LEGAL PRACTICE IN SOUTH AMERICA.

By William Trumbull,
of the New Haven Bar.

At first blush it may appear strange that the prevailing law throughout South America should be founded on the French system of law, not the Spanish. The Spanish-American colonies of the new world were settled exclusively by Spaniards, who established there Spanish forms of government, both municipal and territorial, and implanted among the aborigines, with a very fair measure of success, the laws, customs, and religion of the mother country. Spain's jealous colonial policy, too, which excluded foreigners as far as possible from her dominions, tended naturally to keep their institutions exclusively Spanish. Toward the beginning of the present century, however, when the colonists succeeded in breaking away from the mother country, all this was completely changed. Napoleon was then the leading figure on the stage of European politics. The colonies took advantage of the presence of his brother, the usurper Joseph, upon the Spanish throne, to declare a partial independence under the guise of loyal adherence to Ferdinand, the rightful heir to that throne. The plot succeeded, and so completely, that when the Spanish monarch came to his own again it was only to find his empire in a practical state of disruption, quickly to be shorn of some of its fairest dominions. One of the first acts of the liberated colonists was to throw open their ports to foreign commerce. Through this came the steady infiltration of foreign ideas, which slowly but surely revolutionized the institutions of their forefathers, enlarged the narrow horizon of Spanish ideas bequeathed to them by the *conquistadores*, and freed the colonists mentally as well as materially from further allegiance to the mother country.

Of all foreign lands, France stands easily preëminent as the country which has most influenced Spanish America in the progress and development of its ideas. Why this should be so, I do not pretend to be able to explain. Perhaps the genius, vivacity and wit of the brightest and most volatile of modern peoples appeal more to the South Americans than the more stolid characters of the English and Germans, with whom they do the bulk of

their trading. At any rate, the undoubted fact remains that the people of the sister republics to the south of us have imbibed their ideas of government, literature, science, and life in general, from the same source whence they derive their fashions in dress stuffs, and their manners in polite society. Paris, not Madrid, is the centre toward which all eyes turn. Although Spanish is the official language of those countries, French is spoken fluently by all the upper classes of society, and a visit to Paris is what all eagerly desire and strive for, and many attain. Even in religious matters, in which South Americans have not without reason been accused of being inclined to fanaticism, this truth holds good. The old narrow spirit of bigotry is rapidly giving place to one of broad toleration, tinctured largely with a flavor of good-humored, bantering skepticism, which has been caught directly from the French schools of philosophy. Here again, it is not Rome but Paris which sets the fashion in religious ideas.

In the development of law, this feature of French influence is still more strongly marked. Every one of the Spanish American republics has its law codified, if I am not mistaken, on the direct lines of the French code. These codes are usually four in number, the Civil, Commercial, Mining and Penal. The *Códigos* are largely transcripts of the Code Napoleon, modified of course to some extent by the peculiar necessities of each country, and to a still less extent by the influence of old Spanish law; though the latter influence is to be found mainly in certain features of practice, and in the inquisitorial powers given to judges in their cross-examination of witnesses. The leading feature of the system is that justice is exclusively administered by judges. Jury trials are absolutely unknown, save in the comparatively rare case of certain forms of libel connected with the law of newspapers, when a jury of seven men may be impanelled. The judge is absolute arbiter of all the issues in a case. Even in criminal trials for capital offenses, when life or death hangs in the balance, this tremendous burden of power and responsibility is centred in the hands of one man. He examines and cross-examines each witness separately. Should a witness in a criminal case prove refractory, or appear unwilling to testify, the judge has the theoretical power, at least, to order him out to be bastinadoed until he finds a more willing tongue. But this power is seldom or never used. It is a relic of the old Spanish rigor and severity to be found in the blood and iron policy of colonial times. The fact is, there is seldom necessity for such harsh measures. These judges are trained experts in the art of ferreting out the facts in a case. They deal

in the main with a people largely illiterate, and being themselves men of education, have but slight difficulty in tripping up a witness, should he feel inclined to prevaricate. In the main, I think it may be said that this sole administration of justice by judges in criminal matters, gives very fair satisfaction. Of course, all depends on the judge; but inasmuch as appointments to the higher judicial offices are made by the executive and his privy council for life, or rather during good behavior, and since the judges can be removed only by impeachment, a reasonable measure of ability and experience is assured.

