and maims. The accuser was to support his charge by *three* witnesses — 'vecinos,' or burghers of the town

<sup>1</sup> Indeed, she might very well hope it. The jurywomen would dread being in the same situation themselves, — many, probably, deserved it at the very time, — and would naturally lean to the side of mercy.

<sup>2</sup> Edin Rev LXI 125, 126

—if the offence was committed within its walls Two vecinos sufficed, if without, and, in default of full proof, the culprit either swore with twelve vecinos, or fought with the accuser, but the latter had the choice of the ordeal He who was riotous at the gate of the judge, or of the alcalde, or in the council chamber, or in the chamber of justice on Friday, when the court sat, forfeited 100 maravedis But the evidence of two alcaldes was required to convict him, and, if this was wanting, he 'swore with twelve,' and was discharged When a murder had been committed, if one of those engaged in the fray took the guilt upon his own head, saying, 'I killed him,' the others were to 'save themselves with twelve true burghers'—*los otros salvense con doce vecinos derechos* It might happen that none would confess the crime, and as all were then equally liable to suspicion, the relations of the dead man were at liberty to select any one as the murderer, just as they thought fit after which, the supposed murderer named eleven relations of the slain, and these, together with the accuser, swore to his being guilty, or not guilty Unanimity was required, and if one or two would not swear,—that is to say, if they could not agree with the majority,—each who was so dissentient 'swore with twelve,' that neither he, nor any one for his use, had received any bribe, then he was discharged But the defendant did not 'fall' by the withdrawing of his juror, and he was at liberty to name another This proceeding is remarkable a new aspect is given to the ordeal, by calling in the compurgators to swear with the accuser instead of the accused, and in this form it is, perhaps, more closely assimilated to a jury trial It may be observed, that a practice once prevailed in England of withdrawing the dissentient jurors, and replacing them by others, till an unanimous verdict was obtained The continuation of the law of Molina is obscure, and a part of the text seems to be lost If there were no relations, we think it appears that the accuser was supported by the oath of twelve burghers taken at large from the town The fraudulent substitution of a stranger was punished by the payment of the full weregild Though the charter of Molina is very minute, yet no provision is made for murder committed otherwise than in a quarrel among many This strongly indicates the prevalence of party feuds and family enmities When one man killed another, he must either have been judged by the Fuero Juzgo or the Fuero Viejo, or the regulations in the charter were followed as nearly as might be Battle might be demanded in many cases, but it was always in the power of the appellant, after he had so demanded it, to waive the proof by the body, and to require the appellee to 'swear with twelve,' or, as it may be said, to put himself



upon a jury Compurgation was gaining ground, and considered as better adapted for the furtherance of justice than the appeal to arms " 1

" Legal usages, such as the battle and fire ordeals, appear to place the middle ages at an immeasurable distance from us, and teach us to consider those who lived in them as beings alike ignorant and depraved, and with whom we are less in communion than with the savages of New Zealand We are not wholly estranged by their domestic habits, their sports, or their solemnities we are not inclined to shun the moated castle, nor do we rush away from the dais and the festive board Unwonted spectacles are no doubt exhibited there, yet not so wildly rude as to be repugnant to our nature We can imagine ourselves quaffing from the beaker of Hypocrias, or sipping piment and morat After a due course of starvation, it is not impossible but that we might have swallowed a mess of 'charlot gentyl', or even have made a meal of that royal dainty, a barbecued porpoise Knights jousting in the lists, or monks chanting in the choir, rise up before us like splendid visions, or holy dreams, and, forgetting the evils of feudality and popery, we contemplate the pageants with enthusiasm On a nearer view, indeed, their beauty fades, but the noble and the burgesse reeking in their coarseness, the soldier abusing his brutal strength, and the priest wallowing in the filth of superstition, are not so intolerable as the seeming profanation of the sacred name of Justice Accustomed to the patient and impartial trial of the culprit, we shudder at the superstitious ferocity which surrendered the victim to the ordeal of the fire, we execrate the barbarous law which compelled the accused to risk their lives in judicial contest, or we deplore the pious folly which bade the criminal go forth unpunished, when twelve good men had sworn to his innocence Were not these trials calculated for the oppression of the guiltless, and the protection of the evil-doer? Yet those who appealed to the chance of the field, or 'the judgments of God,' were not destitute of good sense and discernment, and they must have deceived themselves into a toleration of the inconveniences attendant on these proceedings Some allowance must be made for prevailing opinions Words exercise a strange witchery over the wisest of us all *We*, who are so well pleased with our own wisdom and humanity, do not hesitate to settle points of honour by the pistol, *they*, with equal willingness, decide points of law with club and target An age of good order and refinement, in which duelling is cherished by the 'unwritten usages' constituting the code of society, may, perhaps, excuse the age of

1 Edm. Rev *ubi supra*.

turbulence and ferocity, in which ordeal by battle was allowed to retain its place in the code of law. If our great-grandchildren advance as rapidly in the scale of civilisation as we have done, it is possible that they may learn to consider a meeting at Chalk Farm in the same light as we now view a battle before the judges of the kingdom of Jerusalem, but, in the meanwhile, let us do justice both to the twelfth century and to the nineteenth, by confessing that, in both, this apparently absurd appeal to arms has given that protection to the individual, which he could scarcely have obtained without it. Our courts of law will not grant us adequate redress for those injuries which inflict the keenest pain—not a farthing can be recovered against him who salutes us as rogues or liars, nor can the spotless virgin maintain an action against the foul-mouthed wretch who prefers a verbal charge of incontinence against her, 'unless any damage ensues which may be considered by the wisdom of the law as affording her a foundation for a *per quod*' But the half-drunken bully stops short in the middle of the words of affront, anticipating the unwelcome civility of the challenge, and the cool politeness of the *friend* who bears it. Rapine and lust, in like manner, might not be restrained by the tribunals of a feudal kingdom conniving at crimes, or fearing to punish them, but they must have often been checked by the salutary terrors of the solemn battle."<sup>1</sup>

"Sentiments which, if not praiseworthy, were at least excusable, dictated the ordeals of the ploughshare and the caldron, and required the assisting testimony of the compurgator. With a firm and lively faith, the omniscience of the Almighty was invoked by judges who distrusted the wisdom of man, but, though distrusting his wisdom, they confided in his faith, and therefore they hesitated to doubt the truth of his appeal to his Creator. By degrees the mistaken piety which tempted Providence, and required the Author of the universe to subvert the laws of nature, yielded to a rational reliance on those faculties which his goodness has bestowed upon us. Another mode of trial, however, remained,—ordeal by compurgation,—which, though less awful, seems, according to our ideas of judicial investigation, to afford room for equal, if not for greater abuses. We may conjecture how the criminal would labour to evade the 'judgment of God.' He granted his broad lands to holy church, in purchase of the favour of the priests, and his hand was anointed with juices and medicaments of wondrous potency, and, during the lengthened recitation of the prayer and the psalm, the intense radiance of the probationary iron became dimmed into an obscurer glow yet, even then, sufficient

<sup>1</sup> Edin Rev No lxi.

danger still accompanied the fiery proof to render it appalling. But he who might wage his law was declared guiltless of the imputed crime, or discharged from the fulfilment of the obligation by an easier trial. An oath confirmed his own denial of the charge. Friends or relations, whom he himself had named, declared their belief in the truth of his denial. They too, indeed, were bound by oath, but the free judgment of the compurgators might be fettered by the ties of blood or fellowship, or the irresistible force of self-interest would conquer their conscientious scruples, and audacity and perjury, without doubt, often succeeded in gaining many a triumph over good faith and justice." <sup>1</sup>

"Great defects were inseparable from trial by compurgation, but they were in some measure compensated by its advantages. People who were insensible to the nicer or conventional delicacies of reputation were taught to defer to public opinion, whose influence is more beneficial to society in checking the commission of bad deeds, than in stimulating to the performance of great ones. An inestimable value was given to unblemished character. To those who were of fair fame and good repute, trial by compurgation afforded an efficient protection against calumny and malice, but to them alone. Notwithstanding the influence of relationship and clanship, or of more tempting and degrading motives, the gentleman or the citizen, if his deeds had borne a questionable shape, would have some difficulty in persuading twelve, or twenty-four, or thirty-six good men and true, to become forsworn in his defence. Perhaps the *very* powerful and the *very* rich may have assembled their compurgators with greater ease, but no additional impunity was thereby given to those great fiends, who, in all states of society, contrive to escape the cobweb meshes of the law, than they would have possessed had compurgation been denied to them. The heart of the widowed one was faint when the king's companion stood in the great hall of the king's palace, before the table of marble stone, surrounded by his meinscy of willing believers in his innocence. Did she cry aloud for vengeance on their perjuries? Alas! arguments such as convinced them that the tale of woe was false, would have been equally irresistible, if addressed to the haughty seneschal, or the high-born justiciar, wrapped in the robe of scarlet and ermine bestowed upon him by royal favour. Was the right hand of each baron uplifted towards heaven, whilst he repeated the solemn oath which screened the noble miscreant from his deserved punishment? If sentence had been passed, these same hands would have drawn the sword with equal readiness to defend

<sup>1</sup> Edin. Rev. No. LXI.

him Consistency was not to be expected before jurisprudence settled into a regular system Sometimes the original principle of compurgation may have been forgotten, but it should always be remembered that, in their strict and primitive form, these oaths of delivery were never allowed, but when the plea of the defendant was opposed to the unauthenticated claim of the demandant, or to an arraignment supported only by presumptive evidence, or the naked oath of the accuser Oath then counterbalanced oath, and the compurgators turned the scale " 1

" We have dilated on the subject of the compurgative ordeal, because we consider it as the basis upon which our criminal jurisprudence has been erected The Goths and the Saxons alike endeavoured to lay the foundation of the sanctuary of justice each followed a simple and artificial plan But whilst ours has arisen into a proud and majestic structure, theirs has mouldered into ruin Spain whilst it constituted the Gothic monarchy, and Leon and Castile until the full admission of the Partidas, enjoyed a system of laws, which, although they cannot be identified with the laws and customs of the Anglo-Saxons, were yet accordant with them, both in the general bearing and in many of the details Let it be, however, remarked, that the Castilian labrador was compelled to resort to the oaths of his superiors, but our Alfred commanded the Saxon landholder to justify himself with eleven of his even thanes and one king's thane alone, and the humblest Saxon freeman could always claim a jury of his equals Notwithstanding the absence of this generous spirit of the Saxon law, compurgation seems to have been more favourable in Castile than the ordeals of fire or battle This is evinced by the charter of Molina It may appear improper to draw conclusions respecting the general customs of a kingdom from the by-laws of one chartered town, but don Manrique would select such usages as were common amongst the Castilians, whom he sought to draw together as settlers in his colony, and he would confirm to them such privileges as were most prized Nor, because the Fuero Viejo only directs the 'oaths of twelve' in two or three peculiar cases, must we infer that it was excluded in all others When our law books define a felony, it is not necessary to add that a jury is to be impanelled to determine it The student is presumed to be acquainted with the general course of trial " 2

The same reason which induced the reviewer to dilate on the subject of the compurgative ordeal has influenced

<sup>1</sup> Edin Rev No lxi

<sup>2</sup> Ibid. No lxi. pp 126—131

us to follow his example. Until we perused the preceding paragraphs, that subject never struck us in so forcible a manner, nor do we know that it has ever struck others—certainly none of the peninsular historians. For this reason, and not to rob him of his fair praise, we have preferred giving his own words at length. In some cases, however, we conceive the principle between the Gothic and Spanish system has been carried too far, and doubtful analogy been somewhat violently converted into a positive rule. With such limited information as we possess relative to the ancient local charters of Spain—most of them now mouldering in the dust of the national libraries, and not likely to be ever disturbed—we can be led only by hypothesis. A comprehensive view of the analogy between the forms of compurgation in criminal cases between the Teutonic and Spanish people, during the middle ages, would be an interesting subject for a separate work. But such an enquiry could be pursued only in Spain,—for no where else could the necessary authorities be found,—and it would require years of intense application. It can, in fact, be expected only from some learned Spanish civilian, at the express instance of the Spanish monarch, whose authority alone could open the numerous archives of the kingdom. Unfortunately, hitherto Spain has produced no such prodigies of legal erudition as Heineccius. Indeed, the learned of that nation have hitherto considered the subject of legislation as below their notice, although they have given us minute accounts of provincial councils, convoked, perhaps, for no other purpose than to determine some insignificant point of discipline.

Though the benefits enjoyed through the local fueros were unquestionably great, and were designed to be still greater, the system was not without its inconveniences. The attachment of the people to these charters weakened the action of the general laws, and introduced into each separate jurisdiction a spirit of locality by no means

favourable to a genuine and enlightened patriotism. Each regarded itself as an independent republic, jealous of its privileges, however inconsistent with the general weal, and fiercely resolved to defend them. The provisions of the Fuero Juzgo began, in the thirteenth century, to be found impracticable. Society was become more military, more feudal, more licentious. Restrictions which could scarcely have been borne by human nature under any circumstances were not likely to be obligatory on such a people. A code less impracticable in its requisitions, and uniform in its application,—one that would unite the different communities into one great brotherhood,—was wanting. San Fernando perceived the defects of the existing system, and he was the more eager to remedy them, as he could not but perceive that, so long as these local predilections were fostered, his views of a universal monarchy must be impeded, and the royal authority could never be established. So great, however, were the obstacles opposed to the formation of a general code, so averse were the minds of men to any change, so eager were the nobles to preserve their domination and the communities their privileges, that he had not the courage, perhaps not the ability, seriously to attempt the salutary change. But if he left the law untouched, he rectified their administration. He suppressed the counts or governors of the provinces, whose powers were almost sovereign, and substituted for them the adelantados mayores, whom he more immediately subjected to the throne. He also, as before observed, caused the Fuero Juzgo to be translated into Castilian, and though he could not force its observance on the places which enjoyed the fueros, he could at least impose it on the new conquests in Andalusia. Alfonso, the successor of Fernando, resolved to make the attempt. The Roman jurisprudence, which had so recently been discovered, and which was taught with such applause in the Italian universities, drew his admiration, both because its spirit was favourable to absolute monarchy,

and because it had been the code of a great people. His hopes of the imperial crown of Germany<sup>1</sup> roused him to the glory of becoming a legislator. His first care was to encourage the profession of the Roman jurisprudence in the university of Salamanca. There he created three chairs for the canon and civil law, and caused several manuals, all based on the new, or rather restored, doctrines, to be drawn up for the use of the students. How cautiously he proceeded in his great design will be clear from the fact, that his first compilation for actual use (1250) was the *Fuero Real*, which contained such parts of the local *fueros* as were favourable to royal authority, and into which he carefully interwove not a few of the monarchical axioms of the Justinian code. This compilation was first introduced into the tribunals of the court, where it soon became the only recognised authority, whether for causes in the first instance, or for appeals. Its obscurities were explained by subsequent ordinances, called *Leyes del Estilo*. It contained the elements of a code which he designed to be much more extensive and complete. But he could not, indeed he dared not, attempt to make its observance general. He granted it as a favour to several towns and communities, in the hope that others would also be induced to solicit it. In the mean time, the composition of his great work proceeded in Salamanca, the most learned professors of which were encouraged by the royal liberality, and by their own predilections, to labour diligently at their task. Their chief attention was directed to the *Codex*, *Pandects*, and *Institutes*, which they made the basis of the new compilation, but as the state of society in the Peninsula was, in many respects, different from that of the Roman world, they extracted from the body of the *fueros* such as were not inconsistent with their favourite dogmas. Their object, too, was to amend the canon no less than the civil law,—to banish, among other barbarisms, the

<sup>1</sup> See Vol. II p 184.

superstitious judgments of God—the savage ordeals that had so long prevailed,—and to extract from the compilation of Gratian, and the decrees of their own councils, whatever was consonant with reason After some years of labour, in 1258, appeared the celebrated result of their learning and diligence, by means of which Alfonso hoped to attain a celebrity equal to that enjoyed by the far-famed Justinian <sup>1</sup>

The Siete Partidas, so called from the seven parts into which it is divided,—a division founded on a celebrated preceding authority,—is the fourth, and by far the most comprehensive, code of Spain It is taken from the code of Justinian, the Wisigothic, the Fuero Viejo, the local fueros, as well as from the decretals, the canons of councils, nay, even the sayings of philosophers and saints It is a complete digest of Roman, feudal, and canon law, and arranged in something like order It is by far the most valuable monument of legislation, not merely of Spain, but of Europe, since the publication of the Roman code It is still the basis of Spanish common law, for though more recent compilations exist, they are chiefly founded on it, and cases which cannot be decided either by them or the local fueros must be decided by it We may observe, that if all the other codes were banished, Spain would still have a respectable body of jurisprudence, for we have the experience of an eminent advocate in the royal tribunal of appeal for asserting, that during an extensive practice of twenty-nine years, scarcely has a case occurred which could not be virtually or expressly decided by the code in question To give a complete analysis of it, in limits so circumscribed as ours, would be a vain attempt, but we must endeavour to impress the reader with a general idea of its spirit, especially with such of its provisions as exhibit the state of society in Leon and Castile during the middle ages Instead, however, of

<sup>1</sup> Perez, *Discurso Preliminar a los Leyes de las Siete Partidas*, cap 7 Ferreras, *Histoire Générale d'Espagne*, par Hermilly, tom iv p 237 Marina, Sempère, *Histoire des Cortès*, chap 10 et 11 *Considérations sur les Causes*, tom 1 chap 8, 9 and 10



examining it in the order in which it now appears, we will in general follow that of a celebrated editor, or rather abbreviator (Perez), who has arranged the subjects in such a manner as to establish a natural connection between them. We say *in general*, for on some occasions we prefer the original order. The preliminary observations respecting the design, nature, and obligations of laws, may be well omitted, since they contain nothing but what is to be found in other codes, in the writings of jurists, or in the dictation of common sense <sup>1</sup>

PERSONS — The obligations of man regard his duty to God, to himself, and to his neighbour. By the first he honours, fears, yet loves his Maker. The second involves the care of his soul, and of his body — of his soul, by cherishing a Christian faith, and by performing good works, of his body, by cherishing his life and health, by avoiding whatever could bring either into jeopardy. But if he loves and obeys God, he must also love his neighbour, since charity is of divine ordination, and is, in fact, the fulfilling of the law. This love constrains us to advise the ignorant, to succour the necessitous, to bear patiently with the weaknesses, and readily to pardon the injuries of others, and to benefit all by good example. Hence religion, in its general sense, is not only the foundation, but the sum and substance, of all duty, and consequently of all good law. In a more limited sense, it is confined to the *spiritual* intercourse between the soul and its Maker, and as such cannot be cognisable by human legislation, and as instinct, to say nothing of religion, inculcates the care of ourselves, that legislation regards only the third class of obligations, — those which must regulate our dealings with the rest of mankind <sup>2</sup>

The obligations of man towards others are determined by the relation in which he stands towards them,

<sup>1</sup> Perez, *Compendio del Derecho Civil y Comun de España*, tom 1. *Discurso Preliminar*

<sup>2</sup> *Las Siete Partidas*, part 11 tit 12. Perez, *Compendio del Derecho*, tom 1 lib 1. tit 2 and 3

and where the relation is the closest, the duty is the strongest. As *matrimony* is not only the nearest tie, but the first in the order of nature, since it precedes those of parents and children, the regulations which reason or human experience have sanctioned regarding it should occupy the first place. 1 It may be preceded by *espousals*, which are a promise of marriage, and which are binding, if contracted by qualified persons. The form was simple: the words, "I will take thee for my wife or husband," if repeated before witnesses, were valid, and the marriage was to be solemnised on arriving at a proper age, which was fourteen for the male, and twelve for the female, though the time might be prolonged by mutual consent. If the words are used in a *present* sense, as "I take thee for my wife," and by persons arrived at the canonical age, the contract becomes matrimony, and annuls any prior promise which had a future reference.<sup>1</sup> But if this promise of a future marriage be followed by the copula carnalis, it cannot be annulled by any subsequent contract. No parent can espouse his children without their consent, and if that consent be given before the age of seven, it may be recalled by either of the parties contracted. Conditions may, in some cases must, accompany espousals. Thus, if a man say, "I will marry thee, if thou wilt give me a certain sum of money," the marriage must be suspended until the condition be fulfilled, unless the present form of contract, or the copula carnalis, intervene: thus, also, none of the faithful can marry a heretic or an infidel, unless the other engage to embrace the true faith. Nuptial presents, called arras, are to be given as a pledge that the espousals shall be followed by marriage, and if either forfeit the engagement, the arras or donation remains in the power of the other. Either party can take the religious state without the consent of the other, provided the copula carnalis have not taken place: if it

<sup>1</sup> This distinction between *sponsalia de presente et de futuro* was unknown to the Justinian code, and was first broached by the canon law (Heineccius, v. 384.)

have, the consent is indispensable, but the one remaining in the world must observe the vow of chastity. Where no canonical impediment exists, the contract is irrevocably binding, for though, in some instances, a separation may be permitted, *ab mensa et thoro*, the *vinculum matrimonii* cannot be destroyed. The *debitum conjugale* is obligatory on both, and must be paid at the request of either.<sup>1</sup> The impediments are numerous. Besides the forbidden degrees, whether of consanguinity or of affinity, where he who marries one person believes her to be another, and where the freeman marries with a slave whom he believes to be free, both are *impedimenta dirimentia*, unless the one who has reason to complain confirm the engagement, or by the *copula carnalis* madness, *frigor vel impotentia naturæ*, holy orders, minority, &c, are in the same predicament. And the married man, who commits adultery, cannot, on the death of his wife, marry the partner of his guilt if he have hastened her death by ill usage, or if the parties have espoused. One slave may marry another without the consent of either owner, and neither can be separated, on the contrary, the master of the one shall be compelled to purchase the other, or the church shall purchase both, that they may live united, and fulfil the obligation of the state, and if a freeman marry a slave with the owner's consent, from that moment the slave is enfranchised. The rights of the owner, in other respects, are paramount to those of the state, for if the *debitum conjugale* be required by one of them at the moment the owner requires the services of either, its payment must be deferred. No matrimony can be clandestine, *viz* without witnesses, nor can it take place without the knowledge of the parents, or, in their default, of the nearest relatives. Whoever marries a woman without their consent shall become their slave.<sup>2</sup>

<sup>1</sup> But if the *copula carnalis* be effected through *concupiscentia carnis*, it is *peccatum veniale*, and *peccatum mortale*, if stimulants are administered.

<sup>2</sup> Alonso el Sabio, *Las Siete Partidas*, part iv tit 1, 2, 3, 4, 5, 6, 7, 8 11. Perez, *Compendio del Derecho*, lib 1 tit 4—12. Compare *Codex Legis*

It may be here proper to observe, that through the licentiousness of the age, a commerce between the two sexes was sometimes permitted without marriage. Thus, any single man, not in holy orders, could take a concubine, or barragana, provided she were free like himself, and the issue of such connection could succeed. On the marriage of the man, the connection was at an end, or the children born afterwards were spurious, and both parties subject to the penalties of adultery <sup>1</sup>

The next link in the social chain is that which connects children with their parents. *Legitimate* are not only those which are born in lawful wedlock, but those which spring from a free concubine, or barragana, and even from a slave, if he afterwards married, and thereby enfranchised her. A father can, at any time, render legitimate a natural son, if he have no legitimate ones, and this son can succeed him without dispute, or he can be made so by the secular prince. And though natural sons cannot take holy orders, the pope can remove the impediment, can declare them legitimate, and elevate them to the highest ecclesiastical dignities, just as the prince in temporal can elevate them to the civil. Adopted children are also legitimate, and could succeed like those born in lawful wedlock. The *patria potestas*, or paternal authority, is founded in nature, but it does not extend over illegitimate children. A father, in danger of dying with hunger, may sell or pledge his son, nay, if besieged in a castle, and in danger of surrendering through want of strength to defend it, he may eat the child. The *potestas*, however, is destroyed when the father commits a capital offence, when he contracts an incestuous marriage, or when the son is invested with certain dignities, such as councillor of the royal court, *corregidor*, *adelantado*, also by excessive cruelty, by

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Wisigothorum, lib iii tit 1 et 2, and Codex Just. De Sponsalibus et De Nuptiis. The canon laws differ *toto cato* on this subject, from those of ancient Rome.

<sup>1</sup> Part iv tit 14, or lib ix tit 5, of Perez Alfonso here follows the Roman laws *De Concubinis*. He is sure to follow these laws, with or without reason, whether they can consort with modern society or not.

an encouragement to daughters to prostitute themselves, or by an act of renunciation on the part of the father in other cases the authority remains during life, and to such an extent, that he can enjoy the usufruct of whatever the son acquires, except the *peculium castrense*, or what the latter receives in the camp or court of the king. The power possessed by the man who finds and rears an exposed child, or foundling, is nearly equal, and no less enduring that foundling can never prosecute his benefactor in any grave offence, or if he do, let him die<sup>1</sup>

Next in degree to the paternal authority, is that of masters over their slaves. Slavery is to be found in the *partidas* as well as the *Wisigothic code*, but in a more subdued form, and with greater facilities for enfranchisement. Slaves were of many classes, those who were born in the state, those who were taken captive in war, and those who were condemned judicially. The offspring of a free man and a slave was of the servile condition, and so was that of any ecclesiastic who married a free woman. No señor could kill his slave, unless the latter were found in copula carnali with his wife or daughter, and if he starved the slave, the latter was rescued from his dominion, and sold to some other master. Whatever the slave gained became the property of the señor. No Jew or Moor could possess a Christian slave. Enfranchisement was often voluntary, it was sometimes compulsory. If the slave denounced a grave criminal, and substantiated the charge, or avenged the death of his master, he became free. If the señor prostituted his female slave, she became free. If the slave entered into holy orders with the master's knowledge, he became free, if without it, he might be demanded within the first year of his subdiaconate, and if more than a year had elapsed, he was compelled to furnish his late owner with a substitute. After enfranchisement the *liberto* and his chil-

<sup>1</sup> *Las Siete Partidas*, part. iv tit. 13—20. Perez, *Compendio del Derecho*, lib. i tit. 14—20. Compare these laws with those *De Patriâ Potestate et De Naturalibus*

dren were bound to honour, and in every possible way to assist, their late owners' ingratitude re-subjected him to the servile state, and where he died without immediate heirs, his substance devolved to the patron<sup>1</sup>

The relation between parents and children, and their reciprocal duties, being thus explained, the next enquiry would regard the laws of testaments, inheritance, executors, guardians, &c. But as these subjects, like the similar titles in the Wisigothic, are extracted from the Justinian code, and seldom differ from them, they need not be noticed in this compendium<sup>2</sup>

The duties of man towards his natural connection having been defined, the next consideration regards those that are owing to the government under which he lives, and to the community of which he is a member. And here, from the careful minuteness with which the former class of duties are defined, we may perceive how anxious the royal legislator was to support the interests of monarchy, and even its divine right: how jealously he regarded the prerogative of the nobles, and how great a progress ultra-montane notions had made among the jurists of the Peninsula, especially among the professors of Salamanca. Subjects are enjoined to love, honour, and obey their king, to defend him in his life, his substance, fame, and family, to speak always well of him, to believe nothing to his disadvantage, to interpret every thing he does in a charitable spirit, to regard him, in fact, as God's vicar on earth, who cannot do wrong, or who, at least, is subject to no earthly tribunal. Crimes against him, his dignity, family, or household, were punished with far greater severity than all others. Thus, such as quarrelled within three miles of the royal person, and wounded each other, lost their hands, besides being amenable to

<sup>1</sup> Las Siete Partidas, part iv tit 21 and 22, et part ii tit 29. Perez, Compendio del Derecho, lib 1 tit 21 et 22. Many of these laws are the same as those of the Wisigoths, and in some cases, both are taken from the Justinian code, as may be seen by comparing with *De Manumissionibus, et De Libertis eorumque Iberis*.

<sup>2</sup> Las Siete Partidas, part iv tit 1—19. Perez, Compendio, lib 1 tit 23—46. Compare with Codex Legis Wisigothorum, lib iv tit 2, and with Codex Just. *De Testamentis, &c* necnon. *De Hæredibus, &c*

the ordinary penalty. If one officer of the household slew another, he was, if a grandee, exiled, if an inferior servant, buried alive with the corpse of the deceased. The noble who plundered any one proceeding to the court was banished, the plebeian was put to death. In short, the *partidas* are filled with maxims in favour of absolutism, and to their influence is chiefly owing the extraordinary powers and privileges which have long been possessed by the monarchs of Spain<sup>1</sup>.

The duties of man towards the community of which he is a member are defined with more justice. His first care must be to choose such a wife, and at such a period, that the offspring may be healthy and vigorous, his next must be to rear and educate his children in such a manner that they may have both the will and the power to benefit society, he must encourage the cultivation of the ground, and every useful branch of industry, he must assist in the common defence of the *poblacion* or community to which he belongs. And here it may be proper to explain what is meant by the words community, society, or *poblacion*. No *poblacion* or colony in the waste lands, rescued from the infidels, could be framed without the royal permission, and for these *cartas pueblas* a considerable sum was paid to the royal chancery. The places thus colonised had the name of *aldea*, *lugar*, *arrabal*, *pago*, *villa*, or *cuidad*, according to the tenor of the *carta puebla*, or *privilegio de poblacion*, which assigned the boundaries of the new settlement, and a common portion of land with wood and water sufficient for the consumption of the people. *Aldea* signifies a community of many families beyond the walls of a city, *arrabal* means that portion of a city which, though outside the walls, is joined with a city, *lugar* signifies either a village or a town, *pago* comprises several *aldeas*, or the particular district of a city, but with a separate municipality, a *villa* contains many more families than an *aldea*, and

<sup>1</sup> *Las Siete Partidas*, part II tit. 13, 14, 15, 16, 17, 18, 19. Perez, Compendio, lib. I. tit. 47—52.

is sometimes equal to a city All the poblacions, in virtue of their original charters, signify a community, and in the language of civil law are so many *universitates*, each containing within itself jurisdiction, honour, territory, district, &c It must, however, be observed, that a lugar is not always invested with these privileges, but may sometimes be dependent in its municipal government on some city, villa, or pago. A *ciudad* means a community surrounded by walls, possessed of an independent jurisdiction, either by royal grant or immemorial custom Each of these poblacions or communities has its municipal council elected by the people, and consisting of *alcaldes*, *regidores*, &c, with *alguacils*, *escribanos*, and other subordinate officers In the *sala de consejo*, or council-chamber, a general meeting of the inhabitants is sometimes convoked to deliberate on affairs which concern all In these halls, local regulations are enacted for the government and welfare of the community, but these must afterwards be ratified by royal authority Each community is generally subdivided into corporations, according to the business or craft, and each corporation has its peculiar constitution and privileges, in which no stranger would be permitted to participate In all the price alike of labour and of provisions is regulated <sup>1</sup>

2 THINGS — From the relation and duties of *persons* the natural progression is into the dominion and acquisition of THINGS *Dominion* is the power of doing what we will with our own, in conformity with the dictates of justice and right reason.<sup>2</sup> It is three-fold, 1 In the authority of the supreme magistrate to administer justice, and to punish evil doers, 2 In the free use or disposal of what is properly our own, 3 In the power which one possesses over certain revenues or returns, in which he has either an interest

<sup>1</sup> Las Siete Partidas, passim Perez, Compendio, lib 1 tit. 52—60

<sup>2</sup> *Dominium est jus in re corporali, ex quo facultas de eam disponendi, eamque vindicandi, nascitur, nisi vel lex, vel conventio, vel testatoris voluntas obstat* (*Heineccius, Elementa Juris Civilis secundum Ordinem Institutionem*, lib 11 tit 1 § 385) This is a more accurate definition.



during life, or for a specified period. On these bases rest the legitimate enjoyment of all property, and the endless distinctions between *mine* and *thine*, which, when pushed into their remote ramifications, sometimes occasion great troubles in society. Of things, some are common, others particular, some belong to all animals, others to all men, some belong to all of the same community, others to individuals only of that community, and some which belong to nobody. Thus the air, the running waters, the sea and its shores, are common to all animals<sup>1</sup>, and on these shores any creature may build and acquire dominion over the creation, provided it do not interfere with the common advantage: thus treasures found on the beach belong to him who finds them<sup>2</sup>: thus rivers and highways may be used by all of the same nation, but no one can impede the course of the one, or obstruct the other: thus, though each individual of a community has a right to the enjoyment of certain possessions common to the rest,—to the gardens, for instance, belonging to any particular city,—the members of that body, corporate or politic, have no dominion over the things of an individual, and thus, lastly, no dominion can be assumed either by communities or individuals over sacred things. From these propositions, it is evident that the fowls of the air, the wild beasts of unclaimed forests, and the fishes of rivers and seas, belong to him who can take them, but, as his right is founded only on his successful activity, the moment they escape from his hands, his dominion is lost, and any one is as free as himself to retake them<sup>3</sup>. In individual cases, as where an artificer

<sup>1</sup> *Communis ergo ex his principis sunt aer, aqua profuens, mare, et littora maris* (Instit. § 326)

<sup>2</sup> *De Acquirendo Rerum Dominio*, (Instit. § 350) *necnon Pondetæ*, vi § 166. *Quæ nullius sunt, cedant occupanti*

<sup>3</sup> *Venatio est occupatio ferarum bestiarum et quæ nullius sunt* (Inst. § 345) *Illud singulare est, quod feræ, simul in custodiam nostram evaserunt, nostræ non maneat* (Ibid. § 347) Vide *Pandect* vi § 170, 171. If the *feræ* are on the ground of any one, for that period he is the *dominus*, not, however, of the *feræ*, but of the soil, and may prohibit us from pursuing them. (*Pandect* vi. § 170) What a heap of absurdities are our game laws!

works a piece of wood or ore into an utensil, the dominion is conjoint in the one instance it is natural, being vested in the owner of the material, in the other, it is acquired by the industry or skill. In commerce, the dominion is acquired by the tradition or delivery of the article sold, but always on the condition, that the price be at the same time delivered to the seller, otherwise the dominion by natural right belongs to him and not to the buyer<sup>1</sup>. By natural right, too, he who finds a lost treasure in a public way acquires dominion over it, if in a heritage, it belongs to the owner of that heritage. And if a man of sound mind, neither convicted nor accused of any misdemeanour, should abandon his property, with the intention of never requiring it, it would, by the same rule of right, belong to the first occupant<sup>2</sup>. Possession is the just retention of a thing: it is natural when we have actually the object in our hands, it is civil when we retain it with a legal title: thus, the possession of a purse is a natural, that of an estate a civil act. Hence, the acquisition of things must be two-fold also, first, when the object is delivered by the owner into my hands, secondly, when from its bulk it cannot be thus delivered, but the legal possessor may invest me with it by a written instrument, and if the object be a warehouse of merchandise, the tradition may be effected by that of the key. When the transaction is a sale, if the buyer seize it with the consent of the seller, or the representative of one seize with the consent of the representative of the other,—the powers of both, however, being duly verified,—the possession is equally valid. But possession does not always imply dominion. the conductor or carrier of merchandise has the one, but not the other, for this possession is not in his own name, but in that of the owner. It is evident, that no natural, civil, and consequently valid tradition, can take place,

<sup>1</sup> This right would make strange havoc with the artificial, unnatural laws of commerce, which is founded on so palpable a fiction. Civil law, however, is compelled to recognise this fiction,—to accept the *fidem emptoris*, instead of the *pretium solutum* (Inst. § 384)

<sup>2</sup> *Quamvis et res pro derelictis habitæ, occupanti cedant, &c.* (Inst. § 351)

except where the intention of the one is to deliver, that of the other to receive, for in the intention exists the virtue of the act. He, therefore, who obtains possession of a thing without my knowledge or consent, is subject to the penalties of theft<sup>1</sup>

The dominion and acquisition of things being thus established, the next enquiry regards *contracts*, or the transactions by which men transfer those things from one to another, and the conditions by which the contracts are accompanied. This interchange of commodities arises from the nature of society: man has perpetual need of the aid of man, if one have a superfluity of some things, he is in want of others, and as the superfluity to him is a necessary to another, the advantage of both has suggested an exchange, and he who has no natural superfluity may yet bring his industry or skill in exchange for tangible commodities. But the relation and wants of society have undergone so great a change, commerce especially has introduced such a revolution into the course of human transactions, that the simplicity of ancient intercourse no longer exists. The most simple of all contracts is *the loan*, by which, not the dominion but the use of a given thing is transferred for a given time. It may, indeed, be contended, that where the article lent is one of necessary and speedy consumption, as bread or wine, or of circulation, as gold, the dominion is transferred with the use, but in this case the transaction ceases to be a loan, it is in fact an exchange<sup>2</sup>. He who lends must have the full dominion over the thing lent: hence a son cannot lend what is his father's, but the father may lend the son's, except in regard to the *peculium castrense*, as until a

<sup>1</sup> Las Siete Partidas, part. iii. tit. 28, 29, 30, 31, 32. Perez, Compendio, lib. ii. tit. 1, 2, 3, 4, 5. We need not remind the learned reader, that all the preceding axiomata or deductions are founded on, or are identical with, those of the Institutes (*De Acquirendo Rerum Dominio*, § 331—384). We omit the dominion obtained by war, as complicated and irrelevant.

<sup>2</sup> It must not be supposed, that in this analysis we slavishly follow the order of reasoning, much less the words, of the Partidas. We take the propositions and the cases, as they appear best calculated to throw light on the general spirit of the code, and sometimes we draw conclusions which are not expressed, but are virtually included in the original.

certain age the son, and whatever the son may possess, belong to the father much more strongly is this true in regard to the owner and the slave. If, however, the father or owner be privy to and sanction the loan, it is, in fact, made by him, that is, by his representative. If the thing lent sustain damage, that damage in reason must be repaired by the borrower, but, in some cases, due regard must be paid to *accidental* damage, and such as is the result of *inadequate care*. If I borrow a horse, and, through want of skill, it is injured, I am clearly responsible, but if it be scathed by the lightning of heaven no responsibility exists, and the loss is the owner's. If the thing be lost in a conflagration or a flood, or by the falling of a house, the owner can claim no compensation, unless any one of those calamities were hastened or aggravated by some culpability in the borrower. The same rules will generally apply to simple *deposits* or *pledges*, the dominion of the thing remaining with the pledger, not with the depository. In *donations* the dominion is transferred with the thing; but every owner cannot make donations. For instance, a father cannot give to one son, when he holds in *patriâ potestate* what ought to be divided among several. *Buying* and *selling* is another form of contract, and equally subject to the regulation of justice. A father and a son in *patriâ potestate* cannot sell to each other, because they are recognised as one. Dominion is as necessary to the vendor as to the lender or giver, and even it does not invariably imply the power to sell. No man who follows natural justice can sell what must injure the buyer, whether in body or in principle, and no man can lawfully sell to the natural enemy what he hears will be turned to the prejudice of his country. No true citizen can sell that which must injure the community to which he belongs, or any individual of that community. If the quality of a thing be warranted, and the thing is defective, the sale is void, unless, indeed, the quality has been deteriorated since its tradition into the hands of the purchaser. *Exchanges* are but

another species of sale, and subject to the same rules. *Promises*, or obligations to pay, or do something stipulated by one party, are often used in contracts. Thus, the seller sometimes receives not the equivalent at the time of tradition, but the promise that the equivalent shall be produced at a given period. By the artificial state of society,—a state which can only tend to the embarrassment and ultimate ruin of the community,—the dominion of a thing thus delivered on faith passed to the creditor. The practice is contrary to reason, to natural right, and to national prosperity. If the contract be not fulfilled at the time appointed, the seller has, indeed, his remedy. Sometimes *bail* or security is given for the punctual payment of a debt, or the discharge of an obligation, and if the principal in the contract neglect or be unable to fulfil it, the responsibility devolves on the guaranties. But this expedient confounds the innocent with the guilty, or, at most, the imprudent with the unfortunate, and thereby extends the sphere of human suffering. The necessary qualifications in a surety are ability and residence in a given place. If, through the disappointments of life, the debtor cannot fulfil his contract, he may make a legal cession of his property (over which he has dominion) to be sold for the common benefit of the creditors. And when this cession is made, he cannot be molested by them, until he arrive at better fortune. If he refuse to make the cession, he may be imprisoned, and if while thus confined he waste the substance, he forfeits his liberty.<sup>1</sup>

The relations and duties of man, the dominion and possession of things, and the obligations of contracts being defined and recognised, our next consideration

<sup>1</sup> Las Siete Partidas, part v tit 1—15. Perez, Compendio, lib iv tit 1—25. Compare with Inst lib v, de Obligationibus, &c.

It would be well if legislators near home would study this part of the code of Alonso el Sabio. The Romans and Visigoths were worse: they reduced the unfortunate debtor to slavery. See Codex Legis Visigothorum, lib v tit 6 et Pandect, pars iii lib xviii tit 5 de Lege Commissoria necnon, tit. iv de Hereditat. vel Actione venditâ. As the dominion of the thing remains with the seller, whom the buyer must pay (Pandect iii 281), the latter becomes a criminal (De Verborum obligationibus).

regards the penalties involved in usurping the rights of others, or in failing to fulfil the conditions of our own compact. As human nature is prone to self-advantage, the doctrine of crimes and punishments must occupy a conspicuous portion of every code. *Treason* against the king, or against the community of which we are members, is the first and greatest of crimes, since its effect, if not design, is to injure a whole people: no less a penalty than death and confiscation of his substance can be awarded against the delinquent. But in the midst of justice pity must be remembered: the wife of the guilty shall retain her dowry, the debts contracted prior to the crime shall be discharged, and though the sons must be dishonoured, and declared incapable of holding any public office or dignity, the daughters are excepted, and may inherit the fourth portions of the mother's property. Knightly treason—the treason of one noble or hidalgo towards another—must be preceded by challenge, and substantiated by victory. No challenge or defiance can be made without the consent of the king, who must first exhort the complainant to a composition, and allow three days for the purpose. If a good understanding cannot be restored, the accused is cited before the king, when the complainant exposes the cause of the treason, demands a fair field, and vows to prove the truth of the accusation on the body of the accused. If the lie direct be returned by the accused, the king may yet prolong the term in the hope of an accommodation; and if the accused die before the day of combat, both he and his lineage are exempt from the disgrace. He did all that could be expected from him, he denied the truth of the charge, and it is presumed, that had his life been spared he would have disproved it by his arms. If the accused do not appear when the lists are opened, a relation, or friend, or vassal, or superior, may answer for him, and demand a prolongation of thirty days, and even when the thirty are expired, nine more may be added. If the challenged do not appear at the termination of the period, he is declared guilty of the

treason, and even his sponsor is banished the realm. No churchman is allowed, no woman is able, to appear in the lists, but either may appear by their champion or representative, and if either of the parties die, the next in consanguinity can take up the dispute. After the challenge is once publicly made, no compromise can be effected between the accuser and the accused without the express licence of the king, and if the challenger be unable to prove his charge, he shall be made to own himself a liar, or be banished for ever, and in either case declared incapable of entering the lists thenceforward with any true knight. Hence a defiance is a judicial proof the choice alike of the field and arms rests with the king, whose commissioners must see that the advantages are equal,—must appoint the stations and barriers from what points the attack is to be made, and how the sun is to be divided between the combatants<sup>1</sup>. If the challenged be stronger, more powerful and muscular in body than the challenger, he may, if he pleases, employ another to fight for him, and the substitute must be equal in size, strength, valour, and lineage to the other, but the challenger cannot provide a substitute, unless with the consent of his antagonist. The combatant who leaves, or is driven from the field, is held vanquished, but if his flight be the fault of his horse, he may return to the contest either with or without it. If the challenger falls, the accused is absolved; if the latter die without confessing, he is no less absolved, though no blame can be attached to the accuser. If the contest be not decided the first day, both parties shall be conducted from the field, served during the night with equal care, and the following morning reconducted to the lists. If, on the eve of the third day, the accused be not vanquished, he is declared absolved, and the challenger a liar<sup>2</sup>.

<sup>1</sup> That is, the sun must not shine in the face of the one more than of the other.

<sup>2</sup> Las Siete Partidas, part vii. tit. 2, 3. and 4. Perez, Compendio, lib v tit. 1—3

To some crimes, as well as misfortunes, society has affixed the brand of *infamy*. Thus the illegitimate son, the one cursed in his father's will, the man publicly chastised by the judge, or who has been compelled to make restitution for theft, the woman taken in adultery, or who re-marries within the first year of her widowhood, the father who within the same period marries his widowed daughter, and the spouse who receives her, the bawd, the sodomite, the buffoon, the strolling singer, the mountebank, he who fights with beasts for money, the soldier expelled from the army, the usurer, the man guilty of perjury, and all criminals convicted of the graver offences. Where fame is once lost, it can never be regained, but if the sentence of infamy be reversed by the king, or by a tribunal of appeal, the reputation, and the consequent eligibility of offices of dignity or honour is restored. He who accuses another falsely, and thereby renders him infamous, shall suffer the punishment which the other must have suffered had the accusation been proved. The laws respecting *falsehood* may be comprised in the same category. The notary who forges an instrument, the witness who withholds one, the advocate for one party who betrays his client to the other, the judge guilty of deliberate injustice; the witness who deposes falsely, and the instigator to the false deposition, the plebeian who assumes the arms of a cavalier, the layman who gives himself out for an ecclesiastic, and celebrates mass, the artificer who mixes false with genuine ores, and the medical vendor or practitioner who adulterates his medicines; the counter of money, and the maker of false seals, &c. are liable to banishment, in some cases to death, and to the loss of their property. He who sells with false weights and measures shall be banished to some island, during the king's pleasure<sup>1</sup>.

Among the crimes to which the degrees of punishment should be lawfully proportioned is *homicide*, ac-

<sup>1</sup> Las Siete Partidas, part vii tit 6 and 7 Perez, Compendio, lib iv, tit. 5 and 6. See, also, Ad Sen Cons Turpilhanum, &c



ording as it is unjustifiable, justifiable, or casual He who kills another deliberately is punishable with death, except in some cases Thus, if a man discover another forcing, or attempting to force, his wife or daughter, he may kill him *at the moment of detection*, and with equal justice may any one kill the midnight thief who has broken into his house, or who is consuming his property by fire, so may the soldier kill the deserter who is passing over to the enemy He who is accidentally the death of another incurs no punishment, but witnesses (*bonos homes*) must swear that there was no enmity between him and the deceased If the death arose through the carelessness of the homicide, he must be banished to an island during five years The same penalty is decreed against the physician or surgeon, who, through want of skill, sends a freeman prematurely to the grave, if the sufferer be a slave, the price must be paid to the owner The apothecary who knowingly mixes up poisons with his drugs, or teaches others to do so, shall be put to death, as well as the buyer, even if the poison be not effective if it be, he shall be torn to pieces by wild beasts The pregnant woman who takes drugs to procure abortion, shall, if the fœtus be alive, suffer death, if not quickened, five years' banishment to some island, and the same punishment shall visit the husband if he administer the potion, or by kicks or blows produce the same effect If the master so chastise the scholar that death follow, he shall be banished to some island <sup>1</sup> He who puts arms into the hands of a madman, or a drunkard, or a passionate man, shall be held guilty of homicide The man who kills his father, grandfather, or great-grandfather, his son, grandson, or great-grandson, the woman who kills her husband, the brother, the sister, the uncle, the nephew, or *vice versâ*, let him or her be first publicly whipt,

<sup>1</sup> Had the number of criminals been great, where could the learned Alfonso have found his *islands*? The Romans had islands enough, and the penalty appears reasonable in their jurisprudence In following the letter, the authors of the *Partidas* have often neglected the spirit, of the Justinian code.

then tied in a leathern sack, with a cock, a dog, a viper, and a monkey, and all thrown into the sea. He who castrates another is guilty of homicide<sup>1</sup>

Insults, calumnies, terms of reproach, libels, &c are punished according to the magnitude of the offence, and generally at the discretion of the judge, or of bonos homes, who may estimate the damage<sup>2</sup>

Violence, open robberies, and theft, are in the next class of offences. The officers of the royal revenues, who resolutely collect more than their due, the creditor who seizes the substance of his debtor by force, the judge who prevents a suitor from appealing against his decision, are equally guilty with him who robs on the highway, and may be banished. He who burns the harvest, or house, or orchard, of another, shall also be burnt. Where theft was not accompanied by violence, the restoration of the article with its value threefold, or in doubtful cases twofold, was the usual punishment, and the same was inflicted on all who were privy to the crime, but both were deservedly held infamous. Where violence was added, the punishment varied from stripes to banishment, and even death, and where the theft was of flocks or herds the penalty was capital. The hidalgo who stole the child of a freeman was condemned for ever to labour in fetters in the royal works; if the criminal were of inferior rank, he suffered death, if a slave, he was torn to pieces by wild beasts. Injuries, damage, &c by man or beast, were to be compensated, as well as thefts, generally according to the estimation of the judge, or of bonos homes, very similar to the provisions on the same subject in the Visigothic code<sup>3</sup>

<sup>1</sup> Las Siete Partidas, part vii tit 8. Perez, Compendio, lib iv tit 7 l 1—13. Confer also Ad Legem Corneliam, De Sicariis, &c. The last named punishment is taken from the Lex Pompeia. *Pœna antiquitas constituta parricidis erat, ut virgis sanguineis cæsi, colleoque insuti cum cane, gallo gallinaceo, vipera, et simia, vel in vicinum mare, vel in amnem projicerentur.* (Pand vii § 21.) Why could not Alfonso have promulgated the Visigothic law on this subject?

