

law; but in few other modern states has the work of a genius lent character and interest to a jurisprudence as has the work of Edward Livingston, entering into and strengthening the legal system of Louisiana. At an earlier period, too, than the compilation of the codes, our interest gathers about the strange and incoherent mixture of law in force in the early days of our ownership of the territory, and the confusing complications that ensued. We are led back to the Spanish codes of Ferdinand and of Alfonso, and to the *Siete Partidas* of 1348—the *Pandects* of Spain,—and we realize that mediæval customs of Spain were in full force in Louisiana as late as the first decades of this century.

Early law in Louisiana (before the 18th century) there was little. Justice was imperfectly administered by a military commandant. The population was an unsettled one, and the need of a system of law was not greatly felt. In 1712, when Crozat took possession under his charter, the legal history of this region begins. The custom of Paris—a code, first written down in 1510, of that mixed Roman and customary law which characterized France before the codification of Napoleon—was made the law of Louisiana by the charters of Crozat in 1712, and of the Western Company (John Law's) in 1717.\* It was in 1762 that Spain, by cession from France, became owner of the territory known as Louisiana, including the greater part of the region west of the Mississippi, except Texas and California; but six years passed before the Spaniards, under Count O'Reilly, took actual possession. When a region is ceded, its local law continues in force until abrogated by the new owner.† Accordingly, in 1769, by a proclamation of O'Reilly, all French law was abrogated (with the exception of the "Black Code" or slave code, given by Louis XV. in 1724, and continued in force by O'Reilly),‡ and the Spanish law took its place; nor did the law of France ever after reappear in its own name in Louisiana. It was totally overthrown§ and its influence

revived only when Livingston, Lislet, and their coadjutors, went to the French code for a model. Don Alexandro O'Reilly was a young Irishman of great military ability, who, forsaking his country, had served under various continental commands, and finally had risen to distinction in the Spanish army. He was at this time in high personal favor with Charles III. of Spain. Count O'Reilly organized an efficient government for the province, and published a portion of the laws in the French language, and the substitution the Spanish system seems to have been thoroughly carried out. As it happened, the common origin of the two systems of law made the transition not a radical one. The attendant friction was due to the personality of the new government rather than to the content of the new laws.

What was this law of Spain, received by the people at the point of the bayonet, actively enforced for nearly 60 years, and tingeing ineffaceably the jurisprudence of the State?

The early streams of Spanish law were copious. Roman law, culminating in the Theodosian code of 438 A. D., held sway until the conquest of Spain by the Visigoths about the year 466, and perhaps for a short period thereafter. Euric, the first Gothic king, promulgated some written laws of uncertain extent, which probably did not displace the Roman law; and possibly the *Breviary* of Alaric II. (itself often called *Lex Romana*, and based on the Theodosian code), published 506 A. D., was in force in Spain in the sixth century. But Recesswind the Goth, about the year 672, by atrocious penalties stamped out the Roman law as such, and introduced a collection of laws bearing his name, after-

\* For a summary of the custom of Paris, see 1 *La. Law J.*, No. 1, p. 15.

† 1 *Bl. Comm.* 107; 5 *Martin's Rep.* 284.

‡ *Derbigny, J.*, in 4 *Mart. Rep.* 368.

§ *Moreau & Carleton*, *Introd. to Las Siete Partidas*,

p. 21; *Livingston*, *Introd. to System of Penal Law*, 69 and "Batture" pamphlet, 5 *Hall's J. of Law*, 141; *Martin*, *Hist. of La.*, p. 211 (ed. 1882); *Derbigny*, in 4 *Mart.* 368; 17 *La. Rep.* at 227; *Gayarré*, *Hist. of La., Spanish Domination*, p. 18; *Gayarré's 3rd Ser. of Lectures* (1852), p. 64; "Batture" pamphlet, *Du Ponceau* (Phil. 1809), p. 11; *Am. State Papers*, *Miscell. I.*, 363, 369. But the opposite opinion was stoutly maintained by *Jefferson* (5 *Hall's J. of L.* 20), and by *Schmidt*, the learned editor of the *La. Law Journal* (L., No. 2, pp. 96-100); and has sometimes been adopted, loosely, it is believed, and without much examination: *Amos*, *Civil Law*, p. 463; 3 *Wheaton*, 202, n. a.; *Barb'le Marboris*, *Hist. of La.*, p. 338.