In civil cases, the same concentration of powers in the hands of the presiding judge is to be observed. Oral argument, in person or by attorney, is unknown, save before the supreme court which sits always in the capital. The rules of pleading and evidence approach more nearly to those of equity, than of our common law. Evidence is taken mostly in the form of written depositions before the *juez civil*, or civil judge. The lawyer who pleads your case submits his argument on a written brief, citing the sections of the code upon which he depends to establish his points of law. The judge already knows, or is supposed to have decided in his mind from the written depositions taken in his presence, all questions of fact in dispute. Not until a case has been appealed from the *juez de letras*, or judge of letters, up through the intermediate court of appeals to the supreme court, does the budding young barrister find an opportunity to air his eloquence. There, he is entitled to make his oral argument before the full bench; and I must confess, from such opportunities as I have had for observation, that the argument is usually one of no low order of merit. The educated Spanish American is, in fact, a born haranguer. Whether addressing an audience from the stage, or a mob from the centre of a *plaza* or public square, or a prayer-meeting from the pews, whether seated by your side in a city horse-car, or on a railroad train, or ocean steamer, wherever and whenever you give him the opportunity, he will declaim with all the vehemence of an old Roman, gesticulating freely, and pouring forth sonorous rolling periods in the most approved Ciceronian style. Even among the humbler classes of society this is noticeable, and sometimes extremely laughable, particularly when a member of the lower orders who has obtained a slight education attempts to grapple with a subject somewhat beyond the reach of his intelligence, and gets badly thrown in the attempt. Stage fright, self-consciousness while addressing an audience, seem to be phases of character quite foreign to the temperament of the Latin races.

Add to this natural gift for language the fact that no one is admitted to practice law until after a five years' course in the university, terminating in an examination before the supreme court, and it will readily be seen how a fairly high order of merit is maintained among the members of the profession. The law there, is the most attractive of all the professions to those young men whose means allow of spending the requisite number of years in preparing themselves for practice. Hardly a wealthy landed proprietor, or miner, or merchant, who has a family, does not have one scion of the house, at least, fit himself for admission to the bar. As in other countries, this is the profession which paves the way naturally to a political career. Those whose aspirations lead in the direction of political preferment succeed in bringing themselves before public notice, not only by their professional practice, but also by the additional fact that most of the editorials in the leading newspapers are written by lawyers whose names or initials are appended thereto. They thus come to be widely known throughout the country; and it may be added, parenthetically, that this custom has tended to raise the tone of the press quite materially. Problems of internal reform, of finance, of foreign affairs, questions of municipal government and the like, are discussed with a gravity, dignity, and knowledge of the subject worthy of the legal profession, and which is especially refreshing after the flippant tone and lack of knowledge on technical subjects so often displayed by professional "journalists."

The scientific and mechanical professions appear to have but few attractions for the Spanish-American youth. Civil, mining, and electrical engineering are left almost entirely in the hands of foreigners. So too, though not to as great an extent, with the professions of medicine and dentistry. Either the eloquence of the law or of the church claims and receives the best minds of the country. As an old cynical South American remarked to the writer on one occasion, while discussing this matter: "*Palabras, palabras, palabras:* Words, words, words; they are the plague of these countries, sir!" And then added: "What we need down here first of all is doers, not talkers; engineers who will aid in opening up these lands, and in developing their material resources. At present, we are in danger of being talked out of existence."