<sup>2</sup> The same authorities. See, also, Ad S C Turpilianum.

<sup>3</sup> Las Siete Partidas, part vii tit 10 13 15. Perez, Compendio, lib iv tit 9—14. Many of the preceding laws are to be found in the Justinian code. See, also, the corresponding titles of the Fuero Juzgo, which are very similar with those De Furtis. (Pandectarum pars vii lib 47 tit 2.)

The laws respecting *adultery, fornication, rape, &c* are severe enough, though in some cases less so than those of the Wisigothic code. The adulterer (free) was put to death, the adulteress was publicly whipt, and confined to a monastery, with the loss of her arras and dowry. After two years, however, her husband could pardon her, and receive her into his house. If he died before the two years were expired, she was compelled to take the veil. If one of the parties were a slave, both were burnt alive. He who married a second wife during the life of his first was banished five years to some island<sup>1</sup>. The woman could not accuse her husband of the crime, but he could accuse her<sup>2</sup>,—a distinction that might do something towards compensating the disparity of the punishments. The term of accusation for the husband or father of the criminal extended to sixty days after divorce had been pronounced by the church, without the penalty of talion, but whoever afterwards became accuser was subject to that penalty<sup>3</sup>. If no divorce had been pronounced, and the accuser failed to establish the proof, even if he were the husband, he was sentenced to the same punishment as she must have received had the proof been clear. Another loop-hole for escape lay in the difficulty of proving whether one of the parties knew that the other was married, and if five years elapsed from the time of the act, no prosecution could be instituted. Slaves were admitted as witnesses against their owners, but not without torture, and were not suffered to return to them after the conclusion of the trial. The man who suspected his wife of adultery with another could cite him before the judge, and in the

<sup>1</sup> How comes bigamy, which involves a repetition of the offence, to be visited with less severity than one isolated act? See *Ad Legem Juliam*, (Pandect. vii § 187) where it is punishable with death.

<sup>2</sup> *Quam atque adulterium jure civili sit violatio tori alieni, (ad Legem Juliam, § 180) consequens est ut mulier maritum adulteri accusare non possit. (Ibid 181)*

<sup>3</sup> Where the punishment was so terrible, human pity must compel the accuser to dread the same in case he failed in his proof. The Julian law, which banished the offender to an island, with the confiscation of half his goods, (Pandect. vii 48 § 183) was severe enough. *Constantinus magnus primum pœnam gladii statuit (Ibid) Justinian changed the capital punishment, as far as the adulteress was concerned, into confinement in a monastery,*

presence of witnesses warn him three times never to speak with her again, and if he afterwards found them in conversation in a retired place, he could kill the suspected criminal, if he found them in the street, he could call witnesses and apprehend the man, if in the church, he could call on the priests to deliver him over to the secular arm. The very conversation was admitted as evidence of guilt. If he found his wife *in flagrante delicto*, he could kill the gallant, if her father so detected her, he was compelled to kill both or neither.<sup>1</sup> Incest was visited with the same punishment. If by seductive arts the crime were committed with a virgin, or a widow of reputation, or with a nun, the criminal, if distinguished in rank, lost half his substance, if mean, he was whipped and banished for five years, if a slave, he was burnt alive, but if the woman were not a nun, or a virgin, or a widow of honest fame, but mean in rank, he escaped without punishment.<sup>2</sup> If the crime were accomplished with the aid of violence, the victim, if a widow or virgin, could save his life by marrying him prior to the accusation, but his substance passed to her relatives, and as an inducement for her to prosecute instead of marrying him, it became her own on the conviction of the culprit.<sup>3</sup> If the victim were a nun, death only, and the confiscation of his substance to the monastery of which she was a member, could atone

<sup>1</sup> Eadem lex Julia patri et marito permisit adulteri interitu dolori suo parentare, sed ita ut marito occidere liceret adulterum vilioris conditionis, domi suæ vel alibi, si tridui denuntiatio intercesserit, non autem uxorem quam tamen statim dimittere tenetur patri autem et filiam, familias, domi suæ vel cujuscumque conditionis Pandectorum, vii § 184 (secundum Henneccium, tom v p 718) See Codex Legis Visigothorum, lib iii tit. 4

<sup>2</sup> Pœna stupratorum humilium erat corporis coercitio, honestiorum publicatio partis dimidiæ bonorum Ibid § 190 See, also, § 189

Adultery was punished with death by the Edictum Theodorici Regis, § 38 and 39 (apud Lindenbrogium, Codex Legum Antiquarum, p 258)

<sup>3</sup> The penalty in Edicto Theod. § 59 is less severe. A married man, if rich, who forced an *ingenuam*, paid one third of his substance to settle her in life: if poor, he suffered the capital penalty.

The Lex Burgundiorum (apud Lindenbrogium, p 280) is more lenient than either. Quicumque ingenuus ancillæ violentiam faciet et vis potuerit adprobare, inferat ei cujus ancilla est, sol xii (§ 30) But if a slave were the offender, death of course (Ibid § 35)

The Lex Salica, — and few things are more interesting than the comparison of different codes, — carefully graduates even immodest touches. If a man touched a woman's finger against her will, he paid 15 sol., if her arm, 30 if her bosom, 45.

for the crime Sodomy, and other crimes against nature, were also punished capitally Pimps and bawds are of various descriptions, such as kept houses of ill-fame, such as were employed on messages of seduction, those who prostituted their female slaves, those who prostituted their wives, and such as made their houses the scenes of such intercourse, in all cases for the lucre attending the prostitution, were punished according to the estimated comparative guilt The alcahuete, or pimp of common women, was banished from the city, and these with him, the man who lent his house for such a purpose lost both it and ten pounds of gold, he who prostituted his female slave lost her, if she were his female servant, he either furnished money to settle her in life, or in default he was put to death, he who prostituted wife, or daughter, or nun, or honest widow, could not escape the capital penalty <sup>1</sup>

<sup>1</sup> Las Siete Partidas, part vii tit 17, 18, 19, 20, 21, 22 Perez, Compendio, lib iv tit 16—21 Compare with Pandect, pars vii tit 5 Ad Legem Juliam de adulteris cœ r c n d i s, § 179—192

To what we have extracted in the preceding notes, we add the following curious provisions from the Lex Bajuvariorum, one of the strangest codes of the middle ages —

Siquiscum uxore alterius concuberit libera, componat hoc marito ejus cum suo *wei egeldo*, id est, 160 sol (tit vi § 4)

Et si in lecto calcaverit uno pœdæ, et prohibetur à muliere, et amplius nihil fecerit, cum 12 sol componat (§ 3)

Si quis propter libidinem manum injecerit, aut virgini seu uxori alterius, quod Bajuvi in *horgift* vocant, cum 6 sol componat (§ 3)

Si indumenta super genucula elevaverit, quod *hnutzorum* vocant, cum 12 sol componat (§ 4)

Si autem discriminalia ejecerit de capite, *wultwolf* dicunt, vel virgini libidinosos crimes de capite extraxerit, cum 12 sol componat (§ 5)

Si quis virginem rapuerit contra ipsius voluntatem et parentum ejus, cum 40 sol comp et alios, 40 cogatur in fisco (§ 8)

Si quis cum libera cum consensu ipsius fornicaverit, et nollet cum ea conjugio sociare, cum 12 sol componat (§ 8)

But, si *seivus* cum libera fornicaverit, et hoc repertum fuerit, ille cujus servus est, reddet illum parentibus ejus *ad pœnam quam meruit lucendam, vel ad interficiendum* (§ 9)

Si quis cum manumissa, quam *Frislaxin* vocat, et maritum habet, concuberit, cum 40 sol comp parentibus, vel domino, vel marito ejus (§ 10)

Si cum virgine manumissa, cum 8 sol comp (§ 11)

Si quis cum ancilla alterius maritata concuberit, cum 40 sol componat (§ 12) And the same if she were a virgin (§ 13)

The Lex Ripuariorum (apud Lindenbrogium) is more severe the mulct was 200 sol for the abduction of an ingenua by an ingenuus, (a priest, however, only paid half,) but the slave was punished with death (Lex Ripv § 34) If the copula carnalis only took place, without abduction, the mulct was 50 sol (§ 35)

The laws of the Frisians are not less remarkable the mulct varied from 4 soldi to 30, according to the condition of the female (Lex Frisionum, De Farlegani.)

The laws against *magicians, Jews, Moors, heretics, &c.* are of no less severity. Alfonso el Sabio was evidently a believer in "the black art," and part of the title on the subject is probably the fruit of his own wisdom. He does not prohibit astrology, or the art of foretelling future events from the aspects, positions, and influences of the heavenly bodies. This he calls a liberal art, which may be left to professors and the learned.<sup>1</sup> He rigorously forbids the use of waxen images, and of certain draughts to create love, condemns all soothsayers, diviners, &c. to death, with banishment against their supporters. Nevertheless, with an inconsistency common to the age, he does not prohibit, but rather declares worthy of reward, the arts by which unclean spirits are cast out of the body, by which the impotentia naturæ of married people is removed, and by which the thunder cloud is driven away, so that hail or storm may not injure the harvest. The *Jews* are commanded to lead a quiet, unostentatious life, never to praise their law before Christians, never to speak ill of Christ's, and, above all, never to crucify any child or any image in wax, in imitation of our Saviour's passion, all under pain of death and confiscation of property. Every Good Friday they were to remain shut up in their houses, and if they disobeyed the command, the Christians were allowed to treat them in any manner with impunity. They could not hold any office by which Christians would be subject to them, nor could they either possess a Christian slave, nor have carnal knowledge of a Christian woman, under pain of death, "because the Christian woman is the spouse of Christ," and they were compelled to wear some distinguishing mark, by which they might be known from the faithful. In other respects, they had some privileges.

<sup>1</sup> The laws of the Lombards are written in blood, like the Wisigothic, to which they bear a close analogy (Lex Longob lib 1 tit 31, 32).

By the Sicilian constitution, the adulterer lost his goods in favour of his heirs, the adulteress her nose (lib III tit 43).

The great diversity of punishments in different countries would give rise to some useful reflection, but we have no space for it.

they could build synagogues, and, from a prohibition against Christians making these places into stables, and disturbing the worship, we may infer that such outrages were not unfrequent. The Jew could not be cited before a tribunal on his own Sabbath, nor was he to be either forced or persuaded — which is a species of force — to turn Christian, but if he voluntarily turned, he was to be received, honoured, and defended against his vindictive former brethren. If a Christian embraced Judaism, death was his reward. Most of the same regulations applied to the *Moors*, or Saracens, and the same punishment denounced against all who embraced their faith. The Christian who did so, and who immediately repented, was held infamous, was declared incapable to inherit or to hold any office, or even to witness a contract. “a punishment,” it is rightly observed, “worse than death, — for a man to live among his like, yet be deprived of their honour and privileges.” Any one who apostatised could be accused after death, and his goods confiscated. The Saracen who had carnal knowledge of a Christian was stoned to death, and she, for the first offence, lost half her substance, for the second the whole, and her life at the same time. If the Christian delinquent were a married woman, she was delivered over for the first offence into her husband’s power, who could either keep her as his slave, or burn her alive. If she were a noted prostitute, she and her accomplice were whipped for the first offence, and executed for the second. The *Heretic* was not likely to be treated with much lenity. At first, indeed, if he obeyed the exhortation of the bishop or vicar, and returned to holy mother church, he was to be pardoned, on the condition, however, of a rigorous penance, and the loss of reputation. If he persisted, he was delivered over to the secular arm. If a preacher, he was burnt alive, if a hearer only, he was banished for ever, or confined until he repented. He who received a heretic into his house lost it, or, if it were not his own, he was compelled to pay a fine of ten pounds in gold to

the king, and if he had not the money, he was publicly scourged, and paraded through the streets, a herald proclaiming the cause of his punishment. No heretic could make a will, or inherit, or witness a contract, or depose in a court of justice. He who protected one was liable to severe penalties.<sup>1</sup>

The last class of penalties in the *Siete Partidas* regard *blasphemy*. The rich man or noble, who blasphemed God or the Virgin,—in some parts of the Peninsula one is held about equal to the other,—for the first offence was deprived of his fief during a year, for the second two years, for the third always. The knight was similarly punished, but if he had no fief or hereditary estate, he lost his arms and his horse, if he had not these, any thing he possessed, even to his wearing apparel he was, besides, dismissed the service of his señor, and the same penalty was decreed against any one who, within a year, gave him shelter. The citizen, or plebeian, for the first offence lost the fourth part of his substance, for the second offence the third portion, for the third offence the half, if he still persisted, he was banished. If he had no substance, for the first offence he received fifty stripes in public, for the second his lips were branded with the letter B, for the third he lost his tongue. The punishment for blaspheming any other saint than the Glorious, was half the above penalties. These denunciations regard mere words. For *acts* of insult towards the cross, the statues, shrines, or representations of our Lord and the Santissima, the penalty is greater. If any one struck them with a sword or knife, with his foot or with a stone, or spit upon them, he was visited for the first offence with the same penalty as if he had blasphemed the third time, or, if a poor man, he lost the offending hand. Jews or Moors guilty of the same crime were punished corporally, or by a pecuniary mulct, at the discretion of the judge.<sup>2</sup>

<sup>1</sup> *Las Siete Partidas*, part. vii. tit. 23—26. Perez, *Compendio*, lib. iv. tit. 22—25.

<sup>2</sup> *Las Siete Partidas*, part. vii. tit. 26—28. Perez, *Compendio*, lib. iv. tit. 25, 26.



From the consideration of crimes and punishments, the transition to that of the *judges and judgments*, by whom those crimes are proved and those punishments applied, is natural and easy. In the infancy of society, parents were the natural judges of their children, next the elders judged those of the same tribe, and as society advanced, the judicial power in each community was intrusted to one or more eminent for wisdom, and venerable for age. The royal authority is an imitation of the patriarchal, and though election has given way to hereditary succession, that authority remains the same. The *king* is the supreme judge and interpreter of the laws. Doubtful cases are submitted to him and his council, and decided by him, and appeals may be carried before him from all parts of his dominions. He, too, it is who has frequently to appoint, always to preside over, the judges, and to punish such as are corrupt or negligent. Next are the governors of provinces, of whom many enjoy the judicial prerogative by hereditary descent, and appoint subordinate magistrates. *Potestades* have no hereditary jurisdiction, but they are magistrates appointed by the king or his governors. (Those are now called *alcaldes*.) The *ordinary judges* are appointed by the king, or his lieutenants, the delegated or arbitrating judges as before explained<sup>1</sup>

The first person in a civil or criminal suit is the *actor* or *demandador*,—prosecutor or plaintiff. No son can sue his father, while in that father's power, except for the peculium castrense, or for cruelty or want of food, or extravagant waste of his inheritance. The son, who is no longer in patria potestate, may proceed for civil damage, but not in criminal actions, and the same may be said of the liberto and his patron. The brother cannot prosecute the brother in criminal affairs, except where his own life or soundness of limb is concerned, or where treason has been meditated against his feudal superior, or against the king. The husband cannot criminally pro-

<sup>1</sup> See page 68 of the present volume. Las Siete Partidas, part ii tit 1, &c. Perez Compendio, tom. iii lib vi.

secute the wife, except in case of adultery or treason, and the same prohibition is extended to slaves and servants. The slave could be no plaintiff in his own cause, but his owner might prosecute for him, since whatever damage he received was ultimately sustained rather by the former than by himself. The monk could appear in behalf of his monastery, and with the episcopal permission. The actor must be minute in setting forth the nature of his claim or complaint, must describe every particular of the thing claimed, or of the injury sustained, and when the defendant or criminal appears, he must identify him as well as the property respecting which he proceeds. No suits or trials could be instituted on the festivals of the church, or during harvest or the season of vintage, except in a few urgent cases specified by the laws. In fact, the ordinary course of justice was suspended during half the year. The actor should put forth his libellum or petition in writing, but if he cannot write, it may be taken down by the *escribano*. If he claim more than his due, though the due be awarded him, he shall be condemned in costs. The *demandado*, — the *defendant* in civil, a prisoner in criminal matters, — is the next person in a suit. He must answer the citation before the judge of his own district or place, but certain offences can only be tried in the court of the king's palace. If he deny the charge or claim, the onus probandi devolves on the actor. A *personero*, or an *advocate*, may conduct the case of either party, and he must be appointed by a written instrument, or chosen in presence of the judge. The office of the first was somewhat similar to an attorney, that of the second is sufficiently significant. It must, however, be observed, that the former was not of necessity a member of the legal profession, the latter always, or at least learned in the law of the country. The *escribano* draws up the instruments, deeds, contracts, &c, and registers them, and he it is who authorises suits. He is appointed by the king, or by those who have the power of nominating the judges in certain

governments, and he must always be bred to the law<sup>1</sup>

The forms of proceeding in the tribunals may occupy a passing notice The *citation*, or summons to appear, was served on the defendant by order of the judge, after proving the petition or libellum of the plaintiff The defendant was then examined, either by the plaintiff, or by the pursuers, but oaths were not administered to the two chief parties, except in the defect of evidence, to support or repel the accusation But we have other cases, as when the charge was serious, the judge could force the actor to swear that he was not actuated by malice in the prosecution, and that he would conduct it sincerely, and for the interests of justice The voluntary confession of the accused was admitted as judicial proof *Witnesses* were admitted where the interrogatory of the judge was followed by the negative of the accused, and were always examined on oath The qualifications for a witness were strictly sifted, — his moral character, his business or profession, his knowledge of the facts, and, above all, his position with regard to either of the parties, — whether he would be actuated by love, or fear, or hatred, or hope, and if any suspicion could arise against him, he could be challenged by the opposite party, in some cases without being compelled to assign a reason for the exception His evidence was taken down by the escribano, before the judge, whose duty it was to question him, always out of the hearing of the rest Two witnesses were sufficient to establish a fact Written instruments, properly witnessed, signed and sealed, were the next to judicial proof *Torture* might be applied to the accused, but only when the suspicion of guilt was strong, and by express command of the judge Minors, cavaliers, graduates in the laws or sciences, counsellors, pregnant women, &c could not be tortured It could also be applied to a witness who prevaricated in his evidence

<sup>1</sup> Las Siete Partidas, part 11 passim Perez, Compendio, tom III lib VI.

After the charge was made, the witnesses examined, and the instruments proved, the judge appointed a day for the parties to appear before him, and then he pronounced his sentence, which must generally be in writing, though in criminal cases it must also be accompanied by the words, *I condemn*, or *I absolve*. In civil suits, where the interests of the action were trifling, he might pronounce without writing. If he had any doubt as to the sentence he ought to give, he might consult with wise and good men, whether lawyers or not, and if they also doubted, he must transmit a copy of the process, with the reasons for the doubt, to the king, who either pronounced, or instructed him to pronounce, the sentence. The execution of the sentence delivered by an ordinary judge could be suspended by notice of appeal, but banditti, robbers on the highway, ravishers of virgins, false comers, traitors, &c. could not exercise the privilege. The appeal might either be carried to the next superior tribunal, or the intermediate ones passed over, and it might be carried at once before the king. If the sum involved in the civil suit fell below 500 maravedies, the king commanded the appeal to be laid before the ordinary judges of his court, if above that sum, before the superior judges. If 5000 and upwards, he judged the case himself, aided by his council. And even when the amount of the action was not 20 maravedies, if the appellant were a widow or an orphan, the king must hear it in person, or if he delegated it to another, an appeal might still lie from the decision of that delegate to himself. Where sentence was given by the king in person, or by his deputy (but not in cases of appeal), the defendant or prisoner might petition him to mitigate the severity of justice.<sup>1</sup>

The doctrines and discipline of the *Church* occupies a prominent place in the code of the *Partidas*, but as we shall devote a separate chapter to the religious state

<sup>1</sup> Las Siete Partidas, part iii tit 7—30 Perez, Compendio, lib viii tit 1—20 Compare with Pandect tit vii De Appellationibus

of Spain during the middle ages, we defer to that occasion all that we have to say on the subject

From the preceding partial abstract of this code, the reader will immediately perceive, what we have before observed, that its foundation rests on the Wisigothic; and that the superstructure is derived partly from the local fueros, chiefly from the Justinian code and the decretals. No code in use during the middle ages is to be compared with this for extent, for natural arrangement, for the spirit of justice generally pervading its provisions, or for knowledge. It is, in fact, a complete body of morality and religion, defining the duties of every citizen, from the highest to the lowest station, assigning the grounds of their duties, and deducing one obligation from another with great precision, and with some force of reasoning. By introducing into his code such portions of the canon law as abrogated the native and barbarous ordeal, he conferred a great benefit on humanity. How carefully its provisions are made to strengthen the royal authority must strike every observer, and though the design of humbling the barons is less apparent, and is cautiously put forth, it may be recognised. To effect this object two things were necessary,—the amplification of the privileges of the church and of the new poblaciones. From the beginning of his reign Alfonso had been advised by his father-in-law, don Jayme I of Aragon, to adopt this policy. The knights, said the experienced Aragonese, are more prone to revolt than the other two orders of the state. By means of the latter he was encouraged to check the former. The class at which this policy was aimed were not so dull as to overlook the fact, and they raised so great a clamour against the code, which they characterised as an unwarrantable innovation on native right and privilege, that Alfonso was compelled to see his elaborate statutes a dead letter. There can be no doubt that the complaint was to a certain extent founded in justice. The attempt to engraft a foreign jurisprudence on the native stock,—to adopt the subtle and complicated maxims of Justinian legislation to one

of exceeding simplicity, and of a character essentially different, — was certainly not a wise one. Indeed, the state of peninsular society would not admit of the violent innovation. The monarch, in his zeal for the subject, overlooked the fact, that laws must be adapted to man, not man to laws, that the latter inevitably assume their complexion from the former, and accommodate themselves with admirable flexibility to the dominant social influence. But peace be to his memory! he is not the only one who has violently, and therefore unsuccessfully, attempted to reconcile native with foreign usages. His labours, however, were not wholly lost, since Alfonso XI incorporated a portion of them into the Ordenamiento Real de las Leyes de Alcala, and at the same time sanctioned the authority of the rest, indirectly indeed, but not the less effectually. In his ordinance he directed, that in the first instance all suits, civil or criminal, should be decided by the Ordenamiento, when it was defective, by the fuero of the place where the notice was instituted, or by the Fuero Real, provided, however, that the local law contained nothing contrary to reason or religion, and that when both the Ordenamiento and the fueros were silent, — and no one knew better than Alfonso that they are often silent, — the decision must be determined by the code of the Partidas<sup>1</sup>

Before we take leave of the royal promoter, and, in some degree, perhaps, author of this code, we must add, that he laboured to improve the administration no less than the laws. He nominated twenty-four alcaldes, nine for Castile, eight for Leon, and seven for Estremadura. Eight of these magistrates were to be constantly with the court, and there to decide cases in the first instance. Commensurate with this tribunal was one of appeal, consisting of three judges, all well versed both in the general codes and in the municipal fueros. If these judges could not agree in their decision, the case was

<sup>1</sup> Perez, *Discurso Preliminar à las Leyes de las Siete Partidas*, p. cxiv

submitted to the alcaldes of the court, and if *they* could not reconcile the difference, to the king. Alfonso himself sometimes presided with the alcaldes three mornings in the week, not only to decide appeals, but to hear cases in the first instance. His example was rather promised to be followed, than actually followed, by his successors, but extraordinary judges, called *corregidores*, were often sent into the provinces, not only to survey, but, in many cases, to supersede, the ordinary judges. The arrival of these functionaries—intermeddlers, as they were called by the local authorities—was any thing but agreeable to the people, and petitions were frequently laid before the throne, requesting that this royal prerogative might not in future be exercised. To such petitions, however, little attention was paid indeed, they deserved little, for there can be no doubt that the surveillance of the *corregidores* was salutary, nor would their jurisdiction have been opposed, had they not been zealous in introducing the foreign legislature, and, consequently, hostile to the municipal fueros.<sup>1</sup>

Henceforward the subject of Spanish legislation will be best understood by discussing it in connection with another not less important,—that of *Popular Representation* in the cortes. The two from this place are so intimately united, that they cannot be dissevered without violence.

Much disputation has been exercised in regard to the origin of popular representation in Spain. Some refer it to the tenth, others to the thirteenth century. An instrument, published by Risco in the thirty-fourth volume of the *España Sagrada*, says, that don Ramiro III was elected king in 974, by the prelates, the nobles, and *the people* of Leon,—a statement which the editors of the Valencian edition of Mariana have converted into a proof that the cortes originated in that assembly. At the council of Jaca, in 1063, the people, we are told, opposed the decrees which were there read, giving thanks

<sup>1</sup> The Chronicle of Alfonso and Sempère, *Histoire des Cortès*. See, also, Vol. II. p. 270.

unto God and their prince for the restoration of holy church His son, Sancho I, in an assembly at Ubarte, is said to have been assisted by the people, rich and poor, men and women "From these instances," says a judicious writer, "it would appear that no doubt could reasonably be entertained of the presence of the people in the cortes during the tenth and eleventh centuries If, however, we reflect on the tenour of the instruments produced, we shall easily discover, that when the people are mentioned, they are introduced, not as a constituent part of the national representation, but as spectators,—as witnessing and approving whatever had been decreed without their advice, according to the use of the ancient Wisigothic councils"—"The acts of the council of Jaca clearly demonstrate the difference between the great and the people on this occasion We read in the introduction, that several points of discipline have been reformed *with the consent of the nobles and prelates*, but not one word is said about the sanction of the people Among the signatures we find only those of the king, the infantes, nine bishops, three abbots, three magnates they are, indeed, followed by a note, saying, that all the other *magnates* had subscribed the same acts, but there is no signature on the part of the people,—no note to show that any one had signed for them" We may add, that in the councils of Leon, Coyanza (now Valencia de Don Juan), Palencia, and Salamanca,—all held about these times,—not one word is said of the suffrages of the third estate Nay, even in that of Toledo, which was held in 1135, and which was by far the most imposing, since it was convoked for the purpose of acknowledging Alfonso VII as emperor, and was attended not only by the princes his vassals, whether Mohammedan or Christian, but by Louis I of France, then on a pilgrimage to Santiago, and by count Raymundo of Barcelona, though an innumerable multitude were present, the latter came only "to see, to hear, and to praise God"<sup>1</sup>

<sup>1</sup> Aguirre, *Collectio Maxima Conciliorum Omnium Hispaniæ*, tom. iv



The acquisition of the fueros, and the establishment of the confraternities, conferred extraordinary strength, and no slight degree of reputation, on the third estate, and opened a way for its entrance by deputies into the cortes. Whether this new and remarkable privilege was, in its origin, the voluntary or compulsory concession of the monarch, whether it was granted as a means of shaking aristocratic influence, or claimed as a right by a class now become too powerful to be denied, must remain a mystery, nor is it less impossible to decide the precise period when the deputies were first admitted to the privilege. We know that there were present at the cortes of Leon in 1188 "the deputies of towns chosen by lot," but we have no proof that this was the first time of their assembling, nor is it probable that the system of representation could have been so suddenly matured for the present occasion. In the acts of this assembly, however, we, for the first time, hear of deputies, and we are therefore compelled to assign to this period the origin of popular representation. That Castile was not behind Leon in adopting this novel institution appears from the convocation of the states at Burgos in the same year, when deputies were present from the following places — Toledo, Cuenza, Huete, Guadalaxara, Coca, Cuellar, Portillo, Pedraza, Hita, Salamanca, Uzeda, Buitrago, Madrid, Escalona, Maqueda, Talavera, Plasencia, Truxillo, Avila, Segovia, Arevalo, Sahagun, Cea, Fuente-dueña, Sepulveda, Ayllon, Maderuelo, San Estevan, Osmá, Corcena, Atienza, Sigüenza, Medina del Campo, Olmedo, Palencia, Logroño, Calahorra, Arnedo, Tordesillas, Simancas, Torrelobaton, Montealegre, Fuente Segura, Medinaceli, Berlanga, Almazan, Soria, and Valladolid. In perusing these names, one thing must strike the reader,—that some of them are simple boroughs

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Concilium Legionense, &c. Rodericus Toletanus, De Rebus Hispanicis, lib vii (apud Schottum, Hispania Illustrata, tom ii.) Lucas Tudensis, Chronicon Mundi, lib iv (apud eundem, tom ix.) Zurita, Anales de Aragon, tom 1 Sempère, Histoire des Cortès, &c cap. 7

and villages, while many respectable towns, and even cities, are omitted. This strongly favours the hypothesis, that the privilege of deputation was the concession of the king, granted, perhaps, for the same reason as the local *fueros*. Possibly, however, the privilege was either open to all, and, on account of the expense with which the deputation was attended, not embraced by some, or the places which were to send representatives to the present assembly were selected by lot. One thing alone is indisputable,—that the origin of popular representation in Leon and Castile must be assigned to the twelfth century, while in Germany and England it did not exist until a full half century afterwards<sup>1</sup>.

The institutions of a people can only be understood from their history, since they are the fruit of circumstances, and vary with every change. Sancho the Brave, the son of Alfonso, with the design of wresting the sceptre from the hands of his father<sup>2</sup>, was an adept at the common artifice of exaggerating existing wrongs, and at the no less common deception of redressing them. Knowing the extreme attachment of the people to their *fueros*, he wrote to the municipalities, whom he proposed to guarantee in the possession of their privileges, and he held out other allurements to the barons and prelates. By these means, he procured from the cortes of Valladolid, in 1281, his recognition as governor of the kingdom. He recalled the emigrants who had been exiled through the rebellion of his brother Fadrique<sup>3</sup>, and restored their possessions. His liberality did not stop here: he divided among the great the domains of the crown, and to no request or demand of the deputies could he give a refusal. His unthinking liberality, the effect, not of benevolence, but of the most sordid ambi-

<sup>1</sup> Authorities, Rodericus Toletanus, Lucas Tudensis, the Acts of the Cortes, Mondejar, *Memorias para a Historia de Alonso VII* cap. 56. Sem-père, *Histoire des Cortès*.

<sup>2</sup> See Vol. II p. 191, &c.

<sup>3</sup> *Ibid.* p. 190.

tion, was long fatal to the realm. According to an ancient Spanish law, the property of the crown was inalienable: the government of the provinces and towns was conferred only in fief, that is, for a limited period, under the condition of military service, and the judicial administration, and the funds assigned for these objects to each governor were distributed out to the inferior branches of local administration. On the death of the feudatory, the fief, with the disposal of the revenues, reverted to the crown, to be again confirmed, with whatever new stipulation the monarch might please to make. Sancho, in imitation of other European sovereigns, conferred a considerable number of fiefs, *jure hereditario*, making the governments perpetual and immovable, and thereby laying the foundation for the annihilation of the royal prerogatives. With the governments, the jurisdiction of each noble became also hereditary, so that each was virtually a sovereign, owing no more than a common allegiance to the head of the state, and recognising no duty beyond military service when the king was at war, and the transmission of certain revenues to the court. The third estate, which had always detested the seignorial jurisdiction, remonstrated by its deputies against these dangerous concessions. To allay the dissatisfaction, Sancho not only confirmed its rights and immunities, as contained in the *fueros*, the observance of which he sanctioned in the first instance as exclusive of other codes, but he authorised what the communities had long desired, the right of forming confraternities in their own defence. But the hypocrisy, no less than the perfidy of his character, was exhibited in its true colours after the death of his father. The throne was now his by inheritance: he had no longer need of bribes or promises, and though he could not revoke the grants which he made, he could at least render such as regarded the people useless by acts of violence, not only against the *fueros*, but the provisions of the general codes. And such was the fear inspired by his numerous

cruelties, that his tyranny was endured without open complaint <sup>1</sup>

On the death of Sancho I the troubles which threatened to attend the regency during the minority of his son Fernando IV presented the communions with an occasion for vindicating their privileges. In 1295, the deputies of thirty-two cities, towns, and villages<sup>2</sup>, assembled at Valladolid, and entered into a solemn confederation, the objects of which were to defend their rights, and to assist each other against the crown and the nobles. The acts of this confederation have descended to us. After agreeing on the customary duties payable to the crown, they bound themselves by the following obligations: that if their common privileges were invaded by kings, nobles, or royal magistrates, they would immediately assemble and arm, that if any judge delivered sentence not in accordance either with the spirit or the forms of the fuero of the place, the party prejudiced by the sentence should lay his case before the municipal council, which should not cease its activity until the obnoxious decision had been revoked, that if any noble or prelate seized by force the property of any individual, and refused to surrender it, the whole community, and, if necessary, the neighbouring ones, should rise, and destroy his house, lay waste his fields, and do him every possible injury, that if any individual was killed by a noble, the community should pursue and kill the offender, and destroy his domains, that the same punishment should await the judge, who, whether with or without the royal commands, should execute a communcro in any case not provided by the fueros, that all who applied on the part of the king for a contribution not included in the

<sup>1</sup> *Cronica del Rey Don Sancho el Quarto d'este Nombre*, cap 13, & *Sempèr*, *Histoire des Cortès*, cap 12

<sup>2</sup> Leon, Zamora, Salamanca, Oviedo, Astorga, Ciudad Rodrigo, Badajoz, Benevente, Marjorga, Mansilla, Abihs, Villapando, Valencia, Galisteo, Alba, Rueda, I neo, la puebla de Lefia, Ribadavia, Colunga, la Puebla de Grado, la Puebla de Cangas, Vivero, Riba de Sella, Vilver, Pravia, Valdeiras, Castro-nuevo, la Puebla de Lanes, Bayona, Betanzos, Lugo, la Puebla de Mabayon.

terms of the charter should be visited with the same fate, that approved deputies only should be returned to the cortes, that each of the thirty-two communes should send two deputies every two years, to meet about Pentecost, alternately at Leon and some other place, for the purpose of enforcing the observance of the above resolutions, that the communes which neglected to depute should be fined, and be considered perjured, that any individual of each commune who attempted to oppose the union should be seized in any place except the king's palace, and put to death, and that if one commune required the aid of the rest, that aid should be sent in five days at the latest, the troops demanded being compelled to march five leagues every day. In this and part of the following reign cortes were of perpetual recurrence, never were their meetings so frequent, or their influence so great. The desire of the government to frustrate the aspiring schemes of the Infantes de la Cerda, and their numerous adherents<sup>1</sup>, made the attachment of these assemblies indispensable. The disputes during the minority of Alfonso XI more than ever favoured the pretensions of the third estates. Each of the candidates for the regency<sup>2</sup> paid assiduous court to the municipal authorities, in the hope of obtaining the necessary suffrages. To secure their present rights, to guard against the disasters so general in these times of violence, when justice was disregarded, and brute force triumphant, and if possible to ensure tranquillity for the future, in 1315 the nobles and the deputies from a hundred communities agreed to form a confederation, and to act in concert. The provisions of this novel confederation will sufficiently show the alarming insecurity of the times, and the jealousy entertained towards each other by the different orders of the state. To restore the authority of the laws, it was there agreed that the co-regents should be constantly accompanied by a certain number of knights and citi-

<sup>1</sup> See Vol. II pp 197, 198.

<sup>2</sup> Ibid p 202.

zens, whose expenses were to be defrayed by the different towns, and whose great object should be the punishment of the lawless. To ensure its execution, the alcaldes of the various places constituting the league were to meet once or twice every year at Valladolid, Cuellar, Burgos, Leon, or Benevente, and each was to lay before the rest an account of the state of each commune, and what measures were judged necessary to diminish the existing abuses. In the cortes of Burgos, which were assembled during the same year, other demands were made by the deputies, and granted by the regent: they went to the effect that none of the crown lands should be alienated, that all the municipal towns and corporations should be maintained in the integrity of their charters, and contribute nothing beyond what was prescribed in them, that the administration of justice should be confided to no noble, unless he were a merino or adelantado mayor, that the collectors of public revenue should not be churchmen, or Jews, or rebels, but inhabitants of the place, and be men of supposed worth, and that the same should be observed with respect to the magistrates, that no noble or regent, not even the king, should seize provisions in any place without previous payment, that the magistrates of the court should be taken from the third estate, that the Jews should only receive by way of usury about thirty-three per cent, and that the debts due to them by Christians should be reduced one third<sup>1</sup>, that all debts should be obligatory, that no adelantado or merino should arrest or condemn any one to death unless he had been previously tried by the alcaldes, or unless they were accompanied by the royal judges, who should hear the cases, that on their circuits they should remain

<sup>1</sup> The Fuero of Cuenca shows the rapacity of this race. "Omnis pactio quæ facta fuerit inter Judæum et Christianum coram testibus sit valida, excepto pacto usuræ, quia usura nullatenus erescit nisi in *duplum* in capite anni. Et secundum hanc rationem exigat Judæus usuram unius mensis vel alterius temporis, tam breve quam longum, in quo pecuniam suam ederat ad usuram." — *Forum Conchense*, cap 23 § 19. One would think this must satisfy even a Jew.

only ten days in a place after the conclusion of their official duties, without paying for their provisions, that no *secret* proceedings should be instituted against any individual, that no man, however powerful, should take justice at his own hands, but lay his case before the ordinary tribunals, and if dissatisfied with the decision, appeal to the regents, that none of the great should possess permanent property in the communities, unless it were acquired by marriage, or held since the time of Alfonso X, and even such as was so held should be restored to the town for an equivalent, that the castles which favoured banditti should be seized with the guard, that no prelate or vicar-general should usurp the royal jurisdiction, nor interfere in any respect with temporal affairs, that no layman should be allowed to summon another layman before the ecclesiastical tribunals, under a heavy penalty, and that the royal domains, which had been alienated in favour of the religious orders, should be restored. These, and similar enactments, will give us a clearer idea of the state of the times than all the histories in the universe <sup>1</sup>

Whatever partial success might attend the measures of the confederation, it was temporary. During the minority of Alfonso XI disorders of the most revolting description abounded on every side. The barons and knights, says the chronicler Villasan, lived by open plunder, and seized on the lands of others with full impunity, for the regents would not punish them for fear of losing their support. The inhabitants of the towns were split into two parties, one favourable, the other hostile, to the regents, and such towns as were not under their immediate authority rose and seized the royal revenues. In the rural districts the peasants murdered their masters, and hastened to seek sanctuary in the fortified places. Travellers could not proceed unless in caravans, and well armed banditti were become

<sup>1</sup> Autos de las Cortes de Burgos, A. D. 1315. Villasan, Cronica del muy Esclarecido Principe y Rey Don Alfonso el Onzeno, passim. Scmpère, Histoire des Cortès, cap. 13.

so numerous, that they feared not to attack towns without fortifications, many of which had then become communities of robbers. In fact, there was no security anywhere for property or life: industry was suspended, famine inevitably followed, corpses lay unburied in the fields, and such as had the means emigrated into Portugal or Aragon. This was not all. Juan el Tuerto, and Juan Manuel, two princes of the royal family, troubled the state, the one in favour of a new candidate for royalty, Fernando de la Cerda, the other for his own ambition<sup>1</sup>. It was evident that the authority of the cortes was wholly useless for the restoration of tranquillity, that town was armed against town, and that nothing but the consolidation of the royal power could present any hope for the kingdom. So impressed were the people with this truth, that when the young Alfonso so dishonourably put to death the rebel Juan el Tuerto<sup>2</sup>, no dissatisfaction was expressed at the deed. The cities of Toro and Zamora were next punished, the rebel forces were every where dissipated, and by a mixture of clemency and vigour, peace was restored to the state. Thus the abilities of one man, sustained by the inborn reverence of the people towards the crown, did more in a few short months, than could ever have been effected by barons, clergy, or people. To strengthen still more the royal authority, to counteract the mischievous policy of Sancho the Brave, Alfonso laboured to introduce the ultramontane jurisprudence into the tribunals of Spain. He knew that its maxims were favourable to absolute monarchy, and he had the satisfaction to see that the professors in his universities were deeply imbued with its spirit, and that many of his people flocked to the schools of Bologna and Paris to acquire it in greater perfection. To the professors of this jurisprudence, Alfonso X had conceded the rank of nobles, his present successor secured them in their honours, nor did either endow a single chair for Spanish law. As the one had

<sup>1</sup> Vol II pp 202—205

<sup>2</sup> Ibid p 204



incorporated much of the Justinian code into the *Partidas*, so the other, knowing how disagreeable that code was to the bulk of the people, transferred many of its provisions into a new compilation—the Ordinance of *Alcala*—and authorised an appeal to the rest. He perceived, indeed, that to change the opinions of a nation was a mighty attempt, and he knew that his work would be slow. But if it was slow, it was sure, for his determination to select as royal judges, not merely in his court, but throughout the towns which owned his jurisdiction, none but such as had graduated in the new jurisprudence, and such as were, consequently, ignorant of every other code, was an infallible aid to his design. That design, through the opposition of his people, and the negligence of his successors, might indeed be impeded for a season, but it was sure ultimately to triumph. The collision between the Teutonic and Roman spirit now commenced, and ended not until the former was banished to its native north.<sup>1</sup>

The Spanish constitution is in an especial degree the work of accident. In all countries, indeed, institutions are the natural growth of time and circumstances, but in few is that growth so clearly marked as in the Peninsula. Pedro the Cruel was too busy in earning that enviable epithet, to trouble himself much about the two systems: yet he was an excellent justiciar, always ready to receive the complaints of his people, and to preside himself in the tribunal of his court. He granted no privilege to the cortes, which, during his reign, were a vain formality, called merely to supply his wants, and to register his decrees. But his brother Enrique pursued a different course. To strengthen his party, that worthless prince, like Sancho the Brave,—(usurpers are every where the same,)—lavished favours and promises

<sup>1</sup> Villasan, *Chronica del Rey Alfonso XI* cap 14, &c Sempère, *Histoire des Cortès*, ch 14 Marina, *Teoria de las Cortes*, tom 11

The last named author, throughout his eloquent work, is describing an ideal state: he represents the middle ages as abounding with patriots and sages, with men superior to humanity. The power of prejudice is inconceivable.

on all To no one, says the chronicler, did he refuse whatever was asked, and his liberalities were so excessive, that they were significantly called after his name Of this, no better illustration can be given than his reply, when the cortes, in 1367, immediately after the flight of Pedro<sup>1</sup>, demanded the admission of twelve deputies into the royal or privy council That council had hitherto consisted only of the hereditary nobles, who were members by birth, and of the prelates, who were so in virtue of their dignities sometimes, indeed, the kings had summoned individuals of inferior rank, if eminent for talents, to share in the deliberations, but this had always been a mark of especial favour, and an innovation in the established policy The new demand was in itself as unreasonable, as if a member of our parliament, merely in virtue of his representation, should insist on a seat in the privy council But Enrique had yet need of friends he replied, that the demand was just, and should be satisfied, but no sooner was his brother dead, than he showed little disposition to fulfil either it, or any other of the magnificent promises he had made When reminded by the cortes of Toro, in 1371, of his royal pledge, he replied, by creating the *audiencia real*, consisting of seven jurists, of whom three were bishops, and whom he admitted into his council This tribunal was to sit three days in the week, and from its decision there was to be no appeal He created also a new tribunal for the hearing of criminal causes, and of civil ones in the first instance it consisted of eight alcaides, chosen from different provinces of his dominions The towns were dissatisfied with this reply, and were not very favourable to the new tribunal, which, as it consisted exclusively of ultramontane jurists, was little disposed to respect their *fueros* They could not behold, without jealousy, the royal council filled only by the hereditary nobles, the prelates, and the new lawyers, but during the life of Enrique they could wring nothing from him.

<sup>1</sup> Vol. II p 227

In the reign of Juan I, however, after the unfortunate battle of Aljubarrota<sup>1</sup>, it was judged advisable to satisfy in some degree the popular clamour. In 1385, another new council was created, in which extensive powers were vested, and which, as it consisted of the three orders of the state, — four bishops, four knights, and four citizens, — was thought calculated to satisfy all classes. But extensive as were the powers in question, this council could not interfere with the jurisdiction of the *audiencia*, nor with the royal prerogative of appeal, and nomination of magistrates, &c, the old hereditary council continued, too, the same in form, though with inferior consideration. Two years afterwards, however, the new council was so amplified in its authority, that the old one was in fact replaced by it, it acquired the cognisance of every thing except the administration of justice — the assembly of the cortes, the construction, defence, and repairs of fortifications, the control of the finances, the direction of the national troops, the nomination of all civil and military dignities, the superintendence of the public tribunals, in fact, three fourths of the executive power, was subjected to it.<sup>2</sup>

This triumph of the municipal towns, though far beyond what in the preceding reigns they had ever hoped to acquire, was not sufficient. Faithful to their democratic spirit, they were not ashamed to solicit the dismissal of the *cavalleros* and bishops from the new council, the functions of which they sought to appropriate exclusively to themselves, and, indeed, they sometimes contrived to exclude the privileged orders from the cortes. But these orders were the natural advisers of the crown, and even in the cortes, though money might very well be voted, nothing important could be decided without their concurrence. We must add, that either prelates or barons could attend these

<sup>1</sup> Vol II p 237

<sup>2</sup> Pedro Lopez de Ayala, *Cronicas de los Reyes de Castilla* (in *Regnis Don Pedro, Enrique II et Juan I*) Marina, *Teoria de las Cortes*, tom II cap 25, &c Sempère, *Histoire des Cortès*, ch 16. The interminable Acts of the Cortes, in these reigns, have also been consulted

assemblies *by right*, not in virtue of a writ The new demand was rejected by Juan with indignant contempt In his last testament, however, after nominating six prelates and nobles as the guardians of his infant son, Enrique III, and consequently as co-regents, he declared that they should not decide in any important affair without the concurrence of six deputies, one from each of the cities,—Burgos, Toledo, Leon, Seville, Cordova, and Murcia <sup>1</sup> In that testament he also avowed, that if, as he had himself experienced, the advice of certain citizens was useful to kings, it must be more so to regents It was the policy of this monarch to balance one power by another, and thereby to neutralise both The resentment of mutual wrongs, and that desire for vengeance inseparable from a country where the individuals of each order regarded each other as hereditary enemies, required a firm hand to restrain them When each order, under the pretence of the general service, but in reality in the hope of revenge, solicited permission to confederate, he rigorously denied it If, he said, the administration of justice is so defective as you represent it,—if the apprehension of criminals be so difficult that you require the re-establishment of the confraternities to pursue them,—let the ordinance of my grandfather, Alfonso XI, be adopted By that ordinance, whenever homicide, or any other great crime, was committed on the highways, the tocsin was sounded in the nearest community, and an armed force despatched in pursuit of the delinquents <sup>2</sup>

The fourteenth century is the brightest period of municipal glory, and of the popular representation The cortes were frequent, and the subject of the deliberations of the most important nature But Spain had never a definite representation to no meeting of this period did all, or half, the great towns send deputies, and those which did return them appear to have observed little proportion in the numbers. There can be no doubt that

<sup>1</sup> Vol. II pp. 241, 242

<sup>2</sup> The same authorities.

two should have been returned from each, yet in the cortes of Madrid, held in 1390, we find that Burgos and Salamanca sent eight each, while the more important cities of Seville and Cordova sent only three, Cadiz only two, Oviedo and Badajoz one, Santiago, Orense, Mondoñedo, and other great cities of Galicia, sent none at all. In fact, only forty-eight places returned deputies to these cortes, and the number, at the most, was inconsiderable. Incidentally we learn that in the assemblies of this period the archbishop of Toledo spoke for the ecclesiastical state, and the chief of the house of Lara for the nobles. Some of the deputies contended for the precedence in voting, as well as for the comparative honour of the seats. This rivalry was more conspicuous between Burgos and Toledo, each of which might justly aspire to the dignity of a capital, until Alfonso XI found the means to appease it. "The deputies of Toledo," said the monarch, in the midst of the assembly, "will do whatever I order them, and, in their name, I say, let those of Burgos speak!" The same formula has been continued to modern times. The municipal corporations could boast of something more than the honour of returning deputies, an honour to which many of them were perfectly indifferent. Their condition was far superior to that of the seignorial towns, which, for the most part, groaned under the oppressions of the nobles. The picture drawn by Juan himself, in the cortes of Valladolid (1385), of the sufferings endured by the latter class of towns, is revolting. We there read that the hereditary governors impoverished the people by arbitrary imposts, that they imprisoned them, deprived them of food, and otherwise ill-treated them, until the poor victims were compelled to become sureties for the money borrowed from the Jews, that, not satisfied with violently seizing the substance of the people, the governors sold or pawned the ornaments, and even bells, of churches and hospitals. But this is not the worst. Spies were maintained, and encouraged falsely to accuse men of substance, who never escaped without severe mulcts;

and their widows or daughters were compelled to marry the creatures of the nobles. Hence, while the royal cities, — those which were immediately governed by the king's officers, and which, in virtue of their privileges, returned deputies to the cortes, and had generally their own municipal authorities, — increased alike in population and wealth, the others rapidly decayed. During the middle ages, we every where meet with the same tyranny on the part of the feudal barons, — the same haughty and rapacious behaviour to such of their vassals as were not exclusively military. Aristocratic violence had, indeed, two checks: the royal authority, which, even in the most despotic states, is exercised for the benefit of the humbler classes of society, and the influence of the church, which, in every country, has been beneficent. In general, however, the king was too distant or too elevated to hear the complaints of the serf, and the remonstrances of the church were not always sure to be obeyed. Hence the establishment of municipal corporations, — the escape of particular communities from the onerous and capricious despotism of the great feudatories, — was a blessing to humanity. Yet, while thus advocating the benefits of corporate institutions, we must not lose sight of the evils they occasionally produced. The privileges enjoyed by some of the towns, in virtue of their fueros, were inconsistent with the well-being of the community: many employed their armed force in the same career of violence as the barons, some openly refused to furnish contributions of any kind, and slew the revenue officers who came among them, others tortured or despoiled Jews and travellers, others, again, made war on each other, despoiling each other's territories, plundering and laying waste in every direction, and all were eager to storm the villages, massacre the adherents, and seize the substance of the barons. It is true, indeed, that they had frequent provocation for their hostilities, but when one class of society is permitted to arm in persecution of private wrongs, — when the laws are wholly disregarded, —

when complete disorganisation prevails, — men soon become tired of anarchy, and are glad to seek refuge even in despotism, provided it be the despotism of one man, whose arm shall weigh alike on noble and serf, on churchman and citizen <sup>1</sup>

The period which witnessed the glory of the cortes, and the consequent prosperity of the third estate, began also to witness its decline. We have seen how the last act of Juan I was to constitute six of their number as counsellors of regency, and though, as related in the proper place <sup>2</sup>, the testament was modified after his death, yet they were held in their former consideration during the minority of Enrique. But from the majority of this last named prince must be dated the period of their decline. It is difficult to say what cause so suddenly deprived them of their influence, unless, as we have long suspected, that influence depended rather on the concession of the monarch, than on any fixed constitutional principle. When Enrique, in the cortes of 1402, proposed war with the Moors, and demanded the necessary supplies, which he estimated at sixty millions of maravedis, the deputies granted only forty-five. Surprised at their parsimony, he made the extraordinary request that if the money should be found insufficient for the purpose, he might be allowed to raise the deficiency by loan, without the formality of another convocation. Some of the deputies, who seemed to have attained a clearer idea of their privileges and duties, objected to place so dangerous a power in the crown, but the greater number, observing that the royal will must soon or late be obeyed, and loth to subject their constituents to the expense of another journey during the present year, agreed to accept the proposition <sup>1</sup>. This fact alone is sufficient to prove that the

<sup>1</sup> Lopez de Ayala, *Cronicas*, fol 200, &c. Villasan, *Cronica del Rey Alfonso XI* cap iii 246, &c. The Acts of the Cortes of Briviesca, Valladolid, Burgos, Salamanca, Madrid, &c, during the Reign of Juan I. Marina, *Teoria de las Cortes*, tom ii *Sempere*, *Histoire des Cortès*, chap 17, et *Considérations sur les Causes de la Grandeur*, &c tom i. chap 6.

