

fully acquainted with them, the matter shall be put to the vote, each voting according to his conscience; first the counsellors, then the ordinary, and afterwards the inquisitors, who shall vote in presence of the counsellors and the ordinary, that all may know their motives; and that in case they should be of a different opinion, the counsellors may be convinced that the inquisitors act according to law, and not from caprice. The notary shall write down the opinion of each voter in the register of votes, whence they shall be taken to be added to the proceedings. The inquisitors shall leave to the counsellors full liberty of voting, and shall not suffer any person to speak out of his turn; and, as among the officers of the inquisition, there is no reporter, the oldest inquisitor shall state the question, without giving his opinion, and the notary shall immediately read his report. The fiscal shall be present, seated below the counsellors, and shall leave the assembly before the question is put to the vote.

XLI.

Those who seriously confess shall be reconciled.

If the accused candidly and seriously confesses, and his confession be of a proper nature, the inquisitors, the ordinary, and the counsellors shall admit him to a reconciliation with *confiscation of property conformable to law*. He shall be cloathed in a penitential habit, which shall be a *sambenito* of linen or yellow cloth, with a red Saint Andrew's cross, and he shall be conducted to the prison, called perpetual or *the prison of mercy*. There are, however, with respect to the confiscation of property and the colour of the dress, some rights, privileges, and customs, in several parts of the kingdom of Arragon, to which it is necessary to conform, saving the regulation of that which relates to the dress and the prison, according to the issue of the prosecution; and if for some reason the form of the dress seems to them arbitrary, they shall leave the decision of it to us, or to the inquisitor general, and
not

not to the will of the inquisitors. This relates to persons who are not relapsed; for as to them, it is decided by the law, that being convicted or having confessed, they are to be delivered over to the hands of justice; and the inquisitors cannot reconcile them when they are not really, but dissemblingly relapsed, in abjuring *de vehementi*.

XLII.

Abjuration.

The abjuration which the accused shall make shall be placed under the sentence, referring to the mandate according to which they have abjured. If they can write they shall add their signatures; and if not, the inquisitors and the notary shall sign; and as this formality is public, the signature cannot be added in that place, but shall be made the following day in the audience chamber.

XLIII.

Negative and by contumacy.

If the accused denies the charge, and be legally proved to have been guilty of the crime of heresy of which he is accused, or be an obstinate heretic, it is manifest, according to the law, that he is to be delivered over to the tribunals and the secular power. *But in such a case, the inquisitors ought to take every means to convert him, that he may die, at least, with the knowledge of God; and with this intent they shall do every thing they can do as Christians.*

XLIV.

Advice concerning persons who confess before the secular tribunal.

The inquisitors often determine to deliver over to justice persons who deny; and when they become converted, and confess their faults before the sentence, the inquisitors admit them to reconciliation and suspend the decision of their cause; but this is a thing *very dangerous,*
and

and it ought to be suspected that their conversion proceeds rather from a fear of death, than from true repentance. This therefore should but *seldom* take place, and for very particular reasons. If any one of the criminals on the eve of the *Auto*, when it is notified to him that he ought to make his confession, because he is going to die, judicially avows his faults, in whole or in part, so that it may appear convenient to suspend the execution of the sentence, he shall not be conducted to the secular tribunal, his cause not being yet decided. There is even great inconvenience in taking him there who has accomplices, because he hears the sentences of all, and remarks the condemned and the reconciled, and has time to arrange his confession as he pleases. Besides, much credit is not to be given to what such persons may say of another; and even what they say against themselves ought to be considered as very doubtful, on account of the fear with which death inspires them.

XLV.

He who denies, to be put to the torture, in caput alienum, and this to be declared in the sentence.

If the criminal denies the charge, and there be witnesses against him and his accomplices, and he be delivered over to justice, he shall be put to the question *in caput alienum*: and if he triumphs over the trial he undergoes, not that he may avow his own faults already sufficiently proved, he shall be equally delivered over to it, if he does not *confess* and ask for mercy; but if he asks for it, attention shall then be paid to what the law prescribes. The inquisitors ought to examine with the greatest attention in what case the question is to be given. Sentence shall be pronounced, expressing therein the reason for giving the torture, that the accused may know he suffers it as a witness and not as a party.

XLVI.

When complete proofs are wanting, pecuniary penalties and abjuration are to be imposed.