Of course there are the usual complaints to be heard concerning the law's delay, and possibly with more reason in South America than here. Certainly the amount of red-tape to be gone through with in order to effect some transaction of but slight moment, is appalling. A simple power of attorney is apt to mean

at least two solid, closely-written pages of legal cap, penned by the notary or notary's clerk in a fair round hand, and formidably bristling with seals, signatures, counter-signatures, and what not. A will or deed is of course even a more formidable looking document. As regards the contents of these instruments, the historic Philadelphia lawyer might well be puzzled to make out their gist, such is the abundance and superabundance and reiteration of legal terms. Those who complain of the verbiage of Anglo-Saxon legal instruments might be recommended a course in Spanish conveyancing. It would effectually cure them of any further disposition to doubt the kindness of Providence in implanting them on English or American soil. Provision for the registry of landed property and deeds of partnership is secured by entrusting the same to notarial conservators, or notaries charged especially with the duty of drawing up and preserving these legal instruments. These registers are open to public inspection.

One of the leading authorities of this country on railroads and railroad laws inquired of the writer some few years ago as to the practical working of the railroad law of Chili, remarking at the same time that it was about the best law *on paper* which he had ever examined. "It is a copy of the French law," he added, "but with the defects of that law eliminated, and some very good features introduced." In reply, I was obliged to confess that however beautiful the scheme of railroad law looked on paper, one formidable obstacle lay in the way of a private litigant's successfully enforcing its provisions, and that was the fact that the railways almost without exception are owned and operated by the government, under the Ministerial office of the Home Department. And to show the influence exerted by the executive even over courts of justice, I cited the following instance which had come under my personal observation. True, it related to a criminal trial, and not to a civil cause of action; but the anecdote served to show the extreme divergence which may exist between the law in theory and the law as sometimes actually practiced in South America to-day. The case is of course an extreme one:

About seven years ago, an English farmer, L———, was found murdered on the highway close by his farm, within some ten miles of the seaport of Valparaiso. An investigation of the crime, which was immediately set on foot by the *juez de crímen*, or judge of crime, resulted in the prompt arrest of the murderer, who proved to be an ordinary *peon*, or day laborer, on one of the adjacent farms. The judge, on subjecting the accused to a rigid cross-examination as to the motives which led him to commit the

act, elicited during the pursuit of his investigation the astounding fact that his prisoner had acted throughout the affair merely as the tool of another,—an aristocratic old Spanish *hidalgo*, who moved in the best social circles in town, a man of education and large means, and who was the proprietor of the farm upon which the accused worked. Further investigation in other quarters brought out the fact that L———, the murdered man, had been of an extremely litigious disposition, that he had brought suit after suit against his wealthy Spanish neighbor concerning the boundary lines of their respective farms, until finally the old Don, exasperated beyond all endurance, had publicly vowed that he would have the life of that bellicose Englishman even if it cost him his own. Additional proof was gathered by the judge, all pointing toward a confirmation of the *peon's* story, until at length the judge considered himself authorized in ordering the old Spaniard under arrest. Immediately, society rose in arms. The judge was waited upon daily by deputations of the leading fashionable ladies in town, who urged upon him the age of the accused, his social position and wealth, and the extreme improbability of the *peon's* story. Against all these arguments, however, the judge of crime remained proof, and while deploring the apparent harshness of the measure to which his duty drove him, continued to weave the chain of direct and circumstantial evidence about his victim with all the remorseless, unpitying relentlessness of an old spider towards an unfortunate fly entangled in the meshes of its web. The evidence had been almost completed, and there seemed no loop-hole of escape for the wealthy *hacendado*, when one day the following message came flying down the telegraph wires from the supreme court in Santiago, addressed to the judge of crime in Valparaiso: "Quash all further proceedings; set the prisoner at liberty immediately." Some influential friend at court had sought the ear of the executive, and found it graciously inclined toward his petition. He, in turn, had sought the ear of the supreme court, and likewise found that it could not resist the blandishments of the executive. The result was, of course, the immediate discharge of the prisoner.