<sup>2</sup> Vol II p. 241

Spaniards never had an independent representation, and that the eloquent declamations of Marina, in praise of the system, has no other foundation than his own patriotic enthusiasm. During the whole of his reign, Enrique paid little regard to this branch of the legislature, and in his last testament, so far from imitating his father's example, he excluded the citizens from the council of regency during the minority of his son Juan II. The kingdom was for some years governed by the archbishop of Toledo and the infante Fernando, uncle of Juan, who was afterwards elected to the throne of Aragon.<sup>1</sup> In 1419, when he held his first cortes at Madrid, the deputies complained that they were no longer admitted into the royal council, enlarged on the benefits which must result from their deliberative voice, and besought the restoration of the privilege. Juan replied, that he would take the subject into consideration, and decide for the best. But neither the archbishop nor any of his colleagues wished to see the citizens in the council, and they prevailed on the king to elude the request. Their short reign was over, while the feudal and aristocratic spirit which so much pervaded the constitution, began to regain its ascendancy. To the insurrection of Sancho the Brave against his father, and to the usurpation of Enrique II, was the third estate indebted for its short-lived consideration, and now that the current of society had regained its usual channel, this estate, which accident alone had elevated, gradually fell before the feudal domination. The constable and favourite, don Alvaro de Luna, was little disposed to sacrifice the rights of his order before the shrine of popular liberty.<sup>2</sup>

So long as the deputies were freely nominated by the municipal councils—so long especially as they enjoyed any authority at court—their expenses were defrayed, if not freely, at least without murmur, by their consti-

<sup>1</sup> See Vol. II. p. 244

<sup>2</sup> Fernando Perez de Guzman, *Coronica del Serenissimo Principe Don Juan II*, passim. The Acts of the Cortes from 1402 to 1419. Marina, *Teoria de las Cortes*, tom. ii. cap. 28, &c. Sempère, *Histoire des Cortès*, chap. 18.



tients From the accession, however, of Juan II they regarded the system of representation as idle, as only affording greater facilities to the monarch to raise supplies, and as a waste of money for which no equivalent could be obtained The municipalities, accordingly, began to complain of the burden, and to solicit a release from it These complaints were so loud, that they struck the attention of Juan, who immediately proceeded to redress them The remedy which he applied to the alleged evil was one of consummate policy, and one which could not have been surpassed by the most wily of Italian statesmen In the cortes of Ocaña, held in 1422, he consented or proposed that the future expenses of the members should be defrayed from the royal treasury, — a boon which, strange to say, was eagerly received by the kingdom<sup>1</sup> The effects of this innovation were soon apparent In the very next cortes, twelve cities only — Burgos, Toledo, Leon, Seville, Cordova, Murcia, Jaen, Zamora, Segovia, Avila, Salamanca, and Cuença — were suffered to send the deputations, some other towns were informed that they might intrust their procurations to any deputy from the above places This privilege of procuration, or of being summoned with the twelve just named, was subsequently confined to six cities — Toro, Valladolid, Soria, Madrid, Guadalaxara, and Granada, nor, except these eighteen, was a single community allowed to have a seat in the cortes Hence the designation of the places which were to enjoy the unexpensive honour rested with the crown, and the particular choice was always a mark of royal favour Soon, indeed, the communities began to perceive the advantage they had lost, and to petition for its restoration, but, strange to say, their applications were most zealously thwarted by the eighteen which enjoyed the privilege, and which besought the crown not to increase the number, both because such an increase would hurt their own monopoly, and because it would protract discussions, and produce confusion instead of despatch Where the deputies were

thus few, they were easily corrupted, but, generally, the creatures of the court were influential enough to procure the return of such only as were likely to be pliant. In 1442, the cortes of Valladolid besought the king not to interfere in the elections, the request was renewed by those of Cordova in 1455, and though a promise was given that in future such interference would not be exercised, it was repeatedly violated. Nothing can better illustrate the extent to which the kings of Castile interfered on such occasions, than the letter which, in 1457, Enrique IV addressed to the municipal council of Seville. In it he not only indicated the two individuals whom he declared to be most fit for the deputies in the approaching session, but commanded the municipality to elect no others. Under Fernando and Isabel, popular freedom was not likely to improve. The cortes were seldom convoked—never without precautions being taken to stifle every sentiment unpalatable to the court. Few as were the deputies, they were surrounded by spies, they were made to feel that they had no deliberative voice, and were of no utility beyond registering the royal decrees, and voting the supplies demanded from them.<sup>1</sup>

From a long and attentive examination of the subject, we are convinced that in Castile popular representation, however its independence may have been extolled by some national writers, was but a farce. At no period are the names of more than forty-eight places to be found as returning deputies, and of these many were insignificant villages, while the most populous cities had no deputies at all. Did, then, the privilege depend on the royal summons,—in other words, on the mere pleasure of the sovereign?<sup>2</sup> or was it determined by lot among the places themselves?<sup>3</sup> To neither of these questions can we give a positive reply, though our own opinion

<sup>1</sup> Fernando Perez de Guzman, Cronica, fol 170, &c. Ælius Antonius Nebrissensis, Decades (apud Schottum Hispania Illustrata, tom 1.) Hernando del Pulgar, Cronica de los Señores Reyes Catolicos, passim. Zurita, Cronica del Rey Hernando el Catolico, lib vi. Marina, Teoria de las Cortes, passim. Sempère, Histoire des Cortès, chap 19.

is strongly in favour of the former hypothesis. A recent author, who will not be suspected of bias towards royalty, has the honesty to acknowledge the anomaly. After observing that, according to the constitution of Castile, every chief town of a *concejo* or corporation ought *perhaps*,—a saving word,—to have received its regular writ for the election of deputies to cortes, he owns — “But there does not appear to have been, *in the best times*, any uniform practice in this respect. At the cortes of Burgos, in 1315, we find 162 representatives from more than ninety towns, at those of Madrid, in 1391, 126 were sent from fifty towns, and the latter list contains the names of several places that do not occur in the former. No deputies were present from the kingdom of Leon, in the cortes of Alcala, in 1348, where, among many important enactments, the code of the *Siete Partidas* first obtained a legislative recognition. We find, in short, a good deal more irregularity than during the same period in England, where the number of electing boroughs were raised considerably at every parliament.” Had the third estate possessed much consideration prior to the fourteenth century, the contemporary chroniclers would surely have acquainted us with the fact. We should in vain consult them for such a testimony. On the contrary, we should find that though the national assemblies were duly convoked, and the deputies with them, they were in fact subservient to the crown. Their advice, indeed, was often of great service; they could report on the state of their respective towns, and suggest such measures for the promotion of tranquillity as were required by circumstances. Doubtless, too, the benefit would to a certain extent be reciprocal, as where the royal governors were culpable, or the contributions oppressive, or the local prosperity impeded, they could complain, and obtain either a change of governor or a diminution of imposts. It was the interest, too, of the whole nation, to see that the supplies required for the service of the state were levied on proper commodities, and that they did not exceed the wants of the

occasion These were unquestionably objects of advantage, but beyond them, it would be difficult to say what functions were exercised by the deputies They were not legislators, for the different codes were compiled by the royal orders, and submitted merely for their approbation The *fueros* were granted without this formality, at the royal pleasure alone, and all the regulations for the administration of justice, the creation and jurisdiction of all new tribunals, and the nomination of all magistrates, other than the few which certain charters left to the municipalities, solely depended on the crown During the fourteenth century, indeed, the authority of these assemblies was enlarged, but scarcely had the circumstances which occasioned the concession passed away, when it was revoked Sancho the Brave forfeited his pledges, and made the deputies the mere instruments of his will, Enrique II the next benefactor, also undid his own work Though Juan I, after his unfortunate defeat by the Portuguese, granted the admission of the deputies into the government council of Castile, and even left them by will a place in the council of regency, his son, Enrique III excluded them from the royal council their glory was of no more than thirty years' duration <sup>1</sup>

If Fernando and Isabel almost destroyed the last lingering traces of popular liberty, their power fell with no less severity,—and here it was a most salutary severity,—on the other orders of the state The bishops were taught to regard them as the dispensers of all ecclesiastical patronage, and as the guardians of discipline But the barons and cavalleros were the most difficult to be controlled The decay of popular influence had added to their own, and enabled them, during the reigns of Juan II and Enrique IV, to resume all their ancient preponderance The picture of their excesses, as drawn,—let us hope overcharged,—by the hand of Hernando del Pulgar, is sufficiently revolting

<sup>1</sup> The Acts of the Cortes Hallam's State of Europe during the Middle Ages, ii 29 Marina, Teoria des las Cortes, tom. i p 148.

He tells us, that justice could not be executed, that the armed nobles set the law at defiance, that their example, though in an inferior degree, was imitated by the rest, that there was no subordination, that the fields were every where laid waste by armed banditti, that the manners of the people were rendered savage by familiarity with violence and every known crime. If much of this be declamation, much is also true. The catholic sovereigns began their cause of reformation by destroying the castles and fortresses erected by the great to set at nought the pursuits of justice, and some idea may be formed of the number, when we state that in Galicia alone forty-six were razed with the earth. The next step was the establishment of the Santa Hermandad<sup>1</sup>, which had its own tribunal, and which, as it consisted of strong bodies of horsemen spread over the kingdom, soon inspired both the noble and the plebeian culprit with fear. The annexation of the grand masterships to the crown, and the revocation of the profuse grants made by their predecessors<sup>2</sup>, finished their great work, and, from proud feudatories, transformed the barons into assiduous courtiers<sup>3</sup>.

No less politic was the conduct of the catholic sovereigns, with respect to the administration of justice. As to the laws themselves, they remained the same, except some casual additions, as in the time of Alfonso XI, and were the same in substance as those of the Partidas. The Ordenamiento Real of that sovereign was confirmed by the royal pair, and some additions made to it, chiefly respecting the forms of proceeding, and the jurisdiction of the tribunals. In 1505, in the cortes of Toro, they proposed eighty-three additional laws, which were not so much original as definitive of others, respecting inheritance, successions, donations, &c, and which are called, from the place of their promulgation, *Leyes de Toro*. Neither they, nor the Ordenamiento Real, abrogated the existing codes. The laws of the Partidas continued, and

<sup>1</sup> Vol II p 270

<sup>2</sup> Ibid p 278

<sup>3</sup> Hernando del Pulgar, Zurita, and other historians of these reigns

to this day continue, in force, however, more modern compilations — compilations from *them* — have the priority in the public pleadings. But it was in the administration that Fernando and Isabel showed the greatest policy. Mention has before been made of the royal council created by Juan I, consisting of twelve members from each of the three orders of the state. By Enrique III the citizens were excluded, and the vacant seats conferred on professed jurists. By Juan II the number was greatly increased, but no citizen could obtain admission, by Enrique IV it was reduced to its original bounds, — *viz* two bishops, two nobles, and eight jurists. In 1469, an attempt was made to increase the number by two more prelates and two caballeros, but though the proposed organisation was approved, and the title of counsellors conferred on the additional members, the troubles of the times prevented its consolidation. This council had changed no less in its jurisdiction than in the number of its members. During the reign of Juan II, especially, it had encroached on that of the *audiencia*. The subtlety of the jurists could find some analogy between cases apparently contradictory, and, like a whirlpool, it drew within its vortex every thing that approached the court. The cortes of 1428, and still more those of 1440, petitioned the king against this alarming monopoly of justice — and of the administration, nay, of the whole executive and judicial powers. In the time of the catholic sovereigns, the duties of this council had increased so much, that it was unable to hear, much less to decide on, the subjects brought before it, and a great accumulation of business lay in arrear. To remedy the evil, Isabel referred many of the causes to another tribunal, — the chancery of Valladolid, which had been created in the reign of Juan II, — which consisted of eight jurists of the royal council, presided by the archbishop of Santiago, and from the decision of which there should be no appeal. The chancery of Granada was afterwards added, and its constitution similar. In time, however, appeals from both

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chanceries to the supreme council were admitted, but, to deter suitors from frivolous litigation, no appeal could be lodged until 1500 dobles (about 223*l* sterling) were deposited to cover the costs. In the cortes of 1480, the royal council was again modified. It was made to consist of one bishop, three cavalleros, and eight or nine jurists, but in a short time the cavalleros were removed to make way for the licentiates, whose number was again increased. It entirely superseded the *audiencia* of the court, though tribunals with the same name were established in all the kingdoms of the Peninsula, and from them appeals, in civil cases, could be carried to the two great chanceries. Thus the whole internal administration passed into the hands of the jurists on them alone were the great dignities conferred. With a facility which has no parallel in history, the ignorant nobles began to study the ultramontane jurisprudence, the code of the *Partidas*, the *Ordenamiento Real*, and other codes, that they might aspire to honours and riches <sup>1</sup>

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So far with respect to the government and laws of Castile and Leon, the most important of the peninsular kingdoms, and almost the only ones in which the reader will take much interest. We must now briefly advert to those of the rest, without entering into any analysis of other codes, or even adverting to their spirit. For researches so vast, the whole of this compendium would be inadequate, much more a limited portion of a small volume, but, indeed, if our limits were sufficiently extended, we could not prosecute them in this country. The necessary authorities exist only in Spain, and could be consulted only by one who could exhibit—what has always been very difficult to procure—a sign manual order from the king.

After Leon, Catalonia seems to have been the first of

<sup>1</sup> Hernando del Pulgar, *Cronica*, the Acts of the Cortes, Perez, *Compendio del Derecho Publico y Comun*, Sempere, *Histoire des Cortes Marinas*, *Teoria de las Cortes*, &c

the Spanish sovereignties which, in addition to the Wisigothic code, obtained a provincial charter. This charter, known by the name of the *Usages of Catalonia*, was compiled by Raymundo I from the decisions of the tribunals in the court and capital, and was proclaimed in 1068, in an assembly of viscounts and barons. Its provisions are a mixture of Roman and Gothic jurisprudence, — Roman to the civil, Gothic to the criminal portion, Gothic also with respect to the tenure of the fiefs, the conditions of service, and the jurisdiction of the tribunals.<sup>1</sup>

The origin of the *Fuero de Sobrarbe*, which was common to both Navarre and Aragon, is wrapt in much obscurity, and has consequently given rise to much dispute. Rejecting the fabulous accounts of the writers who assign it to the pretended foundation of the kingdom of Sobrarbe in 716, or to its equally fabulous restoration in 850, or 855, when, as they tell us, a check was formed against the royal power by the institution of a grand justiciar, — an officer not merely independent of the crown, but in many cases controlling it, — the author of the code appears to have been don Sancho Ramirez, the time 1076, on the junction of the crown with that of Navarre.<sup>2</sup> This, however, is but hypothesis; neither the author nor the period can be positively ascertained, but probability, and the opinions of the ablest peninsular historians, concur in assigning the reign of Sancho as the true period of Aragonese legislation. After the recovery of Valencia, that kingdom too had its fueros, most of which are similar to those of Aragon. The fueros of both were granted by successive kings, from don Jayme el Conquistador to Fernando II.<sup>3</sup>

<sup>1</sup> Monachus Ripullensis, *Gesta Comitum Barcionensium*, cap 10. Aguirre, *Collectio Maxima Conciliorum omnium Hispaniæ*, tom iv. *Concilium Barcionense*, p 425. Baluzias *Tutelensis*, *Marca Hispania*, lib iv. An 1068. Masdeu, *España Arabe*, lib ii p 71.

<sup>2</sup> See Vol III p 81.

<sup>3</sup> Moret, *Investigaciones Historicas*, lib ii. cap 11. Blancas, *Rerum Aragonensium Commentarii*, (apud Schottum, *Hispania Illustrata*, tom iii. Briz Martinez, *Historia de la Fundacion y Antigüedades de San Juan de la Peña*, lib i. Zurita, *Anales de Aragon*, lib i cap 14, &c. Masdeu, *España Arabe*, lib ii. p 72.



A slight inspection of the general codes of Aragon and Valencia would show that crimes were visited with less severity, and that individual liberty had surer guarantee in these kingdoms than in Leon and Castile. Thus, the adulterer or adulteress was only fined in Aragon<sup>1</sup>, in Valencia, both were only publicly whipped through the city<sup>2</sup>. If a single man *forced* a virgin, he was compelled to marry her, or to endow her with his goods, or to be hung, and if he forced a married woman, his doom was properly death<sup>3</sup>. The man who stole away a virgin had the same punishment as if he forced her<sup>4</sup>. The voluntary homicide was also justly punished with death. He who committed bigamy paid a fine, or, in default, was publicly scourged and banished<sup>5</sup>. The enchanter or magician had the same punishment<sup>6</sup>. Theft was punished according to the circumstances of the case: if the first offence, without aggravation, the thing stolen was returned double, or the culprit was scourged and banished, on the second conviction, he lost his ears and was exiled, if the third, he suffered the last penalty<sup>7</sup>. In other respects, the *fueros* of the two kingdoms have great similarity to those of Leon and Castile.

The ancient constitution of Aragon has been the theme of enthusiastic praise by some writers. What that constitution was, would now be vain to enquire, as, amidst the frequent conflagrations of San Juan de la Peña, the monastery where the national archives were deposited, no *authentic* documents remain to assist us in arriving at an opinion on the subject. But if history be silent, conjecture is not the ancient state of Aragon has been compared to one of unrivalled liberty. Robertson tells us, that though the government was monarchical in form, its genius and maxims were purely republican. The enviable state of things has been ascribed to a

<sup>1</sup> Fori Aragonum Universi, lib viii fol 33

<sup>2</sup> Tarazona, Instituciones del Furs y Privilegios del Regne de Valencia, lib iv tit. 5

<sup>3</sup> Tarazona, ubi supra. Fori Arag fol 103

<sup>4</sup> Tarazona, ubi supra

<sup>5</sup> Ibid tit 7

<sup>6</sup> Ibid. p 388

<sup>7</sup> Ibid. tit. 8, p 396.

novel institution,—that of the justiciar or grand judge, whose duty, we are told, it was to check the encroachment of despotism on the one hand, and anarchy on the other. Of his authority and functions Robertson has not failed to give us a strange account

“ This magistrate, whose office bore some resemblance to that of the Ephori in ancient Sparta, acted as the protector of the people, and the controller of the prince. The person of the justiza was sacred, his power and jurisdiction almost unbounded. He was the supreme interpreter of the laws. Not only inferior judges, but the kings themselves, were bound to consult him in every doubtful case, and to receive his responses with implicit deference. An appeal lay to him from royal judges, as well as from those appointed by the barons within their respective territories. Even when no appeal was made to him, he could interfere of his own authority, prohibit the ordinary judge *to* (?) proceed, take immediate cognisance of the cause himself, and remove the party concerned to the manifestation, or prison of the state, to which no person had access but by his permission. His power was exerted with no less vigour and effect in superintending the administration of government than in regulating the course of justice. It was the prerogative of the justiza to inspect the conduct of the king. He had a title to review all the royal proclamations and patents, and to declare whether or not they were agreeable to law, and ought to be carried into execution. He, by his authority, could exclude any of the king’s ministers from the conduct of affairs, and call them to answer for their mal-administration ”<sup>1</sup>

But does this picture,—which is wholly drawn from fable or imagination,—agree with the most correct existing descriptions of the dignity? How far it resembles that drawn by don Vidal Canellas, bishop of Huesca and, moreover, a jurist and collector of fueros, who lived in the thirteenth century, may be seen by the following extract —“ As the diadem shone on the front of Aaron, and as the sun enlightens this earthly sphere, so does authority adorn the royal majesty. So perfectly is this authority inherent in kings, that its exercise flows to

<sup>1</sup> Robertson’s Charles the Fifth, vol. 1 § 11. This work is, in reality, what it has been denominated — a romance.

the judges like the spring from the fountain The jurisdiction not derived from him would perish, just as the stream would fail if cut off from its source And so truly does the judicial authority rest on the royal power, that the appointment and institution of all judges is inherent in the crown"—“ And as the king can create magistrates, so can he displace them, when he pleases, appointing them either for a definite or indefinite time The grand justiciar is one of these, but when once he is nominated by the king, he is not usually removed, unless for a just cause, or for some considerable crime It is his duty to accompany the court so long as the king, by whom his necessities are supplied, remains in Aragon, to hear and examine cases, either in the king's presence, or if commanded so to do, when the king is absent And when the trial is at an end, and sentence is to be pronounced, our lord the king and his barons, that is, the bishops and warlike chiefs, whom we call *ricos-homes*, and who happen to be at court, deliberate on the matter And whatever sentence our lord the king, and the majority of his barons, or whatever they alone, if he do not wish to interfere, shall decree, that shall the grand judge pronounce, nor need he fear for the consequences of that sentence, since it is not his, but theirs, whom he is bound to obey”<sup>1</sup> To

<sup>1</sup> That we may not be accused of doing injustice to Robertson, whom, in the second volume of this work, we have been compelled to censure, and whom, we fear, we shall have again to censure, we give the original of the above passage It was certainly before him, yet, in his usual manner, he chose to pass over it —

“*Ut diadema in capite Aharon, et splendor in medio firmamenti illuminans totam machinam mundanalem, sic splendet jurisdictio in regia majestate In qua est sic totaliter constituta ut quasi à fonte in rivus, oportet ab ipso in omnes alios, ipsam jurisditionem et ejus exercitum derivari Et qui ab eo jurisditionem non suscipit, ut rivus, fontis subtracto fomento, aret necessario et siccatur sic a jurisditione et ejus exercitio remanet alienus, sic viget ergo plenitudo jurisditionis in ejus plenitudine potestatis quod institutio et destitutio omnium jurisditionum præsidentium, ab ejus semper dependent voluntate*”—“*Regis est ergo Judices et Justitias ordinare, et quando sibi placuerit revocare, et eos perpetuo ponere, vel ad tempus Inter quos Judices Justitia est semper unus principalis in Aragonia constitutus qui ex quo semel a domino rege fuit constitutus, non consuevit nisi ex causâ justâ, et culpâ condemnabili, removeri Cujus est officium, ut quamdiu rex inter fines Aragonum fuerit constitutus, in regis curia commoretur, subministrandis sibi ubi ipsa curia alimentis Ibi que in præsentiâ domini regis, vel de ejus imperio sine eo, causas examinat et consultat. Et quotiescumque interloquutoria vel definitiva sit sententia*

this we may add that the whole history of Aragon confirms the dependence of the justiciar on the will of the reigning prince "In what," asks a sensible Spaniard—one somewhat better versed than Robertson in the constitution of Aragon—"did this officer resemble a tribune? The tribune was elected by the people, the grand judge of Aragon was nominated by the king the functions of the one ended with the year, those of the other were for life the tribunes exercised great influence over the government, the magistrate of Aragon took cognisance of legal proceedings only" A much more judicious and honest writer than Robertson says —

"The justiza or justiciary of Aragon has been treated by some writers as a sort of anomalous magistrate, created originally as an intermediate power between the king and people to watch over the exercise of royal authority But I do not perceive that his functions were, in any essential respect, different from those of the chief justice of England, divided from the time of Edward I among the judges of the King's Bench We should undervalue our own constitution by supposing there did not reside in that court as perfect an authority to redress the subject's injuries as was possessed by the Aragonese magistrat"—"The office of justiciary, whatever conjectural antiquity some have assigned to it, is not to be traced beyond the capture of Saagossa, in 1118, when the series of magistrat commences But for a great length of time they do not appear to have been particularly important,—the judicial authority residing in the council of ríco-hombres, whose suffrages the justiciary collected, in order to pronounce their sentence rather than his own"—"Gradually, as notions of liberty became more definite, and laws more numerous, the reverence paid to their permanent interpreter grew stronger, and there was, fortunately, a succession of prudent and just men in that high office, through whom it acquired dignity and stable influence"—"Yet it was not perhaps looked upon as

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*proferenda, dominus rex et barones, hoc est episcopi et duces militum qui ríco-hombres appellantur, qui in curia fuerit tunc præentes, super illa deliberent in communi Et quod dominus rex et major pars baronum, vel si dominus rex noluerit interesse concilio, major pars baronum, in justitiæ os posuerit preferendum, ipsa justitia id pronuntiet impartialiter et declarat, nullam pœnam ex pronuntiatione cujusmodi metuendo Nam non ipse, sed ipsi, quibus in hac parte eum oportet necessario obedire, ipsius sententiæ sunt latores"—* *Quoted by Blancas Rerum Arag Com*  
p 722

fully equal to maintain public liberty against the crown, till, in the cortes of 1448, after the privilege of union was for ever abolished, such laws were enacted, and such authority given to the judiciary, as proved eventually a more adequate barrier against oppression, than any other country could boast <sup>1</sup> All the royal, as well as territorial judges, were bound to apply for his opinion, in case of legal difficulties arising in their courts, which he was to certify within eight days "

To this we may add, that he could, like our court of King's Bench, by its writs of *pone* and *certiorari*, withdraw any suit from the jurisdiction of the inferior tribunals, and he could inhibit any process from issuing against the person who applied for this benefit. But lest he should abuse his powers, he was accountable for his decisions, and, in fact, subject to a particular court, which consisted first of four deputies, and subsequently of seventeen, all nominated by the king <sup>2</sup>

In a country which was more pervaded by the feudal system than any part of Spain, Catalonia excepted, the aristocracy took care to have guarantees enough against the power of the crown, however they degraded the rights of the citizens, and above all, of the rural population. The chief privileged order of the state was that of the *ricos-hombres*, among whom the conquests, as they were gained from the Moors, were divided. One of these barons held of the king land sufficient to maintain at least three knights, to whom he distributed it, to be held by the same tenure as he himself held of the crown. His military service was annual, generally two, sometimes three months in the year, and he was no less compelled, when summoned to court, to assist his

<sup>1</sup> Yes, against oppression by *the king*, but who was to control the more tyrannical, because nearer and more onerous, oppression of the feudal aristocracy?

<sup>2</sup> Robertson's History of Charles V vol. 1. Introduction Hallam's State of Europe, tom. II. passim. Fucros de Aragon (in multis titulis) Blancas, Rerum Aragonensium Commentarii, p. 722, &c. Sempère, Histoire des Cortès, chap. 20.

In following the enthusiastic Marina, Mr Hallam is sometimes led into error,—as when, for instance, (ii. 64) he calls the ancient monarchy of Aragon *elective*, when it was decidedly *hereditary*, according to the strict principles of succession, and as when he seems to deny the existence of the feudal system in Castile but we bear very willing evidence to his general accuracy in fact, he is almost always so when he chooses to follow his own understanding.

sovereign as a counsellor or judge In his own territory he could appoint subordinate magistrates, but whether he or they could take cognisance of any crime to which a capital penalty was awarded, may be doubted It cannot, however, be doubted that his powers were very extensive,—too much so for the people dependent on his jurisdiction —Next to these barons were the mesnadories, an inferior order of nobility, corresponding to our tenants in chief, holding smaller territories immediately from the crown, and the cavalleros, or *infanzones*, who held from the barons The privileges of this mixed order were considerable, they paid no taxes, were not amenable to the jurisdictions of the barons, and could make compositions for whatever offences they committed against the burgesses or peasants The condition of this last named class—unquestionably the most numerous—was worse in Aragon than any other part of Spain, not even excepting Portugal When, therefore, we hear of the superior liberty of the Aragonese, we must always understand the liberty of the aristocratic order, or at most of a few towns which enjoyed certain privileges in virtue of their fueros According to Alfonso III there were as many kings in Aragon as there were ricos-hombres <sup>1</sup>

There can be no doubt that the establishment of the municipal corporation, and the admission of the third estate into the cortes of the kingdom, in some degree counterbalanced the power of the nobles But in Aragon their estate is usually termed the fourth, as the cortes consisted of four brazos,—the prelates (including the commanders of the military orders), the barons or ricos-hombres, the *infanzones*, and the deputies of the royal towns. The two former could appear by proxy, the third, who were few in number, appeared personally, the fourth by representation When the first assembly was held is difficult to be ascertained, but the first in

<sup>1</sup> Zurita, *Anales de Aragon*, lib i Blancas, *Rerum Aragonensium Commentarii*, p 737, &c (apud Schottum, *Hispania Illustrata*, tom iii) Hallam's *State of Europe*, ii. 65 Sempère, *Histoire des Cortès*, chap 20.

which deputies are distinctly mentioned was in 1133, when deliberations were opened for giving a successor to Alfonso I<sup>1</sup>. In the cortes of Saragossa, held in 1163, we find *fifteen* deputies of that capital, besides many from Huesca, Calatayud, Tarrazona, and Daroca. It was the policy of don Jayme el Conquistador to increase the privileges of the representatives, and the communities by whom they were returned,—not from any abstract love of liberty, but from a policy to restrain by their means the influence of the ricos-hombres. To these communities he granted permission to confederate,—to enter into a league for resisting the encroachments of the great,—for here, as in Castile, the two orders were generally at war. The troubles which sometimes distracted the state afforded both opportunities enough for wreaking their vengeance on each other. But in such inglorious and savage warfare both could not fail to suffer, so that they at length agreed to establish armed bands, consisting both of nobles and burgesses, to pursue and punish the lawless. The kingdom was divided into five departments, called *juntas*, the heads of which were called *sobre-junteros*, but the institution did more harm than good. Instead of repressing the scenes of violence which were exhibited on every side, these *juntas* did their utmost to fan the flames of civil strife. Under the pretext that their liberties were in danger, the democratic portion sounded the tocsin of alarm, while the nobles no less complained that their ancient and just privileges were sacrificed in favour of the plebeians, who aimed at substituting a republic for the monarchy. When the two parties coalesced, they were generally too powerful for the crown. In 1283, they compelled Pedro III to concede several important things, some of which were salutary, others unreasonable. Among these were, that the king should not make war or peace, promulgate laws, or levy taxes, without the authority of the cortes, that the grand judge, who had generally leaned in favour of the crown, should

<sup>1</sup> See Vol. III p 88

not sentence until he had consulted with individuals of the order to which the plaintiff and defendant belonged, that the king should not deprive any baron, nor the baron any infanzon, of his fief without sufficient cause, and a previous trial, that any noble might leave the kingdom whenever he would, and enter into a foreign service, and that during his absence the monarch should protect his wife and children, and that the cortes should be convoked every year at Saragossa<sup>1</sup> Concessions still more momentous were wrung from Alfonso III, the son of Pedro<sup>2</sup> Not only was he constrained to consent that his ministers and even domestic servants should be nominated by the cortes, but to sanction the most dangerous of all proposals,—that of assembling in arms for the defence of privileges, which, whether enjoyed by nobles or burgesses, were too much for the well-being of the community If power be abused by one man, it may also be abused by a multitude This privilege of the union could not safely be intrusted to men, whose minds were in a state of continued excitement, and who were resolved still farther to extend the rights of their class Pretexts were never wanting to draw the sword. how mischievous the privilege proved to the whole kingdom has been abundantly seen in the reign of Pedro IV, when horrors were perpetrated at which human nature must shudder<sup>3</sup> It became as odious to the nation as to the king, by whom, in the cortes of 1348, it was forever abrogated Yet if the people had no longer the royal permission to rebel, they never failed to do so, whenever it suited their views On some occasions their resistance was patriotic, but certain it is that on most they appear to have been impelled by the worst motives At all times their union rendered them formidable to the crown It was the saying of a monarch who knew them well (Fernando the Catholic), that to separate the Aragonese was as difficult as to unite the Castilians<sup>4</sup>

<sup>1</sup> See Vol III p 109

<sup>3</sup> Ibid pp 130—134

<sup>2</sup> Ibid p 117

<sup>4</sup> The same authorities



That the Aragonese—excepting the serfs—possessed a greater share of individual liberty than any people in the Peninsula, is indisputable “ We have always heard of old,” say the cortes of 1451, “ and the saying is proved by experience, that seeing the great barrenness and poverty of this kingdom, the inhabitants would leave it and take up their abode in more fruitful countries, if they were not retained here by their sweet liberties ” Hence we find, that the *Fori Aragonum Universales*, and other codes of the country, contain far more jealous provisions to insure the life, liberty, and property of the people—always excepting the serfs whom Aragonese legislation does not condescend to notice—than are any where else to be seen Besides the privilege before mentioned—that of escaping by the inhibition of the proticiar from the inferior tribunals—all processes were to be conducted in public, and torture was allowed only in one case—the charge of coining false money But the advantage will be found still more favourable to the people, if their codes be compared with those of the neighbouring nations Where the popular suspicion was so soon roused, and the popular resistance so soon concentrated, little was to be feared from the usurpations of the crown, and, in fact, we find that the true tyrants of Aragon have never been its kings, but its own nobles The nation was not satisfied with watching the royal motions through the cortes for the same purpose, it had a government deputation at Saragossa, consisting of eight members, two from each of the four brazos of the state These eight deputies, who were always chosen by the cortes, constituted a truly national representation, and were intrusted with the power of convoking extraordinary assemblies of the cortes But these noble privileges were of little avail after the accession of the tyrannical Charles I (the Vth), whose despotism, as we shall have occasion to relate in the next volume, weighed with fatal energy on the liberties of the Peninsula And even at

the best period of popular freedom there was unhappiness enough

“ I do not mean,” says Hallam, “ to represent the actual condition of society in Aragon as equally excellent with the constitutional laws. Relatively to other monarchies, as I have before observed, there seems to be fewer excesses of the royal prerogative in that kingdom. But the licentious habits of a feudal aristocracy prevailed very long. We find in history, instances of private war between the great families, so as to disturb the peace of the whole nation, even near the close of the fifteenth century. The right of avenging injuries by arms, and the ceremony of diffidation, or solemn defiance of an enemy, are preserved by the laws. We even meet with the ancient barbarous usage of paying a composition to the kindred of a murdered man. The citizens of Saragossa were sometimes turbulent, and a refractory nobleman sometimes defied the ministers of justice ”

To such of our readers as have perused the history of Aragon in this compendium, the word *often* may be put for *sometimes*, in the last sentence of this extract <sup>1</sup>

Catalonia and Valencia were always distinct from Aragon, both in government and laws. Each had its cortes, consisting of three estates,—prelates, nobles, and deputies,—all no less tenacious of their privileges than those of Aragon —

“ The Catalans were tenacious of their ancient usages, and averse to incorporation with any other people of Spain. Their national character was high spirited and independent. In no part of the peninsula did the territorial aristocracy retain, or at least pretend to, such extensive privileges, and the citizens were justly proud of wealth acquired by industry, and of renown achieved by valour. At the accession of Ferdinand I, which they had not much desired, the Catalonians obliged him to swear three times successively to maintain their liberties, before they would take the reciprocal oath of allegiance. For Valencia there seems to have been a politic design of James the Conqueror<sup>2</sup>, to establish a constitution nearly analogous to that of Aragon, but with such limitations as he should impose,

<sup>1</sup> *Fori Aragonum Universales De Manifestationibus Personarum, De Custodia Reorum, De Judiciis, et alii Tituli*. Blancas, *Reverum, Arag. Com.* (apud Schottum, iii 750, &c.) Sempère, *Histoire des Cortès*, chaps 20 and 21. Hallam's *State of Europe*, ii 86

<sup>2</sup> Don Jayme el Conquistador

taking care that the nobles of the two kingdoms should not acquire strength by union. In the reigns of Peter III and Alfonso III one of the principal objects contended for by the barons of Aragon was the establishment of their own laws in Valencia, to which the kings never acceded. They permitted, however, the possessions of the natives of Aragon in the latter kingdom to be governed by the law of Aragon. These three states, Aragon, Valencia, and Catalonia, were perpetually united by a law of Alfonso III, and every king at his accession was bound to swear that he would never separate them. Sometimes general cortes of the kingdoms and principalities were convened, but the members did not, even in this case, sit together, and were no otherwise united than as they were in the same city."

The Catalan was always a more elevated subject than the Valencian, the latter was usually intent on the advantages of traffic, while the former, conscious of his past glory, and proud of his immemorial liberty, was, and is, distinguished for honour, for valour, and for patriotism<sup>1</sup>. His chief defect arose from his feudal spirit: the serfs were in a more degraded state than in any other neighbouring country, and the condition of the peasantry was far from enviable, even at the close of the fifteenth century<sup>2</sup>.

The laws and government of *Navarre* are represented to be the same in substance as those of Aragon. Originally they were doubtless so, but the French princes must have made some additions to, or alterations in, the national code. As this, however, is a subject on which we have no information, and which could be prosecuted only amidst the MS. archives of the kingdom, we shall proceed to another<sup>3</sup>.

In *Portugal* the authority of the king appears to have been restrained by fewer checks than in any other part of the Peninsula, at least we meet with more frequent

<sup>1</sup> *Le fier Catalan*, was the just description of Napoleon Bonaparte, who knew the people too well.

<sup>2</sup> Hallam's *State of Europe*, ii 84, &c. Zurita, *Anales de Aragon* (in regnis don Javme el Conquistador, don Altonso III, &c.) Blancas, *Rerum Arag Com* p 760 (apud Schottum, tom iii).

<sup>3</sup> The numerous writers on the laws, government, and condition of Spain, have carefully refrained from giving us more than incidental hints respecting Navarre. They evidently laboured under the same difficulty as ourselves.

and signal proofs of its exercise than any where else. One reason for the difference doubtless was, that in this western province the deputies of the towns were fewer, less politically organised, and consequently much less influential than in Castile or Aragon. Not more than ten or twelve places appear to have simultaneously enjoyed the right of representation, nor does the number of deputies seem to have exceeded from thirty to forty. As in Castile we find that the towns and deputies varied in each assembly of the cortes, and this fact deepens an impression, which throughout the present chapter rests on our mind, that such places only as received a royal summons to that effect were allowed to be present by their representatives, that the choice of these places rested on the mere pleasure of the monarch, and was considered either honourable or burdensome, according to the occasion of their meeting.<sup>1</sup> If the choice of the representatives thus rested not with the king, why was the reception of his writ a necessary preliminary?<sup>2</sup> A mere proclamation, appointing the day of assembling, would surely have been sufficient, nor must it be forgotten that these assemblies were much less frequently convoked than in other parts of the Peninsula. Other causes might be assigned for the increased power of the king,—the extreme rigour and paucity of the laws, the interpretation of which rested with him, and the absence of any effectual check, other than that of open rebellion, were among the chief. From the foundation of the monarchy, the Portuguese kings have generally been tyrants when they have not, the reason has been, not their want of power, but their disinclination to exercise it.<sup>2</sup>

The domestic establishments of the Portuguese kings, and the great dignitaries of the kingdom itself, were on

<sup>1</sup> An English law officer has recently astounded the House of Commons by a similar declaration. He is, doubtless, right the case was the same in England as in Spain and Portugal. The only surprising part of the declaration is, that it should invest the king at the present day with the same prerogative.

<sup>2</sup> Authorities, the Acts of the Cortes

a scale far more than commensurate with the state of their territories, or their natural resources. The *cemereiro môr*, or chief chamberlain, the *contador môr*, or chief auditor, the *copeiro môr*, or chief cup-bearer, the *esmolero môr*, or chief almoner, the *caçedor môr*, or chief fowler, the *adail môr*, or chief scout, the *alferez môr*, or chief ensign, the *annadel môr*, or chief of the household troops, the *apostador môr*, or chief har-binger, with the chief chaplain, the chief captain, the chief secretary, the chief notary, the chief chancellor, and innumerable other dignitaries, all heads of departments, showed the fondness of the court for regal state. The great officers of the kingdom, such as constable, chief judge, marshal, steward, &c, were the same as in Castile, and so also were the *corregidores*, *juizes*, *ouvidores*, and other officers of the law <sup>1</sup>

The *Laws* of Portugal, as before observed, were few, and though generally founded in natural right, were unable to control either the king or the great barons. To give a summary of the national code is impossible; the work has not yet been effected by any native writers, and such are the contradictions, difficulties, and obscurities which the enquirer would meet at every step, that royal liberality and royal authority only can ever produce a comprehensive treatise on the subject. Of that code, the laws of Lamego, so called because they were approved in the cortes assembled at that place in the reign of the first king are the foundation <sup>2</sup>. They chiefly regarded the royal succession, the nobles, the great body of the people, and the independence of the kingdom. It was there agreed, that the succession should rest with the eldest son of the prince, or, if he had no son, with the daughter, provided that daughter married a native prince or noble, but if she gave her hand to a foreigner, she

<sup>1</sup> Lemos, *Historia Geral*, Brandaon, *Monarchia Lusitana*, La Clède, *Histoire Générale*, Beawes, *History of Spain and Portugal*, with many others.

<sup>2</sup> See Vol. III. p 188. We have, however, our doubts, whether the laws in question were sanctioned in the manner and at the time mentioned, there is no ground for scepticism as to the *place*.

was, *ipso facto*, excluded from the throne Hence Beatrix, daughter of Fernando, who had been married to Juan I of Castile, was, by that marriage, excluded from the succession<sup>1</sup>, yet the royal council agreed, that if she should have a son, he should succeed How such a marriage should have been contracted might surprise us, were we not informed that the states of the kingdom consented to it, and agreed that her rights of succession should not be affected by it,—that the law in her case should remain a dead letter A dead letter it would, doubtless, have remained, but for the ambition of the bastard Joam, grand master of Arris<sup>2</sup>,—a proof that conventional forms must yield to necessity It was at the same time enacted, that when a king died without children, he should be succeeded by a brother, but that the son of that brother should not succeed, without the express sanction of the states, to be convoked for the purpose 2 The descendants of royalty on either side, he who delivered the king from danger, the sons of the captive who remained constant to the faith of Christ, he who killed the king of the enemy, all who had fought at the battle of Ourique, with their descendants for ever, were declared *noble* The dignity and privileges might be lost by cowardice in the field of battle, by striking a woman with sword or spear, by neglecting to aid the king, by false testimony, by speaking falsehood to the monarch, or scandal of the queen or her daughters, by retiring among the Moors, by blasphemy and by treason 3 The laws regarding the people were necessarily more numerous In regard to theft, we are not told what punishment was awarded to the first offence, probably, however, it was the one assigned by the Wisigothic code, which was, doubtless, as obligatory in Portugal as in any other province, but the second offence was to be visited by a public exposure, naked, or half naked, in the market-place For the third, the culprit was also to stand in

<sup>1</sup> Vol. II. p. 228.

<sup>2</sup> *Ibid.* p. 230, &c.

the same place, with a writing on the forehead, denoting the crime, and to be afterwards branded with a red-hot iron for the fourth, the penalty was capital, but execution could not take place until the king had approved the sentence. The adulteress was to be burnt alive with the partner of her guilt, provided the husband consented to the punishment, but if he wished her to be spared, she was spared,—for his alone was the injury,—and in this case equity demanded that the male culprit should be pardoned too. The capital penalty was also applied to murderers, and to the ravisher of a noble maiden if she were not noble, the offender, even if noble himself, was compelled to marry her. Wounds and bruises were compensated by a pecuniary fine, at the discretion of the judge. The man who resisted or struck a magistrate or governor of a fortress was either to make ample reparation by fine and repentance, or to be branded. As the laws relating to the king, the nobles, and the people were proclaimed, the spectators exclaimed, “These laws are just and good, and shall be observed by us and our descendants!”<sup>4</sup> But when the question was asked whether Portugal should be dependant on Castile, and whether their king should appear in the Castilian cortes as a vassal, all present arose, laid their hands on their swords, and swore that both they and their king were, and would ever be, free<sup>1</sup>

How powerful the nobles of this kingdom were, has been seen from the reforms effected with so much difficulty by Joam II, how powerful the ecclesiastics, was felt by his predecessors. In short, the great body of the people were strangers to freedom, their voice in the cortes was feeble, and but seldom raised in favour of their rights. Sometimes, indeed, as in the instance of the first Joam and of the infante Pedro, it was found necessary to allure them by present licence and promises of future advantage, but in the end the licence was repealed, and the promises forgotten. At length—and

<sup>1</sup> Brandaon, *Monarchia Lusitana*, tom III liv 9, 10. Lemos, *Historia Geral*, tom III liv 10. La Clède, *Histoire Générale*, tom II liv 6.

the case is not otherwise at the present day — the people became reconciled to their condition Liberty is a word which they did not, and wished not, to understand One reason of their resignation, doubtless, was their superior comforts, commerce and a fertile soil enriched many, and preserved all from wretchedness In fact, these are advantages which, with the generality of mankind, will do more to cherish patriotism than the most beautiful rights in the abstract <sup>1</sup>

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### CHAP III

#### LITERATURE — SCIENCE — ARTS

FROM the eighth to the beginning of the twelfth century, if not later, the Latin was the only language used in the testaments, diplomas, decrees of councils, and the writings of authors During many ages, Spain was the favourite abode of that language, and where it was spoken and written with more facility, perhaps also with greater purity, than in any other part of Europe To most readers the assertion may appear strange, that during the eighth and ninth centuries, masters were procured from the Peninsula, as well as from other parts of Europe, to teach that language in Italy, its very cradle, yet nothing is more undoubted than that such was the fact the frequent irruptions of the barbarians into that devoted country had destroyed the monuments of civilisation, had adulterated the native idiom so much that it would have been unintelligible to a Roman, and had

<sup>1</sup> See Vol III pp 231 257, &c The issue of the present contest (we write early in August, 1832,) cannot be doubted we have long foreseen, and often predicted it.



banished all taste for the classic models of antiquity. But for the church, every vestige of the Roman tongue would probably have disappeared. A certain, however small, acquaintance with it, was indispensable prior to the assumption of holy orders, and though the majority would, doubtless, rest satisfied with a mere understanding of the prayers repeated in the mass, a few would ascend to the source, and enjoy, at the fountain of Virgil or Tully, draughts which would appear far purer and sweeter after wading through the muddy stream that flowed beneath. At length, however, in Spain, as in Italy and France, the ancient language became corrupted. For this corruption three causes have been assigned —

- 1 The first and most natural was the invasion of the Arabs. The introduction of Arabian words into the native speech may be traced to the eighth century, and is much more conspicuous in proper than in common names, and though in later ages the latter species of words have been inflected, according to the prevailing idiom, their roots are essentially from Arabia. Thus, Valladolid is probably a corruption of *Balad-walid*, the city of Walid, and not of Valle-de-Olito. In the same manner, Escorial is derived from *Escunia*, which in the Arabian language signifies the place of rocks, and not from *Æsculus*, or oak,—an hypothesis sufficiently proved by the barren and gloomy region in which the palace bearing that name rears its lofty turrets above the wild scene. In vain has ingenuity endeavoured to derive *Guada* or *Guad*, a river, so common a prefix to rivers and places in central and southern Spain, from the Latin *vadus*—thus, Guadalquiver, Guadalete, Guadiana, &c are unquestionably Arabic. There are instances, indeed, in which the Latin *v* or *u*, is conversive with *gu*, as in *Wilhelmo*, (or *Vilhelmo*) *Wifredo*, which have been changed into *Guillermo*, *Guifredo*, but this conversion prevailed no where except in the northern parts of the Peninsula, while the words compounded of *Guad* are to be found only where the Moors were settled. The change sustained by the river *Ana*, which the Arabs

named, and which has ever since been known as the *Guadiana*, ought to set this idle controversy at rest. *Medina*, a city, is frequently prefixed to proper names, as in *Medina-Sidonia*, *Medina-Celi*, *Medina del Campo*. *Ben*, or *beni*, the Arabic for son, is no less usual a prefix in many towns and villages, especially in *Valencia*, *Algarve*, *Badajoz*, *Gibraltar*, &c bear the marks of their derivation, and the case is still stronger in regard to other names, — *azofar*, *albeitar*, *algebra*, *alambique*, *alhoge*, *alcazar*, *alcalde*, *arrabal*, *bodas*, with the names of most plants, and an incredible number besides, are purely Arabian.<sup>1</sup> 2 The ignorance of the vulgar was the second cause of corrupted Latinity. Those who lived in territories subject to the strangers, not only incorporated into their daily tongue such words as were of foreign extraction, but, like those of all other countries, learned to drop the inflexions of such as they continued to use. Thus declension ended, and relations began to be expressed by prepositions. In Spain, the process is sufficiently intelligible. the ablative singular was often assumed as the nominative, as *clero* from *clerus*, *breve* from *brevis*, *largo* from *largus*, *libro* from *liber*, *duro* from *durus*, and the plural was formed by the addition of *s*, as *cleros*, *largos*, *libros*. Even the learned sometimes wrote in the corrupted idiom. Thus, *Elipando*, bishop of Toledo, in a letter written about the close of the eighth century, to *Felix*, bishop of Urgel, says — “*Domino Felice, sciente vos reddo quia vestro scripto accepi*” — “*direxi vobis scriptum parvum de fratre Militane*” — “*ego vero direxi epistolam tuam ad Cordoba*” In this manner originated the modern languages of the Peninsula, — the Catalan, the Castilian, and the Portuguese, — until they attained their present form. But if the vulgar thus early corrupted the colloquial tongue, and scholars who wished to be understood were under the necessity of following them, yet the Latin continued to be the language of the cortes, (or, if the

<sup>1</sup> The number of Arabic words in the Spanish language is said to be considerably above 2000

reader pleases, national councils) of the laws, and of the public edicts. Most of the municipal fueros were written in it, and it was the language of the tribunals, until San Fernando caused the Liber Judicum to be translated into the vulgar tongue. 3 The intercourse of the Franks with the Catalans is the last of the causes assigned for the corruption of Spanish Latinity, but we may doubt whether its influence has ever been so great as some writers have contended. That an abundance of French words, or at least of the Provençal, are to be found in the Catalan, is beyond dispute, but the Catalan exercised little influence over the rest of Spain: the country was, in fact, separated from Navarre and Castile by the Mohammedan states of Aragon, which were not destroyed until the twelfth century.<sup>1</sup>

To fix the precise origin of the various dialects of Spain would be a vain attempt, that of Catalonia is probably the oldest. The Castilian was certainly not formed in the eleventh century. The oldest existing monument, the Poema del Cid, cannot well be assigned to an earlier period than the year 1200, and if we assume the middle of the twelfth as the epoch of the dialect, we shall not probably be far from the truth. How the German author (Bouterwek) of the History of Spanish Literature could assert that "the Castilian tongue, now called by way of distinction the Spanish, *doubtless* had its origin before the Moorish conquest, in the northern and midland parts of the Peninsula," might surprise us, if a Spanish writer had not previously declared that the Fuero Juzgo, or Castilian translation of the Codex Legis Wisigothorum, existed before the fall

<sup>1</sup> Ximenes, De Rebus Hispanicis, lib iv cap 16 (apud Schottum, Hispania Illustrata, tom ii). Casiri, Bibliotheca, tom i p 248, &c Sarmiento, De Nomine Escorial (apud eundem, tom ii). Aldrete, Del Origen de la Lengua Castellana, lib i cap 2. Elipando, Epistola ad Felicem Masdeu, España Arabe, lib ii p 102, &c Mayans y Siscar, Origenes de la Lengua Española, parte i. Bouterwek, History of Spanish Literature, Introduction.

