fully. "Not at all," he answered, "and I am tired of playing the beggar. I am going home to have myself returned, if possible, to the next Cortes. If I can succeed in that, I think I shall be able to make my own terms!"

It has often been a question whether the system of direct compensation to members of the legislature is a wise one. That it places the honors of the republic equally within the reach of the wealthy and the poor, is deemed with us an unanswerable argument in its favor. It is supposed, besides, to secure legislative independence. If a *per diem* would in truth prevent the members of the Cortes from surrendering themselves to that subserviency which no place-hunter can escape, it would certainly be both wise and economical to let them name their own stipend. Unfortunately, however, it is by no means absolutely certain that the result would be so happy. It might be asserted, as a fact quite susceptible of proof in our own beloved country, that members of Congress have been found, — circumnavigatory to the last degree in their demands for mileage, — scrupulous, to the extent of good conscience, in the exaction of their pay, — and yet feeling themselves in no way precluded thereby from asking and taking every scrap of official preferment to be had. Perhaps the best remedy for this evil would be to make members of the legislature incapable of filling any but elective offices, within at least five years from the expiration of their legislative terms. But even then there would be uncles and cousins to provide for, besides lineal descendants and influential constituents, so that, on the whole, it is greatly to be feared

there is but poor chance of any sure reform in the matter, until some plan be devised for remodelling human nature.

It must not be supposed, from the tone of this chapter, that I regard the decided influence of the Spanish executive over the legislature as by any means an unmixed evil, in the present state of the Peninsula. I shall have occasion hereafter to consider that point, in a more general connection. There are, no doubt, those by whom it will be held marvellous that a republican should entertain any question whatever on the subject; but I think it the duty of every candid man, upon proper occasion, to set his face against the folly so prevalent with us, of striving to fit all the world with governments according to our own measure. An American, who returns from European travel without an increased sense of the value to us of the institutions under which we were born, and a profounder feeling of gratitude to the good Providence whose beneficence made them our birthright, must be as mad as the most "undevout astronomer," or too silly to reach the dignity of madness. But, on the other hand, his intellect must be very narrow, and his prejudices most absurd, if he has not been able to rid himself of the superstition, that our system is the best for all nations, all times, all circumstances, and all stages of intelligence, merely because it happens so to be for us and ours. He must be made of impenetrable stuff indeed, if observation abroad has not convinced him — as sanity and reflection at home might surely do — that no government under popular auspices is likely to answer its true purposes, unless it tally, not merely with the abstract con-

victions and theoretical demonstrations of constitution-tinkers, but with the actual necessities, the ingrained habits, sentiments, and traditions, the very prejudices and weaknesses, of the people whose welfare it concerns.

It is easy enough to create institutions. Mr. Burke's inventory of what was to be found in the pigeon-holes of the Abbé Sièyes, is but a trifle compared with the stock in the market at present. All popular government, nevertheless, must be a form and a folly, unless it be the shadow of the true, predominating national character, — the projection, as it were, of the national mind and temper. Men are not to be dealt with as right-angled triangles, and he is a sad statesman, be he ever so much a philosopher, who acts upon the notion that human nature is one of the exact sciences. The best constitution in the world will be but a source of perpetual discord, misrule, or no rule at all, unless there be the adequate amount of good sense and good feeling among the people, to get them practically out of the theoretical difficulties against which no foresight can entirely provide. A very bad constitution, on the other hand, with popular intelligence and purity, and a compromising spirit to remedy its defects and relieve it when in straits, will make a people prosperous and happy for many generations, — or, to speak, perhaps, more logically, will interpose no serious obstacle to their making themselves so. In England they get along very well with a system which would set all Yankeedom at loggerheads in a *month*. Here we seem to have a passion for making ourselves uncomfortable, under a constitution which ought to secure the

peace and felicity of any people out of Bedlam. Nowhere in the world have wiser or more eloquent expositions of the true principles of government been heard, than in the late French Assembly, and yet they probably afford a less substantial indication of rational republicanism to come, than would be furnished by the existence of a single thorough-bred French Quaker, — drab, broad-brimmed, earnest, and orthodox. One such fixed human fact would show the possibility of self-control among a people who as yet have given no proofs of it, — just as the finding of a solitary fossil man or monkey would settle for ever one of the problems of geology. Without that self-control, who shall pretend that the legitimacy of La Rochejacquelin and Montalembert, or the *coup d'état* of Louis Napoleon, is of less promise for good than the drunken Utopia of socialism ?