When the proofs of the crime are not complete, and the indications against the accused are such as not to permit his being absolved, the law furnishes in that case different remedies, as abjuration *de vehementi* or *de levi*, a remedy the object of which rather seems to intimidate the guilty for the future than to punish them for the past; with a view to the latter, *pecuniary* penalties are imposed upon persons who abjure: they ought at the same time to be reminded of the danger to which they will be exposed in case of *ficta relapsa*, *feigned relapse*, if they be again found guilty of the crime of heresy; and they who abjure *de vehementi*, ought to sign their names to their abjurations; (although hitherto this has not been much in use) which shall be done with the formalities prescribed with respect to the reconciled.

XLVII.

Compurgation.

Compurgation is another remedy to be applied according to the form of the mandate, and with the number of persons the ordinary inquisitors and counsellors shall judge convenient; upon which it only remains to be observed, that the wickedness of men in the present age renders this remedy dangerous, that it is not much in use, and that it is to be had recourse to with much caution.

XLVIII.

Torture or question.

The third remedy is the torture; which considering the different degrees of bodily strength, and the characters of men, is esteemed by the law insufficient and dangerous; and, as no certain rule can be given thereupon, the conscience and decision of the judges, conformable to right and reason, must be confided in. When sentence of torture

is pronounced, the ordinary and all the inquisitors shall be present, as well as when the torture is administered, because cases may then happen in which the suffrage and opinion of all may be necessary; although, according to the instructions of Seville, of the year 1484, it be permitted to delegate the inflicting of the torture. What is herein prescribed appears convenient, except some one of the judges excuses himself on account of illness.

XLIX.

Admonition to the accused before he is put to the torture.

Previous to pronouncing the sentence of torture, the accused shall be particularly informed of the reason for which he suffers it; but the sentence once pronounced, nothing shall be particularized to him; none of those who appear criminated or indicated in the prosecution shall be named to him, because experience has proved, that the accused say every thing in this crisis which is suggested

gested to them, whence prejudice results to others, and they themselves gain an opportunity of revoking what they have confessed, and other inconveniencies:

L.

Appeal from the sentence of torture:

The inquisitors ought to be very careful that the sentence which condemns to the torture be well explained, and is authorized from legal evidence. If in this respect they have any doubt or scruple, as the wrong may be irreparable, and that in cases of heresy, there is room for appeal from interlocutory sentences, they shall grant an appeal to the party wishing to make such an appeal; but if they be satisfied, from the proofs before them, that the sentence which condemns to the question is legal, the appeal ought then to be considered as frivolous, and the inquisitors to proceed without delay to inflict the torture. Let them, however, observe, that in case of doubt they are to grant the appeal; and let them not pronounce sen-

tence of torture, nor proceed to the execution of it, before the conclusion of the cause, and until they have received the defence of the accused.

LI.

When an appeal is granted in criminal cases, the records of the prosecution are to be sent to the council, without informing the parties.

And when the inquisitors shall think proper to grant an appeal in criminal cases, they shall send the proceedings to the council, unknown to the parties, and without the knowledge of any person out of the prison. If the council be of a different opinion upon any particular question, they may also provide for the execution of its orders.

LII.

Rule to be observed when any inquisitor is excepted against.

If any inquisitor be objected against by a prisoner, and he has a colleague present, he ought to abstain from taking cognizance of the cause, and give advice thereof

thereof to the council, and his colleague shall take charge of the proceedings. If he has no colleague, he shall equally inform the council of the objection, and suspend the proceedings until the council shall have pronounced, after examining the motives of exception. The same method shall be observed when it shall happen that all the inquisitors are objected against.

LIII.

Ratification of the confession made during the torture.

Twenty-four hours after the question, the confessions of the accused are to be read to him; and if he revokes them, recourse must be had to the remedies furnished by the law. The notary must mark the hour of the torture, and that of the ratification, that if the question be repeated the following day, he may prove whether it be before or after the expiration of the twenty-four hours. If the accused ratifies his confessions, and the inquisitors be satisfied with them and

his conversion, they may admit him to reconciliation, although, during the torture, he may have acknowledged himself culpable. The instruction of Seville of the year 1484, chap. 15. states, that he who during the question confesses himself guilty shall be reputed convicted, whence results his delivery to the secular power; but what is herein established is more conformable to custom. However, the inquisitors ought to pay attention to their manner of treating criminals of this class, and to the nature of the heresies of which they shall have declared themselves guilty; whether they have learned them from any person, or taught them to others. The want of these precautions may be attended with great inconvenience.

LIV.

What remains to be done if the accused endures the torture without confessing.