The last named work is not creditable either to its author or to Germany. It is the most superficial and inaccurate work of the kind we ever consulted: its errors are monstrous, and its best parts are miserably meagre.

of the Gothic monarchy <sup>1</sup> But, indeed, assertions without the *possibility* of proof to support them, nay, in direct opposition to the concurrent testimony of authority and reason, are too common to excite surprise And here we may be allowed to explain why, in the royal names of Wisigothic Spain, we followed one mode of orthography, and from the accession of Pelayo another In the former, we followed the Latin,—after dropping, however, the inflection,—in the latter, the Castilian mode of spelling Now, we could not be ignorant that the Castilian was not fully formed until some ages after the conquest,—*Pelagius, Aldefonsus, Veremundus, Ordo-nius, Santius, &c*—instead of Pelayo, Alfonso, Bermudo, Ordoño, and Sancho, but we also know that a line must be drawn somewhere, and we choose the restoration of the monarchy To have suddenly changed the orthography about the middle of the twelfth century would have appeared arbitrary <sup>2</sup>

As, at the commencement of the present volume, we have given a copious list of all the Arabian and Christian writers of Spain during the middle ages, in the following pages we shall not dwell on obscure names, that we may notice at some length such as are deserving notice, and more still such monuments of literature as may be peculiarly termed *national* So extensive, indeed, is the subject of Spanish literature, that the limits of this compendium would be too narrow to do it justice, nor could it be comprehensively treated any where but within reach of the great libraries of Spain It must ever be regretted that the two Mohedanos

<sup>1</sup> But Bouterwek and his guide might have gone further, and assigned the origin of the Castilian language to the confusion of tongues at Babel This has actually been done by “names of learned sound”

<sup>2</sup> Sanchez, *Collection de Poésies Castellanas Antérieures au Siècle, xv* tom 1 p. 220 et tom II p 1, &c Masdeu, *España Árabe*, lib II p 197 Bouterwek, *History of Spanish Literature* (English translation), Introduction, p 9

Again must we severely condemn the last named work almost every statement is an error The author wanted two great things—information and judgment That part of Sismondi's *Histoire de la Littérature de Midi de l'Europe*, which relates to the same subject, is as meagre and as erroneous A comprehensive history of Spanish literature is, and will for ever remain, a thing to be desired rather than expected The example and fate of the Mohedanos, whose elaborate work, ample as it is, comes down no lower than Roman Spain, will not attract imitators.

did not live to execute their task, however numerous the volumes in which even the small period they have treated, is comprised

1 HISTORIANS — During the eighth century, we find mention of only one historian, — *Isidorus Pacensis*, whose work, so frequently quoted in the first volume of this history, comes down to 754. Much dispute has been maintained as to the see filled by Isidore, but, with his usual diligence, Florez, the learned author, or rather compiler, of so many volumes of the *España Sagrada*, has proved that Beja, in Portugal, not Badajoz, is to be understood by *Pax Julia* hence the epithet of *Pacensis*. The work of this prelate, however barbarous in style, and whining in tone, in which respects it bears considerable resemblance to that of our *Gildas*, is of great value, since it is the only authority we have for the decline and fall of the *Wisigothic* monarchy. It was not, however, his only composition, he himself alludes to two other historical works, of which unfortunately no record is known to remain. The ninth century has two historians. *Sebastian of Salamanca*, who wrote a chronicle of the native kings from *Receswind* to the reign of *Alfonso III*, by whose order it was written. This chronicle is no less useful than that of *Isidorus Pacensis*, since it is the chief authority we have for the history of Spanish regeneration by the establishment of the *Asturian* kingdom. Though the good bishop lived no more than a century and a half after the time of *Pelayo*, he does not scruple to record some miracles, one of which we have already translated.<sup>1</sup> Credulity is natural to man, and we must not blame the author for his where there is no intention to deceive, the wishes will often mislead the judgment. Another history, called *Chronicon Albeldense*, because written by an anonymous monk of that place, beginning with *Romulus*, and ending with the reign of the same *Alfonso*, is also of great value, since it is composed in a more judi-

<sup>1</sup> Vol. II. p. 122. See also Appendix C in the same vol.

cious spirit, and, unlike that of Sebastian, has reached our own time uninjured. It was continued the following century by *Vigila*, of the same monastery, who brought it down to the year 976. The continuation is chiefly valuable as affording us the earliest information of the kings of Navarre.<sup>1</sup> In the eleventh century the chronicle of Sebastian was continued by *Sampiro*, bishop of Astorga, who yet comes down no later than 982. Perhaps he was summoned away by death in the middle of his task, or more probably he had no wish to speak of the two princes contemporary with him, Bermudo II and Alfonso V. His work is a very valuable one, but, like that of Sebastian, it has had his fortune to be vitiated by the hand of Pelavo, bishop of Oviedo. In the following century (the twelfth) lived the *Monk of Silos*, who brought down the national history to the reign of Alfonso VI, and *Pelayo*, bishop of Oviedo, who continued the chronicle of Sampiro, from Bermuda II to the time of the same Alfonso. The *History of Compostella*, written by two bishops of the same century, at the express command of the archbishop of that see, is chiefly remarkable for its virulent abuse of queen Urraca, and for its praise of the archbishop, whose conduct on some occasions appears to have been rebellious—on all, haughty and overbearing. Some anonymous chroniclers also lived in this age. One, the author of the Chronicle of Alfonso the Emperor, exceeds all his predecessors, not only in elegance of style, but in animation of narrative. He is the first who aimed at graphic description, and in no requisite of an historian has he been surpassed by subsequent writers until the close of the fifteenth century. Belonging to the same century are the anonymous authors of the *Chronicon Lusitanum*, the *Annales Complutenses*, and the *Chronicon Complutense*, which relate some few facts, but in so brief a manner that they resemble mere tables of facts and dates. Of the same character are the anonymous chroniclers of the following

<sup>1</sup> Vol III p 4

century,—the *Chronicon Burgense*, the two first portions of the *Anales Toledanos*, and others Even barely to mention the names of such obscure writers, or the titles of their productions, is any thing but interesting, nor is it required, considering the tables at the head of the present volume <sup>1</sup>

Two writers, however, of the thirteenth century, *don Lucas*, bishop of Tuy, in Galicia, and *don Rodrigo Ximenes*, archbishop of Toledo, merit a more particular mention This last named writer, a native of Roda, in Navarre, was educated at Paris At first he appears to have attached himself to his own sovereign, Sancho V king of Navarre, by whom he was employed to negotiate a peace between that kingdom and Castile The manner in which he discharged this mission procured him the favour of king Alfonso, by whom, in 1192, he was nominated bishop of Sigüenza, and on the death of Martin, archbishop of Toledo, in 1208, he succeeded to that elevated dignity He showed great zeal in the frequent wars with the Moors, and at the splendid victory of las Navas de Tolosa, his penon was the first that entered the dense ranks of the Almohades <sup>2</sup> He it was, who had proclaimed the crusade in Spain, and such was his martial disposition, that, at the head of his own vassals, he made frequent inroads into the Mohammedan territory So high was he in the favour of the kings of his time, especially of San Fernando, that nothing was done without his advice His zeal for learning was no less ardent than that for the destruction of the common enemy He persuaded the king of Castile to found the university of Palencia, and thereby to avoid the necessity of sending the youths of Spain to be educated in foreign countries <sup>3</sup> Of his learning, he is said to have exhibited abundant proof at the fourth

<sup>1</sup> Sandoval, *Historia de los Cinco Obispos* Nicolas Antonio, *Bibliotheca Vetus*, lib. vi et vii Florez, *España Sagrada*, tom viii xiii xiv xvii xx xxi xxiii Ferreras, *Histoire Générale d'Espagne* par Hermilly, tom ii et iii (*Ecrivains Natifs d'Espagne*) Masdeu, *España Árabe*, lib. li p 182, and also the notes in the preceding volumes of this history

<sup>2</sup> Vol II p 46

<sup>3</sup> This university, in the reign of Alfonso el Sabio was deserted for the new erection at Salamanca.

Lateran council, when he not only harangued the fathers in elegant Latin, and in the true spirit of eloquence, but he gained over the secular nobles and ambassadors, by conversing with them, each in his maternal tongue. In German, French, Italian, and even English, he spoke with so much fluency, that he was declared superior in learning to any prelate who had appeared since the apostolic times. This is, doubtless, exaggeration, but exaggeration only proves the fact. He died in France, in 1247, after attending the council of Lyons, convoked by Innocent IV, his corpse was brought to Castile, and interred in the Cistercian monastery of Huerta<sup>1</sup>. Of his works, some are yet in MS, others have been published. His *Rerum in Hispaniâ Gestarum Chronicon*, and his *Historia Arabum*, are the most valuable of the latter<sup>2</sup>. He is unquestionably superior to all preceding writers on the subject, and deserves to be called the father of Spanish history. He is, however, more than reasonably credulous — Personally known to the archbishop Rodrigo was don Lucas, who was probably a native of Leon. While deacon, the devotion of the age led him to Rome, Constantinople, and Jerusalem, and on his return he exhibited great severity against such of his countrymen as had espoused the tenets of the Albigenses. It was probably for his zeal on this occasion that he was raised to the see of Tuy. He died in 1250. By Berengaria, mother of Fernando III, he was persuaded to undertake the

<sup>1</sup> In Vol II. p 57 we have given part of the epitaph of Rodrigo, the following is the whole, as found in Nicolas Antonio —

“ Angelicis manibus ad sidera tollitur iste  
 Cœli nominibus sociandus, — Laus tibi, Christe!  
 De cuius morte soli bene contigit Hortæ.  
 Præsulum gemma, totius gloria gentis,  
 Lux, decus Hispaniæ, verus fons, arca sophiæ,  
 Et pius et mitis, cunctis uberrima vitis  
 Existit alumnis, caruit sua vita calumnis  
 Mater Navarræ, Nutrix Castellæ, Toletum  
 Sedes, Parisiis studium, mors Rhodanus, Horta  
 Mausoleum, cœlum requies, nomen Rodericus ”

A different epitaph is, however, given by Rodriguez de Castro. These doggrel verses are unworthy of such a man.

<sup>2</sup> The whole of his works may be found noticed in Nicolas Antonio, lib. viii. cap 2.



*Chronicon Mundi*,—a work which ends with the reduction of Cordova, in 1236 The style is not bad, though it is often obscure and abrupt, but the book is valuable, as containing a few facts omitted by the archbishop His treatise against the Albigenes was published by Mariana Whether he also wrote the *Vita S Isidori*, and the translation of that prelate, has been much disputed, what the more curious reader may wish to know on this subject may be found in the work of Nicolas Antomo <sup>1</sup>

Omitting in this place the mention of one or two historic works still in MS, we proceed to *Alfonso el Sabio*, son of San Fernando Of his poetical and mathematical labours we shall speak when we arrive at those branches of our subject, our present enquiry must be restricted to the history which passes under his name The *Cronica General de España*, containing the history of the country, from its fabulous population immediately after the flood to the death of Fernando III, was written, as the preface informs us, at the express command of the king But from the use of the first person plural in that prologue, and from his literary habits, it is reasonable to infer that he had also a considerable share in its composition One MS, indeed, distinctly affirms that it was *composed* (*compuesta*) by him, but this copy is not of equal antiquity with the others which have *que mando fazer*, which he commanded to be written To determine what portion emanated from the royal pen would be a hopeless attempt Most of this work is compiled from St Isidore, from Isidore of Beja, Sebastian, Sampiro, the monk of Silos, and, above all, Rodrigo of Toledo But if, for much of this work, the authors were indebted to the historians just mentioned, they were under no fewer obligations to the ballad makers, or, perhaps the prose traditions of the age The fourth part of the *Cronica General* is composed chiefly of fables, many relating to the celebrated Rod-

<sup>1</sup> Flores, *España Sagrada*, tom xxii p.108 Nicolas Antonius, *Bibliotheca Vetus*, lib viii cap. 2. et 3 Ferreras, *Histoire Générale*, tom iv passim

rigo de Bivar It may, indeed, be a question whether the numerous ballads of that doubtful personage be not wholly founded on the *Cronica*, since in their present form they are evidently much more modern than the history itself. However this be, this chronicle is one of the most curious and interesting books in the Spanish language<sup>1</sup>

Whether, in the fourteenth century, another general history of Spain was not composed by order of Alfonso XI may perhaps be doubted. *Garibay* expressly affirms that there was, while *Sandoval* asserts that it was merely the general chronicle. Possibly it may be the continuation of the former work brought down from the death of Fernando III to the latter part of Alfonso's reign. Contemporary with Alfonso was *don Juan Manuel*<sup>2</sup>, who, besides some poetical pieces, which we have not space to notice, wrote a chronicle of the events of his own times. In these times he himself was a memorable, often a perverse, actor. This is merely a table of facts and dates,—a thing we should scarcely have expected from a poet, but, in those days, the duty of a general historian was considered perfected when he had related the most striking events, without comment. Apparently, his reputation was corresponding to his brevity: if he could compress into a single page what ought to have filled a volume, he seems to have been regarded as the great master of his art. Fortunately, however, general historians now began to be superseded by particular chronicles of each king, which, if composed without method, and unaccompanied by reflections, dwelt on *facts*, and enabled the reader to form a truer estimate of the royal character than could have been obtained from the most laboured description. Thus, to *Fernando Sanchez de Tovar*, chancellor of Castile in this reign, are assigned no fewer than three chronicles: one of Alfonso X, the second of Sancho the Brave, the last of Fernando IV.

<sup>1</sup> Authorities,—*Nicolas Antonio*, *Ferreras*, and the *Cronica de España*.

<sup>2</sup> See Vol. II. p. 196, &c.

The reign of the present Alfonso was written in that of his illegitimate son, Enrique II, by *Juan Nuñez de Villasan*. The series of kings was continued by *Pedro Lopez de Ayala*, who wrote the lives of Pedro the Cruel, Enrique II, Juan I, and Enrique III. This historian had the singular felicity of being successively known and valued by the four sovereigns. The character of the first seems to have disgusted him, for he joined the count of Trastamara, and had the misfortune to be taken prisoner at the battle of Najera<sup>1</sup>, nor could he obtain his liberty without a heavy ransom. Had Pedro been allowed to follow the bent of vengeance, the money would doubtless have been spared, at the expense of the owner's life. He was present at another action not less disastrous, — that of Aljubarota<sup>2</sup>, where he became the prisoner of the Portuguese, but on his return he was amply rewarded for his services and sufferings by the highest dignities of the state. This was a superior man; he was conversant, we are told, with the best writers of antiquity, especially with Livy and St Gregory, part of whose works he translated, and was evidently a close observer of human life. His *Cronicas de las Reyes de Castilla* are among the most useful in the whole range of Spanish historic literature<sup>3</sup>. His chief defect is his negligence of the relative importance of events in the eyes of posterity — on such as posterity would have been interested in knowing, — on those which gave a character to the age, — he has been brief, while on such as might well have expired with the chief actors, he has dilated ad nauseam. Another writer of this age is deserving of honourable mention — Ruy Gonzalez de Clavijo, who, with two others, was sent by Enrique III on an embassy to the terrific Timur, and who wrote an entertaining account both of that conqueror and of his own embassy. The chronicle of don Alvaro de Luna, by an anonymous writer, and that of

<sup>1</sup> Vol II p 225

<sup>2</sup> Ibid p 237

<sup>3</sup> The chronicle of Enrique III. he left imperfect it has been continued by other hands

Juan II by Fernando Perez de Guzman, contain important matter, but the manner in which it is communicated to us is far inferior to that of Ayala. The same judgment may be passed on the *Historia Hispana* of Rodrigo Sanchez de Arevalo, or a general history of Spain from the earliest times to the reign of Enrique IV, whose actions are recorded with sufficient care, and with more than sufficient partiality, by this bishop. Of the long chronicle of this king by Diego de Valero we can give no opinion, as we have never seen it. According to Lucius Marinæus Siculus, the author was more ingenious than learned. As little, and for the same reason, do we know of another chronicle (also in MS) of Enrique, by Alfonso de Palencia. The work of Hernando del Pulgar, — *Cronica de los Señores Reyes Catholicos, Don Fernando y Doña Isabel*, — is of a superior order, superior, not from its ability, but from the importance of its facts, from its general interest, and from its agreeable style. Equally useful, though scarcely as interesting, are the *Decades* of Antonio de Nebrija, who dwells so largely on the chief transactions of the catholic sovereigns. As the other historians of these reigns lived in the time of the emperor Charles V or of his son, they belong to the *modern* history of the Peninsula<sup>1</sup>

The preceding are historians of Castile and Leon. we will now briefly advert to those of the other kingdoms, not separately, but promiscuously as they occur in the order of time.

Of these, if we except a meagre chronicle of the Goths, composed in the eleventh century, and published by Brandaon in the third volume of the *Monarchia Lusit-*

<sup>1</sup> Nicolas Antonio, *Bibliotheca Vetus*, lib ix cap 6. et 7, et lib x cap 1—16. *Chronica Dni Joannis Emmanuelis* (apud Florez, *España Sagrada*, tom 11.) Pedro Lopez de Ayala, *Cronicas de los Reyes de Castilla*, et Ruy Gonzalez de Clavijo, *Historia del Gran Amorlan*, passim. Also, *Chronica del Gran Condestable de Castilla*, Fernando Perez de Guzman, *Chronica del serenissimo Rey Don Juan II*, Rodericus Santius, *Historia Hispana*, Hernando del Pulgar, *Cronica de los Señores Reyes Catholicos*, Aelius Antonius Nebrissensis, *Decades*, &c. As our observations apply to the whole of these historians, no passages can be particularised.

tana, the anonymous monk of Ripol, who commenced the *Gesta Comitum Barcionensium*, or the History of the Counts of Barcelona, and who appears to have lived in the twelfth century, was the first His work, however meagre, is exceedingly valuable, as the only record we have of the early history of that lordship It has been continued by other hands to the close of the thirteenth century The next is a royal historian, don Jayme el Conquistador<sup>1</sup>, who wrote, in the vernacular language of Aragon, an account of his own actions<sup>2</sup> On this work, which we have been unable to consult, a favourable judgment is passed by his biographer, Miedes, who represents it as one of the strictest veracity, though harsh in style Like Cæsar, Jayme, we are told, whenever the sword was laid aside for a moment, took up the pen to detail his own exploits, — like him, too, in the third person<sup>3</sup> As we shall not again have an opportunity of mentioning this prince, we may here advert to another of his works, the MS of which adorns the library of the Escorial It is a treatise on wisdom (*de la Saviesa*), and consists of moral sentiments, chiefly extracted from the ancient moralists and philosophers The following specimen, extracted by a learned editor of the *Bibliotheca Vetus*, may convey some idea of the royal author's manner —

“ *Dedi cor meum ut scirem prudentiam et doctrinam, erroresque et stultitiam* These are the words of Solomon, contained in a book called *Ecclesiastes*, and their meaning is this — I gave up my heart to know wisdom and learning, and also errors and follies, that I might refrain from them Wisdom he wanted for him-

<sup>1</sup> Vol III, p 97, &c

<sup>2</sup> We give the published title — *Chronica o Commentari del Gloriosissim e Invictissim Rey en Jacme Rey d'Arago' de Mallorques e de Valencia, Compte de Barcelona e de Urgell, e de Muntpelher, escrita per aquell en sa lingua natural, e treita del Archiu del molt magnific Rational de la insigne Ciutat de Valencia, hon estava custodita Valencia, 1557*

<sup>3</sup> *In primis quidem historia, cujus præcipuus ad perennitatem genus est veritas, ab ipsomet rege non modo perilligenter dictata, verumetiam inter arma, ne quipnam exciderat, hasta quandoque in lævam conversa, dextra arrepto calamo exarata et quamvis ineleganter duroque stilo pro injuria temporum (how can this be?) summâ fide tamen atque accurate perscripta. — Miedes, *Vita Jacobi Primi*, lib 1*

self, learning for others, for how can a man refrain from a thing, unless he knows what it is? Wherefore I, king don Jayme, seeing these things, laboured to acquire the means of knowing what Solomon wished to understand for his own profit, like him, I give up my heart to learn them, and in the search I meet with many fine sayings in ancient philosophers, and though theology contains in itself the perfection of the understanding and of reason, yet the sentiments of those who were not Christians cannot injure, they must rather profit us. Thus Seneca — ‘*Soleo transire in aliena castra, non tamquam profuga, sed tamquam explorator,*’ &c.<sup>1</sup>

Passing over an anonymous historian of Catalonia, whose work no one but Zurita appears to have seen, we come to Bernard de Sclot, who lived under the reigns of Jayme and Pedro, and who wrote, in the vernacular language (the Catalan), a history of his native principality, and of the Aragonese kings subsequent to the junction of the two states. This work, too, has eluded our industry to acquire, as well as the biography of king Jayme by Raymundo Montaner, composed early in the fourteenth century. In the same century lived the anonymous authors of the *Chronicon Barcionense*, and the *Chronicon Vhanense*, both which, though exceedingly meagre, have been of service in the composition of the past volumes. In Portugal, we have Alfonso de Melo, who lived under Fernando I, and who wrote a history of his own times, and in Aragon, the royal Pedro IV, in imitation of his illustrious predecessor, don Jayme, com-

<sup>1</sup> The philological reader may not be sorry to see the original passage — “*Dedit cor meum ut scirem prudentiam et doctrinam, erroresque et multitudine*” Salamo dice esta paraula en un libre que es dit *Aclesiastes*, é l’entement es aquest. Yo doni mon còr que sabés doctrina è saviesa, e error et folia per guardarsí. Sabér volch aver pera sí, è doctrina pera altres, per có com destes cosas no s sab hom guardar sino lcs enten. Per có yo Rey en Jachme vén aquestes cosas, estor em d’apendre com les sabés, les quale Salamo volch pera sí, e dona mon còr per saber aquelles, è demanán açò, trobe paraules bones de Philosopho anticho, ét já sia que en Theologia sia tot compliment d’entement et de sèn, les bones paraules que dixèren aquells que no foren chrestians no es dany en sabér, ans es profit que dice Seneca, *Soleo transire,*” &c — *Ant Bibl vet a Bayerio*, tom ii lib 8 p 70.

Certainly the pen of king don Jayme would never have procured him so much fame as his sword.

mitted to writing the chief events of his reign. The fifteenth century is much more fruitful in historians. We have — 1 A History of the Kings of Aragon and Counts of Catalonia, by Juan Fuencas. 2 Fernando Lopez, keeper of the Portuguese records in the Torre do Tombo, who wrote the chronicle of most kings of that nation, from Alfonso I to Duarte. 3 Charles, prince of Viana, the first native historian of Navarre, the first, at least, of whom we can obtain any information. The work of this ill-fated prince<sup>1</sup> begins with the fabulous origin of the country, and ends with the accession of Charles the Noble. It has never been printed, probably because it does not deserve to be so. He is also known as the translator of the Ethics of Aristotle, from a Latin version. 4 Matthæus de Pisano. 5 Gomez Eannes de Zurara, and, 6 Ruy de Piña, to whose works — *De Billo Septensi*, the *Cronicas das Condes Dom Pedro and Dom Duarte de Menezes*, of João I, Duarte, Alfonso V, and João II, we have been under the highest obligations for the history of Portugal during the greater part of the fifteenth century. 7 Pere Tomich, a Catalan, at whose history of Aragonese kings and Catalan counts we have but cursorily glanced, yet have we seen enough to convince us of its utter worthlessness as an historic guide. The other historians of this period, — such as Lucius Marineus Siculus, Zurita, Blancas, Brandaon, Moret, — all, in fact, of much celebrity in our days, — were posterior to the transactions they relate, and cannot, therefore, be noticed in the present place.<sup>2</sup>

The times when the preceding writers lived are not liable to much dispute, but there are a few others whose period it is impossible to assign, and whom, for this reason, we could not include in the summary. Among these are several anonymous writers, whose names, as they are contained in the table at the head of

<sup>1</sup> See his political life, Vol. III pp 41—48

<sup>2</sup> Authorities, — Nicolas Antonio, *Bibliotheca Vetus*, Marca, *Limes Hispanicus*, Da Serra, *Collecção dos Livros Ineditos de Historia Portugueza*, Ferreras, by Hermilly, *Histoire Générale d'Espagne*, with many others.

this volume, need not be noticed here *Apocryphal* works cannot be included in either — we have been the more minute in particularising the historians of Spain during the middle ages, from the intimate connection of the subject with that of the present work. Into the wide field of biography — most of it ecclesiastical biography, — a field much more extensive than that of history, — we cannot enter for three reasons: because the works are in MS, and therefore difficult, often impossible, to be consulted, because they would afford little entertainment to the reader, and because, if they could, the limits of this history should be extended to ten times its contemplated size before they could be admitted. On the second branch of peninsular literature, however — that of poetry — we shall become more diffuse, both because it is a subject more interesting to the general reader, and because it affords us the means of illustrating it by extracts.

II POETS — The *Latin* poets of Spain during the middle ages need not occupy us long. Of these, the first is Theodulfo, who was doubtless by birth a Spaniard, but educated in Gaul, and ultimately raised to the see of Orleans. His hymns, elegies, and other verses, may be seen in the collection of Mabillon and Duchesne. San Eulogio (of whom more hereafter) cultivated poetry even in his prison of Cordova, while suffering for the faith. His *ardor ingenui*, his *decus eloqui*, and his *fulgor scientiæ*, are highly praised by his poetical contemporary *Alvaro*. The abbot *Sanson*, the fourth poet of the ninth century, is inferior to the rest, and scarcely deserves even a line for his name. Superior to all is the archpriest Cyprian, of Cordova, who flourished in the same century, and whose hymns are so frequent in the Spanish breviary and martyrology. Thus we have a song to saints Juan and Paulo, another on St Sisenando, a third on St Paulo, deacon, a fourth on St Theodormiro, abbot, a fifth on the saints Emelia and Hieremia, another on St Columba, another on St Pomposa, all, except the first, martyrs of Cordova. The tenth century does not produce a single poet, if we except some



anonymous epitaphs, which are miserable things. The same may be said of the eleventh, except an epitaph on count Raymundo I. The twelfth is no less barren. We have only Alo, or Halo, surnamed Grammaticus, who was doubtless the same with the bishop of Astorga (1122—1131), who is said to have written a poem *De S Jacobi Adventu*<sup>1</sup> into Spain, and who, we know, composed some epitaphs and epigrams. In the thirteenth we do not find one, but at its close, or early in the fourteenth, we have Juan Egidio, a Franciscan of Zamora, who had been preceptor to Sancho the Brave. Among some volumes of MS works still extant, relating chiefly to scholastic theology, is a poem *De Jesu et Maria*, from which we cannot avoid giving an extract, —an extract curious alike for its matter and versification<sup>2</sup> —

## 1

“ Dicant illi qui damnati  
Sunt, ad vitam revocati  
Sunt, Mariæ precibus,  
Dicat ille desperatus  
Vitæ domus, sum salvatus  
De inferni faucibus,

## 2

Dicant omnes tribulati  
Et peccatis onerati,  
Ubi sit refugium  
Ad petendum et habendum,  
Certe tute retinendum,  
Ad Mariæ gremium.

## 3

Ad hanc currunt omnes rei  
Ut in annum jubilæi

Juan Tamayo Salazar, author of the Spanish Martyrology, in 1648, published what he pretended to be the original work of Halo, *De Adventu*, but what, in reality, he chiefly took from Alvaro Gomez, a poet of Ciudad Real, in the sixteenth century. The imposture has been well exposed by Nicolas Antonio, lib vii cap 7.

<sup>2</sup> We are indebted for it to Bayer, the learned editor of Nicolas Antonio.

Habet nostra servitus.  
 Ipsa lima peccatorum,  
 Spes dolorum, schola morum,  
 Via scalæ cœlitus <sup>1</sup>

And the poem runs on in the same precious strain unto the end —

“ Audi, Benignissime Pater, peccatores,  
 Per Dilectum Filium fac nos meliores.  
 Da nobis Paracletum corrigentem mores  
 O Virgo dulcissima, nobis hoc implores <sup>1</sup>” <sup>2</sup>

The next work is allegoric, partly prose, but chiefly poetic, *De Consolatione Rationis*, written about 1325, by the maestro Pedro of Compostella. Its strain is so singular, that we give a brief analysis — The author in his sleep is much delighted with the appearance of a beautiful girl, named *Mundus*<sup>3</sup>, who, by the most lascivious enticements, endeavours to allure him to the love of worldly pleasures. Just as he is on the point of consenting to her wishes, in steps *Natura*, a nymph still more beautiful, who places herself between the two, and addressing the youth, discourses with equal learning and sweetness on the elements, the nature of plants and animals, the laws of motion, matter, the songs of birds, and other things, which she produces and nourishes. In the midst of this allegory arrives a third female, incomparably more lovely than the two former, and her name is *Ratio*<sup>4</sup>. Regarding her two rivals with indignant contempt, she calls them a couple of whores, adepts in flattery and falsehood, occupied in charming the inexperienced to their own destruction. Then turning to the author, she dwells on the beauty of her handmaidens, of whom the first are Grammar, Rhetoric, and Logic. The four next on whose charms she dilates, are Arithmetic, Music, Geometry, and Astronomy, and to these

<sup>1</sup> That these praises of the Virgin are not exaggerated by the rhyme, will abundantly appear from the *Milagros de Nuestra Señora*, by Berceo.

<sup>2</sup> The unlearned reader would scarcely thank us, if we translated the above — verses? We know not what name to give them.

<sup>3</sup> The world.

<sup>4</sup> Reason.

she adds as many sisters, the four cardinal virtues. But her sage discourse has little effect on the youth, who grievously complains that the "two noble ladies" have left him, and he upbraids her for supposing that any human art could withstand such attractions, or refuse such proffered pleasures. She tells him that their charms are unreal—in fact, concealed deformities, and that he is under a spell, which invests every thing around him, even whitened sepulchres, with unnatural splendour —

" O juvenis captusque catenis carnis obesæ  
 'Tc læsæ, cor habes? tabes Scis quod morieris?  
 Et superis cariturus eris, si verba puellæ  
 Bellæ corde tuo fatue sectaberis? Illa  
 Stilla manu, quamvis pravis blanditur oculis,  
 Cum mellis calice inversa vice dando venenum  
 Sirenum modulis rapiens, capiens cor, &c "

In another part of the scene suddenly arise *Caro*<sup>1</sup>, *Avaritia*<sup>2</sup>, *Gula*<sup>3</sup>, and other vices, and all endeavour to gain him over to their views, but *Ratio*, who never forsakes him, exposes their real characters, and by degrees weans him sufficiently from the world to render divine things not altogether unattractive. *Caro*, however, continues to fill him with certain thoughts. *Ratio* grieves, but in the end succeeds in dispelling them, by expatiating on the delights of paradise, the privileges of the elect, the praise of God and the Holy Mother, the mysteries of faith, the infirm condition of man, not forgetting to draw a suitable picture of the infernal torments. The good impression being thus deepened, he ventures to propound certain questions, some sufficiently abstruse, respecting original sin, free will, the miraculous conception<sup>4</sup>, and the hypostatic union of the divine

<sup>1</sup> The flesh

<sup>2</sup> Avarice

<sup>3</sup> Gluttony

<sup>4</sup> In reply to his enquiry how the miraculous conception was effected, *Ratio* says, —

Ut proprijs solis radius lux vitra subintrat,  
 Sic uterum Rector Superum mox Virginis intrat  
 Ut Dominis clausis foribus loca discipulorum  
 Ingreditur, sic Rex ortur de Matre bonorum.  
 Ut rubus ardens, non tamen ardens, uritur igne.

and human natures in Christ. To these, satisfactory answers,—to him, at least, satisfactory,—are given by his instructress, so that he forsakes the follies of the world, glows with rapture over the contemplation of celestial truths, and as he thus glows, becomes happy. Hence the title of the piece, *Consolatio Rationis*, or the Consolation of Reason. Throughout, the author exhibits an acquaintance with natural philosophy, theology, and general learning, that cannot fail to surprise us in a poet so early as the first half of the fourteenth century. “Utinam,” says the learned Bayer, “non ille impeditissimum planeque puerile rhythmi genus in versibus consecretatus fuisset!”<sup>1</sup>

The preceding brief list does not include the poets whose names or epochs cannot be ascertained. They are, however, but few, and are still confined to the dust of libraries—*Requiescant in pace!* We now proceed to the vernacular or national poetry of Spain.

The origin of Castilian *poetry* may reasonably be assigned to the middle of the twelfth century, though no record exists that can be well referred to a date anterior to the opening of the thirteenth. Fortunately, the publication of the most ancient poems in the language by Sanchez, under the title, “*Collecion de Poetas Castellanas anteriores al Siglo XV*,” furnishes us with data to arrive at something like a satisfactory notion on the subject. In this valuable collection, the language of the poems of Gonsalo de Berceo appears to us at least,—and we have been at some pains to compare the two,—almost as old as that of the anonymous

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Arca Dei similis fit ei dum manna tenebat,  
Et tabulas pro Lege datas virgamque terebat  
Virgo parens sed peste carens sit filia tandem.  
Sic Deitas, sed non levitas, habitavit Eandem

Stranger verses than these we do not remember to have seen. They must have cost the author some trouble.

<sup>1</sup> Nicolas Antonio, *Bibliotheca Vetus, Notulae ad Bibli. Vet.* tom. 11, p. 151. Sirmundus, *Opera Varia*, tom. 11. Mabillon, *Vetera Analecta* tom. 1. Theodoli Episcopi Aurelianensis *Carmina*, p. 410. Alvaro, *Vita Beatissimi Eulogi* (apud Florez *Espana Sagrada*, tom. xi.) Sanson, *Vida et Escritos Ineditos* (in eodem tomo) Cyprianus, *Epigrammata* (in eodem tomo), cum aliis.

*Poema del Cid*, yet we know that the priest resided in the monastery of San Millan between the years 1220 and 1246. Attempts, indeed, were made by some critics to remove him into the eleventh century, but they must have been little acquainted with his writings, since, in one of his *Milagros de Nuestra Señora*, he mentions the bishop don Tello, who, according to Rodrigo of Toledo, was present in the great battle of las Navas de Tolosa in 1212. Again, he speaks of the reign of Fernando *the Fortunate*, grandson of king Alfonso the *Tall*, as *past*. Who can this prince be, but San Fernando, whose mother, Berengaria, was the daughter of the conqueror at Navas de Tolosa? But father Romero, keeper of the archives in the monastery of San Millan, has produced some ancient instruments, among the witnesses to which appears the name of the poet. The last bears the date of December 31 1246. How long he survived this year would be vain to enquire, but he certainly lived until the reign of Alfonso X. We willingly admit that the *Poema del Cid* is older, — perhaps even half a century. The date, about which there has been so much dispute, era mille CC XLV, and which is subjoined to the oldest MS of the poem, a candid mind will have little difficulty in settling. There is an erasure between the letter C and the X, and the space is just sufficient to admit a third C, so that the MS appears to have been originally mille CCCXLV, corresponding to A D 1307. The third C has probably been cancelled to give the MS. greater antiquity. It has, indeed, been observed, that the transcriber, perhaps, wrote one C too many, and was compelled to erase it, but what should we think of a man careless enough in writing a date to blunder a whole century? That such a blunder is *possible* must be admitted, but is it *probable*? and with what justice can it be made the foundation of a theory? After all, however, the best argument for fixing the commencement of the thirteenth century as the origin of this curious poem must be the internal evidence of its language, there is not, we repeat, any reason for in-

ferring that it is *greatly* older than that of Berceo The *manner* of the former is, indeed, more simple, but this may have depended as much on the different genius of the two authors, as on the age More, too, would depend on the *province* which gave birth to each, than is commonly supposed the native of Galicia or Leon, or even of the regions bounding on Navarre, or Aragon, or Valencia, would employ a style apparently more antiquated than an inhabitant of the two Castiles At this very day, the style of many educated persons of northern and north-western Spain might be easily mistaken for language of the sixteenth century <sup>1</sup>

The *Poema del Cid*, as being the most ancient, occupies the first place in the collection of Sanchez Of this curious monument of antiquity we have already given the substance <sup>2</sup>, and may therefore proceed to another As the author of the work just named is unknown, Gonzalo de Berceo may be regarded as the oldest poet in the Castilian language He himself confesses that he was not learned enough to write in Latin, and from the manner in which he acquaints us with his choice of the vernacular tongue, we should infer that composition in that tongue was yet novel His works are entirely of a religious character, and have few passages deserving the name of poetry they are, in fact, rhymed chronicles, and legends of the saints Yet they are highly interesting—more so, assuredly, than the more finished compositions of the language This interest arises, first, from the simplicity of the author's manner, and, in a superior degree, from his works being more deeply impressed with the spirit of the times than any other compositions of the middle ages, excepting only the *Poema del Cid* <sup>3</sup>

Of the copious works of Berceo, most have no great

<sup>1</sup> Sanchez, *Collecion de Poesias*, tom ii Prologo Romero, *Noticias del Famoso Poeta*, &c (in eodem, tom iii) Nic Antonio, *Bibliotheca Vetus*, lib vii cap 1 Southey's *Chronicle of the Cid*, Introduction

<sup>2</sup> See Appendix H, Vol II relating to "the Cid Rodrigo Diaz de Bivar, surnamed El Campeador"

<sup>3</sup> Sanchez, and Nicolas Antonio, ubi *suprà*.

claims to notice in this place The Life of San Domingo de Silos, of San Millan de la Cogulla, of Santa Oria, the Martyrdom of San Lorenzo, are but versifications of the received legends of the time The Praises of Our Lady, her Grief on witnessing the Passion of her Son, the Signs that are expected to precede the last Judgment, and a devotional as well as doctrinal discourse on the Sacrifice of the Mass<sup>1</sup>, would not be tolerated by a Protestant English reader The *Milagros de Nuestra Señora*, or the Miracles of Our Lady, are the only portion of this priest's works that we consider worth extracting Those extracts must chiefly be in prose, simply because the original is neither more nor less than rhymed prose<sup>2</sup> The first of these miracles relates to San Ildefonso, of which we have before given an account<sup>3</sup> We accordingly commence with the second

“ In a house belonging to good Bennet's rule—the place I cannot tell, for why? I read it not—there lived a monk who right heartily loved Santa Maria, and every day paid meet homage before her shrine Yea, every day did he bend before it, and as he attended the devout *Ave Maria*, his worldly sorrows left him So decorous, and with also prudent, did he seem, that the abbot made him sacristan to the brotherhood But our mortal enemy, the vicar of Belzebub, who ever did and doth hold the righteous in hatred, so cunningly wrought on him that he fell from God's grace, and did whoredom And the foolish sinner soon fell into a foolish habit, for when night came, and the prior was in bed, he stole privily from the dormitory in the church, and hastened, like the sow, to wallow in the mire of iniquity Howbeit this sinner forgot not the Glorious, for ever, as he passed her shrine, whether to pursue his lustful purpose, or on his return from it, right willingly did he kneel before her, and repeat his *Aves* Now it happened that a deep river flowed near the monastery, and the monk had always to pass it, but one night, as he came on his

<sup>1</sup> In *El Sacrificio de la Misa*, there is but one poetical expression —  
Si queremos con Christo à los Cielos volar,  
Las alas de virtudes nos aven à levar

Cop 183.

<sup>2</sup> Berceo himself calls it prose —

Quiero far una *prosa* in roman paladino  
Ca non so letrado a far otra Latino.

<sup>3</sup> Vol. I p 219

foolish errand, in he tumbled and was drowned. When the hour of matin song came, no sacristan was there to ring the bell, so that the monks arose, and ran to the church to awake him from sleep; they opened the church door as best they might, and in they entered, but in vain did they seek him, high and low, in and around, no where was he to be seen, and though they passed by the place where he lay drowned, and thought he might perchance be there, little could they wot how it was, whether he had fallen in or been cast in by others. Great was their labour, and still greater their dole, for well knew they that the place must be held in bad repute. Meanwhile the corpse lay in the river, in what plight was the soul? In great numbers did the demons come, to bear it away whither little joy doth sojourn. Right well did they clutch it, sometimes, however, bandying it about like a tennis ball. And certain angels beheld this, and descended from on high, but the devils held fast, and bade the angels begone from what was their rightful prey. So the blessed ones had not wherewithal to answer, for wicked had been the monk's end, and just was his present fate, not one straw availed all their talk, and sorrowfully did they depart from the dispute. But Heaven's Glorious Queen saw the perversity of these devils, and down she came to the poor soul's aid: she bade them halt, nor dared they disobey her, while she disputed with power and true logic. Angrily did the Glorious say, 'Ye fools, what have ye to do with this soul?' So long as it was in the body, right dutiful was it towards me, and now ill would betide it if it were left unaided!' Quickly replied a learned subtle devil: 'Mother, art thou of a right noble Alcalde, whom violence pleaseth not? Is it not written that as a man dieth, be his end good or wicked, so shall he be judged? If thou oppose this decree, then is the Gospel not worth a fig!'—'Thou liest,' said the Glorious, 'and talkest of what thou knowest not, but I will not dispute with a wretched beast like thee. Only will I say, that when this brother left the house, he left with my leave, and as to the sin he committed, for that will I set him fit penance: if he remained in thy power, the violence and the wrong would be on thy side, but I appeal to the audience of Christ, of Him who is powerful and wise, and by his mouth shall sentence be given!' The King of Heaven, that right learned Alcalde, soon ended the debate—never was one more wisely ended: he commanded the soul to return to the body, that it might afterwards receive such reward as it should merit. Meanwhile right sorrowing was the convent for that so sad a thing had happened among them, when, lo! the brother appeared in the midst of them, and frightened them much—for



why? his face was deadly pale, and his garments were running with water. And he cried out, 'Companions, be ye sure that I have been dead, and am alive again, — thanks to the Glorious, who watcheth over her servants, and who freed me from the hands of the wicked!' And he related to them how that the devils and Santa Maria had disputed concerning him, and all that each said, how she released him from their power, and how, but for her aid, he would be in utter darkness. Right thankfully did they all praise God, and the holy Queen, the mother of mercy, for that she wrought so great a miracle, to the strengthening of Christendom. The monk confessed, and did his penance, and recovered from his incontinence, and served the Glorious so long as he had strength, and did when God saw fit, not despairing, but in good hope. May the divine mercy keep his soul!"