The art of good government may find more profitable analogies in medicine than mathematics. The man who is only weak needs but a staff; the cripple requires his crutches; he of the fractured limb must have it bandaged, splintered, and put at rest. The surgeon should be hanged, without benefit of clergy, who would prescribe gymnastics to them all, because their neighbors, who were not halt, could dance and be glad at a merry-making. We have quacks enough among us, notwithstanding, who are always prescribing to other people, in the way of government, something quite as innocent and sensible. Now the fact is, — let the newspapers and stump-orators say what they please, — that the sun of civilization neither rises nor sets within our national limits, ample though they be. The

moon of Athens was no finer moon than that of Corinth, though there were Athenian patriots, in Plutarch's time, who would have fought to prove it so. With a good deal of political philosophy, and extraordinary political sagacity, we yet have no monopoly of either. We are not, like the friends of holy Job, "the only men," nor is there any danger that "wisdom will die with" us. A fair appreciation of these truths would greatly enlighten some of our public men and popular oracles, who seem to be entirely unaware that there is a breathing, thinking world outside the happy valley which surrounds their tripods. It would save us (a wise economy!) Heaven knows how much of cant and fustian, which now pass, unhappily, with many, as the only language of patriotism and the genuine evangely of the rights of man. It would, upon occasions of national solemnity or rejoicing, make teachers and counsellors of our statesmen, instead of flatterers merely, as, for the most part, now they are. It would have spared us the recent triumphal march of Hungarian propagandism over our national dignity and self-respect.

VII.

THE EXECUTIVE AND JUDICIARY. — JURIES AND THE TRIAL BY JURY.

IN view of the substantial influence which the Spanish executive has been shown to possess and exercise over the legislature, and through it over all the details of government, it would seem hardly worth while to analyze the functions which, on the face of the constitution, legitimately belong to the monarch. These, nevertheless, in themselves, are quite as extensive and various as would seem compatible with the notion of a limited monarchy.

The Queen is irresponsible, and her person is inviolable. The royal dignity is hereditary in her line. She is the fountain of justice, which is administered in her name. She has the power to convoke the Cortes, suspend and close their sessions, and dissolve the Chamber of Deputies at will, — subject only to the obligation, in the last case, of calling together a new legislature within three months after such dissolution. Through her ministers, she may introduce projects of laws for the consideration of the Cortes, and she may not only

refuse her sanction to a law, but thereby prevent its revival during the session of the legislature in which it may have arisen. This last result, however, can be equally well attained by the dissent of either house from a law originating in the other, so that the Senate may relieve her Majesty, if need be, from the necessity of interposing her prerogative in cases where it would be unpopular or impolitic. The promulgation and execution of all the laws are her especial duties, and in the performance of the latter she has the right to issue such orders, decrees, and instructions as may seem meet to her. In practice, this enables her to explain, modify, amplify, or nullify, very much at discretion. She is the arbiter of war and peace, and distributes and disposes of the army at her will. She directs and regulates commercial and diplomatic relations; coins money; pardons criminals; and has the uncontrolled disposition of all offices and honors. She needs the assent of the Cortes, however, to any alienation of the national territory, and she cannot, without their permission, admit foreign troops into the kingdom, ratify commercial treaties or offensive alliances, make any stipulations for the payment of subsidies, or abdicate the crown in favor of her immediate successor.