If the accused endures the torture and makes no confession, the inquisitors ought to consider the extent of the proofs,

proofs,

proofs, the nature and manner of the torture, and the character and age of the person who suffers it, and when, all these having been properly weighed, it shall appear that he has sufficiently cleared himself from the informations, they shall absolve him from the accusation; although, if for any reason, it appears to them the torture was not sufficiently severe (considering the above-mentioned circumstances) they may prescribe him the abjuration *de levi*, or *de vehementi*, or any pecuniary fine: this, however, must not be done but upon mature reflection, and when the information seems not sufficiently disproved. The inquisitors ought to observe, that when an accused person shall have been sentenced to the torture, it must not at the same time be determined what is afterwards to be done in case he confesses or denies; as the torture may produce different results. These determinations ought not to be made until afterwards.

LV.

Who are to be present at the torture; and of the care afterwards to be taken of the criminal.

The judges, notary, and executioners are the only persons who are to be present at the infliction of the torture: when it is finished the inquisitors ought strongly to recommend the curing of the patient, if his person be any way hurt; and great attention is to be paid to those among whom he is placed, until he has ratified his confession.

LVI.

The alcayde to have no communication with the accused, nor is he to be their solicitor, defender, or substitute to the fiscal.

The inquisitors are to be particular in their orders to the alcayde, forbidding him all communication with the prisoners which may relate to their cause: he is neither to speak to them concerning it, nor give them advice, but to leave each to his own manner of acting; and

and the inquisitors shall punish him if they discover that he disobeys them in any one of these respects. To prevent suspicion the alcayde must not be the guardian or defender of a minor, nor exercise the functions of the fiscal in his absence; he is to be permitted, and even ordered, in case a prisoner cannot write, to write for him his defence, but this after the prisoner's dictating, without speaking to him upon the subject, or adding any thing from himself.

LVII.

Examination of the proceedings after the question.

The proceedings being brought to this state, the inquisitors shall assemble with the ordinary, and the counsellors shall examine them again; they shall pronounce according to law, and the order before mentioned. The fiscal shall assist at the examination of the proceedings, that he may take notes of the articles then in question; but, as it has already been regulated, he shall retire before the matter is put to the vote.

LVIII.

LVIII.

Those who shall be freed from imprisonment without having been delivered up to justice, shall be examined relative to the advice and communications they may have received.

When the inquisitors shall give a prisoner his liberty, in whatever manner it may be, if he has not been delivered up to justice, they shall examine him, upon oath, relative to the particulars he may have observed in the prison; whether or not he has seen or remarked any communication between the prisoners, or between them and persons without doors; how the alcajde has discharged his duty, and whether any prisoner has given him information; and if the thing be of consequence, they shall command him, under severe pains, to keep it secret, and to say nothing of what he has observed in the prison. This formality shall be mentioned in the proceedings and inregistered, provided the prisoner consent to it. If he can write, he shall sign his name; which will make him still

still more fearful of violating the law he has been enjoined to observe.

LIX.

If the prisoner dies, the prosecution to be carried on with his heirs.

If any prisoner dies in prison, before the prosecution against him be concluded, and if, although he may have confessed, his confessions do not sufficiently correspond with the depositions of the witnesses, so that he may be admitted to reconciliation, his children, heirs, or persons to whom his defence belongs, shall be informed of his death; and if they undertake to defend him, a copy of the accusations and depositions shall be given them, and all they shall legally alledge in defence of the deceased shall be admitted.

LX.

A guardian shall be appointed to the accused whose mental faculties shall be deranged.

If any accused person shall, whilst his case is in the state above-mentioned, become

come deranged in his mental faculties, he shall be provided with a guardian or defender; but if, whilst he retains his reason, his children or relations wish to alledge any thing in his defence, they shall not be received as parties to the proceedings, because they are not so of right; but the inquisitors shall admit the allegation, and do, independently of the prosecution, every thing they shall judge necessary to come at the truth, without communicating their private proceedings either to the accused or to the persons who shall have pleaded in his behalf.

LXI.

The manner of proceeding against the memory and reputation of the accused.