The affection which the Glorious bore to her votaries is a favourite theme with the priest of San Millan. Her amatory behaviour to Ildefonso at the time she invested him with the cassock, could only be equalled by the zeal with which she resisted the devils who were conveying away the soul of the lustful monk. Milagro the third acquaints us with the death of another devotee, no less wicked than the preceding, who came to a violent end, and, not being judged worthy to be interred in consecrated ground, was hastily thrown into a ditch. Incensed at the dishonour thus offered to his remains, the Glorious appeared to a priest of the same church, and commanded that they should be removed to a decent tomb, threatening to take ample vengeance unless her commands were obeyed. Her will was speedily done. On opening the ditch, a flower of exquisite fragrance was seen growing from the mouth, and the tongue exhibited all the freshness of life. Sometimes she appeared to her dying suppliant, taking care that the soul should be escorted by angels to its eternal reward. Generally, however, her worshippers were too wicked thus summarily to enter heaven, and were fortunate enough to escape, for a time, the doom they deserved. Thus there was a notorious robber by pro-

Milagros de Nuestra Señora, Mil 2 (apud Sanchez, *Collección de Poesías*, tom. II p. 295—298) See Appendix D

fession, who, with all his crimes, never failed to repeat his Ave, and to bow before the image or picture of Our Lady, whenever he saw one. At length he was taken, condemned to be hung, and led away to the gallows, which had been erected for him there his eyes were covered, the rope adjusted to his neck, and up he was hoisted, amidst the acclamations of the spectators, who exulted in his well-merited punishment. In appearance, no Jack Ketch could have done his business more dexterously, or more effectually, so that, after gazing a time, the crowd departed, together with the ministers of justice. On the third day came the kindred and friends of the culprit to cut down the body and honour it with the rights of sepulture, but, instead of a corpse, they found the rogue, not merely alive, but merry and laughing. He told them that no sooner had the hangman pulled away the platform, than the Glorious placed her hands under his feet, and held them there as comfortably as if he had been seated in an arm chair, he would have been glad to hang a whole year! The wondrous news flew from mouth to mouth, but some there were who did not believe it, and who exclaimed that he had practised some trick to escape the gallows and the devil. Again was he clutched by the hand of the law, and sentenced to be beheaded, and again did the Glorious befriend him! in vain did the executioners strike, they could not so much as touch him. Astonished at the miracle, they acknowledged the hand of Heaven, and left him in peace. It is added, that he amended his life, and died in a good old age — Milagro the seventh introduces us to another monk, whose fate resembles that of our drowned Benedictine friend. This man neglected every precept of his order, nor did he care for any penance that was set him. he was, besides, a perfect epicure. in short, his reverence appeared no better than one of the wicked. At length he died as he had lived, “without taking Corpus Domini or hearing confession,” and, of course, away went the devils with his soul. His fate did not at first touch Our

Lady, merciful as she is wont to be, but St Peter, in whose monastery he had professed and lived, saw and pitied it, and knelt before the throne of Christ, to procure his release To most readers what follows may appear to border on impiety, but nothing is more certain, than that the author was incapable of such wickedness, and that he wrote in full assurance of faith "My dear Peter," was the reply, "well knowest thou what David says, that whosoever would enter on the hill of Sion must be blameless, and without stain of sin But this one for whom thou kneelest, neither worked righteousness, nor lived without sin how, therefore, can he merit a seat among the happy on high?" Convincing as was the reply, it did not quell the ardour of the apostle thinking that other advocates might be more effectual, he employed them to make the same request, but, as may be expected, with the same want of success "He now turned to the Glorious Mother of our Don, and to the virgins of her household," who went in a body to repeat the request, "and when don Christo saw the Glorious, and so goodly a procession of her friends, he rose to meet them with a right good will Happy the soul which could see such a scene! 'Mother,' said Don Christo, 'much do I wish to know what can have brought you and this fair company' — 'Son,' replied she, 'I come to ask a boon for the soul of a monk in such a monastery!' — 'Mother,' returned he, 'most unfit would it be for the soul of such a man to enjoy such happiness as is here if this were done, then were all holy scripture made of none effect Yet, through your prayer, we will do something yea, through love of you, I will do this, — let the soul return to the body in which it dwelt, do penance as becometh a sinner, and strive for salvation by better deeds' When San Pedro heard this sweet decision, he saw that his business was as good as done he turned to the devils, that viperous race, and took from them the soul, much against their will" In accordance with the divine decree, the monk was restored to life, and though he remained a whole

day in a kind of stupor, he recovered his senses, and related the wondrous things he had suffered "This was no common miracle," adds Berceo "Let no one doubt of it in his heart, nor say whether this thing could be or not Let him place his affections on the Glorious, and soon will he find that we relate nothing contrary to reason As the Glorious is full of mercy and grace, and free from stain, no petition could she make which would be denied how could such a son to such a mother say *nay* ?"<sup>1</sup>

But the Glorious was not satisfied with aiding her departed,—she often assisted her living votaries Thus the poor idiot priest, whose attainments extended no further than to repeat daily a mass in her honour, whose morals appear to have been somewhat exceptionable, and of whom complaints were laid before the bishop, experienced a signal proof of her favour The manner in which this miracle is related, we should not have expected, even in the coarse priest of San Milan On hearing the charges, the indignant prelate lost all patience, or even decency "Tell the son of a whore to come before me let him not delay!" The trembling chaplain obeyed the mandate, and, on entering the presence of his superior, his fear and shame were such that all colour left his countenance, and he could not hold up his head "Tell me truly," said the stern bishop, "is thy folly so great as it is said to be?"—"If I said *nay*," replied the poor elf, "verily I should speak falsehood!" The bishop dismissed him from the church,—*nay*, from the priesthood, and told him, as he was too stupid to do other than repeat, like a parrot, *Salve, Sancta Parens*, he must seek out some more useful source of livelihood Away went the disconsolate culprit, and in the sorrow of his heart complained to the only being he had ever worshipped She heard him, and appeared in a dream to the prelate, whom she fiercely

<sup>1</sup> Berceo, *Milagros de Nuestra Señora*, Mil 3—7 (apud Sanchez, *Collection*, tom 1 pp 298—309)

upbraided for dismissing her poor chaplain "Don Glutton, why art thou so villanously bitter against me? I never robbed thee of a grain, but thou hast robbed me of a chaplain. He who sang me a daily mass thou hast treated as a beast and heretic, and deprived him of his orders. Now, listen! If thou do not restore him, and allow him to say mass as he was wont, thou and I shall quarrel in one month thou shalt be called hence, and shalt tremble at the wrath of Maria." The terrified prelate sent for the priest, whose pardon he humbly craved, and restored him without delay — On another occasion she interfered for the promotion of a poor priest, her peculiar devotee, to the vacant episcopal throne. Appearing in a vision to one of the chapter, the members of which were divided in the choice of a successor, she ordered him to acquaint the rest with her wish that her servant Geronimo should be chosen. The chapter obeyed, and Geronimo was brought from an obscure parish to the splendid cathedral — Milagro the twentieth exhibits an equal instance of her maternal care. A monk one day entered a wine-shop, and drank so deeply that he could not stand on his legs, but laid himself down on the ground. There he remained until the approach of evening, when the vesper bell smiting his ear, roused him to something like recollection. With difficulty he raised himself, and staggered along the cloisters towards the door of the church. As he proceeded, what should meet him but the devil, in the shape of a bull, which was preparing to gore him with its horns, when the Glorious descended, and with her mantle scared the enemy away. Just, however, as he was beginning to ascend the steps, the same devil assailed him, in another form, but the same aid was at hand. The third attack was more serious: a large lion, and fierce as large, obstructed his passage, and opened its jaws to devour him. In consternation, he invoked Our Lady's aid, and, as before, she immediately appeared, — this time with a large staff in her hand. "Don Traitor," said she to the lion, "hast thou no fear of me? I will now give thee thy deserts,

and make thee know what an enemy thou hast dared to brave!" She began lustily to lay on the beast, "never were his sides so lathered in his life"—"Don 'Traitor," said the Glorious, "let me again catch thee here, and thou shalt be drubbed still better!" Well pleased was Don Devil to scamper away, and long was it before he was cured of his bruises. Anxious to see her votary in safety, the Glorious took him lovingly by the hand, led him to his dormitory, laid him gently in bed, threw the coverlid over him, put on his night-cap, and said, "Lie still, for well tired art thou, and a little sleep will recover thee. To-morrow, when thou arisest, go to my friend such-a-one, and confess to him, for he is a good man, and well I know he will give thee a heavy penance." The drunken knave by this time was sufficiently recovered to ask her name, and knowing that she was the Mother of Our Lord, he attempted to rise and fall at her feet, but she vanished from his eyes. The following day he made his confession, and was absolved, both confessor and penitent being filled with devout astonishment at the condescension of Heaven's Great Queen. Her praises were soon resounded throughout the monastery, both by night and day.<sup>1</sup>

If the Glorious was thus ready to assist her male votaries, it may be easily conceived that she neglected not the female. On two occasions she performed the honourable functions of midwife. 1. On the sea shore, near Mount St Michael in Britany, was a cell, which was not accessible at full tide. In this cell was a little chapel of wondrous sanctity, and therefore a favourite place with the devout. But when the tide advanced along the level sand, it did so with such rapidity, that he must be nimble indeed who could escape it. One day, on the feast of St Michael the Archangel, the faithful heard mass in the grotto, and at its conclusion issued forth to gain the high land. The sea was unusually quiet, but in a few minutes in flowed the tide,

<sup>1</sup> Berceo, *Milagros* 9 13. and 20. (apud Sanchez, *Colleccion*, tom. 1.)

with such haste, that all fled for their lives. All escaped except a poor pregnant woman, who was left far behind the rest: the waves advanced and encircled her. In a minute no traces of her were to be seen, and all, concluding that she was engulfed, offered up prayers for her soul. While thus occupied, not a few deeming her more sinful than themselves, because she happened to be less fortunate, the tide receded, and they perceived at a distance a woman walking along the sand, with an infant in her arms. All were astonished when they recognised the identical neighbour whom they had charitably consigned to the goodly society of the damned. "Good mistress," exclaimed they, as they raised their admiring hands, "do tell us, for the love of our Lord, how is this, and how you are delivered of your burden!" From her relation they learned that the Glorious, on being invoked, had hastened to her aid, and not merely saved her from the devouring floods, but had placed a mantle under her, and delivered her as she floated on the waters. "Without sorrow or pain I brought forth this little boy, thanks be to God!" A good midwife had I, never was there better, and great mercy was shown to me, a poor sinner. A twofold mercy it was: but for her I should have been drowned, and but for her, too, I should have been damned!" 2 The second interposition of Our Lady is still more wonderful. A certain abbess, devout enough in her general conduct, of great charity towards the poor, a zealous supporter of discipline, and therefore obnoxious to many of the sisterhood, had the misfortune at length to make a sad trip. The consequences could not long be concealed, her increasing size betrayed itself to the nuns, of whom some grieved, others rejoiced at her shame, and many agreed to join in effecting her destruction. Strictly as they were guarded, they wrote to the bishop, asking him why he did not pay the accustomed visitation. The prelate immediately concluded either that there was a division in the convent, or that some frailty had been committed, — the former, at least, of frequent occurrence, — and

departed for the place where his official duty was required. Fortunately for the abbess, as we shall soon see, he did not reach his destination until evening, and he repaired to his hostel, after sending an intimation that, in accordance with his episcopal jurisdiction, the next day he would hear the charge against the superior. This was a melancholy night to the accused abbess, to her, death would have been a welcome release from the ruin which awaited her the following day. Adjoining her bedroom was an oratory, in a retired situation, containing an altar dedicated to the Glorious, where she often passed her hours. Thither she repaired, prostrated herself before the altar and the image which adorned it, and in a pathetic tone besought the Star of the world, the refuge of the afflicted, the fountain of mercy, the tower of salvation, the queen of heaven, the mother of God, to have pity on her. Her prayer was heard, the Glorious appeared, accompanied by two shining ones. "Be of good courage, abbess, nor grieve any longer, know that I bring you good comfort, — better than your prioress will like." With the celestial aid the creature was born, — "a pretty little thing it was," — and delivered to the angels, who were commanded by the Glorious to convey it to a certain hermit, with a strict charge that he would rear it with all imaginable care. The anchorite — who we may shrewdly suspect could not be very old — received the infant with great joy. "It pleased him more than great riches would have done, and in truth it was a right noble thing." In the mean time the delivered abbess was in great surprise, and feared that all was a dream. She felt her waist with her hands, and found all smooth and level, and with her two hands could, as usual, span it. "When she found the sack empty of the bad meal," she began lustily to sing the *Salve, Regina!* and no longer did she dread to meet her accusers. The following morning she was summoned to the chapter as she entered, she hastened to throw herself at the prelate's feet, but he beckoned her off, and denounced



on her the vengeance of the offended laws. But in the age and country of Berceo that vengeance was only expulsion and everlasting disgrace, — death or perpetual imprisonment was not yet known beyond the Pyrenees. “My lord,” said she, with much assumed simplicity, “why do you thus treat me? It may be that I am not so wicked as you suppose!” The churchman would hear of no excuse, but ordered her to leave the chapter. He refused, however, to pass condemnation on her until she had been examined, and he commissioned some of his trusty clergy to visit her for the purpose. How great was his astonishment, to hear, “from their report, that she was flat as a table.” He could not at first believe them, but hastened as fast as his episcopal legs could carry him, and when with his own eyes he saw that she was flat as a flounder, he returned in great wrath to the chapter, and sentenced the accusers to the same penalty they had sought for the abess — expulsion. The lady, however, felt that they had stated the truth, and would not suffer them to be thus unjustly punished, taking the wondering prelate aside, she acquainted him with the fact, and with the miraculous interposition of the Glorious “By Don Christo,” said the churchman, “but if this be so, I will be your servant as long as I live!” He despatched two of his canons to the hermitage, where of course every thing was found just as she had related. The simple prelate, thus outwitted by the abess and the hermit, threw himself at her feet, and humbly besought her pardon. “Sir bishop,” she replied, “for the sake of God and Our Lady, do not kneel to me, for you are holy, and I am no better than a sinner.” So the bishop, at her request, restored peace, sent his respects to the *holy* hermit, and requested that when the child reached its seventh year, it might be consigned to his care. In the sequel, the youth was taught to read, received holy orders, and was raised to the episcopal bench.<sup>1</sup>

<sup>1</sup> Berceo, Milagros 19 and 21

It has been before observed that the works of Berceo are mere prose The following versified miracle, for which we are indebted to a modern periodical publication<sup>1</sup>, will confirm the assertion —

## OUR LADY AND HER SHRINE

The convent to St Michael raised, which men the Tomb do call,  
Is great, and by the sea it is surrounded like a wall,  
And eke a barren place is it, and want doth oft betide  
The holy brotherhood who in that burial place reside

Good odour had that convent isle, as divers yet can tell,  
For all the monks that in it dwelt in virtue did excel  
An altar of the Virgin there, where all the faithful pray'd,  
And o'er it shone an image fair, of costly substance made

That image, as is wont to be, high on a throne was placed,  
And in the arms an infant sweet the glorious mother graced  
Around her knelt the Eastern kings to bear her company,  
'Tis Heav'n's own Queen in glory bright whom God doth sanctify

That Queen so bright upon her head a crown as bright had she,  
And o'er her face a veil so rich—as rich as veil could be  
The whole of wondrous workmanship, and eke of wondrous  
pride,  
By which the monks more favour won than any far and wide

Before this holy image hung a fan of goodly size,—  
A *moscadero* it is called, — to drive away the flies  
Of peacock's feathers eke was it — of feathers long and fine,—  
Which like so many glorious stars to every eye did shine

One day,— for so our sins decreed,— the bolt of heaven did fall,  
And now the church in flames was wrapt, which blaz'd through  
every wall,  
Burnt was each book that lay within, each holy vest also,  
And eke the monks much trouble had to flee from such a woe

On fire were closet, altar, front, beam, rafter, roof, and tile,  
On fire were chalice, candlestick, and cruse for holy oil,  
All, all did blaze from roof to floor, for so did God permit,  
As other things permitteth He, which in His eyes seem fit

<sup>1</sup> The Foreign Quarterly Review, No VII

Yet though the fire consuming was, as fiercely it did blow,  
 Untouch'd was Our sweet Lady's shrine, and her dear Infant  
 too,  
 And eke untouch'd the shining fan which, aye, did hang before,  
 So that to none was damage done to grieve the faithful more

Untouch'd both fan and image were, again I do declare,  
 And that to none was damage done in value worth a hair,  
 Nor either did the smoke annoy, — this of a truth I know, —  
 Nor did it injure more than me, the bishop, Don Iello.

Consumed was both the holy pile and that which it contain'd,  
 Of ashes smoking on the ground a heap alone remain'd  
 But round about that shrine so bright no furious flames did  
 blaze,  
 No mischief did the fire — for why? — No mischief did it dare

This miracle, which I have told, to all did wondrous seem,  
 That neither fire nor smoke could touch heav'n's rich and holy  
 Queen,  
 Still brightly shone the peacock fan, more bright than starry  
 flame,  
 More beautiful did the Child appear, more beautiful eke the  
 Dame

Now blessed be our Lady sweet, the lofty Queen of all,  
 As she her holy shrine did save from flames that erst did fall,  
 So may she all her servants save from such as never die,  
 And take us to her glory bright which shines above the sky

From the preceding extracts, some idea may be formed of the manner of Gonzalo Berceo, whom Bouterwek, in his miserable work, dismisses in three short sentences, each containing as many blunders as lines <sup>1</sup>

<sup>1</sup> "There are some *prayers, monastic rules*, and legends, in Castilian Alexandrines, which are regarded as of very ancient date, but they were, probably, composed by Gonzalo Berceo, a *Benedictine monk*, about the middle of the thirteenth century. Spanish authors have made the dates of the birth and death of *this monk*, objects of very minute search, and have exerted great industry in recovering his rude verses. In this field, however, the poetical historian can find *nothing worth the gleaning*" — Bouterwek, *History of Spanish Literature*, p. 31.

Can this critic have read a single line of Berceo the *deacon and presbyter*, or one word of the dissertation of Sanchez? We answer, *No*. The collection of that editor would have shown him that Berceo wrote no *prayers or monastic rules*, and that he was not a monk, but a secular priest. The dates of his birth and death have not been made the objects of minute research, nor has great industry been used in recovering his rude verses, and

If he have no claims to the character of poet, he will yet continue to be read by the philologist for his language, by the antiquary for his incidental allusion to the state of society, and by many for the interest of his fables

*Juan Lorenzo*, a secular priest, like Berceo, apparently of Astorga, was certainly contemporary with the author of the *Milagros*. He is known from the *Poema de Alexandro*, one of the most curious literary monuments of the middle ages. That this is an original work, not a translation from the Latin poem on the same subject by a Flemish bishop of the twelfth century, has been proved by its indefatigable editor, Sanchez, and that it was written by Juan Lorenzo of Astorga (Johan Lorenzo), a secular priest, is indisputable from the concluding verses. It is a complete life of the Macedonian hero for his facts the author was indebted to the usual sources, for the inventions—which are many—sometimes to his own fancy, and sometimes to that of his Flemish predecessor. But its most singular characteristic is its *manner* if the exploits be ancient, the style and spirit are essentially chivalric, and of holy mother church. As no notice has ever been taken of this poem in our language, the curious reader may be gratified by a brief analysis of its contents<sup>1</sup>

From his earliest years the *infante* Alexander exhibited signs of what he would one day be,—though this exhibition was scarcely necessary, considering the portents which preceded / r accompanied his entrance into the world. At seven years he was taught to read, and he soon became master of the seven liberal arts, but his military propensity was more prominent than even his genius for letters. No sooner did he learn that his father Philip was a vassal of Darius, the king

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it is to be hoped that the poetical historian *has reaped* something worth gleaning

<sup>1</sup> Nicolas Antonio, *Bibliotheca Vetus*, lib viii cap 5 (This writer assigns the work, the MS of which he had never seen, to Alfonso El Sabio. He erred thus egregiously by following Pellicer.) Sanchez, *Collecion de Poesias*, tom iii, Prologo. Bouterwek, *History of Spanish Literature*, p 30. Of this last named writer we shall soon have occasion to speak again.

of Babylon, than he burned with indignation nay, he refused to eat, drink, or sleep, vowing that he would not rest until he had rescued his country from the yoke. But before undertaking so great an enterprise, he resolved to consult his preceptor, don Aristotle To the apartment of that sage, whom he found occupied with a syllogism which had robbed him of his night's rest, he accordingly hastened, but such was the reverence he bore to the philosopher, that he would not speak until he had the permission After expressing, in a suitable manner, his gratitude for the knowledge he had been taught to acquire,—for his great clerkdom, and acquaintance with the arts,—he proposed the expedition into Asia The philosopher, in a long harangue, expatiated on the duties of government, and the maxims which it behoved a wise prince to follow, and ended with saying, that if his advice were taken, Greece would be free The royal pupil considered that by this sanction of his enterprise, Babylon, India, Egypt, Africa, and *Morocco*, were as good as won Before his departure, however, it was necessary that he should be knighted, and accordingly we have a minute description of that ceremony, and of the arms and dress which were prepared for him The helmet was so valuable that Genoa or Pisa would have been too poor to buy it; each of the sandals was worth a city, the *camisa* was made by two sea-nymphs, and was therefore superior to all price, the value of the shoes could not be estimated by the most learned clerk alive, the sword was the work and gift of don Vulcan, the mantle was also inestimable, and as to the shield, it was too wondrous to be described with justice it was sculptured like that of Achilles, its innate brightness exceeded that of the sun, and it could not be penetrated by any mortal weapon As to his steed, of course it was the famous Bucifal (*Bucephalus*), which could gallop a whole month without being hungry or tired The infante now longed to prove that he deserved his spurs, and, in an expedition into Armenia, he met with a worthy

antagonist in don Nicholas, the king of that country, whom he challenged to a mortal combat. A tourney was appointed, the day arrived, the lists were opened, the trumpets sounded, and the two dons couched their lances at each other. Nicholas fell, and the victor subdued his kingdom. During his absence, however, a *rico hombre* in Greece, Pausanias by name, rose against his father, whom he defeated and mortally wounded, and whose wife, Olympias, he hoped to obtain. The infante arrived just as the battle was lost, slew the rebel, and received the last sighs of the expiring Philip<sup>1</sup>

Alexander was now solemnly crowned, and on this occasion he proposed to his assembled vassals the expedition against Darius. All assented, except the count don Demosthenes, whom he soon reduced to submission. Thebes next ventured to rebel, but after a vigorous siege it surrendered, the affrighted inhabitants flocking to his tent to beg for pardon, and "bleating like sheep in a court yard." He refused, however, to spare the place, even though it had given birth to don Bacchus, and he set it on fire. All Greece now testified great zeal in his ruin, troops were raised, a gallant fleet equipped, the soldiers embarked, the armament sailed, and soon arrived in sight of the Asiatic hills. The army disembarked, and the king, like Charlemagne in later times, chose his twelve peers whom he placed over his host. As the invader passed by Troy, our poet has the opportunity of favouring us with an episode of some hundreds of verses on the Trojan war, — verses which he puts into the mouth of his hero don Alexandro. Into this episode the substance of the Iliad has been compressed, and never was the father of song so completely burlesqued, however sincerely the simple-minded priest wished to imitate his great original. The way in which don Achilles, whom his mother had placed, clothed in a female attire, in a nunnery, was discovered, cannot be read with gravity. Don Ulysses suspected that the

<sup>1</sup> Poema de Alexandro, copla 1—172 (apt d Sanchez, Colleccion, tom iiii pp 1—25)

future hero was among the sisters, but was for some time puzzled how to discover him. At length he hit on a notable expedient—he collected a large quantity of the finest female apparel, of ribands, necklaces, and other ornaments, which he displayed before the nuns, leaving each to choose what she best liked—one, however, there was, who, as he had foreseen, took no notice of the gewgaws, but attentively regarded some armour which he purposely displayed at the same time—that one was Achilles, who was forced from the convent to the Trojan war. The catalogue of the ships, the names and exploits of the chiefs, are given with ludicrous minuteness, but our limits do not permit us to indicate the passages. The curious reader may compare them with the corresponding descriptions in Homer<sup>1</sup>

The recital of the Trojan war so inflamed the courage of the Greeks, that all desired to be led without delay against Darius. When the Persian king heard that his rival was approaching, he wrote a haughty letter to the Greek “Dario, king of kings, equal in power to the Creator, to the untried warrior, Alexandro. If thou dost not turn back, boy, it will be worse for thee.” The Macedonian read the epistle, which appeared to make some impression on his followers, but he bade them be of good cheer, reminding them how he had often told them that a “barking dog is not to be feared.” They assured him in return that they cared not a fig for Darius’s braggart words, that they would follow him to the world’s end! The first army of Persians was soon cut to pieces. “By Jove,” cried Darius, “but this war begins to look like earnest”—“By Jove!” cried the vanquished, “but we are in a pretty plight!” “He of the noble beard”—so the Macedonian is frequently termed—found that this was but the beginning of victories. The success at the passage of the Granicus was soon to be followed by that of Issus, in Cilicia, where Darius commanded in person. The description of the shield borne by the royal Persian on this occasion,

—intended no doubt to rival that of Achilles, — should be particularly admired —

“ Much beautiful history was there on the shield here were the deeds of the Babylonian kings, here the giants of Babel when the tongues were confused, there was Zedekias, king of Judea, and Nebuchodonozar, who conquered Chaldea, who took Tribol and Tabarea, and put such shame on the Hebrew people, who destroyed the temple of the holy city, took the twelve tribes into captivity, and did heap such evils on the poor king, even to the plucking out his eyes, — which is all God’s truth For fear lest the arms should be spoiled in some parts, certain histories were repeated in others the artist did not wish some things to be mentioned, lest they should spoil the rest, thus, how Nebuchadnezzar was turned into a beast, and how he wandered without memory during seven years, and how he was at length brought to his right mind, was not there, nor was there the perjured son who cruelly rose against his father, yet for whom that father did much grieve, though the luckless wight did aim to reign alone<sup>1</sup> Stretched out at glorious length lay the fair kingdom of Persia, right skilfully done—for the hand which did it wrought by command of don Belshazzar. The history of Cyrus lay around,—of Cyrus who gained much conquest by his sword,” &c<sup>2</sup>

After this sublime description, our second Homer proceeds in the same style to immortalise the exploits of his heroes “ On went the lines on each side to meet each other on went the balasteros, casting their missiles, on went the knights, lowering their heads, on went the horses, champing their bits” We have not space, however, for the exploits of dons Chitus and Tolomeus, dons Anta and Ardofilo, dons Aretus and Maceus, dons Antigonus and Cenus, dons Admidas and Feyax, dons

<sup>1</sup> Probably, our second Homer here alludes to Absalom the son of David The old priest beautifully confounds the histories of all ancient nations

<sup>2</sup> We cannot understand the last six verses in this description, and we therefore omit them



Disanus and Dimus, don Eumedes, "one of the twelve peers," and the infante don Ovidus, with a number of kings, counts, ricos hombres, and adalides, who here figure in imperishable rhyme Don Dario is admitted to have fought nobly, but don Alexandro, — never was courage like his So great, however, was the respect he bore to letters, that he would not fight the rico hombre don Goceas, who had taught a school of philosophy in Egypt, and who had been summoned to defend his liege lord, the Persian king The enraged philosopher, thinking he was despised, called the Grecian a *coward* — still the king would not fight him, a *son of a whore*, and a *parricide*, but to no purpose, nay, even when wounded by the Egyptian's lance, the king refused to notice him, but don Meleager sent his soul to the shades In the end Darius fled, and the Greeks remained masters of the field <sup>1</sup>

This victory was followed by the submission of Damascus, Sidon, and, after a siege, Tyre Judea and Jerusalem, terrified by the fate of the last-named city, were eager to submit At the time the king approached the holy city, don Judas, the bishop, was saying mass; and he came out, with his mitre and crosier, arrayed in his pontifical robes, and accompanied by his clergy, to deprecate the royal anger Alexander remembered to have seen the old prelate in a vision, and he bowed down before him He next proceeded to Samaria, which imitated the example of the holy city, and thence into Egypt Here he resolved to go on a pilgrimage to the shrine of don Jupiter, so he took the pilgrim's staff, put on the pilgrim's weeds, and away he went His four months' journey in the desert is minutely described by the poet, who tells us that when the sun shines on the sands, "hell itself is not hotter" At length, having lost many of his followers, he reached the shrine, observed his vigils, and offered a sufficient number of wax candles He returned through Egypt to Antioch, and thence went in pursuit of Darius, who, as he heard, had

<sup>1</sup> Poema de Alexandro, pp 101—146 (apud Sanchez, Coleccion, tom iii)

been diligent in collecting a new army We have now a description of the battle of Arbela, in the midst of which appeared a giant of the Philistines, whose height from the ground to the throat was thirty cubits, and who waved in his hand an enormous club, studded with spikes "Don Alexandro," said the monster, "think not that you will rob Dario of his kingdom to-day peradventure you may die a worthy death by my hands I am not one of the boys you are wont to conquer, but one of the giants who built the tower, and warred with the God of heaven" While speaking, the spear of Alexander entered the huge boaster's mouth, and killed him The same valour was shown on this as on the former occasion, equal or greater deeds were performed by the heroes on both sides, the same success attended the generals, and, at the hour of even-song, few of the Persians remained unhurt, except the guard of Darius, which was soon forced Never was grief like his "I pity him," says the poet, "even at this day!" He was left alone on the field, plucking his beard in the anguish of his heart, and resolved to die there, but this the Fates would not allow, and after a time, the love of life prevailing, he fled The victor now pushed on for Babylon, capital of the empire, the defence of which had been intrusted by Darius to one of his captains, but which submitted on Alexander's approach The poet stops his narrative to describe this renowned city, and, as some parts of that description have been much admired in this country,—the only portion of the poet's works to which the English reader's attention has ever been drawn,—we have much pleasure in giving them <sup>1</sup>

It standes in a salubrious spot, wele planted in a clyme,  
 Nor mistye with the vcrnal rayne, nor chilled by wynter ryme,  
 In all riche beauties bountifull beyonde desyre, and Tyme  
 Has with the gyftes of mony an age still stored it from his pryme.

The folke that in that citey bide wan sickenesse hurteth ne'er,  
 There the choice gummess and balsames be, and spice beyonde  
 compare,

<sup>1</sup> Foreign Review, No. 1

Of ginger, frankincense and myrrhe the place is nothyng spare,  
Nor of the nuttemcg, nor the clove, nor spikenard moche more  
rare

The verie treen give odours forth soe swete that they dispell  
Or stricke disease of all its force, the people there that dwell  
Are of a ryght gode tynte, and men may soothlie} swear that  
well

The tribes that jorneye farre and neare perceyve the plesaunt  
smelle

The three most holie rivers flow neare, beneath whose stremes  
O myny a perle and precious stone of richest vertue gleames  
Some that all nyght illumine earth with their resplendente  
beames,

And some that to the sycke give strength, when dead the patient  
seemes

\* \* \* \*

And all throughout the citee daunce fountaynes fresh and gay,  
Lukewarme in the colde mornynge and cool at noone of day,  
Within them neither newt nor frogge is ever born, for they  
Ryghte helthfull are, and verie cleare, and never know decay

And founded on a spacious plaine, most plesaunt was the site,  
Riche in all kyndes of game wherein the hunter takes delyte,  
By verdaunt mountaynes compassed round, by nibbling flockes  
made whyte,

Well tempr'd passed the vernal daye and eke the wynter nighte

There fly the brilliaunt loorie and the curious paroquecte,  
That sometimes even men of brayne with their sage conynge  
beat,

And when the lesser birdes too sing, the motheres, well I weete,  
Forget their own dere babies in lystening soundes soe swete

The men are men of substaunce, and generous in their pryde,  
They all goe robed in garments with goodlie colours dyed,  
Caparisoned sleeke palfries and ambling mules they ryde,  
And the poor in satyn and in silke goe marchyng at their side

Built by a rare good master were the palaces soe vaste,  
Wele mesured by the quadiante and the tymbers morticed fast,  
With marvellous care and labour were the deep foundacyons  
caste,

Stronge to withstande the fyre and floode, the erthquake and  
the blaste.

The gates were all of marble, natyve marble pure and whyte,  
 All shyning lyk fyne cristal, and brave as they were brighte  
 With sculptured werke, the quarter that soared to greatest  
 height

Was the kynges own home, and kyngly it might be termed  
 of ryghte

Four hundred columns had they, those mansions every one,  
 With base and capital of goolde, reflecting backe the sunne  
 Had they been polished brasiers they colde not more have  
 shone,

Their parts so welle the chizel and burnisher had done

There too was musicke chanted to the harp and pastoral quille,  
 The quavers soothing sorrowe and the trebles rising shrill,  
 The mild flute's grieving pathos and the lute's ecstasticke thrille  
 Of all except the verie deaf entranced the captiue wille

There is not in the worlde a man that fitly can declare  
 The perfect swæctnesse and delight that filled all places there,  
 For whilst in that faire Eden a mortal lived, he ne'er  
 Felt hunger or the parchinge thirst, or paine, or vexing care <sup>1</sup>

\* \* \* \*

It must not, however, be supposed that these animated verses are a faithful translation in poetic merit, they are immeasurably superior to the Castilian To be faithful, the translators of such verses should preserve the very rudeness of the original, — a different thing from the elegant quaintness of the above lines The following literal verses of our own, which are rugged and inartificial as those of the old bard himself, will certainly convey a *juster*, though a much less pleasing, idea of his manner, than a hundred stanzas of such laboured excellence as the preceding<sup>2</sup> —

<sup>1</sup> The verses in the above description are not consecutive they have been selected from copla 1299 to 1277 Some of the latter verses relate to Alexander's palace

<sup>2</sup> We give the original of the seven following verses —

Quierovos un poco todo lo al descarg,  
 Del pleyto de Babilonia vos quiero cantar,  
 Cuerna az assentada en tan noble lugar,  
 Cuerno es abundada de rios e de mar  
 Az en lugar sano comarcha mui temprada,  
 Ni la cueta verano nen faz la envernada,  
 De todas las bondades era sobre abundada,  
 De los bienes del sieglo alli non mengua nada

Of Babylon's fair city the wonders to display,  
 Allow me, gentle readers, my story to delay  
 Its scite is passing noble, and both by stream and sea,  
 Well water'd is this goodly place, as well as place can be.

Upon a pleasant plain it stands, well shaded from the heat,  
 Nor ever doth the wintry blast its gentle bosom beat,  
 With nature's richest bounties, no place was e'er so blest,  
 Nor e'er did such abundance on royal city rest

The people of this region no sickness prove, or pain,  
 For theirs the choicest balsams and gums of every name  
 With spices, myrrh and frankincense doth every grove abound  
 And prodigal each shrub of health its perfumes breathes  
 around

So sweet the odour of the trees in this enchanting spot,  
 That distant fleeth pale disease, and anguish is forgot  
 And eke of rosy colour they who in such scenes abide,  
 And sportfully the fragrant breeze is wafted far and wide

Three rivers holy near the walls, their waters clear as glass,  
 And of the three, as palmers say, two through the city pass,  
 With vines that yield the purple juice their verdant banks are  
 crown'd,  
 In sooth the earth no treasure hath that may not there be  
 found

Within these living waters — well may the news surprise —  
 Full many a pearl and diamond of richest virtue lies,  
 Some which by night their radiance far o'er the landscape  
 dart,  
 And some which to the feeble, both strength and life impart

Los que en ella moran dolor no los retienta,  
 Allí son las especias, el puro garengal  
 En ella ha gengibre, claveles e cetoal,  
 Girofre à nuez muscada, el nardo que mas oal  
 Dessimismo los arboles dan tan buena olor  
 Que non avrie antellos forcia nulla dolor  
 Fñde son los ombres de mui huena color,  
 Bien à una jornada sientar el buen odor  
 Los tres rios santos todos son sus vecinos,  
 Dicen que los dos facen por ella caminos  
 Ay en esta cibdat mui olorosos vinos,  
 Los placeres deste mundo son en ella mui continos  
 Son per la villa dentro muchas dolces fontanas  
 Que son de dia frias, tibias à las mannanas  
 Nunca crian en ellas gusanas nen ranas,  
 Ca son perenales sabrosas e mui claras

*Poema, cop 1299, &c*

And even through this city fair the fountains sweetly play,  
Which in the mid-day heat are cool, and warm at dawn of  
day,  
No frog or toad or reptile foul these wondrous waters known,  
But ever doth the crystal stream with health and savour flow

We need not continue the jingling sounds, as the verses before quoted contain the substance of the remaining part of the description <sup>1</sup>

In describing Babylon, the poet, who represents it as built near the sea, could not avoid mentioning the prodigious number of ships that visited its ports from all parts of the globe. Still more complacently does he describe the seventy and two languages which were spoken in the city, and which had descended from the building of the tower. About thirty of these he enumerates, not forgetting those of Scotland, Ireland, and England. In short, whatever languages were spoken on earth, were spoken at Babylon, the cradle of all, and the inhabitants were divided into so many nations, or communities, each unintelligible to the rest, and each governed by its own institutions — Having received the submission of this splendid city, the Greeks prosecuted their successes. Susa and other places were quickly reduced, and the pursuit of the fugitive Darius resumed. Great was the victor's wrath to find that Persepolis had been destroyed by the royal orders, because it was the place in which the Persian monarchs were wont to do their vigils previous to receiving the order of knighthood. The misfortunes and tragical end of Darius are related as substantially as in Quintus Curtius and Arrian. The grief of Alexander is characteristically described — "Great dole made the king over the emperor, — if they had been brothers, he could not have made greater, and all the barons bewailed him, and all cried out, 'The devil take that traitor don Bessus'" The murdered Persian was magnificently interred, and his manes avenged. Just as this pious duty was concluded, and the Greeks, at their

<sup>1</sup> Poema de Alexandro, pp 146—193 (apud Sanchez, Coleccion, tom. III.)

leaders' command, were preparing to visit India, who should arrive but the Amazonian queen, Thalestris (whom our poet calls Calectrix), whose beauty he endeavours to sing in a suitable manner. He describes her forehead, her cheeks, her eyes, her nose, her mouth, skin, neck, stature, and waist, tells us that the wild rose was not so sweet, nor the morning dew so pure, but he suddenly stops short in the midst of his description, for fear, he says, lest his thoughts should lead him into sin. The object of her journey is well known, and in the poet's hand is neither concealed nor softened down. Alexander soon marries Roxana, who is here called the daughter of Darius, writes home to his mother and sisters, and gives them an account of all his successes, and of his approaching invasion. Greatly were his kindred delighted, but no one so much so as greybeard Aristotle, who, for joy, leaped three paces at a spring. India is entered, Porus pursued, the elephants are described, and creatures larger than elephants, the country is conquered. But the Greek was not satisfied. "Don Jupiter," said he, "made seven worlds, and I have yet subdued but one." And of this one he thought he had not seen half. He had heard of the antipodes, and he resolved to seek them by sea. He and his soldiers embarked, were soon lost in the boundless ocean, and assailed by a furious tempest. So great were his dangers and fatigues, that Ulysses was not to be compared with him. As he toiled on the wide waste of waters, the idea suddenly struck him that he should like to see with his own eyes what the fishes were doing, and how the little ones contrived to live with the great ones. Accordingly, he caused a large glass vessel to be made, entered it, with two of his companions, ordered it to be let down by chains into the water, and not to be raised up until fifteen days were passed. The royal prince was acknowledged by the finny tribe, who swam round his glass habitation, and paid him all possible honour. "By my faith," said the king, "but no prince was ever better attended." When he saw that the strong tyrannised

over the weak, — that the great fed on the small, — he began to moralise “It is every where the same in all places the most powerful does the most evil, and he who has most, wishes for more birds and beasts, men and fish, — all are alike!” On his return from the watery realms, he continued for some time longer on the deep, but not finding what he wanted, he gave orders that the fleet should steer for land. Don Belzebub, however, in the fear that he might invade hell, convoked an assembly of the infernal chiefs “The Greek king, that fierce conqueror, has subdued every thing, — men, beasts, serpents, and fishes, — and been seeking the antipodes he intends to break into our realm, and load both me and you with chains. It is written in the Scriptures, that hell shall some time be taken what time I know not, but let us be on our guard.” Great, we are told, were the lamentations of the throng on hearing this news they began to grind their teeth like dogs eager to worry each other. One little devil at length rose, and bade his comrades be of good cheer, for in a very short time the count don Antipater should be induced to poison their dreaded enemy.<sup>1</sup>

This brings us to the last scenes of Alexander's life. He returned towards Babylon, but in his journey he passed a palace situated on a small island, where dwelt a venerable man, a descendant of Apollo, who lived on celestial incense. By this sage he was persuaded to go on pilgrimage to two trees, at a small distance, both which could see into futurity, and would tell him his fate. A second time, in pilgrim's weeds, with staff in hand, he trudged on foot, and on arriving at the consecrated spot, one of the prophetic trees said to him — “My lord, I know your secret thoughts you wish to rule the whole earth, and it shall be yours, but never shall you return into Greece.” The other added, “Thou wilt be slain by traitors poison is prepared for thee!” In vain did he seek to know by what hands it should be administered. “No, no!” replied the tree, with

<sup>1</sup> Poema de Alexandro, pp 190—320



great sageness, "if I told thee the traitor's name, thou wouldst behead him, and the star of fate would not be worth a fig" As he still journeyed towards Babylon, the desire took him to see the whole earth he procured two griffins, which carried him over it The poet does not fail to acquaint us with its shape — it is that of a man The body is Asia, the eyes are the sun and moon, the arms are the cross, the holy sign of man's redemption, the left leg is Africa, the right is Europe, the skin is formed of the sea, the flesh of the soil, the bones are of rocks, the veins are the rivers, the hairs of the head are the grass of the field, in which the poet tells us there is abundant game <sup>1</sup> Leaving these extravagant fancies, on reaching the end of his journey the first part of the prophecy was fulfilled, ambassadors from all kingdoms were assembled to acknowledge his universal empire, and do him homage The second part soon had its completion On a great festival, in which *Te Deum laudamus* was sung by the people, in presence of the world's emperor, a creature of Antipater threw poison into the imperial goblet, and the kingdoms of the earth were in a few hours without a master <sup>2</sup>

Such, from a rapid glance, is this very curious poem, which recent writers on the literature of Spain have been satisfied with merely naming, accompanied, however, by some term of reprobation None of them had ever read it, and the unfavourable character, as is always the case, was the only thing remembered, and the only thing repeated, by succeeding *critics*, for wild, and grotesque, and in many cases absurd, as is this production, it has often invention, and it sometimes ascends to true poetry

"Still less" (says Bouterwek, who has been speaking of the Poema del Cid, which he had neither read nor understood) "of the character of poetry belongs to the fabulous chronicle of Alexander the Great, respecting the origin and age of which

<sup>1</sup> For information respecting this game, the reader may consult the primitive Highlander or Connaught man

<sup>2</sup> *Ibid* pp 320—343

the Spanish critics are far from being agreed. Whether it be, as some pretend, a Spanish original of the twelfth or thirteenth century, or, as others assert, the translation of a French work of the same age, or, what is still more probable, a versified translation of a Latin legend, with the manufacture of which some monk had occupied his solitary hours, are questions which a writer of the history of Spanish poetry cannot with propriety stop to discuss, even though alexandrine verse should, as some suppose, have taken its name from this chronicle.<sup>1</sup> Next to stringing together his rhymes, the chief object of the author probably was, to dress the biography of Alexander the Great in the costume of chivalry. Accordingly, he relates how the *infante* Alexander, whose birth was distinguished by numerous prodigies, seemed, while yet a youth, a Hercules, how he was taught to read in his seventh year, how he then every day heard a lesson in the seven liberal arts, and maintained a daily disputation thereon, and many wonders of the sort. Alexander's officers are counts and barons. The real history only faintly glimmers through a grotesque compound of puerile fictions and distorted facts. But perhaps this mode of treating the materials is not to be laid to the account of the versifier.<sup>2</sup>

Such is all that a professed critic chooses to say on a writer, who, if he had no other recommendation than his age, would be well entitled to attention, and of this the greater part is incorrect. The same may be said of almost every writer of whom this dull and ill-informed German has ventured to speak.

Of *Alfonso el Sabio*, as a poet, we have much less to say than has been said by many others. Of his poetical productions, the *Canticas de Nuestra Señora*, or "praises of our Lady," is in the Galician dialect, and has not, we believe, been published, the *Libro de las Querellas*, or "book of lamentations," has not been discovered, and the *Libro del Tesoro*, or "book of treasure," relating to the philosopher's stone and the moral virtues, contains but few couplets, which are probably not his. It must therefore be evident, that, until the works of this author are determined by the soundest laws of criticism, and published, any opinion of his merit would be highly

<sup>1</sup> Whoever said so, displayed great ignorance of the subject.

<sup>2</sup> History of Spanish Literature. This book should be scouted from the field of literature.

premature, unjust alike to the subject and to the man. The few stanzas which have been from time to time inserted in the collections of different writers, display no great ability, and are of doubtful paternity <sup>1</sup>

*Juan Ruiz*, archpriest of Hita, who flourished about the middle of the fourteenth century, is the next Castilian poet in the order of time. His works were written in prison, whither he had been consigned by order of the cardinal don Gil, archbishop of Toledo, who filled that see from 1337 to 1350. Into the cause of his disgrace it would be vain to enquire. He himself assigns it to calumny and to perjured witnesses, but from the freedom of some passages in his writings, — a freedom not decorous in any man, and highly censurable in a clergyman, — we may be pardoned for inferring that it was owing to some imprudent conduct or intemperate language of his own. The place of his confinement appears to have been Toledo. His works are of a varied description, varied alike in matter and metre. The far greater number, however, relate to a subject which we should scarcely have expected in an archpriest — profane love. Ovid was evidently his favourite, and though his expressions are much less licentious than those of the Roman rake, his spirit is highly exceptionable. Now he falls in love with some nun he saw for the first time at church, and sends an old procuress to plead for him, now he meets a country girl, and woos for himself, now he makes an appointment with a lady at the house of the old woman, now the old woman, perceiving that he is tired of his present mistress, proposes another, and obtains his consent to visit her, and now, in the spirit of the age, he clothes lewd imaginings in the garb of fable. In one piece he describes a procession of “clerks and laymen, of friars and nuns, of dames and jugglers,” who went out to meet don Amor (Love), and this is the worst in the whole collection. The various religious orders he represents

<sup>1</sup> Nicolas Antonio, *Bibliotheca Vetus*, lib viii cap 5 Sanchez, *Collection*, tom. 1. prologo

on this occasion as accompanied by musicians, and in the highest rapture welcoming the approach of the little god the words of their songs he profanely transfers from the mass-book and breviary, "*Venite exultemus*" was chaunted by the black friars, "*Te Amorem laudamus*" by the order of Santiago, "*Exultemus et lætemur*" by the Augustinian and Franciscan monks "*Benedictus qui venit,*" and "*Mane nobiscum, Domine!*" were the chorus of all Monks, nuns, bishops, nobles, all were eager to receive so distinguished a guest, and to receive him, too, exclusive of the rest The monks offered him a magnificent house and spacious refectory, with flowing mantles, and excellent dormitories full of beds The everlasting enmity between the monastic and secular clergy is proved by the monks desiring the illustrious personage not to accept the invitations of the priests — "They have no commodities for so great a señor" The priests replied, that large refectories and kitchens, unless they were well stocked, were of little value, that mantles without provisions, and beds without down, or pillows, or sheets, were still worse The cavalleros at length pressed their claim "Do not listen to them, my lord," said the squires, "they are only sharpers, who by false play will rob you of your money" The nuns advised him to reject the rest, promising him happiness enough in their society, when the clerks cried out, "My lord, beware of them, they will only jilt you, they are false to every body" At length don Amor decided, by accompanying our archpriest, who, he said, had been his devoted servant from a child<sup>1</sup>

It has, indeed, been contended, that the peculiar spirit of this author's works is no proof of licentiousness in himself, but is to be understood as a sharp lampoon on that of the age Undoubtedly satire was the quality in which he excelled, undoubtedly, too, he found subjects for its exercise Thus, when he repre-

<sup>1</sup> Poesias del Arcipreste de Hita, p 198, &c (apud Sanchez, Coleccion, tomo iv) Sanchez, prologo á los tomos i et iv

sents the consternation of the chapter of Talavera on receiving a prohibition from the pope and the cardinal archbishop, that no ecclesiastic should, on any pretence, keep a woman, married or single, in his household, his purpose is evident “ I will never forsake my little Orabuena,” cries the dean “ Nor I my Blanca-flor,” cries a canon “ Let us appeal from the pope to the king,” says another “ some of the apostles had wives, are we more holy ? ” “ Are we not flesh and blood ? ” asks a fourth ? “ Is it not a virtue,” enquires a vicar choral, “ to feed widows and orphans, and if those orphans happen to be female, what fault is it of ours ? I wish the archbishop were here, a nice milling would I give him ! ” But whatever might be his designs, it is impossible to exculpate him from gross licentiousness the minuteness with which he relates his amours,—no matter whether he speak as an individual, or the representative of a class,—proves that he delighted in such descriptions Besides, there is no evidence to prove,—on the contrary, there is much to disprove,—the depravity of the Spanish clerical orders in his day, or during the middle ages The following extract is a favourable specimen of our author’s manner, nor in this case is the translation superior to the original —

Mones do much in this vile world, they’re good in love —  
they make

A man of consequence, and clean transforme the wildest rake,  
They make the cripple run, the dumbe to speke, the blinde to  
wake, —

Yea, he who has noe hands to use, desires goode come to take.

Or be a man an ignorant clowne, a real countreye elf,  
He soone becomes a lorde and sage when graced by princely  
pelfe,

A man is prized the more, the more there’s money on his shelve,  
He who no money has is not the master of his owne selfe.

If you sholde have moche money, you will have moche conso-  
lation,

Pleasure, and of the pope milde terms, in Lente a goodlie  
ration,

You soone will purchase paradise, you soone will get salvation,  
Where moche coine chinks moche blessinge flowes, and kind  
congratulation

I in the court of Rome have seene, where lives much sanctitie,  
That all to money paye their courte, and bowe the reverente  
knee,

Grete honour do they yielde to it, with greetings grave to see, —  
All falle downe to it as to one in power's most highe degree

Moncy has manie an abbot made, archbishops, bishops,  
priors,

Doctors and patriarchs, mayors and monkes, to thousande  
brainlesse friars

Money has given acquirements soche as genius' selfe inspires,  
Lies it has made of truth, and truth of lies, — as right requires.

Moncy has laid downe moche good law, given moche bad con-  
demnation,

Moncy with manie an advocate has bene the sole foundation  
Of covenants and support of pleas where wrongs outlaughes  
vexation,

With money, in fine, you may have law grief and excellent  
reparation

I have known it compasse marvels, where muche has bene  
employ'd

Many have death deserved who still thereby have life enjoy'd,  
Others have strait bene slaine whose life no crime hath e're  
alloyde,

Its pleadings manie a soule have saved, and manie a soule  
destroyde

It has made the poor their vineyardes lose and homes, without  
a hint,

Bed, boarde, and furniture — all, all has melted in its minto,  
Through all the worlde the scurvie gocs, — hands itch to take  
its printe,

Where money rings, as a man may saye, the eye is sure to  
squinte

I have seene coine holde the best estates and palaces of price,  
Tall, costlie, and with paintings fill'd, arranged with taste moste  
nice,

Villas, and lawnes, and castled towers of admirable device, —  
All things serve money, all fulfille its wishes in a trice.

I have heard a number of preaching monkes, with wond'rous  
 elocution,  
 Denounce on money and all its snares I ken not what confusion,  
 But though they in the streetes and squares cry up its perse-  
 cution,  
 They horde it in convent cuppes and bagges with the fondest  
 resolution.