The amount of the royal income is fixed by the Cortes at the beginning of each reign. Her present Majesty has certainly no reason to complain of her loyal people in that particular, since her annual endowment is thirty-four millions of reals, equal to one million seven hundred thousand dollars, over and above the royal patrimony, which is immense, and with which the legislature has nothing to do. The King Consort, whose

majesty is merely titular, and who has no concern whatever with the government, has a yearly stipend of one hundred and twenty thousand dollars. That of the Queen Mother is one hundred and fifty thousand dollars, in addition to the immense private fortune which she has acquired through her connection with the Spanish throne. The rest of the royal family, embracing the Duchess of Montpensier and the remoter collateral branches, have three hundred and twenty-five thousand dollars per annum among them, making two million two hundred and ninety-five thousand dollars, in all, according to the official *presupuesto*, or budget, for 1850, which is lying before me.

The judicial department, by its constitutional organization, is not likely to be much of a clog to the prerogatives, direct and indirect, which the monarch is so liberally paid for exercising. The judges are appointed by the crown, their number and functions being regulated by law. Except in extraordinary and enumerated cases, the determination of causes, civil and criminal, is committed to the *Alcaldes;* the judges of *Primera Instancia*, or primary jurisdiction; the territorial *Audiencias;* and the Supreme Tribunal of Justice. An appeal lies, generally speaking, from the court in which proceedings are instituted, to that which stands next above it, in the order in which I have enumerated them. In some suits, if the litigants please and can live long enough, they may chase justice through the covers and preserves of the whole judicial establishment. Ecclesiastics, in many cases, and those engaged in the military and naval services, have their separate tribunals and *fueros*, or privileges. Commercial causes are also

heard by special courts, whose jurisdiction and decisions are prescribed and regulated by a separate code. Besides these, there are many exceptional jurisdictions and privileges of forum, which are annexed to particular stations and classes, so that, if legal tribunals be, as Carlyle has said, but "chimneys for the deviltry and contention of men to escape by," Madrid ought certainly to smoke like Birmingham. By the official report, published at the beginning of 1850, there were seven hundred and twenty-seven lawyers in the capital, of whom five hundred and seven were candidates for practice. The population of the city being but little over two hundred thousand, there is every reason to believe that the chimneys will not suffer for want of fuel or tending.

The constitution provides that no judicial officer shall be removed, except by sentence of a competent tribunal, or suspended, unless by due judicial action, or a royal order alleging sufficient cause, with a view to prosecution. As before observed, this suspensory prerogative in the monarch is a complete negation of all real independence; but when it is added, that the offences committed by a judge, in his official capacity, are to be tried by his next superior, — save in the case of the supreme tribunal, where the offender is judged by his fellows, — and that the arbiter, like the accused, is the appointee of the crown, and liable to similar suspension and prosecution, it cannot but be obvious that the whole judiciary is, for all needful purposes, under stringent executive control. The noted case of Diaz Martinez, which was tried during my visit, furnished very satisfactory evidence that the ermine could be

made to take an exceedingly ministerial hue. The prisoner was charged with having addressed General Narvaez, by letter, in a style which was interpreted to signify a challenge. That eminent functionary cannot easily be made afraid, and has, as a general thing, no particular objection to the handling of deadly weapons, if it occurs to him, but as he was altogether "*ego et rex meus*," it fell little short of læse-majesty to compass or contrive his bodily peril or discomfort, against his will, — and the unhappy Martinez was dealt with accordingly. His defence was conducted with characteristic manliness and ability, by Don Joaquin Francisco Pacheco, a very eminent jurist and advocate, and there was but little difference of opinion, as far as I could collect, among professional men of all parties, in regard to the utter illegality and anomalism of the proceeding. The *Juez de Primera Instancia*, however, who heard the cause, had no difficulty in arriving at a judgment of conviction. I read his opinion, which certainly bore both obsequiousness and absurdity upon its face. As the sentence involved serious pains and penalties, the case was taken to a higher tribunal; but it, of course, is not easy to foretell the result, where the ways of justice are so much in the depths of the sea.

