

or clothes given one to repair.* If an injured party afterwards sat with the wrong-doer or lived with him, the right to reparation was lost.† Banishment and confiscation of property were the fate of the advocate who betrayed the secrets of his client or intentionally cited the law falsely.‡ It seems beyond a doubt that torture was a legal possibility—not to compel the accused to confess (for this the constitution forbade), but to force out testimony as to accomplices, and to extract the truth from a prevaricating witness.§ In many instances the sentence lay wholly in discretion of the judge. In capital cases he could at his pleasure choose, as the mode of punishment, decapitation by the sword (though not—such was the tenderness of the law—by the saw or the reaping-hook), burning, hanging, or wild beasts; and a judge was found (according to a trustworthy account), who exemplified the terrible potentiality of these obsolete yet living laws, and condemned a slave to be burned alive at the stake, the sentence being executed in his presence.

In April, 1805, the first step was taken towards reclaiming the land from the tangled growth of law that covered it, and Livingston's Code of Procedure was adopted. Not until 1828, however, was the last step taken and the process of codification abandoned. During those twenty years the uncertainties of the law abated only partially. To some extent the legal atmosphere was cleared by the code of 1808; but new penal statutes of doubtful bearings were constantly passed, and the sum total of gain made was little. As a last straw, the Act of 1806, creating the Superior Court provided for three judges, any one of whom constituted a quorum, and might sit separately, rendering a decision of last resort. Thus a new opportunity was offered for increasing the discord and confusion.

But this period was the Augustan age of

* Partida 7, tit. 9, Law 6.

† *Ib.*, Law 22.

‡ *Id.*, 7, 7, 1.

§ *Id.*, 7, 30, 8. "The judge is directed to select for this operation of cruelty and horror the youngest, the most delicately framed, the most tenderly educated, and—is this an earthly or a hellish code that I am reviewing?—where there is a father and a son, to rack the limbs of the child in the presence of the parent." (Livingston, *Introd.*, etc., p. 70.)

the bar of Louisiana. The breadth of research which the circumstances forced upon them tended to make and did make jurists of them all. During those twenty years, the lawyers drew for their authority upon the Gothic, Spanish, and French codes, the Roman and the civil laws, with their attendant cloud of commentators, and, finally, upon the common law of England and its developed form in this country. This keen exercise was not reserved for the leaders of the bar; it was a matter of daily experience for all. Upon a random page in the reports of cases of that period one may expect with equal probability a citation from Binney or Ulpian, from Lopez or Pothier, from Croke or Vattel. There, first in this country, and there only, perhaps it might be added, was found at the bar a taste for comparative jurisprudence. The names of the brilliant ones of that day are not often heard now, but Hall, Derbigny, Duponceau, Brown, Lislet, Workman, Mazureau, were eminent names in that creative era.

Perhaps the leading figure, in earliest times, was François Xavier Martin, judge of the Superior Court from 1810 to 1813, and of the Supreme Court from 1813 till his death in 1846. Removing from North Carolina at an early age, he began life again in this new field. Of foreign birth and in his youth extremely poor, he was a man of broad tastes and high accomplishments. His literary vigor was remarkable, and besides a translation of Pothier on Obligations (the first ever published in English) and other legal works, he wrote a history of North Carolina, his first home, and, later, of Louisiana. His solid legal culture brought him into frequent contact with Kent and Story, and made him no unequal companion; and in 1841, Harvard University honored him with the degree of LL.D.

Better known to-day, and a greater than Martin, is Edward Livingston. In more than one way his history has been the history of his State and of the nation, and needs no mention here. But his legal genius has never been sufficiently appreciated in this country.* He may be called the greatest

* Far otherwise abroad, where his name, with a few others, is especially associated with our jurisprudence.