Every housholde Joan in her village cot, and ladie of condition,  
 Has her toile and dourie paid in coine, for comfort or nutrition,  
 I never kenn'd a beauty yet that did not as an apparition  
 Hate poverty, where there is money, there is state to her full  
 ambition

Money's a subtle advocate, a silver-slipper'd thinge,  
 Money's the worlde's resolver, for it makes a clowne a kinge,  
 For moncy and love and soche like gifts a woman will take  
 wingt,  
 Albeit the latch sholde be shut within, and mamma sholde  
 holde the stringe

It beates downe walls, it beates downe towers inviolate as a  
 nunne,  
 And ye may take my worde for troth, there's not beneath the  
 sunne  
 A slave whose freedome may not bee by monies lightly won,  
 But he who has noe golde to give, his palfreye will not runne

Money makes grave things light, but let him who lays siege to  
 my purse-stringes know,  
 I am not to be by his witte beguiled, however brave a beau,  
 Or little or moche it is not lent without usurie — Noe, noe!  
 I am not to be paide in pleasaunt wordes where moncy does not  
 goe

In soche a case if you would not lende, joke too with a like  
 frank brow,  
 Heare him not oute, to his well-urged suite nor ear nor time  
 allow,  
 He who has not honey in his farme should have it in his vowe;  
 The merchaunt who does so in sooth will truckle well I trowe!<sup>1</sup>

It could not easily be supposed that a writer, with an  
 imagination so subject to the dominion of the senses,

<sup>1</sup> The translation is taken from the Foreign Review, No 1

and of so satirical a vein, should yet have composed several devotional pieces, — pieces, too, which would have done honour to a holy anchorite. In the version of the following, we are rather below than equal to the original —

## TO THE VIRGIN

My longing heart will turn to thee,  
 Sweet Flower of Paradise!  
 And from it, on my bended knee,  
 Shall grateful songs arise  
 Oh, never may my wandering soul  
 From thee its homage bear,  
 Nor let me in thy service cool,  
 Thou Fairest of the fair!

In thee unbounded is my hope,  
 Thou Queen of realms above!  
 In thee I feel my firmest prop,  
 Thou Source of heavenly love!  
 Oh, now, when darkest scenes appal  
 Thy mercy let me find!  
 Oh, hasten at thy suppliant's call,  
 Thou Friend of human-kind!

Thou art the soul's bright polar star,  
 The haven of the good!  
 Thou art the beacon from afar,  
 To guide us o'er the flood!

<sup>1</sup> Quiero seguir à ti, Flor de las flores!  
 Siempre desir cantar de tus loores,  
 Non ma partir de te servir,  
 Mejor de las mejores!  
 Gran fianza he yo en ti, Señora,  
 La mi esperanza en ti es toda hora,  
 De tribulacion sin tardanza,  
 Venme librar agora!  
 Estrella del mar, puerto de folgura!  
 Remedio de pesar e de tristura!  
 Venme librar e confortar,  
 Señora del altura!  
 Nunca fallece la tu merced cumplida,  
 Siempre guaresces de cuitas e caida  
 Nunca perece, nin ertristece  
 Quien à ti non olvida.  
 Sufro gran mal, sin merecer à tuerto  
 Me quejo tal, porque cuido ser muerto  
 Mas tu me val non veo al  
 Que me saque a puerto



Now let thy beams my gloom dispel,  
 Oh, thou who shin'st on high <sup>1</sup>  
 And in my heart thy presence dwell,  
 Thou Empress of the sky <sup>1</sup>

Lady <sup>1</sup> thy pity faileth not,  
 Its source is never dry,  
 Nor are the sorrowful forgot  
 Who on thee humbly cry  
 Thy votary need fear no ill,  
 Though thousand dangers frown,  
 Thou wilt with faith his bosom fill,  
 From thine exalted throne

Lady <sup>1</sup> my hour of need is come,  
 Though conscience clear my soul,  
 And over me the waves of doom,  
 In awful billows roll  
 If thou vouchsafe not thy support,  
 What other shall I crave?  
 'Tis thou must bear me to the port,  
 Or here must be my grave

We may wish that these strains had been addressed to a nobler subject than even the Virgin, but the religion of Mary, more than that of Christ, ruled the middle ages <sup>1</sup>

Contemporary with the archpriest of Hita, or in the

<sup>1</sup> Poesias del Arcipreste de Hita, p 278 Bohl de Faber, Floresta de Rimas Castellanas, tom 1 and No 1

Of this poet the learned Bouterwek thus speaks — "Don Juan Manuel" (of whom more anon) "had for his contemporary the author of an allegorical poem, written in Castilian alexandrines, or in a kind of verse which may be called doggerel. The result of the researches of the Spanish critics ascribe this very singular work to Juan Ruiz, archpriest of Hita in Castile. This writer evidently possessed a lively imagination he has personified, with great drollery, Lent, the Carnival, and Breakfast, under the titles *Dofia Quaresma*, *Don Carnal*, and *Don Almuerczo*, and these and other personages are placed in a very edifying connection with *Don Amor*. The object of the satire is thus apparent, but the execution is as unskilful as the language is rude. Only a part of the work has been preserved" — *History of Spain* 111 p 44

The poem to which this erudite sage alludes as *imperfect*, is printed in full, and, so far from being the only, it is not one twentieth portion of the archpriest's works. The sage had seen a meagre fragment in Velasquez, the only portion he did see, and he pronounced judgment, *ex cathedra*, on the rest. To what impositions will not the public submit!

It would be easy to prove that this German knew as little of the poets we have already mentioned, as of Juan Ruiz, but we have said enough to expose him, nor is there much honour to be gained by breaking a butterfly upon the wheel

same century with him, were several other poets, of whose works, however, but few fragments have yet been published, and those few exhibit nothing likely to attract the reader's attention. Of these were the infante don Juan Manuel, don Juan de la Cerda, also a prince of the royal house of Castile, Pero Gonzalez de Mendoza, grandfather of the first marquis of Santillana, the Jew Rabbi Santo, a favourite of Pedro the Cruel, the archdeacon of Toro, Lopez de Ayala, Fernan Perez de Guzman, and a considerable number who flourished under Juan II, and whose songs are to be found in the *Cancionero General*. The marquis of Santillana, the most elegant scholar at the court of Juan, and his friend Juan de Mena, the best Castilian poet of the fifteenth century, have obtained more attention from native and foreign biographers than their merits deserve. Of the former, several pieces, chiefly of a devotional and amatory nature, appear in the older Cancioneros; but most are yet in MS. Juan de Mena has been more fortunate: his *Laberinto*, or *Trescientas Coplas*, a didactic allegoric poem, has, we suspect, been more praised than read. To us, at least, it exhibits no traces of genius. Juan de Mena is beyond all comparison inferior to the more ancient poets we have already noticed. In this century, too, originated most of the historic, chivalric, and romantic ballads, of which so many collections have been published, both in Spain and other countries, and of which several have been translated into our language by Bowring and Lockhart. To the translations of these writers the reader is referred for specimens of the lyrical compositions of Castile. In the first place, we have not the space, and, if we had, we should not have the inclination, to insert them, for sure we are, whatever authoritative names have been added to support the contrary hypothesis, that the merit and antiquity of the Spanish ballads have been egregiously over-rated.<sup>1</sup>

<sup>1</sup> Nicolas Antonio, *Bibliotheca Vetus*, tom. i; passim. Sanchez, *Collection*, prologo al tomo 1. Lockhart's *Spanish Ballads*, and Bowring's *Spanish Romances*, passim.

So much for the poetry of Castile we will now briefly advert to that of the other kingdoms

The poetry of *Catalonia* and of *Aragon* is not of equal antiquity, at least with that of Castile, but it is of a widely different character. As in the latter it was strictly national, in the former it was of foreign extraction. The troubadours of Provence and Languedoc, from their proximity to the two Spanish provinces, would soon introduce their art into the Peninsula. Alfonso II of Aragon, who reigned from 1163 to 1196, has a place in the literary history of those bards, but of his compositions no record remains. Guillermo viscount de Berguedan, a Catalan, who lived in the following century, has been more fortunate: some of his pieces have survived the wreck of time, but they are yet in MS in the library of the Vatican. This is the less subject of regret, if, as we are assured, they are filled with obscenities. He is charged, too, with being a murderer, — with treacherously slaying a noble baron, superior in riches and power to himself, and we are told that he went not unpunished, that, having been taken, his possessions confiscated, and set at liberty to be abandoned by all, he was at length killed by a common soldier. Don Jayme el Conquistador is also ranked among the sons of song, — with what justice we cannot decide. Of Mosen Pero March, and Jacme March, we know little, except that in the metropolitan library of Seville there is a folio MS of the second, written at the command of don Pedro IV, king of Aragon. Pedro III made his dispute with the pope and the French prince<sup>2</sup> the subject of a poem. The Valencian, Mosen Jorde, whose brows, according to the marquis of Santillana, were adorned with the laurel, was a poet of

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Some of the most interesting originals of the Spanish romances and ballads have been published by Depping, *Sammlung der besten Spanischen Romanzen*, 1 vol 12mo Leipzig, 1817, *Collecion de los mas Celebres Antiguas Romances* London, 2 vols 12mo 1826, and Bohl de Faber, *Floresta de Rimas Antiguas Castellanas*, 3 vols 8vo Hamburg, 1821—1825. The text of the first, however, is full of blunders, and the last exhibits little judgment in the arrangement, and still less in the selection.

<sup>1</sup> See Vol. III. p 114

more eminence than any of the preceding. As he lived late in the fourteenth century, not the middle of the thirteenth, and as some of his ideas are evidently the same as those of Petrarch, we may infer that he scrupled not to rob that famous Italian. Mosen Febler wrote on the conquest of his native city, Valencia, and he was followed by Ansias March, one of the best Valencian poets during the fifteenth century<sup>1</sup>

The art which these minstrels professed they called *La gaya Ciencia*, or the merry art. In 1323 a consistory or academy of its professors was established at Toulouse. Here rewards—the most common was a flower of gold or silver—were proposed to the poet who, at a given time, should repair to that place, and to whom should be adjudged the prize of merit. The institution, which was governed by seven noble poets, had its peculiar constitutions, both for estimating the literary merits of the applicants, and for regulating the prizes. Frequently the assembled poets were orally examined as to their knowledge of the principles of the art, and, above all, to the passion itself—love—which was the exclusive theme of the society. The questions propounded were sometimes remarkable. “Suppose there are two lovers, of whom one is constantly inclined to jealousy, and shows it on the least occasion, the other exhibits none, but is tranquil from his confidence in his mistress, which of them is the most influenced by the passion?” To decide this important question, the seven directors called in a jury of ladies, who constituted the “court of love,” and whose decisions were registered as decrees. Until 1390 the Catalan and Aragonese troubadours resorted to the French academy, but in that year, Juan I, whose immoderate attachment to these idle pursuits has been recorded<sup>2</sup>, founded a similar one at Barcelona, and as none of his subjects

<sup>1</sup> Authorities. Nicolas Antonio, *Bibliotheca Vetus*, tom II. Sanchez, *Notas sobre la Casta del Marques de Santillana*. Mervésin, *Histoire de la Poésie Française*, passim. Baster, *Crusca Proenzal*, p. 75, &c. Quadrio, *Storia d'Ogni Poesia*, tom II.

<sup>2</sup> Vol III p. 145

were sufficiently learned to preside over it, or to draw up rules for its government, he solicited and obtained professors from France, he even assigned an annual stipend for its support. His successor, Martin, amplified both its privileges and its means, but troubles arrived, and it fell into neglect, until Fernando I restored it, at the express entreaty of the marquis of Villena. The marquis himself was no mean poet: he composed several pieces, one of which, an allegorical masque, performed on a festive occasion at the court of Aragon, is mentioned with high praise. But whether this praise be deserved cannot be determined, so long as his compositions remain in MS. The same may be said of many other writers. Indeed, at every step the literary historian has to lament his want of materials. So long as meagre fragments or isolated songs only are produced, little reliance should be placed on any opinion which may be formed respecting the merit of their author. That the marquis was also a scholar, must be inferred from his reputation as a magician: his books were burnt by order of a Castilian bishop, and he himself would probably have shared the same fate, but for his close connection with the royal houses of Aragon and Castile.<sup>1</sup>

In examining such fragments as literary biographers, or some of the earlier *cancioneros* have printed of the Spanish troubadours, it is impossible not to be struck with their feeble uniformity. They sought only for the approbation of the fair: pretty conceits and elegant phraseology were likely to be more acceptable than invention or vigour, brief lays or canzonets than continuous pieces. Accordingly we find that this species of composition is singularly destitute of genius,—as much so as any modern book for a lady's boudoir. We have more than once pressed on the literati of Spain the propriety of publishing in one collection the best pieces of their ancient troubadours, but the present enquiry,

<sup>1</sup> The same authorities

circumscribed as it has been, has satisfied us that they are scarcely worth rescuing from oblivion

Omitting all mention of *Navarre*, which has either done nothing for literature, or its productions have had the singular misfortune of lying wholly buried, we now pass to *Portugal*. And here we are bound in honesty to declare, that, except the old Portuguese chronicles, we are very imperfectly acquainted with the literature of that country. Both Nicolas Antonio and Bouterwek laboured under the same disadvantage, so, in fact, has every writer on the subject, for even a tolerable history of Portuguese literature is among the things to be desired.<sup>1</sup> Gonsalo Henriquez and Egaz Moniz, two lyric poets, are said to have been contemporary with Alfonso I. If so, the poetry of Portugal has undoubtedly the advantage over that of the sister kingdom in point of antiquity, for the *Poema del Cid* is not apparently older than the year 1200. If so, too, lyric compositions must have existed in Portugal two centuries earlier than in any other province of the Peninsula, for the Spanish ballads and songs, of which so much has been written from time to time in this country, are, as before observed, of comparatively modern date. A few verses only of the two poets in question have yet been published, we will not, therefore, express an opinion as to their merits. Of greater antiquity, in the opinion of Manoel de Faria y Sousa, is a metrical narrative, relating to the early history of the Peninsula. The royal Dinis was certainly a poet, a fact for which we have the unquestionable testimony of the marquis of Santillana. His effusions are said to be comprised in two MS. *cancioneiros*,—one containing his spiritual, the other his profane pieces. The first is entitled *Cancioneiro de Nossa Senhora* (our Lady's song-book),—doubtless from its containing many cantigas in her honour. The example of the monarch is sure to be fol-

<sup>1</sup> Let us hope that it will be supplied by a gentleman, said to be now occupied on the History of Portugal, the only man out of that country, probably the only man in Europe, capable of doing justice to the subject. Need we mention Dr. Southey?

lowed at court, and that of the court by the higher classes of society, yet we hear of no other poet contemporary with him doubtless, either because other efforts have been less spared by time, or still remain shrouded in the dust of libraries. The fourteenth century can boast of several royal names. Alfonso Sanchez, a natural son of Dinis, invoked the muses—we are told, with some success, but his writings no longer exist. Alfonso IV, and his son Pedro I, soothed the cares of royalty by the delightful art. The infante Pedro, son of Joam I, probably acquired a taste for poetry by his travels.<sup>1</sup> The most ancient cancionero general exhibits the name of many writers of the fifteenth century. Of all these, Ribeiro was the most celebrated. This poet, an officer of king Manuel's household, is said to have pined by a hopeless passion for a daughter of that monarch. This circumstance, however, did not prevent him from marrying another,—we are unwilling to suppose that he was married when first assailed by the new passion—but his life was melancholy, morbidly so. Though he sought the woods and mountains, to complain over his fate, that fate will excite little sympathy. His grief appears to have been more sentimental than real assuredly the fragments which we have seen are not distinguished for pathos. His descriptions of nature and of natural life were the subjects in which he excelled, not the delineation of passion. In this respect he is held superior to Juan del Enzina, the contemporary Castilian, who likewise cultivated the pastoral muse. For many of his conceptions he was evidently indebted to Virgil, for more still to the Italian poets. In one of his productions, the *Menina e Moça*, he has interwoven the chief circumstances of his peculiar situation, but the whole is so complex, so studiously obscure, as to be scarcely intelligible any where, in some parts it is an absolute riddle. Few readers, however, will be disposed

<sup>1</sup> See Vol. III p 246.

to exert much trouble in divining his meaning, or will take much interest in facts which, if important to himself, must be indifferent to others. He was followed by Christovão Falcaõ, also a pastoral poet, and one, too, of no mean merit, — at least if we may judge from the very narrow data we have consulted. From the great number of pastoral poets in the fifteenth century, Portugal has been called the native land of that species of poetry, forgetting that to Italy the honour, such as it is, must be assigned. Whatever is unnatural cannot long exist: the pastorals, both of Italy and Portugal, were artificial though filled with rocks, and streams, and trees, with tender shepherdesses and pining swains, they carried on their very surface the smoke of cities and the frivolity of courts, and are now deservedly forgotten. The mania was afterwards revived in Spain, but to be as transient in its existence, and as confined in its influence, as in the sister country<sup>1</sup>.

Like the provinces which have been mentioned, *Galicia* can boast of its poets. The similarity of its dialect with that of Portugal, rendered the literature of the two provinces common. From a very early period it was celebrated for its lyric bards. Whether Payva, who is also said to have suffered through an imprudent attachment to a Lusitanian infanta, was a Galician, is doubtful, but Fernan Gonsalez de Sanabria, who was undoubtedly of that country, must be referred to the fourteenth century. The same may be said of Vasco Perez de Camoens, ancestor of the famous Luis de Camoens, author of the *Lusiad*. This Vasco left Galicia in 1370, and entered into the service of the Portuguese monarch, king dom Fernando. The best proof that the Galician was earlier employed than any other peninsular dialect in lyrical composition, is the fact, that several Castilians rhymed in it. Among them was Alfonso el Sabio, who would scarcely have used it in

<sup>1</sup> Nicolas Antonio, *Bibliotheca Vetus*, passim. Faria y Sousa, *Europa Portuguesa*, tom. iii. Bouterwek, *History of Portuguese Literature*, p. 5, &c.



preference to the Castilian, had the latter been so well adapted to the purpose, in other words, so well cultivated. After Vasco, we have the names of other poets, but we shall find room only for Marcias, surnamed *el enamorado*, or the lovesick, whose effusions and misfortunes are celebrated throughout the Peninsula. Marcias was a knight of the order of Calatrava, of which the marquis of Villena was grand master, and occupied a post in the service of that nobleman. His valour was equal to his poetic talent, for often had he distinguished himself against the Moors of Granada. Being imprudent enough to fall in love with a lady in the household of the marquis, — one much above his condition in life, — he thereby brought on himself all his misfortunes. The nobleman soon afterwards married her to an hidalgo of the country, but this marriage did not cure the infatuation of the poet. He entered into an intrigue with the lady, it was discovered by the husband, who complained to don Enrique. In vain did the latter expostulate with the criminal lover, and forbid him to see the lady; the command was disobeyed. Indignant at this contempt of his authority, the grand master committed the poet a close prisoner to the castle of Arjonilla, a few leagues from Jaen. While there, he composed numerous stanzas expressive of his love and sufferings, and of the injustice with which he was treated. Had he confined these effusions to the prison in which he lay, he might have been pitied, but, regardless alike of the lady's happiness, of his obligations to the marquis, and his own honour, he contrived to send them to her. One of these fell into the hands of the enraged husband, who immediately hastened to the castle of Arjonilla, in the resolution of vengeance. Marcias, who was at the grate of his dungeon, received a spear into his body, and expired on the spot. His fate can excite little sympathy.<sup>1</sup>

<sup>1</sup> Nicolas Antonio, *Bibliotheca Vetus*, lib. ix and x. Sanchez, *Notas sobre la Carta del Marques de Santillana*. Bouterwek, *History of Portuguese Literature*, p. 20, &c. For an account of the Jewish writers, the reader may consult the rabbinical works of Wolf and Bartolozzi.

As in the preceding volumes we have mentioned the foundation of the old Spanish universities, we need not revert to the subject. Were our limits more extended, we would notice the *Jewish* writers of the Peninsula,—writers great in number, and not inferior in merit to the Arabs, though such notice could scarcely be included in the plan of this compendium. The Jews belong not to a country—they are every where strangers and aliens. Their literature is peculiar to themselves, and must be sought in the elaborate bibliothecas expressly devoted to the subject.

III SCIENCE AND THE ARTS — As the theological writers of the Peninsula will be mentioned in the ensuing chapter, all that remains for us to notice is the general state of the sciences and arts in Christian Spain, and the names of such as obtained celebrity in either, or were distinguished for their general learning. The less remarkable names will be found in the list at the commencement of Volume V.

The scientific state of Christian Spain, as compared with the Mohammedan, exhibits a lamentable contrast. During the first four centuries from the Arabian invasion, Christian Spain can name but one physician, and that one appears to have been an inhabitant of Cordova, and consequently wholly indebted for his skill to the Mohammedans. During the same period, *three* mathematicians are named, all of the tenth century. Nor from the eleventh to the sixteenth was the case much better. Medicine was abandoned to the Jews, and mathematics were scarcely studied. In the thirteenth century, Juan Pedro, a native of Lisbon,—first a physician, and subsequently a churchman, who rose to the dignity of pope, and is known as John XXI,—wrote on medicine, logic, and other subjects. It may, however, be doubted whether he has not been confounded with two other writers, both called Pedro, both churchmen, and both writers on mathematics and logic. In the national libraries many MSS are extant, under the name of Petrus Hispanus, but whether there were only two or several of

the name, cannot be determined But to Alfonso X, surnamed *el Sabio*, must be assigned the most glorious place in Spanish science His astronomical tables, so well known to the scientific historian, are distinguished both for great ability and great diligence It must not, however, be concealed that for their construction he was chiefly indebted to several Mohammedan astronomers, so that it is impossible to say what, or even whether any, portion of the labour were his Yet nothing is more true than that, even if he had no immediate hand in their construction,—an hypothesis somewhat improbable,—he was capable of the task He had certainly, as appears from the preface of a scientific translation from the Arabic into the Castilian, made considerable progress in the study both of pure and mixed mathematics He was filled with ardour for such pursuits, or he would never have subjected himself to so much trouble and expense, both in collecting authorities, or causing them to be translated, and in attracting, by liberal recompences, to his court the ablest mathematicians of the age —Whether Arnaldus Villanovus, who is known to have been conversant both in medicine and philosophy, was a Spaniard or a Frenchman, has been much disputed, but the balance weighs in favour of the former hypothesis His medical and chemical works have been printed So high was his reputation as a chemical philosopher, that by the vulgar he was said to have discovered the secret of creation, and to have actually formed a human creature from the hidden properties of matter Greater than all who either preceded or followed him was the famous Raymundo Lully, of Majorca, whose learning and subtlety were equalled only by those of Thomas Aquinas On grammar, logic, the mathematics, philosophy, metaphysics, law, chemistry, medicine (we shall hereafter advert to his theology), he wrote at length, and on some of them so profoundly, that by the vulgar of his time he was regarded as a magician His life and fate will hereafter be noticed. Contemporary with him were Antonio

Andreas, who wrote on metaphysics and natural philosophy, and another Raymundo, with whom he has been sometimes confounded. If we except the preceding names, there is scarcely another to be found in any of the sciences worthy of particular mention.<sup>1</sup>

It does not appear that in any one of the useful arts of life the Spanish Christians were equal to the Moors. However liberal the fueros granted with the view of encouraging *agriculture*, no part of the Christian territory was ever so well cultivated as the Mohammedan, nor, consequently, did any part yield so ample a revenue. The same may be said of the *mechanic arts*, of *manufactures*, and of *commerce*. Perhaps the heavy duties which were imposed on various branches of industry, and on their transfer from hand to hand, were the chief cause of the difference. In Spain no *personal* tribute was known: all taxes were raised on commodities, sales, and barter, and on rural property. Thus, not only were forests, mountains, pastures, cornfields, gardens, orchards, &c. subject to an imposition, but, when the produce changed hands, both seller and purchaser had also to pay a certain sum, which varied in various places. The case was the same with respect to every other saleable article,—to wine, butcher's meat, bread, milk, &c., each tradesman paying a tax in proportion to the extent of his dealings. The transit of merchandise,—of every species of vendible commodity,—was no less subject to onerous imposition. In the *military art*, indeed, the Spaniards were fully equal to their more ingenious enemies. In one respect they were less scrupulous, for while the Mohammedans never entered a mosque except to prayer, they seldom hesitated to convert a church into a fortress, and in a church too, while on warlike service, they generally passed the night. The profanation excited no attention, the war

<sup>1</sup> Nicolas Antonio, *Bibliotheca Vetus*, lib vi.—x. Masdeu, *España Árabe*, lib ii. Moreri, *Grand Dictionnaire Historique*, art *Raymund Lully*.

was considered one of religion, and ecclesiastics,—bishops as well as priests,—often swelled the ranks of battle. Thus, Sisnando, bishop of Santiago, fell in a battle with the Normans<sup>1</sup>, and three Catalan bishops, Ethio of Barcelona, Otho of Gerona, and Arnulfo of Vique, while fighting the Moors<sup>2</sup>. In *architecture*, too, the Spaniards will sustain a comparison with the Arabs. If their palaces, hospitals, fortresses, and baths were less extensive than those of the latter, they were generally as elegant, and their churches were superior to the mosques, if we only except the wonderful erection at Cordova<sup>3</sup>. Ecclesiastical structures were the first to which the Christians, after the restoration of their monarchy, directed their cares: the church of the Holy Cross at Cangas was built by the son of Pelayo<sup>4</sup>, and Fruela I founded a more splendid one at Oviedo. The three churches founded by Alfonso II in that city were of a still higher order, the arches and columns being of marble. His successors, especially Alfonso III, who built the magnificent church of Compostella, Ordoño II, who erected the spacious cathedral of Leon, and Fernando I, who founded the church of San Isidro in the same city, nobly imitated his example: nor were the successors of the latter less mindful of so pious a duty. The same may, with equal justice, be asserted of the kings of Navarre, Aragon, Portugal, and the counts of Barcelona. And though one monastery only can be assigned to the eighth century,—that of San Pedro de Villanuova<sup>5</sup>, we know that some were founded in that age, but were subsequently destroyed during the devastating irruptions of the Arabs. The chief erections of the ninth were the monastery of San Zacarias in the Pyrenees of Navarre, that of San Pelayo de Antealtares in Santiago, that of San Martin de Pinao, in the same city, that of San Julian de Samos, in the

<sup>1</sup> Vol II p 131<sup>2</sup> Ibid p 304, and Vol III p 71<sup>3</sup> Vol I p 261 The palace of Medina-Azhar was also unequalled  
Ibid p 288<sup>4</sup> Vol II p 124<sup>5</sup> Ibid note to p. 124

bishopric of Lugo, that of San Pedro de Ripol, in the lordship of Vique, and that of Our Lady of Montserrat, on the famous mountain of that name. The tenth, eleventh, twelfth, and thirteenth centuries were greatly remarkable for such salutary foundations, scarcely a monarch who did not erect and endow one, many a considerable number but we have not space for the names<sup>1</sup>

## CHAP IV

### THE CHURCH

THE state of the church and of religion in the Peninsula, especially in Leon and Castile, is of sufficient importance to claim a separate chapter, and, for the sake of greater clearness, we proceed to examine it under the consecutive heads of — I The Secular Church, its Hierarchy, Doctrine, and Discipline, II The Monastic and Religious Orders, III Martyrs and Confessors, IV Heresies and Persecution, V Theologians

I As the supreme temporal head of the church, the pope, immediately after the restoration, continued to exercise the same jurisdiction as during the monarchy of the Visigoths, — viz to remit the pallium, to judge in appeals, to send nuncios, and to nominate resident legates, — resident, however, only for a limited period,

<sup>1</sup> Ximenes, De Rebus Hispanicis, lib vi cap 24 (apud Schottum, Hispania Illustrata, tom ii) Aguirre and Catalani, Collectio Maxima Conciliorum, tom iv Concilium Legionense, can 30 3<sup>a</sup>, &c Yepes, Cronica General de la Orden de San Benito (in variis scripturis) Baluzius, Collectio Veterum Monumentorum Script 1, 2 45, &c (Cronica Albedense, p 453 (apud Florez, España Sagrada, tom xiii) Historia Compostellana, lib 1 cap 2 (apud eundem, tom xx) Sampirus Astoricensis, p 458 (apud eundem, tom xiv) Sebastianus Salmanticensis, p 487 (apud eundem, tom xiii) Monachus Silensis, p 293 (apud eundem, tom xvii) Florez, España Sagrada, (varius tomis et scripturis) Marca Hispanica, lib iv col 397 necnon Dissertatio de Cultu B Mariæ Virginis in Monte Serrata, col. 335, cum multis aliis

and for a specific duty <sup>1</sup> But it was not to be expected that, while the pretensions of the pope were making such progress in other parts of Europe, they should not also obtain some influence in this, especially after the French, the great advocates of these pretensions, began to be admitted to the chief ecclesiastical dignities His infallibility in all his decrees, — his superiority even to an œcumenical council, — the transmission of his sacred power to all other bishops, — the exclusive right to canonise saints, to elect or confirm other prelates, and to dispense with the obligations of the canons, — his dominion over the temporalities of all churches and monasteries, — were not acknowledged in Spain during the first four centuries after the restoration of the monarchy Not that these pretensions were unknown, for, so early as the eighth century, the presbyter Migecio contended for the divine authority of the Roman see, and for the impeccability as well as infallibility of the pope “To Rome alone,” says the priest, “Jesus Christ bequeathed his authority, on her alone has he conferred the privilege of being holy, without spot or blemish, and of her alone has he said, ‘On this rock will I build my church, and the gates of hell shall not prevail against her’ She shall not be defiled by corruption, or abomination, or lying She is the New Jerusalem, which, according to the testimony of St John, descended from heaven” The strange perversion of the text, the monstrous doctrine which it involved, did not escape castigation Thus, Elipando of Toledo — “The words of Christ, which thou appliest to Rome alone, were spoken of the universal church, as scattered over the whole earth” — “How canst thou say that the church of Rome is free from spot or blemish, seeing that pope Liberius was condemned for a heretic, and that St Gregory complained of the many wicked men who dwelt at Rome in his day?” — “Whom are we to believe, — thee, who callest that city a new heavenly Jerusalem, or the apostle

<sup>1</sup> Vol I p 196.

St Peter, who, in one of his epistles, denounced it as a Babylon ?” The right of canonisation appears to have been arrogated by the popes as early as the ninth century, but not in Spain here the honour continued long afterwards, as it had been from the apostolic times, to be conferred by the bishop and clergy, in the presence and with the approbation of the faithful That even in Catalonia, where the French had most influence, and where, consequently, we might expect to find some traces of it, the pope had no authority in such affairs, appears from the canonisation of St Odo, bishop of Urgel in 1133 the act was made by the clergy and bishop, in the cathedral of that see According to father Mariana, from the middle of the ninth century the election of bishops had need of confirmation by the Roman court, and that previous to the arrival of the necessary bull, no prelate elect could enter on his functions Nothing, however, is more certain, than that, down to the eleventh century, the Spanish metropolitans and suffragans, after their nomination by the king, were consecrated by their brethren, without even the formality of acquainting the Roman curia with the circumstance, much less without waiting for its approbation The case was the same in regard to monasteries, which anciently depended on the diocesans, but, at the commencement of the eleventh century, these establishments began to be gradually withdrawn from the episcopal jurisdiction, and placed under the immediate authority of the pontiff In the same manner, dispensations appear to have been granted by the heads of the native church, down to the eleventh century, but the exclusive power of the concession was at that time assumed by the successors of St Peter Of the ancient independence of the Spanish church, no better proof need be adduced than what is furnished by the *Historia Compostellana*, composed early in the twelfth century, and by writers devotedly attached to the papal prerogatives “Spain,” say the reverend canons, “did not follow the Roman ecclesiastical law, but that of Toledo, until king Alfonso compelled his subjects to



conform with the general law and customs Since that time, the darkness of ignorance being somewhat dispersed, the authority of the holy Roman church has begun to spread among the Spaniards."—"Why recall the rudeness and ignorance of the old bishops of Santiago? Under the Toledan discipline, a cardinal legate arrived in Spain, to collect information respecting the religion, learning, and customs of the church, and being arrived in Galicia, he politely acquainted the bishop of Compostella with his commission The bishop called one of his treasurers, and said to him, 'A cardinal of the Roman church is coming, do thou meet him, and receive him exactly in the same manner as thou wast received when at Rome thyself' To this day the church of Rome has not forgotten this insult, and she endeavours to prevent the church of Santiago from increasing in power by new rights and dignities, for fear lest, under the eyes of the Spanish apostle, this church should usurp the dominion over the western churches, just as Rome, by the authority of St Peter, exercises it over all"<sup>1</sup>

When the history of Compostella was written, the independence of the church was among the things which had been many of the papal pretensions were already received, the rest were sure to be so The cause of this innovation must, as before observed, be sought in the domestication throughout the Peninsula of French ecclesiastics, the unscrupulous advocates of Roman infallibility and its universal jurisdiction This is not the place to enquire what were the causes which bound that nation so closely to the see, but that such should be the case will surprise no reader acquainted with the depo-

<sup>1</sup> Aguirre and Catalani, *Collectio Maxima Conciliorum Omnium Hispaniæ*, tom iii iv et v (in multis locis) Llipando, *I pistola 1 ad Mi geciun* (apud Florez, *España Sagrada*, tom v) Baluzius *Iutclensis, Collectio Veterum Monumentorum Script* 384 Mariana, *de Rebus Hispanicis*, lib ix cap 18 (apud Schottum, *Hispania Illustrata*, tom ii) *Historia Compostellana*, lib 1 cap 1 and 3 (apud Florez, tom xx) Masdeu, *España Arabe*, lib ii p 290, &c Scmpère, (*considerations sur les Causes de la Grandeur et de la Dècadence de la Monarchie Espagnole*, tom 1 p 52.

sition of Chilperic, the elevation of Pepin, and the consequent obligation of the Carlovingian princes to the successors of St Peter. The precedent of deposing one sovereign to make way for another, was not likely to remain inoperative. An extraordinary exception was attempted to be converted into an arbitrary rule, and the subjection of the temporal to the spiritual power to be loudly proclaimed. It was the interest of the new dynasty to support the monstrous doctrine. To it Charlemagne in particular felt that he was indebted both for his throne and for the increase of his authority. More than once was the dreaded ban of excommunication pronounced against not merely his personal enemies, but the princes who sought to escape subjection to him. It was soon propagated in Catalonia, many viscounts of which acknowledged the pope as their temporal superior. It thence passed into Aragon, and there seems to be no doubt that don Sancho I acknowledged himself the vassal of Rome, and subjected to that see all the monasteries of his kingdom. The humiliating conduct of Pedro II in this respect has been already noticed<sup>1</sup>, and though his successors indignantly scorned the tribute and homage, Rome never forgot her claims, when, as in the case of the Sicilian war<sup>2</sup>, she had the opportunity of urging them. The doctrine was introduced into Castile and Leon in the reign of Alfonso VI, the victor of Toledo, through his successive marriages with two French princesses. His attachment to that nation appears from the union of his two daughters with the counts Raymond and Henri, and from the dignities, ecclesiastical as well as secular, which he conferred on the adventurers who continually arrived. Thus, after the conquest of the ancient Wisigothic capital, he nominated to the archiepiscopal throne, not a subject, but Bernard, a monk of Cluny, who soon filled the inferior dignities with individuals from the same country. The archbishop of Santiago, Gelmirez, who had

<sup>1</sup> Vol III pp 91 and 92

<sup>2</sup> Ibid p 114, &c.

been the secretary and friend of count Raymond, no less zealously inculcated the [new opinions. Santiago was immediately subjected to the holy see, and several bishoprics were in like manner exempted, not only from contributions towards the support of the state, but from either royal or archiepiscopal jurisdiction. How different these were from those of the ancient Wisigoths, who styled the king God's vicar, and subjected to him the discipline of the church, may be seen from the speech of this Gelmirez, at Burgos, concerning the proposal of a reconciliation between Alfonso of Aragon and Urraca of Castile <sup>1</sup>—

“ Dear brethren, In my capacity as minister and ambassador of Almighty God, and as his interpreter armed to defend the rights of holy church, I will show you the way of salvation which you should follow in this affair. You know, dear brethren, how the Lord our Redeemer created high-priests in the ancient law to govern his people and teach his doctrines. In like manner did he choose his apostles at the commencement of the new law, and ordained them his ministers. He confided to them the holy sacraments, with the power of binding and of unloosing, both in heaven and on earth, in these memorable words — ‘ Quodcumque ligaveritis super terram, erit ligatum et in cœlis, et quodcumque solveritis super terram, erit solutum et in cœlis ’. These words prove our high calling: we are the successors of the apostles, we have received the same power, and are invested with the highest pastoral functions, being the stewards and ministers of God. We have been called pontiffs: we are his hallowed children, according to scripture, ‘ Qui vos tangit, pupillam oculi mei tangit ’. Christ has also confided to us his spouse, which is the church, and the instruction of his children, and, what is still more precious in this world, the salvation of souls, the defence of his flock against the devouring wolf, the duty of leading them into the way of truth, and feeding them with sound doctrine, whenever they have wandered, or fallen into the pit of evil manners. The kings, dukes, and princes of the earth, with all christian nations, are subject to us, and we watch over them all. Wherefore, dear brethren, I beseech and warn you not to permit the king of Aragon and queen doña Urraca, who are united by blood, to renew their unlawful marriage, to commit

a detestable and horrible crime If you are embarrassed by the oath you took when the contract was made between the king and queen, and fear to commit the sin of perjury, know ye that such oaths are null, for as the scripture saith, 'Non est observandum juramentum, cum malum incaute promittitur,' as in case you should swear to murder, or vow constant fidelity in an adulterous attachment, for perjury is a less sin than either murder or continuance in adultery Wherefore, having recalled your oath, I warn you not to sanction so great an iniquity by the authority of God the Father Almighty we excommunicate whomsoever shall contract or even abet such marriages, we curse him, and expel him from the holy church."

Where such language could be held,—though on the present occasion the orator was assailed with yells and hisses by his audience,—the favourite maxims of the Roman court must have made considerable progress But more than a century elapsed before they were unhesitatingly received After the destruction, however, of the Gothic or Muzarabic office—of which more hereafter,—and the compilation of the canon law by Gratian, papal abuses were as prevalent in Spain as in any other country Though the temporal jurisdiction of the pope was scouted by kings and people, he successfully established his authority in regard to canonisation, bulls of confiscation, convocation of councils, monastic dependence, dispensations, tribute, &c, and he laboured, with great energy, to usurp, either for himself or his creatures, the chief dignities of the Spanish church This last was, doubtless, the most galling of the innovations, and we accordingly find frequent remonstrances against its exercise Thus the cortes of Guadalaxara (held in 1390) called the attention of Juan I to the fact, that while not only Portuguese and Aragonese, but Italians, French, and even English, had benefices in Castile and Leon, not one inhabitant of these last kingdoms held the least preferment out of his own country They complained that Juan was the worst-used monarch in Christendom, and they threw the whole blame on the pope, who never ceased to

present his creatures with dignities in Castile They inveighed, apparently with great justice, against the non-residence of the foreign incumbents, who yet drew such large sums from the country hence, while the churches were inadequately served, that country suffered by the abstraction of its precious metals Juan promised that an embassy should be sent to Rome, to demand the cessation of the grievances, and, in fact, one was sent but, his death following in the same year, no attention appears to have been paid to the remonstrance Enrique III proceeded more effectually he laid a sequestration on the revenues of all dignities and benefices held by absent foreigners, nor did he remove it until a papal legate arrived with a promise that thenceforward the holy father would abstain from such an odious abuse But the next successor in the papacy (Benedict XIII) evaded the promise This so incensed the king and cortes, that a law was solemnly passed, declaring that, in future, no foreigner should be instituted into any dignity or benefice in Leon or Castile, or be suffered to draw any pensions or revenues from either kingdom Nay, the present holders were arbitrarily and unjustly deprived of their benefices, and for ever debarred from all communication with the country, no less a doom than destitution, with exile or imprisonment, was decreed against any native *ecclesiastic*, and death against any native *layman*, who corresponded with the obnoxious strangers The true secret of resisting papal abuses was thus discovered though attempts at such abuses were subsequently renewed, they failed of their effect Among the sovereigns who exhibited most zeal in defence of native rights were Fernando and Isabel, who, with all their piety, were no slaves to Rome, and who, whenever they disputed with that court, invariably gained their object <sup>1</sup>

<sup>1</sup> Baluzius Tutelensis, Collectio Veterum Monumentorum (in multis scripturis) Aguirre and Catalani, Collectio Maxima Conciliorum, tom 14 (Epistola Alexandri Secundi) Monachus Rivipullensis, Gesta Comitum Barcionensium, cap 28. (ad calcem Marce, Limes Hispanicus) Zurita, Anales de Aragon, tom. 1 lib 4 Historia Compostellana, lib 1

Next to the pope, the chief ecclesiastical authority rested in the provincial councils, which were convoked as occasion demanded, — not merely in Oviedo, Santiago, Leon, Burgos, &c, but in Cordova, for though the last-named city was the seat of the Mohammedan faith, no obstacle was opposed to the profession of the Christian, or to the exercise of its discipline, so long as the tolerated followers of Jesus did not insult the established religion. The Muzarabic Christians, — those who lived subject to the Mohammedans, and were so called partly from their capitulation with the general of Muza at Toledo, and partly from their adherence to the Wisigothic office<sup>1</sup>, — formed one church, and met in one council those of Catalonia, Aragon, Navarre, Portugal, Leon, and Castile, being subject to so many different civil governments, had each their own council<sup>2</sup>.

During some centuries after the restoration, the name of *archbishop* appears to have been unknown, though the office virtually subsisted in the *metropolitans*, to whom the suffragan bishops were subject<sup>3</sup>. It was not until the close of the eleventh century that the name of archbishop occurs in the national history. Of these metropolitan or archiepiscopal sees the Mohammedans found six, — Toledo, Seville, Merida, Braga, Tarragona, and Narbonne in Gothic Gaul. Though the first three were subject to the Mohammedans, they continued to possess their respective prelates, who signed before the suffragans in the councils of Cordova. As Braga remained in the Mohammedan power, Lugo long enjoyed the metropolitan honour, but the dignity ended with the creation of the archiepiscopal throne of Santiago, to which Lugo became subject, and Braga was restored

cap 83 (apud Florez, España Sagrada, tom xx.) Lopez de Ayala, Cronica del Rey Don Juan I cap 12 necnon del Rey Don Enrique III (ad finem) Masdeu, España Árabe, lib ii Sempère, Considérations sur les Causes, &c tom 1 cap 4, 5 and 12

<sup>1</sup> Vol I p 165

<sup>2</sup> Authorities the Councils in Aguirre and Catalani, Collectio Maxima Concilium Omnium Hispaniæ

<sup>3</sup> See Vol I p 197

to its dignity, no longer, however, dependent on Leon, but on Portugal, after the expulsion of the misbelievers. In like manner Tarragona lost its ancient splendour, and Narbonne probably was recognised as the metropolis of Catalonia. This dependence, however, would subsist no longer than the former city was possessed by the Moors,—perhaps no longer than the counts of Catalonia depended on France,—and Tarragona again recovered its dominion over the cathedrals of that province. In 1123, Merida was not only merged in the metropolis of Santiago, but was not permitted to possess even the suffragan honour. After the conquest of Saragossa and of Granada, those important cities were invested with the metropolitan jurisdiction. Hence the number of archbishoprics in the time of Fernando and Isabel were six,—Santiago, Toledo, Saragossa, Tarragona, Seville, and Granada. In 1088, Bernard, the first archbishop of Toledo after the conquest of that city by Alfonso, was invested by Urban II with the primacy of all Spain, and the honour was ratified by succeeding popes. It was afterwards, especially in 1236, disputed by the archbishop of Santiago, who, in the quality of vicar and successor of God's own apostle, contended that he had a superior claim to it. Both being cited to Rome to exhibit their respective pretensions, the Toledan prelate, who was no less a personage than the historian don Rodrigo, had little difficulty in procuring the confirmation of the dignity from pope Gregory. Subsequently Burgos and Valencia were elevated to the dignity of archbishoprics.—Portugal had three archbishoprics,—Braga, Evora, and Lisbon. The number of suffragan bishops varied at different times, according as certain cities were lost or gained in the continual wars between the two hostile powers, Christians and Mohammedans. Generally, however, it was inferior to that in the time of the Wisigoths, and about equalled the number now subsisting. Thus, before the fall of the Mohammedan kingdoms, twenty-nine Christian

bishops owned their temporal sway in different parts of the Peninsula, and twenty-three were in the territories of Christian kings. The jurisdiction of the Spanish prelates was regarded as of divine derivation, they decreed by the grace of God, by the favour of the Holy Ghost, or by the virtue of Jesus Christ,—never by the grace of the holy see. They were styled pontiffs, chief priests, and vicars of the apostles, but from the tenth century they declined the epithet of apostolic, in deference to the superior claim laid to that envied title by the prelates of Santiago. This highly favoured church, however, though it stoutly contended for the honour of primacy over all Spain, never attained the distinction it was successfully opposed by Toledo, the archbishop of which has for some centuries been a cardinal, and revered as the head of the Spanish church. The canonical restriction of a bishop to one church was all but universal, since we know of only two instances in which the same prelate held two cathedrals—an abuse loudly condemned at the time, and, doubtless, of short continuance.<sup>1</sup>

The other grades of the hierarchy continued with the same names as under the Visigoths: thus, the presbyters were subject to an archpriest, the deacons to an archdeacon, and the inferior orders,—the subdeacon, the psalmist, the lector, acolite, &c,—to a *primiciero*.<sup>2</sup> There was also a *caput scholæ*, or *capiscol*, who is the instructor of the youths intended for holy orders, and was generally a deacon, the *sacristan* (*sacri custos*), who was either a presbyter or a deacon, and the *archiscrinario*, or keeper of the archives. Every cathedral had its *conclave* or *cloisters*, where youths were educated for the altar, and where the *canons*—so called because they observed a rule—lived in community according to the discipline of the universal church. These canons were elected by the bishop, in concurrence with the other

<sup>1</sup> Florez, *España Sagrada* (in pluribus tomis), Masdeu, *España Árabe*, lib. II. Also innumerable instruments, in Aguirre and Catalán, and the ecclesiastical collections of the country.

<sup>2</sup> Vol. I pp. 198, 199.



clergy they had the same refectory and dormitory, they joined daily at mass, and in reciting the canonical hours, and rose at midnight to vigils and early matins. Their other duties were the visitation of the sick, the instruction of the ignorant, and scholastic duties, especially in the monasteries, so long as the bishops retained a jurisdiction over these establishments. After the institution of *parishes*, the origin of which, in Spain, we have no means of ascertaining, but which may probably be referred to the ninth century, the canons were long the only rectors. The secular ecclesiastics,—those who lived not in communion,—were disapproved as rectors by the council of Compostella (1056), and the bishops enjoined to appoint only regular clergy to the cure of souls. But this monastic mode of life insensibly fell into disuse. By successive decrees of the sovereigns, the canons of the cathedrals were secularised, and consequently placed on the same footing as the rectors of parishes. In these remote ages we sometimes meet with pluralists: thus, in 890, two parishes belonging to the diocese of Urgel disputed respecting the residence of their common rector. The bishop decided that he should reside in one church from the vigil of the Nativity to that of St John, and in the other the rest of the year, but that every day he should officiate in both, with the inferior clergy. Had the livings been forty-five, or thirty, or ten miles asunder, this could not have been done, they were, in fact, in the same city: but even this modified pluralism,—so modified that it would scarcely attract notice in this country,—was highly censurable. All parochial churches were dependent on the cathedrals, even those which owned a lay patron were not exempted from a sort of jurisdiction, nor from a species of tribute. The man, indeed, who founded either church or monastery, or who possessed the *jus patronatus* by inheritance, could reasonably present to either, he could even exchange or sell his right. Such places as had no particular patron entirely depended on the bishop, in concurrence with the chapter. Each

church had its *economus* or steward, whose duty it was to account for the income and expenditure. In the latter there were included wax tapers, incense, wine, the support of the poor, and entertainment to pilgrims and strangers. Some portion of the revenue was also expended in pensions to the necessitous relatives of deceased ecclesiastics.<sup>1</sup>

During four centuries after the restoration, the celibacy of the clergy appears to have remained on the same footing as in the time of the Wisigoths, viz, while matrimony was reluctantly allowed to the minor orders, —none, however, being allowed to marry more than once, and always with a maiden,—it was absolutely prohibited in the higher grades.<sup>2</sup> Hence no married subdeacon could ascend a step higher until he had sworn to refrain *ab usu matrimonii*,—an obligation into which his partner was compelled also to enter. The lives of the clergy were passed in community, totally separate from the rest of the world. There would be little chance of this engagement being evaded. But from the twelfth century this permission, even to the minor orders, was withheld, and the same uniform celibacy prevailed in the Peninsula as in every other part of the Christian world. This innovation was doubtless owing to the increased intercourse with France and with the Roman see. Human nature, however, is not to be always confined by such restraints. From the acts of several councils we learn that suspicious women were to be found in the houses of ecclesiastics. Thus, the eighth canon of the third council of Leon, held in 1114, prohibits the abuse. The fourth council of Palencia forbids young women to be found in the house of any churchman. In 1301, that of Peñafiel is no less rigorous in enforcing the same unwelcome prohibition. How little it availed, appears from the cortes of Madrid, held in 1405, when

<sup>1</sup> Aguirre and Catalani, *Collectio Maxima Conciliorum*, tom iv (*Concilium Compostellanum*), p 394—403. Florez and Risco, *España Sagrada*, tom xxviii Appendix 30. Baluzius *Tutelensis*, *Collectio Veterum Monumentorum Script 1*. Yepes, *Cronica General de la Orden de San Benito (varis scripturis)*. Masdeu, *España Arabe*, lib ii.