The trial by jury has never been thoroughly incorporated into the judicial administration of the Peninsula. Some antiquarians have persuaded themselves that they have discovered its germ in the ancient constitutions of Aragon, as well as in some of the older codes and charters of Castile. Distinct evidences of its existence are said to appear, particularly, in the *Fuero Juzgo* of the Visigoths. It will be found, however, upon exam-

ination, that the provisions which are relied on as in point do not approach much nearer to establishing the theory as now understood and practised on, than the initials of the "lang ladle" at Monkbarns to an inscription of Agricola's. Better proof of their insufficiency could hardly be found than the very language used in the *Fuero Juzgo*, where it directs ten assistants to be chosen as the Alcalde's coadjutors in certain cases, "*ex optimis, et nobilissimis, et sapientissimis.*" Such epithets, it is clear, could never have been gravely intended to designate jurymen, even in those days of primitive jurisprudence and mediæval Latinity. But let the antiquarians be right or wrong, as they may, certain it is, that within the memory of modern men nothing like the trial by jury has existed in Spain, except very lately, partially, and for a brief period. The constitution of 1812 provided for its future introduction, in case it should be deemed advisable, but it was not practically adopted until 1822, and then only for the trial of cases arising under the laws which regulated the press. Having disappeared in 1823, with the press and the constitutional system, it was revived with them in 1836, and was again recognized by the constitution of 1837, though still confined to the same class of cases. The law of 1844, which modified the freedom of the press according to the notions of the *Moderados*, provided a hybridous sort of jury, with innumerable requisites and all manner of embarrassing paraphernalia, which must have made it unavailable as a working thing and were probably intended to do so. The constitution of 1845 has no jury clause whatever, and by the legislation of that year all the lingering traces of the "Palladium" were finally swept away.

Whatever may be the course hereafter in Spain of that political amelioration which is certainly going on, it is not likely, for many reasons, that the jury system will ever become ingrafted upon theirs, as an institution of general scope. We, whose notions have been formed by the study or by our experience of the common law of England, are apt to consider the trial of facts by laymen as absolutely essential to the beneficial operation of every popular or liberal form of government, and there can be no doubt that we generally state our doctrine on the subject a great deal too exclusively and broadly. It of course must be conceded, that, for the trial of criminal causes, the jury, on the whole, is the most satisfactory contrivance which the ingenuity of men has thus far been able to devise. Without reference, moreover, to the subjects of its action, the introduction of so popular an element into the administration of justice must necessarily tend to diffuse among the community, from whose ranks the jurors are indiscriminately taken, a higher degree of confidence in the tribunals of the law, and a heartier disposition to respect and uphold their judgments. Nothing, of course, can contribute more than such a result to the stability of society and the sure enjoyment of the rights which lie at its foundation.

It is not to be questioned, on the other hand, that immediate and frequent contact with the system, as it works, has the effect of notably diminishing our reverence for it as a mode of arriving at the truth. It doubtless affords admirable scope for the dexterous playing of that uncertain game, the law, and hence must always command many eloquent suffrages from

the professional players. But, with a good cause and no other object than the enforcement of right, I greatly doubt whether any candid man, among those who know the jury system best, would hesitate about selecting, in preference to it, the intervention of a well-trained and well-educated judge. Where the object is to put the right and the wrong upon a level, and to take the chances of their confusion, I grant that the choice would probably be different; but such cases surely afford no test. Experience has taught that courts of equity are altogether capable of dealing, justly and wisely, with the greatest complications of fact, — so that issues are sent from them to juries in but few and peculiar cases. There are, it may be safely said, no tribunals in our country whose decisions are more uniformly just, or more universally approved, than those of the federal courts sitting in admiralty without juries. In those States of the Union, too, where the judges are empowered to try issues of fact with the consent of parties, the large number of cases, both civil and criminal, in which juries are willingly dispensed with, may be taken as the best evidence of a public and practical conviction greatly differing from the theory about which there is so much declamation. Nor is it at all wonderful, that such a conviction should exist. As juries are selected and constituted generally, both in England and this country, their verdicts in nine cases out of ten are but the results of voting by ballot or "striking an average"; and it is by no means an easy matter to determine how often a wilful appetite, and an anxious desire to leave the unprofitable adjustment of other men's business for the more advantageous pursuit of their own

