

SLANDER AND LIBEL.

concerned in its government. The famous jurist, Papinian, presided in the forum at York. The judicial tribunals were Roman tribunals, and they administered the Roman provincial law. At the time of the Saxon invasion, the laws and customs of the country could have been little else than Roman laws and Roman customs.

But the conquest by the Saxons was slow and gradual, extending over the greater part of five centuries. The Roman law still held its supremacy. In the year 597 Christianity was reintroduced. Three years later Augustine and his fellow-missionaries arrived. Ten thousand persons were baptized in two years. In a very short time the idols throughout the kingdom were destroyed. A code was drawn up. The Witan, by whose advice this code was made, was partly composed of Roman missionaries. From this time forth, till long after the Norman conquest, the clergy were constituent members of the council. Literary and scientific acquirements were found exclusively among the clergy, and education was wholly in their hands. The study of Roman jurisprudence was an ordinary branch of that education. St. Aldhelm speaks of it as being so. Alcuin, who was sent for by Charlemagne to give his assistance in founding those schools which have made the name of Charlemagne so famous, and which laid the foundation of the scholastic system, was in the year 766 the principal of the school of York. He speaks of the course of instruction there as comprising grammar, rhetoric and jurisprudence. The relation between England and Rome was very intimate. The Saxon kings made frequent pilgrimages to Rome, and Ossa, king of Mercia, made a yearly donation to the pope for the support of an English college there.

Many legal duties were expressly placed upon the clergy. It was made their general duty to support every just right, to protect the weak against the powerful, the low against the high, and not to let any man be greatly injured. All the tribunals were presided over by ecclesiastics. These things were not changed by the Norman conquest. William of Normandy fought the battle of Hastings under a banner presented to him by the pope. He brought with him into England a very large number of ecclesiastics, distinguished for their knowledge of Roman jurisprudence. Indeed the clergy monopolized learning, and their services were indispensable in the business of common life. Whenever a written instrument was to be drawn, a priest must be resorted to. For a long time they were the only persons competent to act as advocates. Many of the judges of the king's court, and perhaps the great majority of all other judges and of all judicial officers for nearly a century at least after the conquest, were ecclesiastics. The law that these men administered was the Roman law, in which they were educated. Indeed there could not have been much other law in practice.

William, claiming to reign as the successor of the Anglo-Saxon kings, introduced no violent change in the form of the laws. He found a kingdom largely governed by the Roman law, the judges whom he appointed were educated in that law, and there was no reason for any such change.

But an ecclesiastical law, founded upon and growing out of the Roman law, was administered in England as well as in the rest of Europe. In England it appears to have been at this time administered in the same courts and by the same judges as the common law. By the constitutions of the Roman emperors, large judicial powers had been given to the bishops. By one constitution the bishops were charged to see that the merchants did not defraud in selling. This in itself might be no small branch of jurisdiction. By another constitution any civil matter whatever could, by consent of the parties, be litigated before the bishop. By another the judgment rendered by the bishop in such case is put upon the same footing as a judgment of an imperial court, and the judges of the imperial courts are ordered to see that the decrees of the ecclesiastical courts are executed. By other constitutions the determination of questions of testament and guardianship, of dowry, of marriage and of divorce, were given to them. Besides these matters, in England the bishops appear to have had jurisdiction of cases of buying and selling, of letting and hiring, of pledging and of fraud,* and of various matters embraced in the Roman law under the title of injuries. An injury in the Roman law meant an insult. The technical word *injuria* is synonymous with the word *contumelia*. A person might be insulted in many ways by direct force, as by beating and wounding him; or without direct force, as by shouting after him in the street, so as to cause a crowd to follow him. It was also an injury to follow an honest woman in the street, or in any way to solicit her chastity. Any reproachful language which lessened one's good fame was also an injury. This class of injuries grew in ecclesiastical law into a distinct title, that of defamation. "Diffamation, or defamation, properly so called, is the uttering of reproachful speeches or contumelious language of any one with an intent of raising an ill fame of the party thus reproached: *Defamare est in malâ famâ ponere*, according to Bartolus. And this extends to writing, as by defamatory libels; and also to deeds, as by reproachful postures, signs and gestures."†

William separated the canon from the civil law by ordering that no bishop or archdeacon should for the future hold pleas relative to ecclesiastical matters in the county court, which appears to have been the practice till this time.

There were many causes which gave the

* Glanville, Beames' tr., pp. 257, 273, 274.

† Aylliffe, Parergon, p. 212.