<sup>2</sup> See Vol. I. p 199

a law was made that women who persisted in abiding with ecclesiastics should wear a distinctive badge,—a piece of scarlet cloth on the head,—that they might not be confounded with women of honour <sup>1</sup>

Each church had several altars Thus, in one of those built by Alfonso II in Oviedo, were three, one to the Virgin, a second to San Estevan, the third to San Julian Another had a high altar dedicated to our Saviour, with twelve lateral altars, one for each of the apostles They were usually of stone, covered with fine white linen, and adorned in front there was also an ascent by steps, and tapers were always burning, not only during the divine office, but throughout the night, and the habits of the priest officiating at mass were of white linen, or silk, or cloth Each church, besides the books necessary for the altar and the choir, had works of devotion, the reading of which was imperative on the clergy even at meals, one read aloud to the rest The consecration of altars and churches was accompanied by many ceremonies On such occasions three bishops at least were present, and relics were devoutly deposited in the proper places Neither they nor the inferior clergy seem to have had much time for leisure,—certainly none for idleness their daily presence in the cathedral was obligatory, not only at mass, but at the canonical hours, and if they were exempted from attendance at vigils and early matin-song, it was not so with the canons, or even the rectors Ordinary fasts appear to have been fewer in the Peninsula than in some other parts For some time, indeed, Wednesday and Friday were appropriated to the purpose, but from the ninth century the former was discontinued, and though the popes wished to render Saturday as obligatory as Friday, they could not succeed On these days were conducted the penitential processions, or rogations, with a particular litany But there was another species of procession, which was unknown to the ancient church, and

the use of which appears to have been introduced into the Peninsula about the eleventh century. These were to the shrine of some saint, always on foot, usually in the garb of penitence. The most ancient pilgrimage was to the shrine of Santiago, to which hundreds of thousands from all parts of Europe resorted. The second religious journey was to Rome, to visit the sepulchre of St Peter, and was then called *Romeria*, a custom which may be referred to the eleventh century. The pilgrim to the holy city of Jerusalem, — a journey undertaken by few in Spain, those excepted who wished to atone for some heavy crime — was called a *palmer*, from the palm leaf he bore in his hat, just as the pilgrim who had been to Compostella bore the scallop-shell<sup>1</sup>. It is doubtless to the influx of so many strangers from all parts that Spain is indebted for some of her numerous legends, and for the chief part of her chivalric lore — hence we are able to explain why, when there was no communication of letters between her and the rest of Europe, the same legends — that, for instance, of the doomed monk<sup>2</sup> — should be found in the heart of Normandy and Castile. Processions of ecclesiastics were also usual at funerals, at least at the funerals of the rich, where masses were ordered for the repose of the departed soul. In the case of great benefactors, this commemoration was usual, and often attended with magnificence. Thus, in the church of Santa Eulalia, on the banks of the Ebro, a solemn requiem was chaunted, in 950, for the soul of don Sancho Abarca, who had been dead twenty-six years. The son, and reigning king, don Garcia, was present, with many of his court. Thus, also, in 1071, Count Guillermo of Cardenia made a donation to the monks, on the express condition that at a stated period every year one hundred masses should be said for the repose of his wife's soul.<sup>3</sup>

<sup>1</sup> See Vol II Appendix G p 300

<sup>2</sup> See Appendix D in the present volume

<sup>3</sup> Monachus Albeldensis, p. 453 necnon Sebastianus Salmanticensis, p. 488 (apud Florez, España Sagrada, tom XIII.) Yepes, Cronica de San

*Sanctuary* continued to be exercised in the middle ages, as in the time of the Wisigoths. The thirty places, however, anciently marked out as the boundary, within which the fugitive might hope for safety<sup>1</sup>, were often extended to sixty. This boundary, in fact, formed that of the cemetery or churchyard, and consisted, not of walls, but of crosses, with short intervals between them. In this, as in so many other respects, the church of Santiago had a greater privilege. By Alfonso II its sanctuary was extended to three miles from the walls of the church, Ordoño I added three more, and Fruela II removed the boundary to twelve miles from that sacred edifice. The limits were almost universally respected, for if they were profaned, the church never failed to exact atonement. Thus, because the troops of Guillermo I, count of Cerdaña, while pursuing their enemy, the count of Roussillon, violated the sanctuary of a monastery in the diocese of Elna, Guillermo, in satisfaction for the crime committed by his people, humbly waited on the bishop, received the accustomed penance, and presented costly gifts both to the monastery and cathedral. Other ecclesiastical immunities were conceded by the various kings. Of these, the most ancient was the exemption from tribute, an example which the Carlovingian princes appear to have first exhibited to the Peninsular monarchs. In the hope of securing the attachment of the Catalan clergy, these princes granted the concession, but on the condition that the churches thus franchised should depend on them alone. How soon that example was followed by other sovereigns is not very clear, but no record that can be proved to be authentic remains to show that similar concessions were granted before the reign of king don Fernando I. From an act of

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Benito, tom iii escrit, 10, &c tom iv escrit 13, &c and tom v escrit 10. Baluzius, Collectio Veterum Monumentorum (in pluribus scripturis) Florez et Risco, España Sagrada (in multis instrumentis) Aguirre et Catalani, Collectio Maxima, tom iv (Concilium Compostellanum, necnon Concilium Coyacense). Masdeu, España Arabe, lib ii. Vol. I p. 199

that monarch, dated 1046, we perceive that an exemption from tribute was neither the only nor the chief immunity which the clergy began now to enjoy by it he conferred the feudal jurisdiction, even in criminal cases, of the town of Matanza, on the bishop of Astorga. This was probably the foundation of episcopal baronage. Four years afterwards, in the council of Coyanza, the same king, in concurrence with all his bishops and barons, decreed that ecclesiastics should no longer be subject to the secular tribunals, but to that of the diocesan. The same system was received in 1063 by the council of Jaca, which forbade all ecclesiastics from acknowledging any other tribunal than the diocesan. Succeeding sovereigns of Aragon, as Sancho II, Alfonso VI, and Fernando III, not only confirmed this innovation, but conceded to several churches and monasteries the exemption from tribute. Each succeeding age made some addition to this impolitic policy, until the church became the dominant power in the state<sup>1</sup>

Before these new immunities, in and long after the time of the Wisigoths, no ecclesiastic could sue another before a secular tribunal, but before that of his diocesan: the presbyters, deacons, &c, before the bishop, two bishops carried their dispute before the metropolitan, and two metropolitans before a provincial council, but where one of the parties was a layman, no ecclesiastical jurisdiction could be exercised<sup>2</sup>. The canons and dignitaries of the cathedral presided with the bishop. For many ages the church had no prisons or alguazils, but when sentence was pronounced, the culprit was delivered over for punishment to the secular arm. excommunication, suspension, degradation, and interdiction were the only penalties it could enforce. In time, however, cer-

<sup>1</sup> Aguirre and Catalani, *Collectio Maxima Conciliorum*, tom. iv (Concilium Legionense, cap. 4. Concilium Coyacense, cap. 3 and 12 necnon Concilium Jacense, cap. 4.) Baluzius *Tutelensis*, *Collectio Veterum Monumentorum Script* 224 255 6. 9 10, &c. Florez, *España Sagrada*, tom. xvi et xix (varius scripturis) Masdeu, *España Arabe*, lib. ii

<sup>2</sup> Vol. I. p. 200

tain churches and monasteries obtained the privilege of awarding *temporal* chastisements. They could not, indeed, condemn to death, nor blind nor mutilate the condemned, but they could exile, or commit to close confinement in a monastery, and subject to scourging and fasting they could, besides, deprive an incumbent of his benefice, or impose whatever fine they pleased. As the ecclesiastical authority increased, the same functions were extended to every episcopal tribunal, and at length the cognisance of the deepest crimes, with the infliction of the last punishment, was devolved on churches and monasteries. But this subject will be best noticed in another place <sup>1</sup>

The fate of the ancient Wisigothic liturgy, the same too which governed the Spanish church down to the twelfth century, is singular. After the Mohammedan invasion it continued to be in force, not only in Toledo, Cordova, Seville, &c, but wherever the holy sacrifice was offered, — in short, throughout all Christian Spain. It was called the Muzarabic office, from its being the missal of the Christians who capitulated with the generals of Muza, and who continued to live under the yoke of the unbelievers. Besides the ordinary prayers and responses, it consisted of hymns and smaller verses, composed by St Eugenius, St Leander, St Branlio, St Ildefonso, St Julian, and other great luminaries of the Wisigoths. Though involving the same doctrines, it differed widely in form from the other offices of the universal church. To produce uniformity in this respect, — to substitute the Roman for the Spanish missal, — was the aim of Gregory VII and his successors. It was said to contain many errors in regard to points of catholic faith, in regard, for instance, to the nature of Christ's filiation, but they who thus condemned had never seen it. They evidently confounded it with the office, as corrupted by the Priscillianists, in the time of the Suevic kings, a corruption which does not appear to have

<sup>1</sup> The same authorities.

been sanctioned beyond the confines of Galicia Early in the tenth century, a doctor arrived in the Peninsula from Rome, sent by John X, to examine the Spanish missals and breviaries From his report, a council, in 924, was held at Rome, when the Muzarabic office was, not condemned, but sanctioned, and even praised, an injunction, however, was added, that the secret prayers of the mass should be repeated according to the custom of the apostolic church Thus the affair remained until 1064, when cardinal Hugo Candido, at the express command of Alexander II, arrived on the same errand He, too, seeing the formal sanction of the office by the predecessor of Alexander, returned without venturing to condemn it But the pope was not to be satisfied with any thing short of the actual prohibition of this obnoxious liturgy At a time when he wished to exalt the power of the church over that of kings, he could not behold with much complacency the existence of a book which allowed them a direct control over many important branches of discipline Other legates were soon sent, with a positive injunction to insist on the abolition of the ancient service As usual, the Spanish church resisted, and despatched three bishops, Nuño of Calahorra, Ximenes of Oca, and Fortuño of Alava, to defend it They laid the books containing their doctrine before the pope, who examined one himself, and delivered the rest to competent censors Again was the Spanish church declared catholic and orthodox, — a declaration which was immediately afterwards confirmed by the council of Mantua in 1067 Still, the French ecclesiastics, and the immediate dependants of the holy see, laboured to introduce the so much wished uniformity there were, consequently, two parties in the church, each of which endeavoured to win the king over to its views In the perplexity occasioned by this dispute, the two parties resolved to leave its decision to the judgment of God, and the expedient which they adopted to discover the divine pleasure is the most singular one we remember to have read Two fierce bulls



were baptised, the one " Toledo," the other " Rome," and, in presence of the king and court, were pitched against each other. After a gory conflict, " Toledo" remained victor. But this result did not deter Gregory VII from making new and more strenuous efforts in behalf of uniformity. They were for some time unsuccessful, owing not less to the natural affection with which men regard whatever has been hallowed by ancient usage, than to his extravagant pretensions in affairs purely temporal. By asserting that Spain, in consideration of its being a conquest from the enemies of Christ, was a fief of the holy see, and by claiming the homage of its kings, he incensed the people so much, that they long turned a deaf ear even to his spiritual admonitions. In the end, however, he gained his object. Alfonso, the renowned conqueror of Toledo, prevailed on the prelates to receive the universal office, and the Muzarabic was consigned, by general though reluctant consent, to desuetude.<sup>1</sup>

The sacraments of the Spanish church, during the middle ages, were the same in number and nature as under the Wisigoths, and to what we have before written on the subject we refer the curious reader.<sup>2</sup>

II Besides the secular and regular clergy, there were many other religious orders. Thus, there were hermits, who fled into the solitudes to pass their days in devout contemplation and the practice of the more austere virtues, and there were women, both widows and virgins, consecrated to God by vows of chastity, who continued to abide in their father's house, or in that of some ecclesiastic, if connected with them by the closest ties of consanguinity. This profession was not always voluntary, for children were frequently devoted

<sup>1</sup> *Historia Compostellana*, lib i (apud Florez, *España Sagrada*, tom xx) Aguirre and Catalani, *Collectio Maxima Conciliorum*, tom iv p 193, &c Florez, *España Sagrada*, tom iii (Documento de la Misa Apostolica, p 187) Baluzius Tutelensis, *Capitularia Regum Francorum*, tom i 203 Marca, *Limes Hispanicus*, lib iii cap i Gregorius VII. *Epistolæ et Decreta*, lib vii epist 6. Masdeu, *España Árabe*, lib ii Ferreras, *Histoire Générale d'Espagne*, tom. iii p 237 246. Sempère, *Considérations sur les Causes*, &c tom. i

<sup>2</sup> See Vol. I. p. 208, &c

by their parents to perpetual chastity, generally accompanied by seclusion in a monastery. These monasteries were either single, or inhabited by monks or nuns only, or double, where each lived in community separate from the rest, but had access to the same church. The inmates were *oblatos*, or children offered to God, in consequence of their parents' vow, *converts*, or novices who awaited the canonical period of profession, and the *professed*, who alone were members of the community. During many ages, the superior, whether abbot or abbess, was nominated by the lay patron, and approved by the bishop. Thus, in 926, on the restoration of the monastery of San Pedro at Barcelona, the count Borello nominated as abbess his daughter, Bonafilia, who was at the same time consecrated by the bishop<sup>1</sup>. Thus, also, in 1006, the count of Besalu and the bishop of Gerona, in regard to the deacon of Adalbert, whom they raised to the dignity of abbot. These religious houses were subject alike to sovereign and bishop: they could not sue except in a temporal tribunal, and they were as much bound to contribute towards the support of the state as the secular clergy. It was no less the bishop's duty, in virtue of his jurisdiction, to see that the inmates led a suitable life, — to punish crime or error, and, in his periodical visitations, to admonish or praise, according to the occasion. "Let all abbots and abbesses," says the national council of Leon, in 1020, "all monks and nuns, be subject to the jurisdiction of their respective bishops, whose right let no man dispute. The same was decreed by the council of Coyanza, in 1050, with the penalty of excommunication against any inmate of the cloister who did not, in every thing, obey his diocesan. But this native discipline was at length superseded by the Roman, through the same person, and for the same purposes as we have noticed in regard to the secular church. Anxious to extend their own power, the popes could

<sup>1</sup> This consecration of monastic superiors has long fallen into disuse.

not tolerate this natural authority of kings and bishops, but wished to subject both to the condition of slaves. The first innovation on the established discipline appears to have originated in Catalonia, through the ambition of the French kings. In the view of attaching to themselves the ecclesiastics, and through these the people of that province, the Carovingian princes began to concede certain exemptions, denominated monastic immunities. Thus, in the ninth and tenth centuries, the monks of San Estevan at Bañoles, of San Pedro at Besalu, of Santa Maria at Ripol, of San Pedro at Roda, of Santa Grata and Santa Cecilia in Urgel, were empowered by the French monarchs to elect their own abbots, and to enjoy in full property the lands they might reclaim from waste. At the same time they were exempted from episcopal and royal jurisdiction. The condition of these concessions was the recognition of the French princes as sovereigns and protectors, a condition not likely to be rejected, when accompanied by such substantial advantages. Seeing the effect of these acts, how easily the French were extending their footing in Catalonia, count Borello had no alternative but to oppose them with the same weapons. To the churches and monasteries of the province he granted the very same privileges as had been conceded by his rival. From the reign of don Sancho el Mayor, "this French corruption," as it is emphatically called by the critical Masdeu, began to be felt in Navarre and Castile. Believing that "evangelical perfection and the true monastic life were wholly unknown in his dominions," he is said, though on authority somewhat apocryphal, to have set two monks to study purity of discipline in the famous monastery of Clugny, and we are told that they afterwards opened a school in San Juan de la Peña for the purpose of disseminating what they had learned. Under Alfonso VI of Leon, and don Sancho Ramirez of Aragon, the new discipline made greater progress. Hugo, abbot of Clugny, pope Alexander II, and his legate Hildebrand, laboured to dispose the

monarch's mind in its favour, and with such effect, that missionaries from Clugny were permitted to spread themselves throughout the kingdom, and its monks were appointed to the highest offices in the church. In a few reigns the ancient native discipline was entirely superseded by the transmontane<sup>1</sup>

Among the monastic rules observed in Spain, that of St. Benedict was by far the most prevalent<sup>2</sup>. In the charters of various foundations, it was rendered obligatory on the future inmates, to the exclusion of every other. In 1050, the national council of Coyanza went so far as to excommunicate the followers of any other rule. But if such decrees were binding at the time of their promulgation, they were derided by posterity. In 1084, the rule of St. Augustine was established in Besalu, and in fifteen years afterwards it found its way into Castile. In 1135 that of St. Bernard was introduced by the Cistercians, and in 1218 the Dominicans, or preaching friars, were formed into a community by San Domingo de Guzman. About the same time the friars minor originated in the zeal of St. Francis. Early in the reign of Pedro the Cruel, the hermits of St. Jerome began their life of contemplation and devotion,—a life widely different from that of the Dominicans, who were bound by their institute to confute and extirpate heresy, and from that of the Franciscans, who were no less bound to the practice of the active virtues. The order of St. Jerome became, and is at this day, one of the chief in Spain. In 1390 the Carthusians obtained a footing in Castile, but such is the severity of their discipline, that, though their superior sanctity procured them a high reputation, they

<sup>1</sup> Gregorius VII, *Epistolæ et Decreta*, lib. i. cap. 6 (apud Cossartium, *Sacrosancta Concilia*, ad regiam editionem exacta) Aguirre and Catalani, *Collectio Maxima Conciliorum*, tom. iv. (*Concilium Compostellanum*, *Epistola Alfonsi Regis*, necnon *statuta Sancti Hugonis Abbatis*) Baluzius *Tutelensis*, *Collectio Veterum Monumentorum* (in multis scripturis) Yepes, *Cronica de la Orden de San Benito*, tom. v. escrit. 10, 11, 12, 45, &c. Ferreras, *Histoire Générale d'Espagne*, par Hermilly, tom. iii. Masdeu, *España Árabe*, lib. ii. Sempère, *Considérations sur les Causes*, &c. tom. i., cum multis aliis.

<sup>2</sup> Vol. I p. 211

have not found so many imitators as their more rational brethren <sup>1</sup>

Little as is the space we can devote to the religious orders of Spain, we cannot forbear to detail the origin of one which confers honour not only on the country, but on humanity itself, — one which is, probably, less known to the readers of this compendium than orders of prouder name. We allude to the Order of Mercy for the Redemption of Christian Captives. For the institution of this godlike order, the Christian world was indebted to Pope Innocent III, at the close of the twelfth century. If the reader be not versed in monastic history, the following account of its origin, extracted without much change of phraseology from the writers of the times, will probably be interesting from its novelty, no less than from the spirit in which they wrote. He will be at no loss to distinguish the true from the fabulous.

In the year of our Lord 1198, say the chroniclers, there lived in France two men of holy lives, the one called Felix de Valois, the other Julian de Matha. These men, for the better mortifying of the flesh, took up their abode among barren mountains, each inhabiting a solitary cell at a considerable distance from the other, and subjected themselves to incredible austerities. At Easter and the chief festivals of the church they visited each other, for the purpose of confessing and communicating — for both had received priests orders, — and each returned to his cell filled with hope and consolation. In this wise they passed many years, every day adding to their holiness, until the Lord, who had chosen them to be the instruments of his glory in higher things, inspired each with a wish to forsake a manner of life in

<sup>1</sup> Aguirre and Catalani, *Collectio Maxima*, tom iv p 494. Baluzius, *Collectio Vet. Monum. Script.* 296. Yepes, *Cronica de San Benito*, tom v Ferreras, *Histoire Générale d'Espagne*, par Hermilly, tom iii. iv et v Masdeu, *España Arabe*, lib 11.

A history of the monastic orders is much wanted. Let us hope that the only man, perhaps, in Europe fully qualified for such an undertaking — Dr Southey — will one day execute it.

which they were of no use to any living creature but themselves, and to embrace the monastic life, in which their teaching and example might benefit their brethren. But this wish neither imparted to the other, because neither was assured whether it came from Heaven, or from the restless disposition of the heart. One night, however, all doubt was ended by the Lord revealing himself to each, at the very same hour and minute. He commanded both to forsake for ever their present anchoretical life, and proceed to Rome, where his holiness, on their demand, would provide them with a better. The same revelation being repeated in their dreams during three successive nights, these two servants of God resolved to obey their Master's will. Without communicating with each other, both arose at the same moment, prayed, prepared for the journey, and set out for Rome by different ways. But the strangest of all is, that both arrived at the same gate at Rome, not only on the same day, but at the same hour and minute! Guess the surprise of each at so unexpected a meeting! But this surprise gave way to joy when each related to the other the particulars of his call: they corresponded so perfectly, that the holy travellers were persuaded of their being designed for some great purpose. When these favoured men stood in presence of the pope, Felix, who was indeed *happy*, and moreover a learned theologian (he was a doctor of the church), proposed the case to his holiness. He mentioned their common life, their common call, and their common desire to abide by his decision as to the course on which they should enter, for surely that decision would not be of man, but of God. The pope, like a prudent man as he was, and one enlightened by the Lord, quickly perceived that some great mystery was concealed in this. He received them into his palace, and enjoined them to seek counsel of God in earnest prayer. So, with continual sighs and tears, they waited on the Lord during seven succeeding days, and at the end of that time, by the pope's command, they confessed and communicated

This being done on the 28th of January, which is the octave of St Agnes, the pope in full pontificals, celebrated mass, in presence of his cardinals, whom he had assembled on the occasion, of the blessed hermits Felix and John, and of a multitude of people. And as he proceeded in the office with great solemnity, when he arrived at these words of the sacred canon, "et elevatis oculis," he also raised his eyes, and behold he perceived an angel descending from heaven, surrounded with celestial light, clothed in a scapulary, on which was represented a cross (partly red, and partly of a celestial colour), and holding in his right hand a Christian captive, in his left a Moor! The holy father rejoiced much at this heavenly vision. When mass was finished, he turned to all present, and declared what had just been revealed to him, adding, that the Lord's will most surely was, that these blessed men, who so much longed to serve him, should devote their whole lives to the redeeming of captives, and thereby free from the power of infidels such as lived in a state so hurtful to the body and dangerous to the soul. Then speaking to Felix and John, he said, "Brethren, and friends of God, you here find what, with such anxiety and labour, you have come to seek. you see what the Lord wishes, what life he would have you lead, and how he may be served and glorified by you. Wherefore, as the service is so eminent, he permits you to do what the Son of God did on earth. as he ransomed men by the cross, so hath he sent you the same holy symbol from heaven, to be placed continually before your eyes. And since, in your appointed labours, the love of God and your neighbour must be the moving cause, so, if need be, must you be ready to lay down your lives, as the Son of God did for us. wherefore one half of the cross is the colour of *blood*. And because you will have to look to Heaven for the reward due to your toils and sufferings, the colour of the other half is *celestial*. Moreover, as such love, such toils, such holy occupations, can spring only from an innocent

heart, — from one wholly filled with purity, so must your scapulary and habit be white” So did his holiness furnish them with scapularies and white habits of the same form, and with the same cross, as the angel brought from heaven And in virtue of his power, as the vicar of Christ on earth, he thenceforth, in the name of the most holy Trinity, Father, Son, and Holy Ghost, did proclaim an order of religion, which should fight under so glorious a title, and he called it “ the Order of the most Holy Trinity for the Redemption of Captives,” — which order was not founded by men, but by the Most High

Such institutions as these are enough to redeem the Romish religion from its corruptions, and put to shame the professors of a purer faith The share which Innocent had in it makes us almost pardon his arrogance towards such princes as our John Philip Augustus of France, and Raymond of Toulouse Strange, however, that the pontiff who so zealously promoted the interests of this order of mercy, should so bitterly have pursued the unfortunate, though, it must be confessed, often imprudent, and sometimes criminal, Albigenses ! The exertions of the order were soon crowned with success One third of its revenues was appropriated to the objects of its foundation, and thousands groaning in slavery were restored to their country, and, what is far more valuable, to their religion John de Matha himself, with the courage and zeal of an apostle, ventured into that dark den of cruelty, Algiers, when such a step would have been considered by the calculating as utter madness, and returned with one hundred and twenty ransomed captives His example was nobly imitated by others The order — to the honour of the church be it spoken — met with so much encouragement, that in the time of Alberic the monk (who wrote about forty years after its institution), the number of monastic houses amounted to six hundred, most of which were situated in France, Lombardy, and Spain



Of the other orders, which were partly military and partly religious, little need be added to what has been already written. That of Calatrava, founded in 1158<sup>1</sup>, and that of Santiago in 1161<sup>2</sup>, have been already described. In modern times, the former had fifty-six, the latter eighty-seven commanderies, the one maintained 300, the latter 386 lances in time of war, and paid a composition during peace. The order of St Julian, afterwards better known as that of Alcantara<sup>3</sup>, which was founded in the reign of Alfonso the emperor, was the noblest, as its statutes required purity and nobility of blood for four generations, while the other orders required them only for two. It had one hundred and thirty-eight commanderies, which, instead of lances, paid, like the rest, an annual composition. By their vows, none of them could originally war with Christians, but only with the enemies of their faith. From such vows, however, dispensation was easily procured, and the blood of the holy monks flowed as freely in the former case as in the latter. Aragon had its peculiar order, that of Our Lady of Montesa, which was founded in 1317, by Jayme II. In Portugal, that of Christ was instituted in 1317, by king Dinis<sup>4</sup>. When the order of Avis was founded is not very clear, but it was coeval with that of Santiago. That of the Tower and Sword, which owed its existence to Alfonso V<sup>5</sup>, was the last created within the period embraced by the preceding volumes. The vow of chastity, taken by the members of all these orders, was sometimes but indifferently observed. The scandal afforded by the knights of one became so great, that the king was compelled to solicit the pope for a dispensation to many once<sup>6</sup>.

III Of *martyrs* the Spanish church during the middle ages can boast a goodly number, though far inferior to those who had been sainted under the Roman persecutions. The first of whom we hear — unless

<sup>1</sup> Vol II p 170

<sup>2</sup> Ibid p 171

<sup>3</sup> Ibid p 167

<sup>4</sup> Vol III p 204

<sup>5</sup> Ibid p 276

<sup>6</sup> Authoriser, the historians of Spain and Portugal, so frequently quoted in Vols II and III

those who perished at the invasion may be ranked among the number — are the monks of San Pedro de Cardena, who, to the amount of 200, were put to death, in 834, by a Mohammedan general. There is indeed an allusion to two martyrs of Seville, who suffered ten years before, but the tragedy is but obscurely noticed, and its attendant circumstances are unknown. Those of Cordova are the most interesting both because they exhibit in the clearest light the policy of the Mohammedan government, and because their characters and sufferings are minutely and truly recorded. St Eulogio, first an eye-witness, and ultimately a victim, to intolerance on the one part and imprudence on the other, has given us, in his *Memoriale Sanctorum*, a valuable history of Mohammedan persecution about the middle of the ninth century. Some subsequent martyrdoms are related by Alvaro, his friend and survivor.<sup>1</sup>

The first of these witnesses of the truth was Perfecto (Perfectus), a priest of Cordova, who, as he was one day walking through the streets, was accosted by the Arabs, and requested to explain the grounds of his own religion, and his opposition to theirs. He readily entered into the former subject, and, in ending, said, "I dare not speak the opinion which we Christians entertain of your prophet." We are told, however, that, being assured no harm should happen to him, with whatever freedom he might speak, he characterised Mohammed as the friend and ally of the devil, adding, that all who trusted in him were doomed to feed the fire inextinguishable. The zeal with which he dwelt on the impostor's personal vices was commendable enough, but his denouncing everlasting damnation on all that impostor's followers was as imprudent as it was intolerant. It so

<sup>1</sup> Chacon, De Martyrio ducentorum Monachorum S. Petri in Cardena, Ordinis S. Benedicti, Hispaniarum Burgensis Diocesis, p. 1, &c. Cronica de Cardena (apud Florez, España Sagrada, tom xxiii p. 370). Yepes, Cronica General de la Orden de San Benito, tom iv p. 39, &c. Sanctus Eulogius, Memoriale Sanctorum, lib. 1 (apud Schottum, Hispania Illustrata, tom iv.)

deeply offended his hearers<sup>1</sup>, that, though they let him depart on the present occasion, they afterwards laid hold on him, dragged him before the *cadí*, and accused him of blaspheming the prophet. In the fear of punishment, he denied the accusation, but he was not the less laden with chains, and consigned to a dungeon. While there, ashamed of his past cowardice, he strengthened his heart for the trial which awaited him, so that, after a certain time, he was dragged from prison, and brought before the executioner. His former meekness had indeed left him, for with his whole heart and soul he cursed the Arabian camel-driver, and all who honoured him. "I have cursed, yea, and I will curse your prophet. I have called and I do call him the spawn of devils, a magician, an adulterer, and a liar! I denounce the profanations of your sect to be the invention of hell!" While uttering these truths, the scimitar separated his head from his body. "His death," says St Eulogio, was avenged: two Moors were drowned in the Guadalquivir, — a catastrophe which the sober-minded would refer to a cause purely accidental, but which the burning faith of the biographer ascribed to the hand of Heaven. The fate of this enthusiast had so great an effect on one Isaac, a monk of Tabanos<sup>2</sup>, who had forsaken a distinguished post under the Mohammedan government for the cloister, that he repaired to Cordova, presented himself before the *cadí*, and promised to embrace the dominant religion, provided good reasons were advanced in support of its truth. While the judge readily entered into the subject, the monk listened with suppressed composure, and, when the discourse was ended, instead of expressing, what the Arab expected he would express, his conviction of the divine authority of Islam, he exclaimed in a loud voice, "Your prophet was wretch and a liar! he was possessed by the devil, whose a doctrine he taught: all who believe it will burn in hell,

<sup>1</sup> "Æternum adversus eum sub pectore vulnus servatum."— Mem Sanct. lib. 11 cap. 1. Eulogio had evidently read Virgil.

<sup>2</sup> "Hujus oppidi nullum manet vestigium," says Morales. The monastery was about two leagues from Granada.

where he now is !” The indignation of the cadí even exceeded his astonishment, and he was so far forgetful of his office as to strike the fanatical monk, but the reprehension of the Moors who were present soon made him ashamed of the act. There seems to have been an apprehension in the minds of both judge and spectators that Isaac was drunk or deranged, but he protested that he was in his right senses. He was consigned to prison, and the affair reported to Abderahman II, by whose order he was immediately beheaded, and his corpse suspended on the banks of the river. He was followed by Sancho, one of the military pages of the palace, who aspired to the same crown of martyrdom, and whose wish was immediately gratified. That wish was now shared by numbers, who, believing that the most effectual way to gain the favour of Heaven was by the hands of the executioner, flocked to Cordova to revile the prophet. Among these were the abbot of Tabanos and five ecclesiastics, who, not satisfied with professing what their sainted brethren, Perfecto, Isaac, and Sancho, had professed, loudly cursed Mohammed and his religion. All six were beheaded, but not until the abbot, in violation of the law, had been scourged, and, lest their relics should be venerated by superstition, their bodies, after hanging a while, to inspire the greater terror, were burnt, and their ashes thrown into the Guadalquivir. Their suffering was approved by a prodigy. As a monk of the same brotherhood was enjoying what in later ages was demominated the *siesta*, he saw in a vision a beautiful child approaching him from the east, and unfolding a scroll, on which was written, “ Even as our father Abraham offered Isaac his son in sacrifice to God, so now hath the holy martyr Isaac offered sacrifice for the monks, his brethren, in the presence of the Lord !” The vision was immediately followed by the arrival of a messenger with the intelligence that the abbot and his five companions had suffered. A deacon of Cordova, by name Sisenando, seems to have been captivated by the same power of imagination. Believing that

two of the martyred monks had called on his name, and, never doubting that it was a call to the same example and the same glory, he joyfully obeyed it. He had a friend, also a deacon, named Pablo, whom he earnestly exhorted to the same purpose nor was the exhortation lost, for Pablo was soon enrolled among the noble army of witnesses<sup>1</sup>

To detail the names and sufferings of these martyrs would require a volume hence, no more can be expected from us than an account of such as posterity has regarded with superior reverence or attention. The victims were not long confined to the bolder sex. Woman's mind is more susceptible of impression, and retains that impression, if not so long, at least much more deeply. The first female victims appear to have been two sisters, Nunilo and Alodia, born from a Mohammedan father and a Christian mother. Such was their beauty, that how such two lovely roses had been produced by thorns was the subject of great surprise to the faithful. After a time the father died, and the mother was graceless enough a second time to marry an infidel, but the daughters no less persevered in the religion of the gospel, which they professed, not privily, but openly, at a time, too, when such heroism was sure to be visited with death. They were denounced, and brought before the *cadi*, who, believing that theirs was an age in which the empire of the passions was most powerful, offered them rich and distinguished husbands, if they would forsake Christianity for Islam, and threatened them with the last penalty in case of a refusal. In reply, they asked him if any husband was richer than Christ, or any happiness greater than was to be found in the faith by which the righteous live, and saints overcome the world. In vain were threats, expostulations, entreaties, and even torture employed, to shake their constancy, so that, after a few days, they were drawn from their dungeon, and beheaded.

<sup>1</sup> Sanctus Eulogius, *Memoriale Sanctorum*, lib. 11 cap. 1—6. Alvarus Cordubensis, *Opera Omnia* (apud Florez, *España Sagrada*, tom. xi.)

Still more remarkable is the fate of two other saints, Maria and Flora, who suffered about the same time. Maria was the sister of Walabonso, one of the six martyrs of Tabanos. At the time of her brother's death she was a nun in the convent of Cuteclara, the abbess of which had lost two sons through the intolerance of the Mohammedans. One of the nuns dreamed that the sainted Walabonso appeared to her, with a message for his sister, — a message which Maria had no difficulty in explaining as a call to martyrdom. Accordingly, she one day left the nunnery to go before the *cadi*, and to curse Mohammed, and in her way she turned aside into the church of St. Acisclus, to pray that she might be strengthened in her purpose. There she met with another virgin, Flora, who had resorted to the same place with the same view. Flora was the daughter of a Mohammedan father and a Christian mother. Her father was no more, but she had been cruelly persecuted by her brother, who adhered to the Koran with as much constancy as she to the Bible. On one occasion he had forced her before the tribunal of the *cadi*, in the hope that a little salutary severity would, if not make her embrace the faith of the prophet, at least teach her prudence enough to avoid an open profession of Christianity. She had been whipped in presence of the judge, and confined to her brother's house, but as love laughs at locksmiths, so may a better feeling she had escaped, and taken refuge with some Christians. There she might have remained in safety, but the glorious fate of so many saints reached her ear, and, like them, she too longed to "take heaven by storm." The meeting of the two maidens in the same church was not an event likely to cool the ardour of either. Both hastened to Cordova, and, on presenting themselves before the *cadi*, Flora exclaimed, "I am the woman, of pagan seed, whom you punished with stripes some time ago, because I would not deny Christ. Hitherto, through weakness of the flesh, I have hid my-

self but now, trusting in the divine grace, I fear not to declare that Christ is the true God, to denounce your false prophet as a wretch, an adulterer, and a magician " And I," said Maria, " had a brother, who, like other glorious witnesses, fell while cursing your prophet with the same boldness do I declare that Christ is the true Deity, and that your faith is the invention of the devil !" They were committed to prison, where, in the hope that entreaties would be used to dissuade them from their purpose, access was freely allowed to all who wished to see them Here they met with Eulogio, who had been consigned thither, not by the Arabs, but by the Christian metropolian, Recafredo Like many other prelates, Recafredo appears to have deplored the desperation with which the crown of martyrdom was sought by the more enthusiastic Christians, to have regarded, in fact, their conduct in its true light,—as a sort of suicide As Eulogio—of whom more hereafter—was the most zealous and dangerous preacher of the new, or rather revived, madness, and the bitter denouncer of all who, satisfied with the private profession of their religion, were not eager to provoke either their own deaths or the probable revocation of the few privileges they now enjoyed, he was in no favour with the sober-minded portion of his brethren It was hoped that a prison would cool his ardour of proselytism, it would, at least, circumscribe his power of mischief. Whatever might have been his past imprudence, to Flora and Maria he proved a seasonable adviser Their excitement was passing away, their spirits were sinking, and as their fate was unavoidable, unless they committed a sin for which even the soberest believer would have execrated them—unless they denied their God and Saviour,—they required just such a counsellor,—one who would show them that to die was now their only duty, and their only path to happiness And well did he acquit himself of his task When the maidens were brought before the judge, they steadfastly adhered to

their former declarations, and bent with becoming resignation to the fatal scimitar<sup>1</sup>

The example of these two saints, who, whatever might be their original imprudence in provoking their own doom, will never be mentioned without reverence by posterity, had an effect far different from that contemplated by the Mohammedans—it encouraged others to tread in their steps. Among these were Aurelio and Sabigoto, husband and wife, who were both persons of distinction, both reputed to be of the dominant faith, and both secretly attached to that of Christ. That their consciences should be wounded at the dissimulation in which they had lived, is natural enough, but, instead of adopting the only wise expedient left them,—that of forsaking the society and country of the Moors,—they had agreed to prepare for martyrdom. They had, accordingly, renounced the pleasures of life, practised the severest austerities, and fulfilled every office of devotion with the ardour of people who felt that their hour was drawing nigh. When they looked, indeed, at their two infant children, who, by the confiscation of their property, would be left destitute, and exposed to the far greater evil of apostasy, their courage failed for a moment. They consulted Eulogio, who exhorted them to aim at the glorious crown, leaving all minor considerations to God, “the Father of the fatherless.” While Aurelio received this desperate counsel, Sabigoto passed her hours with Flora and Maria, whose courage she hoped to imitate, and whom she already revered—and justly revered—as beings of a superior nature. But if *their* path was clear, that of herself and husband lay in a different direction. At this time, however, the soundest dictates, not only of reason, but of religion, were misunderstood or disregarded. After their death, her excited imagination presented both to her dreams,—both arrayed in shining garments,—both bearing palms

<sup>1</sup> Sanctus Eulogius, *Memoriale Sanctorum*, lib. 11. cap. 7 et 8 (apud Schottum, *Hispania Illustrata*, iv.) Alvarus Cordubensis, *Opera Omnia* (apud Florez, *España Sagrada*, tom. xi.) Also the martyrologies of the church.



in their hands, and surrounded by "the just made perfect" The same subjection of her fancy to her wishes made her believe that she had conversed with them, and that they had encouraged her to persevere in her holy design The vision strengthened her faith and purpose, and imparted no less vigour to those of her husband. Their resolution was shared by two relatives,—Felix and Lihosa, — who were also man and wife, and, though reputed Mohammedans, passionately attached to the true religion Felix had once been suspected of apostasy, but had, in fear, avowed himself a Mussulman, and therefore bore a troubled conscience and a load of remorse His was certainly no light guilt if no duty demanded his voluntary immolation by accusing himself before the *cadí*, he was certainly bound, when charged with the fact, to confess it In this case, he might reasonably have believed that Heaven itself had called him to suffer for the truth, and thereby to win for himself an enduring crown, but, having neglected the holy summons, he should now have awaited the will of God concerning him,—a will best revealed by circumstances Like their kindred, both Felix and Lihosa settled their worldly affairs, and prepared for the ordeal which they had resolved to pass All four doubted whether the usual mode, of appearing before the *cadí*, and there cursing Mohammed, was a right one, and they followed another the two wives went publicly to church, and when, as had been foreseen, the two husbands were required to explain this conduct of women who had until then been accounted true believers, they replied, that both they and the women were Christians, and equally willing to abide by the consequences of the declaration. All were immediately summoned, not before the ordinary tribunal of the *cadí*, but before the royal council held in the palace There was evidently great reluctance to proceed rigidly against them promises and prayers were used to make them revoke the fatal declaration, but they were inflexible They were conducted to butcuton, along with a monk or deacon of Tabanos, who

was present at the trial, and who would have been suffered to depart in peace, had he not insisted on sharing the same fate <sup>1</sup>

Throughout these tragical scenes, the Mohammedan government was an unwilling actor—it wished the executions to cease, but, so long as the Christians openly reviled the Arabian prophet, no mercy could be shown to them. To stop the effusion of blood, Abderahman had commanded the metropolitan to convoke a council at Cordova, where the dangerous enthusiasm should be condemned, and where the Christians should be expected rather to prize the toleration they enjoyed, than to insult the prejudices of a bigoted population, and thereby bring destruction on their own heads. This measure, however, did little good. Though the fathers issued a proclamation, ostensibly condemning the prevailing mania, there seemed to lurk under the studied words a hidden meaning, which sanctioned the imitation of the new saints. Fresh volunteers daily arrived to swell the ranks of this army of martyrs: the sword and fire were used with effect, when—“*O admiranda potentia Salvatoris!*” says Eulogio, “*et stupenda virtus Domini nostri Jesu Christi, qui semper quæsitus in tribulatione adsistat, pulsatus aperit, invocatus exaudit nam os illud quod sanctos Dei comburi præcepit, repente eâdem horâ divinitus obstruitur, linguâ vero angelo percutiente repressâ, suo hærens palato, ultra fari non potuit*” In short, he was struck, we are told, by the hand of Heaven, and consigned to everlasting damnation. The Mohammedan writers, however, who seem at no pains to conceal the vices of their rulers, say that he retained his serenity to the last, and that he died universally lamented by his people. There can be no doubt that his death was occasioned by a stroke of the palsy, but whether that stroke was a natural or an extraordinary infliction, is known to the Omniscient only. It produced no relief to the church

<sup>1</sup> Sanctus Eulogius, *Memoriale Sanctorum*, lib. ii cap. 10. Alvarus Cordubensis, *Opera Omnia* (apud Florez, tom. xi.)

San Eulogio is sometimes not without eloquence, but his style is often turgid, and his manner laboured.

of God, for Mohammed I, the successor of Abderahman, who began to reign in 852, was of a sterner disposition than his father, vindictive in his resentment against the Christians, and resolved either to reduce them within the bounds of a strict obedience, or to exterminate them. But to those who had resolved to die, the personal character of the sovereign was no consideration, or, rather, the more relentless it was, the more agreeable to their hopes. Fandila, a monk of Tabanos, was the first to suffer in the new reign. As soon as he appeared before the judge, he cursed the Arabian camel-driver, and was committed to prison. The king, when informed of his temerity, breathed a dreadful vengeance against the faithful, and ordered the bishop to be apprehended, but the latter had time to flee. We are told that, unless the walis and chiefs had interfered, the Christians would have been indiscriminately slaughtered on this occasion. The day following the execution of Fandila, the presbyter Anastasius and the monk Felix followed his example, and Digna, a nun of Tabanos, who had always the modesty to say, "*Nolite me dignam vocare, sed magis indignam,*" silently left the cloister, and on the same day entered, with the two male martyrs, "the joy of their common Lord"<sup>1</sup>

Of the female sufferers at this period, none deserves more attention than Santa Columba, a virgin of noble birth, and sister to the abbot and abbess of Tabanos, which, like many other religious establishments, was a double monastery. Her piety was conspicuous from her infancy, and, notwithstanding the opposition of her mother, she had resolved to take the veil. But that opposition embittered her days, especially as her beauty brought her many suitors, and she was daily urged to marry. In this strait, "through the good providence of God," says Eulogio, the mother unexpectedly sickened and died, and the maiden hastened to Tabanos. There she increased in holiness, devoutly meditating on the Scriptures, in the knowledge of which she made pro-

<sup>1</sup> The same authorities

ficiency enough to be considered a prodigy "In manners laudable, in humility sublime, in chastity perfect, in charity constant, in praying assiduous, in obedience ready, in pity soft, easy to indulge, eloquent in exhortation, and ever prepared to instruct,"—no wonder that her fame should reach distant towns, and that numbers should flock to see and to hear her. It appears, however, that, with all her sanctity, she was almost peculiarly exposed to the temptation of the evil one—"Hanc sæpe ægrimonius tentator macerat, immittit fastidium, speciem virorum præterdit, longum astruit victum, diversisque fatigat phantasias" But the tempter could obtain no permanent influence over Santa Columba. By fasting, by vigils, by prayer, in which she was often engaged during the whole of the night, she mortified "the fleshly lusts which war against the soul." But, whether she still distrusted herself, or thirsted after greater righteousness, she requested that she might be allowed to lead an anchoritic life, in a solitary cell attached to the monastery, and the request was granted. Here she passed whole hours prostrate on the floor, either bewailing the weakness of nature which it required such austerities to strengthen, or beseeching more grace from on high. But when the music of the distant choir fell on her ears, prayer gave way to praise. Yet this music was far less delightful than the announcement of the great persecutions in Cordova. Such a mind was sure to thirst after "the ineffable advantage of martyrdom, which sends the sinner direct to heaven." "She remembered," says her biographer, "the saying of the Gospel, 'The kingdom of heaven suffereth violence, and the violent take it by storm.'" Silently leaving her cloister, she hastened to Cordova, enquired the cadí's residence, and, when she appeared before him, she made her profession of faith, reprobated the cursed creed of the Mussulman, the author of which she loaded with imprecations, and seriously, though mildly, we are even told eloquently, exhorted the judge to forsake the error of his ways. Admiring alike her beauty and elc-

quence, and unwilling to destroy so fair a vessel, he led her before the royal council. There, with the same eloquence and zeal, she exhorted the nobles to repentance, to faith in the gospel, and to a renunciation of the prophet. Her appearance, her manners, her character, appear to have struck them with respect: they offered her a husband, riches, honours, power,—every thing which is supposed capable of captivating the fancy,—if she would withdraw her declaration. “Can your promises,” she replied, “tempt the spouse of Christ? Can you offer me a bridegroom richer or fairer than He who is the Fairest among ten thousand, and altogether lovely? And what faith can be holier than that which thus fills me with eternal hope?” It was evident that on so enthusiastic a mind reasoning or entreaty would be lost, and her fate was reluctantly pronounced. The chiefs conducted her, with equal sorrow and respect, to the court before the palace, where the executioner awaited her. Having rewarded him by a present for the good offices he was about to render her, she knelt, and signed herself with the cross, and while the raised scimitar separated her head from her body, the spectators averted their pitying looks.<sup>1</sup>

The fate of this extraordinary woman had such an effect on an old nun, that, in the resolution of joining so angelic a martyr, she escaped from the convent by night, reached Cordova, cursed Mohammed, was beheaded, and buried at Columba's feet. For some months afterwards this voluntary immolation seems to have ceased, but it then burst forth with the same fury as before. Eulogio, who had been liberated from prison, went from place to place, persuading fresh victims to seek their own doom. It was probably for his conduct in this respect that his election to the metropolis of Toledo was set aside. At length, being found guilty of harbouring a Moorish virgin who was a convert to the Christian faith, and brought before the *cadí*, he

<sup>1</sup> Sanctus Eulogius, *Memoriale Sanctorum*, lib. iii. cap. 10 (apud Schottum, *Hispania Illustrata*, tom. iv.)

cursed the Arabian impostor with such right goodwill, that, as an extraordinary culprit, he was taken immediately before the royal council. One of the judges, a friend of his, who admired his learning and respected his integrity of life, wished to save him. "If fools," said the Moor, "have sought this lamentable death, what madness can have seized thee, a wise and good man, that thou shouldst thus condemn nature, which binds all men to life, and rush on destruction? Hear me, I beseech thee! avoid this death. Say but one word in this hour of thy need, and believe hereafter what thou pleasest, no enquiry shall be made into thy faith or practice!" However well-meant the advice, Eulogio had gone too far to recede. He could not, indeed he wished not, to decline the path which he had persuaded so many others to tread. He persisted in his faith, and was ordered to instant execution. In his way, being struck on the cheek by one of the king's eunuchs, he fulfilled the divine injunction by turning the other. His headless body was thrown from an eminence into the river, and, if Alvaro is to be believed, a white dove of marvellous beauty came flying through the air, and lighted on it. In vain were stones cast to dislodge the heavenly messenger: there it remained, until the Moors approached, and forced it away, and even then it removed to a neighbouring tower, its look intently fixed on the martyr. Another portent was beheld that very night, — several priests clothed in white garments sitting on the same body, and singing praises to the Highest. Alvaro winds up his friend's sufferings with a high-strained panegyric, and with an earnest prayer that, through the interference of the new saint, he may be comforted from above, nor does he speak with less complacency of his own biographical performance —

"Ego autem, mi dulci Euloge, memoriam nominis tui, quantum potui lustravi, vitam digessi, doctrinam expressi, agonemque pulcherrimam explicavi. Construxi enim ære perennius monumentum gloriæ tuæ,

quod nec nimbosus turbo, grandoque lapidea destruat, nec rogos flammaram quocumque igne liquefaciat. *Ædificavi nomini tuo memoriam ex auro obrizo et lapidibus omnigenis pretiosis, quam nullus violentissimus valebit diruere prædonis more tyrannus*” Ovid, who is here so closely imitated, may be more elegant, but he is not more vainglorious <sup>1</sup>

The remaining martyrs of Mohammedan Spain must be despatched in a few lines. Except that of the virgin Leocrisia, the blood of San Eulogio was the last which stained the reign of Mohammed I. Abderahman III. renewed the persecution, but though many suffered, we have no Eulogio or Alvaro to detail the particulars of their fate. In later times the same obscurity rests on the national martyrology: the names are preserved by certain churches, rather by tradition than by authentic acts. Thus, that San Martin died at Cordova in 1147, that San Bernard of Valencia, a convert from Mohammedanism, with his two sisters, whom he had persuaded to embrace the truth, were soon destroyed by an incensed brother, — incensed at their apostasy, that in 1220 five Franciscan missionaries were put to death by the emperor of Morocco in his capital, that two monks of the same order were martyred at Valencia in 1228, just before the conquest of that kingdom by don Jayme el Conquistador, that in 1300 San Pedro, bishop of Jaen, perished in the dungeons of Granada, that in 1315 the famous San Raymundo Lully suffered by the hands of the misbelievers in Africa, that in 1397 two Franciscans were beheaded by order of the king of Granada, for venturing, in spite of his prohibition, to preach the gospel in that capital, may be true enough, though the authority on which two of them rests appears to us apocryphal, or at least insufficient <sup>2</sup>

<sup>1</sup> Alvarus Cordubensis, *Vita Beatissimi Fulgii* (apud Florez, *España Sagrada*, tom xi.) See, also, an excellent article on the subject, in No. 1 of the *Foreign Quarterly Review*. The pen from which that article has emanated cannot for a moment be doubted.