may cause the majority of the imprisoned twelve to select the promptest conclusion as the best.

Perfect or imperfect, however, as the institution may be in its present shape and operation, it is with us, to some extent, a sacred thing. It is surrounded by so many of the holiest associations, and has fought so many of the best battles of freedom, that it is destined long to remain a sign of that popular security to which it is no longer necessary as an element or a guaranty. With the Spaniards, however, it has no such prestige, and as it has never been a household god to them, there seems no particular reason why they should give it a place in their inner worship, as we do in ours. The very familiar and accurate knowledge of the laws and customs of England, which many of their most intelligent and influential statesmen have acquired during long years of exile in that land of European asylum, will most probably secure, in time, the introduction of the trial by jury, to such an extent and in such cases as may accord with the best features of their own venerable jurisprudence. They may be enabled thus to strike the happy medium, between the subserviency of judges to power and wealth, and that dread of public passion and deference to popular opinion, which too often make the jury-room but an echo of the press and of the voices that cry aloud in the streets.

VIII.

JURISPRUDENCE. — CODES. — COLONIAL SYSTEM. — ADMINISTRATION OF JUSTICE. — ESCRIBANOS. — JUDGES. — THE LEGAL PROFESSION.

NOTWITHSTANDING the very formidable expansion which is frequently ascribed to the Spanish jurisprudence, it is really condensed within limits which appear extremely moderate, to one who is familiar with the ordinary copiousness of popular legislation. The codes into which it has been shaped are, it is true, voluminous enough, but those of them which are of common and practical application can easily be mastered, with reasonable industry. Let other evils be what they may, the judges are not reduced to the necessity of toiling through innumerable reports and the varying opinions of judicial legislators and expounders, — sages sometimes, dolts and doubters often, — in order to excogitate what they can from prior cogitations, which are not the less authoritative because they are in great part contradictory. It is reserved for the freest and most enlightened of the nations to rejoice in such judicial precision and philosophy as that amounts to, and gravely

to set it up for men to worship, as "the perfection of reason." Since the Goddess of Reason, in the French Revolution, there has not probably existed a deity bearing the name with a less reputable character or more flimsy pretensions.

The *Novisima Recopilacion*, published by Charles the Fourth in 1806, is the most recent digest of the Spanish law, and is binding in all cases not affected by subsequent legislation. It had for a nucleus the *Nueva Recopilacion* of Philip the Second, (sometimes called the *Recopilacion*, simply,) and may, perhaps, be more properly considered as but the latest edition of that great code, with the intermediate enactments and judicial expositions incorporated. The more ancient jurisprudence of Castile is, however, the basis of these later works, and the antique codes have therefore some authority still, — not merely as illustrating the modern text, but as operative, of themselves, in cases not otherwise provided for. The *Novisima Recopilacion*, by a special provision, determines the order in which the codes shall bind, — giving preference, among the more ancient, to the *Fuero Real*, which was promulgated in 1255 by Alfonso the Wise; next admitting the *Fueros Municipales*, or municipal charters of right, from time to time recognized or granted by Saint Ferdinand and his more immediate successors; and resting finally upon the *Siete Partidas*, which, though prepared under the supervision of Alfonso the Wise, were not published till long after his death, during the reign of Alfonso the Eleventh.

