not inconsistent with it, should continue in force until altered by legislation. The Act of 2 March, 1805, contained the same clause. The legislative council, on 4 May, 1805, passed an Act for the punishment of crimes and misdemeanors, specifying a number of offences, and directing that they be construed and tried according to the common law of England. A subsequent statute of 3 July in the same year, adding a few crimes to the list and prescribing a common-law trial for "all other crimes," was repealed in the ensuing year. Finally, it should be remembered that upon the cession, the constitution of the United States became the supreme law of the territory.

In all the legislative Acts there was no express repeal. Whatever change occurred was effected by implication,—that is, such laws as were inconsistent with the new provisions were thereby abrogated. Briefly, then, the laws repealed were (1) those inconsistent with the new form of government,—such as the royal prerogative, the mode of appointing officers; (2) those inconsistent with the institutions of our constitution,—such as laws interfering with the liberty of the press, with the right to trial by jury; (3) the offences corresponding to those referred to in the territorial Act, and the law of evidence and of procedure so far only as those offences were concerned; perhaps, also,* the laws dealing in any way with offences prohibited since the cession. What procedure was to apply to other offences already existing or subsequently created was not indicated.

Confusing, indeed, then, was the condition of jurisprudence in Louisiana. The *Fuero Juzgo, Fuero Viejo, Fuero Real, Recopilacions, Siete Partidas, Cedulas,* our Federal constitution, several legislative Acts representing the incorporation of an uncertain element of common law,—it was not enough that these codes and statutes pressed in on all sides and claimed the obedience of the citizen. It was not even certain that all of these codes did in fact have the force of law, or what part of each, if any, was in force.† Worse than this, copies of the older codes were rare. Complete collection of all there was none. Of some not a single copy existed.‡ Yet all, old or new, rare or plentiful, were still as potent rules of conduct—so far as they were in force—as the most public and recent proclamation. Moreover, the institutions of the two systems, differing in parentage as well as in language, were repugnant and not easily reconciled. The confusion of tongues, too, impeded the administration of justice.§ For offences and suits other than those enumerated in express legislation it was difficult to say how the administration of justice should be conducted,—whether Spanish or English rules of evidence and procedure should be adopted.

But this was not all. Remaining at the beginning of this century, in a republican community, were provisions dating back to the time of the Gothic conquerers,

"Enrolled penalties * * * strict statutes, and most biting laws,"

—some barbarous, others merely absurd or repugnant to modern notions, but all equally out of date and unfit for enforcement. For example, if a lawyer died after beginning a suit, the heirs, if they tendered another capable lawyer, might claim the whole of the stipulated fee. The penalty of infamy, entailing the most serious disabilities and penalties, was imposed without discrimination upon the lightest offenders, and even upon an unsuccessful defendant in a civil suit. The rules regulating the incompetency of witnesses far surpassed the English rules of the last century in their power to pervert justice. It was a criminal offence to throw into the street, by way of insult, a book given one to bind

* Livingston, Introd., etc., p. 62.

† At a later date, Livingston, hoping for better things, wrote: "Foreign laws can no longer be imported by the package or described in the act of introducing them, as goods are in the bill of lading, 'contents unknown.'"

‡ Martin's Hist., p. 344.

§ Courts of justice were furnished with interpreters versed in the French, Spanish and English languages, these translated the evidence and the charge of the court, but not the arguments of the counsel. The case was often opened in the English language and those of the jury not familiar with it were allowed to retire to the gallery. The defence being in French, a similar privilege was then allowed to those jurymen who did not understand that language. The jury then retired, and, each contending that the argument he had heard was conclusive, a verdict was finally reached as best they could. Martin, p. 345.