<sup>2</sup> Authorities: the Spanish martyrologies, and the large collection of the Bollandists, *Acta Martyrum et Sanctorum*, under the corresponding names.

IV. Of *heresies*, Spain had some, though perhaps fewer than were to be found in most other countries of Europe. The first was that of the presbyter Migecio, who taught that the three divine persons were David, Christ, and St Paul, that holiness is inseparable from the priestly character, that the Christian must not eat bread with the infidel, or the righteous with the sinner, and that the Catholic church is only the church of Rome. He was assailed by Elipando bishop of Toledo, with considerable force of reasoning, but sometimes with inconsiderate zeal. In Andalusia, the great subjects of predestination and free-will were rashly agitated, one party declaring that human salvation depends only on the pleasure of God, the other that it rests entirely with the will of man. The heresy of Felix bishop of Urgel is better known. This prelate was no mean scholar, and appears, even from the admission of his opponent Alcuin, to have been of exemplary life, but he fell into an error which has often distracted the world,—that, in his human nature, Christ is not the natural but the adopted son of God. This doctrine he preached with much success until the year 788, when it was discussed in a council of Narbonne. To what determination the fathers came on that occasion is unknown, but if Felix, as was probably the case, was censured, he certainly paid little regard to their authority, for he continued to persist in his opinions until 792, when he was again cited before the council of Ratisbon. Here those opinions were formally condemned, and he was delivered into the care of the abbot Angelbert, whom he accompanied to Rome for the purpose of abjuring them. And abjure them he certainly did, in the presence of pope Adrian, who appears to have absolved him, and to have restored him to the episcopal functions of which the fathers had deprived him. But on his return to his cathedral, he relapsed into his old errors, which he disseminated with so much success, that Charlemagne, who wished to be considered as the defender of orthodoxy, ordered two ecclesiastics,—our celebrated coun-



tryman Alcuin, and Paulnus bishop of Aquileia,—to combat them by Scripture and argument The manner in which Paulnus executed his task was highly unsatisfactory he was unable to grapple with the subject, and his taste was as puerile, as his style was pompous and his understanding weak hence his hasty performance did no good to the cause he was required to advocate Alcuin proceeded in a very different manner His first care was to learn what the opinions of Felix really were, and with this view he addressed an epistle to that prelate, who was not backward to defend them He now assailed them with considerable force and learning, but before he would allow his work to be distributed, submitted it to the examination of eminent divines It had as little effect on Felix as the thunders of the council of Frankfort, held in 1794, or even the condemnation by Leo III in the Roman council of 799 In that of Aix-la-Chapelle, however, which he was persuaded to attend, he confessed himself vanquished by the reasoning of Alcuin, and acknowledged the universal doctrine concerning the eternal filiation of Christ he even signed the Catholic profession of faith, and begged pardon of the church for the scandal of which he had been the occasion Whether, after his restoration to his see, he again relapsed, is very doubtful — These opinions were shared by Elipando of Toledo, which he defended with great acumen After the council of Ratisbon, he petitioned Charlemagne in favour of Felix, and when advised by Alcuin not to wander, himself, from the fold of Christ, but rather to bring back his respectable brother, he assailed the learned Englishman with virulence, sometimes even with abuse Whether he, too, was converted to the Catholic doctrine, is no less problematical Another great heretic,—heretic in the eyes of the Roman Catholics, but one who will be very differently esteemed by Protestants,—was Claudius bishop of Turin, also a Spaniard A furious iconoclast, he fairly stigmatised the worship of images, and even of

the holy cross, as rank and senseless idolatry His manner, however, was sometimes highly indecorous as when he says, that if the cross is to be worshipped because Christ died on it, then ought all virgins, because he was born of one, all mangers, because he lay in one, and even all asses, because he rode on one into Jerusalem The *ακεφαλοι*, — so called, because they acknowledged no supreme head, — were not unknown in the Peninsula they allowed but one nature to the Redeemer, permitted matrimony, or at least cohabitation with women, to the clergy, and varied in several points of discipline They were condemned in 839, in a council convoked at Cordova In 862, another was held in the same city, to examine the opinions of Hostigesio, who denied immensity to the divine person, which he represented as invested with a human figure He was opposed by the abbot Sanson, who, punning on his name, called him *hostis-Jesu*, but for some time he had influence enough in the city not only to avert his condemnation, but to procure the sanction of his monstrous tenets, and even the banishment of his punning antagonist Besides the preceding, other heresies were imputed, though never more than partially spread, in the Peninsula, and native doctors from time to time arose to disturb by their subtleties the faith of the people, but their influence was circumscribed as much in duration as in space <sup>1</sup>

But the most celebrated of all the sects of Spain were the Albigenses, who are allowed, even by Protestants, — by those, at least, of the established church of England, — to have held some heretical tenets Not satisfied with assailing

<sup>1</sup> Adrianus I Papa, Epistola ad omnes Episcopos per Universam Spaniam (apud Duchesne, *Hærum Francorum Scriptores Coætanei*, tom iii) Elpandus, Epistolæ I et 2 (apud Florez, *España Sagrada*, tom v) Alcuinus contra Felicem Libri Septem, col 782, necnon Epistola ad Elpandum, col 905, et Libelli Quatuor contra Elpandum, lib. i Annales *Hærum Francicarum*, p 37, Annales Bertiniani, p. 161, Annales Fuldenses, p 538 (apud Duchesne, *Scriptores*, tom ii et iii) Marca, *Imes Hispanicus*, necnon Baluzius *Tutelenis*, lib iii et iv Florez, *España Sagrada*, tom iv vii. x. (Concilium Cordubense, Vida del Abad Sanson, &c) Ferreras, *Histoire Générale d'Espagne*, par Hermilly, tom. ii. et iii Masdeu, *España Arab.*, lib ii.

some of the holiest mysteries of faith, with a desperate fanaticism they denounced the hierarchy, and even the priesthood, which, notwithstanding its divine institution, they represented as of Antichrist. Some of them went much further—they reprobated all temporal as well as all spiritual authority, taught that all men were equal, and that its assumption by any man, or class of men, was a tyranny, nay, some clamoured for a community of goods, even of wives. Their system, indeed, admitted some great truths, when they so furiously levelled the oldest institutions,—such even as were consecrated by human opinion and by reason,—they could not overlook the superstitions which time had introduced into religion. They inveighed with zeal, sometimes with eloquence, seldom with much force of argument, against real or fancied abuses, but in reprobating the lives of the French clergy, they were really strong. It is, however, certain that their own errors were even more dangerous than those they combated—the dominant religion, by inculcating submission to the higher powers, and charity to the poor, strengthened the frame of society, which the zealots laboured incessantly to overturn. That both the temporal and spiritual arm should be raised against them—that pope and king, prelate and noble, priest and peasant, should combine to stay the fury of a torrent which threatened to sweep away the salutary distinctions of life—will create no surprise. At first no other weapons were used than persuasion and argumentation—these failed of their effect, often to the confusion of the Catholic advocates, who, when constrained to defend the superstitions and vices of their body, spoke against their better reasons—sometimes, perhaps, against their internal conviction. The bishops were now charged with the expulsion of the heretics,—the only severe penalty which the ancient ecclesiastical discipline permitted,—and when they were too formidable from their numbers to be thus summarily banished from their native places, the temporal power was invoked to aid the church—counts, barons, knights, were

threatened with excommunication, unless they armed for so holy a purpose, and assisted in discovering the delinquents, of whom many had fled into the mountainous districts of southern France, as well as of Leon, Navarre, and Aragon <sup>1</sup>

But these measures, which chiefly originated in the council of Verona (held in 1184), produced little effect. Though kings decreed the expulsion of their heretical subjects, and the bishops did the same in virtue of their divine jurisdiction, the obnoxious sect rather multiplied than diminished. There was negligence somewhere, and with the view of remedying it, pope Alexander III, who unfortunately bound his brows with the tiara, in 1198, despatched commissioners into the places infected with this moral pestilence, who were empowered to supersede the episcopal jurisdiction wherever it was inadequately exercised. This commission deeply offended the prelates, nor did it please the counts and barons, who were in no disposition to see so many useful subjects banished, to the serious diminution of their resources. The counts de Thoulouse, Foix, Beziers, Carcassone, and Comminges, refused to enforce the proscription. But the Cistercian monks, to whom the pope had intrusted the commission, aided by two zealous Spaniards, the bishop of Osma and San Domingo de Guzman, persevered in their vocation. The assassination of a papal legate, however, by the enthusiasts, did their cause serious mischief, and enabled the pope to organise a more powerful confederacy against them. Many of the barons of Narbonensian Gaul now joined the crusade, which was undertaken no less against the count of Thoulouse, who was suspected of a secret leaning to the Albigenses, than

<sup>1</sup> Authorities, those in the third and fourth vols of Duchesne, *Rerum Francorum Scriptores Coetanei*, the general historians of Spain, and Llorente, *Historia Critica de la Inquisicion de España*, tom 1

The remarks which we have made respecting the heretics of southern France and of northern Spain may, probably, be unpalatable to some of our readers, while another class may be no less offended with our reprobation of the dominant church. The love of truth has been our guide, which assuredly we will not cease to follow, either for Catholic or Protestant. No one impartial history of the Waldenses and Albigenses has ever yet been written — or ever will be written

against the heretics themselves. Simon count de Montfort was placed at the head of the Catholic army, and charged to aid the *missionaries*, or special messengers of the holy see, who were not only to preach against the new doctrines, but to superintend the infliction of the extraordinary penalties decreed against both the Albigenses themselves, and all their favourers. Hence the origin of the *inquisitors*, a separate order in the church, the guidance of which was intrusted to San Domingo de Guzman, the most fiery of zealots. During near three centuries, this order continued solely dependent on the pope, until Fernando and Isabel established an independent tribunal, on which they conferred the temporal no less than the spiritual jurisdiction. While De Montfort continued his savage career<sup>1</sup>, and the inquisitors condemned to the flames, and delivered over to the secular arm, all who persisted in the proscribed doctrines, the fourth council of Lateran approved the infant and novel establishment. Honorius III, the successor of Innocent, was so well satisfied with the exertions of San Domingo and his followers, that the extension of the order throughout Christendom was authorised, and even recommended. The Dominicans, as an organised body, under the name of inquisitors, appear to have settled in the Peninsula about the year 1232, two years after the accession to the united thrones of Leon and Castile of the celebrated San Fernando, one of the greatest enemies the poor sectarians ever had to endure. For some time the Spaniards were honourably tenacious of their ancient discipline while sanguinary France burned the unfortunate victim, they were satisfied with excommunicating and banishing him. But the fury of the popes, the vindictive ardour of the inquisitors, and the example of a country which at every period of history has been the curse of Europe, gave rise to the worst cruelties in Spain, as in France and Italy. The first inquisition was established at Lerida, and, insensibly, Aragon and Catalonia were covered with similar communities. In a provincial

<sup>1</sup> Vol. III p 94.

council presided by the archbishop of Tarragona, it was decreed that every obstinate heretic should be delivered over to the secular arm, to suffer the last penalty, and that the more culpable of such as even repented, should, during ten years, do penance on certain occasions before the church door. Innocent IV empowered the inquisitors to deprive the highest dignitaries, civil or ecclesiastical, of their honours and revenues, and this, in regard not only to convicted heretics, but to all who favoured or concealed them<sup>1</sup>

When this odious innovation was first introduced into the Peninsula, there was but one provincial, who nominated all the inferior inquisitors, and authorised the erection of new monasteries of the order. Soon, however, the number of these monasteries was so great that two provincials were required—one for the dominions dependent on the Aragonese crown, another for Castile, Leon, and Portugal. The tribunals of the former proceeded in silent but fatal activity on their diabolical course, but though the latter also existed, they appear to have done little, probably because there were few or no heretics in that most Catholic of kingdoms. The crimes of which cognisance was taken by the ancient tribunals,—so called in contradistinction to those created by Fernando and Isabel,—concerned not only dogmas of faith, but blasphemers, magicians, schismatics, all the excommunicated who remained above a year without soliciting absolution, all Jews or Moors who wrote or spoke against the Catholic church, all clergymen who interred heretics, and all men who, in whatever manner, either favoured the suspected, or opposed the authority of the holy office. The mode of proceeding deserves notice. When the inquisitor visited any city for the exercise of his functions, he summoned the local authorities to ap-

<sup>1</sup> Petrus Monachus Cisterciensis, *Historia Albigensium*, p. 554, &c (apud Duchesne, *Retum Francorum Scriptores*, tom v. Bougts, *Histoire Ecclésiastique et Civile de la Ville et Diocèse de Carcassone* p. 136, &c Zurita, *Anales de Aragon*, lib. 11. Ferreras, *Histoire Générale d'Espagne*, par Hermilly, tom. 14. Llorente, *Historia Crítica de la Inquisición de España*, tom. 1.

pear before him, and swear to assist him with the temporal sword in the extirpation of heresy. Proclamation was next made to the inhabitants, who were exhorted, and even under the penalty of excommunication commanded, to appear and enter an accusation against all whom they suspected guilty of the crimes above enumerated. At the same time, a slight punishment only was held forth to those who, within a given period, should voluntarily appear, and confess their secret heresy. This period was generally thirty days, and if at its expiration none of those who had been delated appeared, the accuser was summoned. The delator could take his choice from three modes of prosecuting — 1 As an open accuser, but in this case he subjected himself to the penalty of talion, if he failed to substantiate his charge. 2 As one who had no personal knowledge of the heresy, but who could name persons whom he believed able to prove it. 3 As one who went by hearsay, which attached the suspicion of guilt to any particular person, and, in this last case, the tribunal itself took the cause into its own hands. The witnesses were examined in presence of the inquisitor, a secretary, and two priests, and if the evidence was deemed sufficient, an order was sent for the arrest of the accused, who was dragged from the bosom of his family and friends, nay, from that of all human society, and imprisoned in a cheerless dungeon. His goods were then seized, to the prejudice alike of his family and his creditors, and, if the accusation was proved, were confiscated to the use of the order. He might petition for a trial, which was never, indeed, granted without such petition, so that if the accused were obstinate, he might die in the dungeon. But as the hope of acquittal, or of a certain defined penance, inspired most, generally the trial closely followed the imprisonment. If the accused pleaded guilty, he was, for the first offence, to be pardoned on certain conditions, and was re-conducted to his dungeon until the next *auto da fé*. there he appeared in a penitential garb, received

the imposition of a certain penance, and was dismissed. If the guilt were denied, and were not fully established by witnesses or a rigorous examination, the accused was admitted to purge himself by oath, and was discharged with the *absolutio ad cautelam*, as one still suspected. When the heresy was proved, punishment was allotted according to the degree of reputed turpitude. The *suspectus de levi*, or one convicted of a slight taint of heresy, first abjured all other doctrines than those held by the Catholic church, and next publicly appeared in the church, in a penitential garb, and standing during the service, to receive whatever penance might be awarded him by the inquisitor. It was generally to the effect that, during three years, he should appear as a penitent during Lent, and at other seasons, outside the door of the edifice, and should be reconciled on Holy Thursday. If the suspicion were somewhat stronger, the period of penance was extended to five years, if very strong, to seven. When the presumption was evident, and the accused would not confess, the torture was applied, a means almost sure to produce self-condemnation. All who were convicted of the crime, — and conviction in such tribunals was very easily obtained, — yet refused to acknowledge it, and to solicit reconciliation with the church, were reserved for the flames, and the same doom awaited the relapsed heretic, even if he confessed his errors and implored re-admission into the Catholic communion. Some offenders were sentenced to perpetual imprisonment, some to the loss of all their possessions, others of a part, and others, again, to public scourging at certain solemn seasons — to fasting three days every week — and to a perpetual abstinence from animal food, wine, cheese, and eggs. The worst feature of this infernal institution was, that the vilest men were admitted as witnesses, that they were never confronted with the accused, that wives might, nay, were compelled to accuse their husbands, husbands their wives, children their parents, and *vice versa*. He who bore enmity to another,



had only to depose, or hire some wretch to depose, and his vengeance was gratified <sup>1</sup>

But though the functions of the ancient tribunal, as headed by the Dominicans, were thus extensive, they were but partially exercised the *autos da fé* were almost unknown in Castile and Leon, and in other parts of the Peninsula were too solitary to attract more than a passing sentiment of horror. It was reserved for Fernando to create a tribunal, the cognisance of which was to be restricted to relapsed Jews and Mohammedans, but which eventually drew every class of spiritual delinquents within its circle. Its powers were prodigiously amplified, for it was rendered independent of the royal and papal jurisdiction, and for the execution of its sentences it had no longer need to invoke the secular arm. It was, therefore, a new tribunal, one which, alike in its constitution and operations, had little similarity to the ancient. With a feeling highly honourable to her heart, Isabel long opposed its establishment, but bigotry of the worst description was an essential part of her character, and after a time her scruples were removed by a Dominican friar of Santa Cruz, — Tomas de Torquemada. Into the constitution and proceedings of this hellish tribunal, under Torquemada and his successors, we cannot enter, and if we could, any information we could afford, within limits so circumscribed, would not only be insufficient, but positively injurious, as it would necessarily be too partial to convey any other than an erroneous view of the subject. For a minute, a useful, and, in general, a very accurate history of this accursed office, — blasphemously called the Holy, — the reader is referred to the recent work of Llorente <sup>2</sup>

V The THEOLOGIANS of Spain, during the middle ages, are more numerous than all her other writers together. None appears of much note, before Felix bishop

<sup>1</sup> Authorities, — the historians, civil and religious, of Spain, and Llorente, *Historia Critica de la Inquisicion de España*.

<sup>2</sup> Llorente, *Historia Critica de la Inquisicion de España*. See also Vol II p 271 of this compendium

of Urgel, and Elipando bishop of Toledo, whose heresy has already been seen. The defence and refutation of their peculiar doctrines employed the pens of several contemporary ecclesiastics. They were followed by Claudius bishop of Turin, who was certainly a Spaniard, by Theodulf bishop of Orleans, who may be satisfactorily proved to belong to the same nation, by San Eulogio, whose *Memoriale Sanctorum*, and *Liber Apologeticus Martyrum*, are valuable monuments of antiquity, by Pablo Alvaro, who, though a layman, was a steadfast defender of Christianity, and who has left us several treatises, pompous indeed in style, but interesting. Passing over several obscure names, and even some of note, but whose works are unknown, we come to don Lucas, bishop of Tuy in Galicia, the celebrated historian. This ecclesiastic had undertaken a pilgrimage to Jerusalem, but, during his absence, hearing that the heresy of the Albigenses had penetrated into Leon, he hastily returned to the Peninsula, composed a treatise against the obnoxious sect, and, for the active zeal which he exhibited in the race of persecution, he was afterwards raised to the see of Tuy. Raymundo de Peñafort, a Catalan doctor of the same century, whose erudition caused him to be regarded as a prodigy, and whose virtues procured him canonisation, was certainly an extraordinary man. He collected a series of decretals, and a book of moral sayings, aphorisms, &c from the most celebrated writers, to which the name *Summa Raymundina* has been given. He also wrote on the sacrament of penance, and the constitutions of the order to which he belonged,—that of the Preaching Friars. Pedro Paschal, a Valentian, obtained some celebrity in his controversies with the Mohammedans, and by some dogmatical treatises. Some of his subjects could not, at the present day, be edifying. Thus, he gives us a history of the holy crown of Jesus Christ, of the Agnus Dei, &c. Probably, a greater writer than any of the preceding was Arnaldo Villanueva better known as Arnaud de Villeneuve, who flourished early in the four-

teenth century, and who, though by many esteemed a Frenchman, was a Spaniard. He wrote largely on medicine, chemistry, and dogmatic divinity. He is, however, as much surpassed by Raymundo Lully, a native of Majorca, in the same century, as he himself surpassed his predecessors. This man was really a prodigy in varied erudition, in extent of learning, or subtlety of intellect, he had no superior during the middle ages, except only the angelic doctor St Thomas Aquinas. He wrote on almost every thing, — on metaphysics, natural and moral philosophy, logic, grammar, rhetoric, medicine, jurisprudence, and theology, and so largely, that his works would comprise many ample folios. The character and versatility of his acquirements will be best understood from the titles of a few of the 321 treatises ascribed to him, and as our present enquiry regards theology, we select them from that department alone — 1 De Articulis Fidei 2 De Deo Ignoto 3. De Formâ Dei 4 Utrum Fidelis possit solvere et destruere omnes Objectiones quas Infideles possunt facere contra Sanctam Fidem Catholicam 5 De Convenientia quam habet Fides et Intellectus in objecto 6 De iis quæ Homo de Deo debet credere 7 De Substantiâ et Accidente, in quo probatur Trinitas 8 De Trinitate in Unitate, sive de Essentiâ Dei 9 De Existentiâ et Agentiâ Dei 10 De Divinis Dignitatibus 11 De Deo et Mundo et Convenientia eorum in Jesu Christo 12 De Ente Infinito 13 De Ente Absoluto 14 De Incarnatione. 15 De Prædestinatione et Libero Arbitrio 16 De Naturâ Angelicâ 17 De Locutione Angelorum 18 De Hierarchiis et Ordinibus Angelorum 19 De Conceptione Virginali 20 De Angelis bonis et malis. Enquiries more abstruse could not occupy the human mind. that mind must be no common one, which could conceive, much more embrace such subjects. But if, with a daring hand, he treated on subjects, the knowledge and, perhaps, contemplation of which is forbidden to man, he was not only a firm believer in revelation, but a zealous

preacher among the Mohammedans. In his youth, indeed, while attached to the court of don Jayme II. king of Aragon, he was vain and dissipated, but he repented, took up his abode in an hermitage on the island of Majorca, and gave up his life to study and religious contemplation. After a long residence in this solitude, he travelled through most of Europe, into the Holy Land, and even visited Africa, and every where he increased his store of knowledge. On his return he resolved to preach Christianity to the Moors, and, if necessary, to lay down his life for the truth. At Bugia, on the African coast, he was at length cast by the mis-believers into a horrible dungeon, laden with heavy fetters, beaten with stripes, and starved with hunger, and, when released, was stoned by the mob, and left nearly dead. Some Genoese mariners found him in this state, and conveyed him on board their vessel, but he soon surrendered his soul to God. His body was brought to his native island, and interred in the Franciscan monastery. But his life is best known from his own words — “I was once a married man, and begot children, I was rich, lascivious, and worldly. Willingly did I forsake every thing to advance the glory of God, the good of man, and the holy faith. I learned Arabic, often have I departed to preach to the Saracens. For my religion I have been seized, imprisoned, and whipt. Forty-five years have I laboured to draw the rulers of the church, and Christian princes, to the advantage of men. Now I am old and poor, yet steadfast in the same purpose, and, through God’s grace, steadfast will I remain unto death.”<sup>1</sup> Steadfast, as we have seen, he did remain, until he attained

<sup>1</sup>With due veneration for the writer, we give the original of this passage — “Homo fui in matrimonio copulatus, prolem habui, competenter dives, lascivus, et mundanus. Omnia, ut Dei honorem et bonum publicum possem procurare, et sanctam fidem exaltare, libenter dimisi. Arabicum didici, pluries ad prædicendum Saracenis exivi, propter fidem captus fui, incarceratus, verberatus, quadraginta quinque annis ut ecclesie rectores ad bonum publicum, et Christianos principes, movere possem, laboravi. Nunc senex sum, nunc pauper sum, in eodem proposito sum, in eodem usque ad mortem mansurus, si Dominus ipse dabit.”

the crown of martyrdom After this great man, few deserve notice Alvaro Paez, a Portuguese, is said by Nicolas Antonio to have been a most shining light in theology Guido de Terrena, a native of Perpignan, Nicolas Rossel, of Majorca, Juan Ballisteros, a Catalan, and Francisco Ximenes, of Gerona, all contemporaries, deserve, at least, the mention of their names Of these, the last is the most eminent two kingdoms, Catalonia and Valencia, have contended for the honour of his birth His greatest work, in thirteen books, which, if published, would fill as many ample folios, is of a mixed nature, theological and political, and is entitled *Crestia, sive De Regimente de Præceptis e de la Cosa Publica* Whatever be its merits, it is likely to slumber in the dust of libraries The fifteenth century can boast of, 1 St. Vincent Ferrer, a Valentian, who wrote much on dogmatical theology, and whose virtues procured him canonisation 2 Juan de Torquemada, who wrote largely on religious subjects his Meditations on the Life of Christ, his Exposition of the Psalms, and Commentaries on the Rule of St Benedict, are mentioned with approbation by the great national bibliographer, Nicolas Antonio These three, however, are not a tenth of his works, many of which were printed in the sixteenth century 3 Alfonso Oropesa, 4 Rodrigo Sanchez de Arevalo, 5 Pedro de Cixar, 6 Pedro Garsias, 7 Jayme Perez de Valencia, 8 Pablo Heredia, and, 9 Juan Alfonso de Benevente, are also mentioned with high praise Some of their works have been printed, most moulder in oblivion Yet if the majority of theological MSS and lives of saints deserve their present fate, it is not so with many of them, and even the worst might be made to throw incidental light on the national history The case is not otherwise in England the neglected writings of ecclesiastics would often be our fullest, sometimes our only, authorities for history Both in Spain and England, a commission ought to be appointed to examine these

monuments of antiquity, and to select for publication such as throw light on the manners and events of former ages<sup>1</sup>

Such a commission, however, would, in England, prove a *job*. We have one sitting, which, if we may judge from its past rate of proceeding, is likely to remain *sitting* a full century

<sup>1</sup> Morales, *Coronica General de España*, tom iv. Nicolas Antonio, *Bibliotheca Vetus*, lib vi—x. Florez, *España Sagrada*, tom v vii xi &c (in multis scripturis). Masdeu, *España Arabe*, lib ii. Ferreras *Histor Generale d'Espagne*, par Hermilly, tom iii iv v vi. passim

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## APPENDIX A Page 8.

GOG AND MAGOG, OR YAJUL AND MAJUL.

*(From D'Herbclot, Bibliothèque Orientale)*

JAGIOUGE et Magiougé, Gog et Magog, dont la postérité, qui descend de Japhet, habite les pays les plus septentrionaux de l'Asie Ebn Alowardi, dans son livre intitulé *Khridat al Agharb*, parlant de ces pays, dit L'on trouve les peuples de Gog et Magog dans le plus haut du Septentrion, après avoir traversé le pays des Kaumakins, et celui des Scelables

Les premiers de ces peuples sont les Iartares, que nous appellons aujourd'hui Calmouques Les seconds sont les Chalybes des anciens, que nous appellons Sclaves, ou Esclavons Ceux-ci demeuroient dans l'Asie mais ils sortirent de leur pays pour en venir peupler un autre plus proche de nous, auquel ils ont donné leur nom

Ces peuples, dit même auteur, habitoient sur des montagnes très hautes et escarpées, où aucune bête de voiture ne pouvoit aller, de sorte qu'au rapport d'Abou Ishak, qui y fut envoyé par le roy de Khorassan, toutes les denrées et marchandises dont l'on négocioit avec eux, se portoiént sur le dos des hommes, ou des chèvres, qui sont fort grandes en ce pays-là. Il ajoute qu'il falloit employer dix sept jours à monter, et à descendre, avant que d'arriver jusqu'à cette nation, et que l'on n'a pu trouver aucun d'entr'eux jusqu'à présent qui ait voulu donner la moindre connoissance des choses qui les regardent Il y a grande apparence que ces peuples sont ceux que les Grecs ont appelé Hyperboréens

L'auteur du livre intitulé *Nezahat al Coloub* cite un autre livre, intitulé *Ketal al Messalek val Memalik*, dans lequel il est rapporté que Vathek, neuvième khalife de la race des Abbassides, ayant la curiosité de sçavoir au vray ce que c'étoit que le fameux rempart de Jagiougé et de Magiougé, ou de Gog et de Magog, bâti autrefois par Alexandre le Grand, pour resserrer les nations barbares du Septentrion, et les empêcher par ce moyen de faire des irruptions dans le cœur de l'Asie, ce khalife donna la commission à un nommé Salam, son interprète, de chercher un ouvrage si fort vanté dans les anciennes histoires, et de lui en faire un fidèle rapport.

Salam partit avec un équipage de cinquante personnes, pourvues de toutes les choses nécessaires pour un tel voyage, de la ville nommée Sermenrai ou Samara, en Chaldée, où Vathek faisoit sa demeure ordinaire l'an de l'Hégire 228, qui est de J C 842, et alla trouver d'abord le roy d'Arménie dans sa ville capitale de Sis

Après avoir quitté l'Arménie, il prit la route du Schirvan ou Médie Septentrionale, dans laquelle Filân schah regnoit pour lors Du Schurvân il passa chez le roy des Alân ou Alains, peuples qui ont conservé leur nom jusqu'à nous, et alla ensuite visiter le prince qui porte le titre de Maître du trône d'or, qui commande dans la ville de Bâb al Abouâb, c'est-à-dire, aux portes Caspiennes, appelées autrement Derbend en Persien, et Demir capi en Turc



Pendant qu'il fut à Derbend, le prince de ce pays-là, selon le rapport de Cazuni, dans son livre intitulé *Agriab al Makhloukhâb*, alla à la pêche sur la mer Caspienne, et mena avec lui Salam on prit dans cette pêche un fort grand poisson, dans le ventre duquel on trouva un autre poisson encore vivant, qui avoit la figure d'une fille toute nue jusqu'à la ceinture, et qui portoit jusqu'aux genoux une espèce de caleçons faits d'une peau semblable à celle d'un homme, elle tenoit ses mains sur son visage, se tiroit les cheveux, et pousoit de grands soupirs, mais elle ne fut pas long-tems en vie Le même Cazuni ajoute que le Tarikh Magreb, qui est une histoire d'Afrique, confirme cette narration par d'autres semblables qu'il rapporte sur le sujet des Sirènes

Le roy du trône d'or nommé Tarkhân donna à Salâm des guides pour le conduire plus avant dans le Nord, où ayant marché 26 jours, il arriva en un pays qui sembloit fort mauvais A dix Journées de-là il trouva des villes, où l'on dit qu'étoit l'ancienne demeure des peuples Hyperboréens nommez Jagiougé et Magiougé, mais elles n'étoient plus que des mazures sans habitans, après qu'il eut fait 27 journées, il arriva enfin à Hama, lieu ainsi appelé par les Arabes à cause de son assiette, qui est très forte, et presque inaccessible

On voyoit assez près de ce fort les restes du rempart que nos voyageurs cherchoient, et Salam s'y étant fait porter, et ayant reconnu cet ouvrage merveilleuse, il le trouva tel qu'il étoit décrit dans les livres qu'il avoit apporté expressément pour les vérifier, et n'ayant plus rien à faire après une si curieuse découverte, il prit la résolution de retourner à Samara par un autre chemin que celui qu'il avoit déjà fait. Il tira vers l'Orient au-dessus de la mer Caspienne, et après deux mois de chemin avec sa petite caravane, à sept parasanges, qui font quatorze lieues Françaises de Samarcande, d'où ayant pris la route du Khorassân, il retourna auprès du khalife son maître, n'ayant employé en tout son voyage que deux ans et quatre mois

## APPENDIX B Page 84

### NORTHERN ORIGIN OF SOME WISIGOTHIC LAWS

THE following extracts from the *Lex Frisionum*, tit *De Dolg* (apud Lindenbrogium, *Codex Legum Antiquarum*, p 498—502), exhibit so careful a gradation of punishment to offences, and are so analogous with those of the *Wisigothic Code*, that they must gratify the curious reader As the substance of many has been given in the proper place\*, we need not translate them —

- 1 Si quis alium per iram in capite percusserit, ut eum surdum efficiat, xxiii solid componat
- 2 Si mutus efficiatur, sed tamen audire possit, xviii solid. componat.
- 3 Si quis alium ita percusserit, quod dura legi vocant, dimidium solidum componat

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\* See p 83—88

- 4 Si autem sanguinem fuderit, componat solid 1  
 5 Si eum percusserit ut testa appareat, cum duobus sol componat  
 6 Si os perforatum fuerit, duodecim sol componat  
 7 Si membranam, quæ cerebrum continetur, gladius tetigerit, xviii solid componat.  
 8 Si ipsa membrana rupta fuerit, ita ut cerebrum exire possit, xxiiii solid componat  
 9 Si quis alteri aurem absciderit, xii sol componat.  
 10 Si nasum absciderit, xxiiii sol componat  
 11 Si summam rugam frontis quis ictu transversam incidit, duobus solid. componat.  
 12 Si subteriore incidit, iv sol componat  
 13 Si tertiam quæ juxta oculos est, duobus sol componat  
 14 Si supercilium incidit, duobus sol. componat.  
 15 Si palpebram aut superiorem aut subteriore vulneraverit, duobus sol componat.  
 16 Si nasum transpuxerit, xv sol componat  
 17 Si graviolem ictu percussum præciderit, duobus sol componat  
 18 Si maxillam incidit, vi sol componat  
 19 Si unum dentem de interioribus excusserit, duobus sol. componat  
 20 Si unum ex angularibus dentibus excusserit, tribus sol. componat.  
 21 Si de molaribus unum excusserit, iv sol componat  
 22 Si jugulum incisum fuerit, iv sol componat.  
 23 Si costam transversam incidit, duobus sol componat.  
 24 Si brachium ictu supra cubitum contractum fuerit, xli solid componat  
 25 Si infra cubitum unum ossum contractum fuerit, vi solid. componat  
 26 Si utraque ossa fracta fuerit, 12 solid componat.  
 27 Si manus in ipsa junctura, quo brachio adhæret, abscissa fuerit, xlv sol. componat.  
 28 Si pollicem absciderit, xlii sol et uno tremisse componat  
 29 Si indicem absciderit, vii sol componat.  
 30 Si medium absciderit, uno tremisse minus vii. sol. componat.  
 31 Si annularem absciderit, viii sol. componat.  
 32 Si minimum absciderit, vi sol componat  
 33 Si totos v digitos absciderit, xlii sol. componat  
 34 Palma manus abscissa, iv sol. componatur  
 35 Si qualibet digitus ex quatuor longioribus, in superioris articuli junctura, ita percussus fuerit, ut humor ex vulnere decurrat, quod lidu wagi dicunt, i sol componat.  
 36 Si in subteriori articulo hoc contigerit, duobus solidis componat.  
 37 Si in tertio articulo fuerit, tribus sol componat  
 38 Si in junctura manus, et brachii hoc evenerit, quatuor solid. componat.  
 39 Si in cubito idem evenerit, iv sol. componat.  
 40 Si in summitate, quæ brachium scapulae jungitur, evenerit, iv solid componat.  
 41 Si in pollicis superioris articuli junctura fuerit, duobus solid. componat  
 42 Si in inferiori, tribus solidis componatur

- 43 Si adjuncturam brachii et pollicis fuerit, iv sol componat.
- 44 Si in cubito, iv, si in junctura scapulæ, similiter iv sol comp
- 45 Si quis oculum alterius ita percusserit, ut eo ulterius videre non possit, xx solid et duos tremisses componat.
- 46 Si totum oculum eruerit, medietatem were geldı sui comp
- 47 Si quis alium pectus foraverit, xii sol comp
- 48 Si præcordia, id est, herthamon, gladio tetigerit, xviii solid. componat.
- 49 Si præcordia perforaverit, xxiv sol componat
- 50 Si membranam, qua icror et splen pendent, quod mithridri dicunt, vulneraverit, xviii solid. componat Si illud perforaverit, xxiv solid componat
- 51 Si in ventrem vulneraverit, xii sol componat
- 52 Si botellum vulneraverit, xviii, si perforaverit, xxiv, solidis componat.
- 53 Si contra stomachum vulneraverit, xii sol comp.
- 54 Si stomachum tetigerit gladio ut vulneretur, xviii, si perforatus fuerit, xxiv solid componat
- 55 Si botellus de vulnere processerit, et iterum interius remittitur, iv sol supra compositionem] vulneris componat Si de adipe aliquid præcesserit ut præcidatur, iv sol. componat
- 56 Si veretrum quis alium absciderit, were geldum suum componat
- 57 Si unum testiculum excusserit, dimidium were geldum, si ambo, totum componat
- 58 Si testiculus exierit per vulnus, et iterum remittitur in locum suum, vi sol supra compositionem vulneris componat
- 59 Si coxam supra genu vulneraverit, et os transversum fregerit vel præciderit, xii sol comp
- 60 Si tibia subtus geniculo media incisa fuerit, vi solid, si tota, xii sol componat
- 61 Si pes totus abscissus fuerit, xiv sol componat
- 62 Si pollicem pedis absciderit, viii sol componat Si proximum digitum vii, si tertium, vi, si quartum, v; si quintum, iv sol. componat Reliqua pars pedis, quæ intra tibiam et digitos est, xv sol componatur
- 63 Si humor per articulos digitorum decurrerit, sicut superius de manu scriptum est, ita et in pede componatur
64. Si quis alium iratus per capillos comprehenderit, duobus solid componat
- 65 Vulnus, quod longitudinem habeat, quantum inter pollicem et complicati indicis articulum spannum non impleat, iiii solid componatur, quod integræ spannæ longitudinem habuerit, hoc est, quantum index et pollex extendi possunt, vi sol. componatur
66. Quod inter pollicem et mediı digiti spannum longum fuerit, 13 sol componatur
- 67 Quod à cubito usque ad juncturam manus longitudine fuerit, duodecim sol
68. Quod à cubito usque ad summitatem pollicis longum fuerit, xviii sol componatur
- 69 Quot plenè cubiti, id est, ad summos digitos manus extensæ, longitudine fuerit, xxiv solidis componatur quod supra est, non componitur
- 70 Si de vulnere os exierit tantæ magnitudinis, ut jactum in scutum trans publicam viam sonitus ejus audiri possit, iiii. sol. componatur

- 71 Si duo ossa exierint, duo solidi adjiciantur, id est, vi
- 72 Si tria exierint, unus sol adjiciantur
- 73 Si minora tunc sint, quam ut in scuto jacta trans publicam viam audiri possint, dimidio minori compositione solvatur
- 74 Vulnera tria, vel quatuor, vel eo amplius uno ictu facta mensurantur, et juxta quod eorum fuerit longitudo, compositio persolvatur Si vero tria, vel quatuor, vel quotlibet vulnera, totidem ictibus fuerint facta, quod ex his maximum, fuerit, juxta sui longitudinem componatur, cetera vero remaneant.
- 75 Si manus percussa manca perpenderit dimidio componatur, quo debuit si fuisset abscissa pes similiter digitus similiter, qualiscunque fuerit, digitus pedis similiter
- 76 Si brachium juxta scapulam abscissum fuerit, tribus sol. et remissae componatur
- 77 Si brachium mancum pependerit, medietate, si abscissum fuisset componatur
- 78 Sicut de brachio, atque manu, ita de coxa ac pede judicatum est
- 79 Si per vulnus pulmo excat, quatuor sol supra quantitatem vulneris componatur
- 80 Si spiritus per ipsum vulnus exierit, viii sol. componatur
- 81 Qui libero homini manus injecerit, et eum innocentem ligaverit, xv sol. componat, et duodecim sol. pro freda ad partem regis componat
- 82 Si quis alium juxta aquam stantem impinxerit, et in aquam ita ut submergatur, projecerit, iiii sol. componat, et pro freda sol. ii
- 83 Si quis brachium, vel coxam alterius transpuxerit, vi solid. componat
- 84 Qui maxillas utrasque cum lingua, sagitta, vel quolibet telo transfixerit, xv sol. componat.
- 85 Qui utramque coxam cum folliculo testium telo trajecerit, similiter xv sol. componat.
- 87 Si quis hominem casu quolibet in aquam prolapsum liberaverit, iiii sol. remunerationem accipiat
- 88 Si quis liberam sceminam, et non suam, per maxillam strinxerit, duobus sol. componat, iiii et duos sol. pro freda
- 89 Si per verenda ejus comprehenderit, iiii solid. componat, et duos solidos pro freda.

## APPENDIX C. Page 92

## LAWS CONCERNING THEFTS, VIOLENCE, &amp;c

I From the *Lex Burgundionum*.

- 1 THE freeman who forcibly entered the garden of another, paid 3 sols to the owner, and a mulct of 6 the slave received 100 stripes. (*De Furtis*, § 1 and 2.)
- 2 If a freeman broke, during the day, into the vineyard of another, he paid the same mulct, 3 sols, but the slave was put to death (*De Irruptis Sepibus*, &c § 7 and 8.)
- 3 If a freeman and a slave stole in concert, the former paid three times the value of the thing stolen, the latter was whipped. (*De Furtis*, § 1)

II. *From the Lex Salsca*

1 He who stole a sucking calf paid 3 sols, if the animal were grown up, 15 sols if he stole the cow with the calf, 35 sols, if the cow without the calf, 30 if he stole an ox, the penalty was 35 sol., if a bull, 35, if the king's bull, 90, if a sheep, 3, if a goat, 3, if a shepherd's dog, 3, but if a house-dog, by night, 15, if a hawk from a tree, 3, but if from its perch, 15, and if under lock and key, 45, if a goose, 3, if a cock, hen, or swan, 3, and if a dove, the same (*De Furtis Animalium, &c*)

2. If a slave stole to the value of two deniers, he received 120 stripes, or his owner paid 3 sols *for his back*, if to the amount of 40 deniers, or 1 sol, he was either castrated, or obliged to pay 6 sols (*De Furtis Servorum*)

3. He who killed a girl before she was able to bear children, was fined 200 sols, if she were old enough to bear them, 600, he who slew a pregnant woman paid 700, if the infant alone, 100, but if the murderer were a boy under twelve years of age, there was no punishment (*De his qui Pueros, &c*)

III. *From the Lex Alamannorum*

1 Si qua libera femina virgo vadit in itinere suo inter duas villas, et obviavit cum aliquis, et per raptum denudet caput ejus, cum 6 sol. componat. Et si ejus vestimenta levaverit, ut usque ad gemicula denudet, cum 6 sol. componat, et si eam denudaverit ut genitalia ejus apparant, vel posteriora, cum 12 sol. componat. Si autem cum eâ fornicaverit contra ejus voluntatem, componat 4 sol. Si autem mulier hæc fecerit, omnia dupliciter componat (*De eo qui Mulierem, &c*)

2. He who cut off another's ear, so that no deafness ensued, paid 12 sols, if deafness followed, 40, if he cut half the ear, 6 (*De eo qui alterius, &c*)

3. He who pierced a nose was fined 6 sols, if he broke the bridge, 12, if he cut off the whole nose, 40 if he cut out the tongue of another, the fine was 40, if half of it, yet so that the victim could speak, 20 if the upper lip, 6, if the lower, 12 (*Tit lxxii &c. De Nar transpuncta, &c.*)

IV. *From the Lex Bavariarum*

1 The thief shall restore the thing stolen ninefold. If the theft shall be committed in a church, or the duke's palace, &c the culprit was obliged to restore the value twenty-sevenfold (*De Furto*)

2. He who threw down the chimney of a house, paid for its re-erection, and also 3 sols, if he stole a rafter, 3 (*De Incendio Domorum, &c*)

3 He who slew a hawk paid 6 sols, a goose, 3. (*De Accipitribus, &c*)

V. *From the Lex Ripuariorum*

1 He who castrated or killed a man paid the same penalty, 200 sols, if he did the same to a slave, 30 (*Tit. vii and viii*)

2. If a native (Ripuarus) killed a Frank, he paid 200 sols, if a Burgundian, 160, if a Roman, 100! (*Tit. xxxvi*)

3 The homicide of a subdeacon paid 400 sols, of a deacon, 500, of a presbyter, 600, of a bishop, 900 (*Ibid*)

VI. *From the Lex Frisionum.*

1 If one noble slew another, he was fined 8 sols, if he slew a freeman, 54, if a freeman or noble, 80 (*De Homicidis*)

2 If a noble thieved, he restored the thing twofold, and was mulcted 80 sols, a freeman restored the same, but was fined one half, if a slave stole, his master merely made good the loss, and the culprit was either whipped, or 4 sols were paid for his skin. (*De Thiboda*)

## APPENDIX D Page 218

## THE DROWNED MONK

Most readers will be surprised to find that the legend in the text is substantially the same with the one in Wace, *Roman de Rou*, tom. 1 p 281—288 As the Norman ecclesiastic lived full half a century before Berce, probably the latter borrowed the legend, though it is possible enough that both may have drawn from some common source The story is certainly better told by the Norman, and the circumstances are more interesting, because more varied and graphic We extract the legend from an excellent periodical, the *Foreign Quarterly Review*, No 1

“ At that time there was a sacristan who was reckoned a proper monk, and one of good report, but the more a man is praised, the more the devil assaults him, and watches the more for occasion to tempt him. So it happened to the sacristan One day, so the devil would have it, as he was passing by the church about his business, he saw a marvellous fine woman, and fell desperately in love with her his passion knows no bounds, he must die if he cannot have her, so he will leave nothing undone to come at his end. He talked to her so much, and made her so many promises, that the fair dame at last appointed a meeting, in the evening, at her own house She told him that he must pass over a narrow bridge, or rather plank, which lay across the river Robec, that there was no other way, and that she could not be spoken with any where else When night came, and the other monks were asleep, the sacristan grew impatient to be gone. He wanted no companion, so he went alone to the bridge, and ventured on it Whether he stumbled, or slipped, or was taken suddenly ill, I cannot tell, but he fell into the water and was drowned As soon as his soul left the body, the devil seized it, and was posting away with it to hell, when an angel met him, and strove with him which of them should possess it, wherefore a great dispute rose between them, each giving a reason in support of his claim Says the devil, ‘ Thou dost me wrong in seeking to deprive me of the soul I am carrying dost thou not know that every soul taken in sin is mine? This was in a wicked way, and in a wicked way I have seized it. Now the Scripture itself says, *As I find thee, so will I judge thee* This monk I found in evil, of which the business he was about is a sufficient proof, and there needs no other’ Replies the angel, ‘ Hold thy peace! it shall not be so The monk led a good life in his abbey, he conducted himself well and faithfully, and no one ever saw ill in him The Scripture saith that which is reasonable and right, *Every good work shall be rewarded, and every evil one punished* Then this monk ought to be rewarded for the good we know he has done, but how could that be, if he were suffered to be damned? He had not committed any sin when thou didst take and condemn him. Howbeit he had left the abbey, and did come

to the bridge, he might have turned back if he had not fallen into the river, and he ought not to be so much punished for a sin which he never committed. For his foolish intention only thou condemnest him, and in that thou art wrong. Let the soul alone, and, as for the strife betwixt me and thee, let us both go to duke Richard, and abide by his opinion. Neither side will then have any reason to complain, he will decide honestly and wisely, for false judgment is not to be found in him. To what he says we will both submit without any more dispute.' Says the devil, 'I consent to it, and let the soul remain between us.' They immediately went to Richard's chamber, who was then in bed. He had been asleep, but just then he was awake, and reflecting about divers things. They related to him how the monk had left his monastery on an evil errand, how he had fallen from the bridge and been drowned, without doing evil. They desired him to judge which of them should take possession of the soul. Answers Richard, briefly, 'Go immediately and restore the soul to the body, let him then be placed on the bridge, on the very spot from which he tumbled, and if he advances one foot, nay, ever so little, let Nick go and take him away without hinderance, but if the monk turns back, let him do so unmolested.' Neither could say *nay* to this decision, so they did as he had said. The soul was returned to the body, the body restored to life, and the monk placed on the very part of the bridge whence he had fallen. As soon as the poor fellow perceived that he was standing upright on the bridge, he ran back as quickly as if he had trod on a snake, he did not even stay to bid the devil and the angel *good bye*. On his reaching the abbey, he shook his wet clothes, and crept into a corner. He was still terrified at the thought of death, and he could not well say whether he was dead or alive. The next morning Richard went to the abbey-church to pray, all the monks of the convent were met together, and he enquired for a certain one among them. The brother came forward in a piteous plight, his clothes dripping with water, for he had not had time to dry them. The duke caused him to be brought before the abbot. 'Brother,' says Richard, 'what think you *now*? how came you to be taken? Take care another time when you pass over the bridge. Tell the abbot truly what you have seen to-night.' The monk blushed, and was ashamed in the presence of his superior and the duke. He confessed all—how he went, how he perished, how the devil had deceived him, and how the duke had delivered him, he related the whole matter, which was confirmed by the noble Richard. Thus was the thing noised abroad, and its certainty established. Long after it took place, this saying became a proverb in Normandy,—'Sir Monk, go gently, and take care of yourself when you pass over the bridge.'"

END OF THE FOURTH VOLUME