Since the promulgation of the *Novisima Recopilacion*, there has been no collection of the laws printed, which

approximates or pretends to completeness. The decrees of Ferdinand the Seventh and of the different Cortes are, it is true, readily accessible in print, but many radical changes have been wrought, by special orders, resolutions, and interpretations, which lie buried for the most part so deeply in the executive archives, that, for all purposes of general information, they had as well been affixed to the top of the old tyrant's column. Indeed, the whole system of administration has undergone so many shocks and revolutions during the present century, that it is not always easy to determine the precise location even of the archives themselves, through which the course of any particular legislation is to be traced. So many councils have been modified, abolished, and recreated with new functions, and the duties of all and each have been so often altered and transferred, that, even after ascertaining the date and origin of a decree or order, it is next to impossible, often, to discover in what vortex of the documentary chaos the authoritative original may be revolving. Fortunately, the cases in which this uncertainty and difficulty exist are for the most part administrative or merely political, so that the ordinary course of public justice is not often obstructed or obscured thereby.

So large a portion of territory on this continent, belonging once to Spain, has now become attached to the American Union, that it may not be altogether out of place in this connection to notice briefly the Spanish colonial jurisprudence. The laws governing "the Indies" — by which title all the discoveries in both hemispheres are comprehended — were always wholly separate from the main body of domestic legislation. In

1511 Ferdinand the Catholic created the Supreme Council of Indies, to which he gave, under the royal supervision only, the entire control of the colonies, in all matters, legislative, executive, ecclesiastical, and judicial. Charles the Fifth, in 1524, in some degree modified the form of this almost sovereign body, but the ordinances for its regulation were not given to the world, with any completeness, until 1636, during the reign of Philip the Fourth. In 1658 a small number of its decrees and acts were published. In 1680 Charles the Second had the glory of promulgating the gigantic work called the *Recopilacion de las Leyes de Indias*, — a complete body of jurisprudence, which, although modified from time to time, and not always wisely, is still the main depository of colonial right. Where, by chance, it may be silent or have become inoperative, the vigorous old legislation of Castile fills up the chasm.

Those who judge of the merits of the *Recopilacion de Indias* solely from the results of the civilization which it was intended to direct, will do but poor justice to the most complete and comprehensive scheme of colonial government which the world has ever known. Although, no doubt, greatly defective in many particulars, and tinctured most prejudicially with the errors in political economy which were peculiar to the times, the *Recopilacion* bears all about it evidences of the most far-seeing wisdom, the most laborious and comprehensive investigation and management of details, and a spirit of enlightened humanity not easily to be exceeded. That, with these characteristics, it should have been practically so complete a failure, seems at first sight

somewhat paradoxical but historians have given many good reasons for it, which are obvious enough, though it would be foreign to my purpose to repeat them. There was one fundamental error, — an error rather of the system than of the code, — which would suffice, of itself, to account for all the consequences that have ensued ; I mean the idea that colonies could be nursed into great nations and yet preserved as colonies. It was upon this impossibility that the *Recopilacion* was stranded. Its municipal regulations, its laws controlling territorial acquisition and descent, its whole commercial plan and political economy, had but the single purpose of building up empires, to be yet dependent upon the mother country. The prosperity of the colonies, even as colonies, was thus rendered impossible. If they took a step forward, it was with a chain and a clog on their feet. They were kept for a long time, it is true, from being independent, but they were prevented, during all the time, from growing vigorous or great. When they became free, at last, it was through the weakness of the metropolis, and not through their own strength. They escaped from being governed by others, but they did not know, nor have they yet learned, how to govern themselves. If it had been the order of Providence that children should be children always, the Spanish system had certainly been successful, for it was wise to that end. As Providence has otherwise ordained the nature of men and nations, the introduction of so unnatural a basis made all its wisdom folly.

Of the decrees and other enactments which have been passed and promulgated since the *Recopilacion de Indias*, there is no collection whatever extant, and

the most learned of the colonial jurisconsults are only familiar or unfamiliar with them by comparison. In the enlightened reign of Charles the Third, an attempt was made to digest a new code out of all the then existing materials; but although the work was prosecuted nearly to its conclusion in the following reigns, and was in 1819 ready for the press, to which it was on the point of being given, it disappeared altogether during the subsequent revolutions, and there is now no trace whatever of the digest itself, or of the multitudinous and valuable documents collected for its preparation. It may be lying, for aught that the best lawyer in Madrid can tell, among the rubbish in the garret of a neglected *archivo*, or have been sold by the *arroba* to the proprietor of a book-stall, to be retailed at a *real* or a dollar the volume, according to the vender's theory of the purchaser's curiosity and pocket.

Under the ministry of the Marquis of Sonora, in 1786, there was a collection of ordinances published, for the establishment and regulation of Intendancies in New Spain. These were in time extended to the rest of the colonies, so far as they were applicable. The general ordinance for the government of colonial Intendants, which saw the light in 1803, and was the result of much labor and ability, was, by a strange caprice, revoked almost entirely in 1804, and is now but partially operative in any particular. The Council of Indies was abolished by the Cortes of 1812. It was too princely an establishment, as it stood, for a limited monarchy. It was, however, reëstablished by Ferdinand the Seventh in 1814, but fell again in 1820, upon the reproclamation of the constitution, — was restored in

1823, and finally suppressed in 1834. Its functions are now distributed among the several executive departments. Those who are best informed do not hesitate to say, that, properly modified, the Council would have been an invaluable administrative agent under any system, and that its destruction has put an end for the present to that politic and comprehensive unity, without which there cannot be much scope or efficacy in any scheme of colonial government.

Of the administration of justice in Spain, a great deal has been said by writers of all classes, foreign and domestic ; but nothing particularly complimentary, that I have ever seen. How far the evils of the system continue to be oppressive at the present time, I had no opportunity of knowing, except from hearsay, which did not leave any favorable impressions. The *escribano*, the clerk or notary, — a sort of judicial go-between, — is, on all hands, conceded to be the chief nuisance in the details of the system. Every picture that is painted of the law's delay and of the costly injustice for which men curse it, has for its chief figure

"el escribano,
Con semblante infernal y pluma en mano."

The suitor who unhappily is forced to seek the aid of Themis employs a *procurador*, a sort of inferior attorney, to prepare a statement of his grievance. This passes to an *escribano*, through whose hands it goes to the tribunal having jurisdiction ; and when it has received the proper attention there, it returns to the *escribano*, who gives the needful direction of process or notice to the adverse party. The defendant's reply passes up to the bench, through the *escribano*, and finds

its way by the same channel to the plaintiff, — whose replication, in its turn, performs the same voyage. Thus the matter proceeds, until each party has alleged all that he has to say, — the *escribano* of course taking toll every time that he opens the gate, or allows either party to look over the fence within which he keeps justice impounded. All the testimony goes up in the shape of declarations made before the *escribano*, and reduced by him to writing. Every document of record is copied by some *escribano* from his archives. Indeed, there is nothing which concerns the case, in law or in fact, of which the *escribano* is not the conductor, from the judge to the parties and from the parties to the judge and to each other. How completely all are dependent upon his good faith, and how conveniently he can make a fortune, — not merely out of his honest perquisites, but by an advantageous use of his good will and opportunities, — the least ingenious of the sons of men may readily imagine.

In further illustration of the extent to which the rights of the community depend upon the honesty and pleasure of these scribes, it is but necessary to state that they are the depositaries of all testamentary records, and of all deeds and contracts whatever which are required to be in writing. A man desirous of making his will gives his instructions to any *escribano* he may select, who prepares the instrument, which the testator executes before him with all the formalities. The *escribano* retains the original, which of course he is bound to keep secret during the life of the testator. Whether he observes that obligation or not depends upon his integrity, and the liberality of the parties who