When it shall happen that the memory and reputation of the deceased are to be proceeded against, after having obtained the proofs required by the instructions, the accusation of the fiscal shall be notified to the children or heirs of the deceased, and to other persons, whom

whom it may concern. To this effect the inquisitors shall endeavour to discover whether or not he has any descendants, that they may be called upon to appear: after which (that no person may make ignorance a pretext) they shall be summoned by a public edict to appear at a certain time, and after that, in case no one appears, the inquisitor shall name a defender, and continue the proceedings according to the forms prescribed by law. If any person presents himself, he shall be permitted to defend the memory and character of the deceased, and the prosecution shall be carried on with him as a party, although he shall be attainted of the crime of heresy in the registers of the holy office, for it would be an injury to refuse him permission to make his defence; he, besides, is not to be excluded should he be confined in the same prison. In this case he shall be allowed to act by attorney, if he can, and shall appoint a person to take, in his name, such measures as shall be necessary; he ought to be

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permitted to leave the prison to defend the deceased. As long as neither one nor the other are as yet condemned, they ought not to be deprived of these means of defence, the survivor being interested in the defence of his relation as well as his own. In such circumstances, although the proofs against the deceased be clear and sufficient, the sequestration of property is not to take place; for this property being in the hands of other persons, these ought not to be dispossessed of it before the deceased has been declared a heretic, and they themselves have evidently lost their cause at law.

LXII.

The sentence which absolves is to be read in a public Auto.

When the defender of the memory and reputation of the defendant shall have legally sustained his cause, and the deceased is to be absolved from the charge brought against him, the sentence or decree shall be read in a public *Auto*, in the same manner as the edicts were

were promulgated. His effigy, however, is not to appear at the *Auto*, nor are the offences of which he has been accused to be particularised, because they have not been proved. The same caution is to be observed with respect to persons who having been accused shall be acquitted, and have asked that favour.

LXIII.

If no defender appears, one shall be appointed by the holy office.

No person presenting himself to make the defence, the inquisitors shall name, for defender, a proper and able person, who is not an officer of the inquisition, and prescribe to him the manner in which he is to observe secrecy, communicating to him the accusations and depositions concerning which he is to confer with the learned of the holy office, and not with others, without a particular permission from the inquisitors.

LXIV.

LXIV.

These instructions to be observed in prosecutions against the absent.

In prosecuting the absent the inquirers shall observe the forms prescribed by the instructions ; and above all they are to pay strict attention to the terms fixed by the edict, by lengthening or shortening the interval, according to what they learn relative to the absence of the accused, taking care that he be three times summoned, and that at the expiration of each term the fiscal accuse him of *rebellion*; a necessary formality that the proceedings may be complete.

LXV.

Corporal punishment shall not be inflicted in defect of pecuniary penalties.

The inquirers frequently proceed against accused persons upon charges which render their faith suspicious, and, considering the nature of the crime and the quality of the person, do not judge them

them heretics; such as those who contract two marriages or publicly utter blasphemies or ill founding words; and the inquisitors impose on them different pains, according to the nature of their crimes, consulting the law, and founding on it their opinion; but on these occasions, they shall not, in defect of the sum of money which they shall condemn the delinquent to pay, inflict upon him corporal punishment, as whipping, the galleys, &c. or other degrading pains, but they shall simply pronounce their sentences without conditions or alternative.

LXVI.

Reference to the council in case of disagreement between the inquisitors, or between them and the ordinary. The same thing in serious cases.

In cases in which there is a difference of opinion between the inquisitors and the ordinary, or between themselves, in the decision of the cause, in any other part of the proceedings, or in an

interlocutory sentence, the cause ought to be sent up to the council; but when the persons above mentioned are unanimous in their opinion, though the majority of the council should think differently from them, the decision of the inquisitors and the ordinary shall be carried into execution. Nevertheless, in important cases, the sentence of the inquisitors, the ordinary, and the counsellors, although they all may be of the same opinion, shall not be executed without first being communicated to the council, as is the custom and prescribed by law.

LXVII.

The depositions to be stated in the proceedings against the accused.

The confidential notaries are carefully to state, in the proceedings against each of the accused, all the depositions found in the records, and not to refer for them from one process to another; a contrary method would produce much confusion: therefore the rule herein prescribed

prescribed must be adhered to, although it occasions more trouble to the notaries.

LXVIII.

Necessary proceedings in cases of communication, and which are to be stated in the general proceedings of the prosecution.

If it be discovered that prisoners have communication with each other in the prisons, the inquisitors are to endeavour to find out who they are, whether they be accomplices in the same crimes, and what has been the subject of their communication, the whole to be stated in the proceedings against each of them. These communications are to be immediately suppressed, as they cannot but render suspicious whatever the prisoners may declare against others, or even against themselves.

LXIX.

Whatever may be farther brought against the accused during the prosecution for the first public offence, is to be added to the proceedings.

When a prosecution against a person is decided, or, without being finally determined, is postponed, although it be not for formal heresy, yet, for other reasons, within the jurisdiction of the holy office, if proofs of new crimes be brought against the same person, the charges must be collected together, to aggravate the offence, and the fiscal is to mention them in the accusation.

LXX.

Persons not to be removed from one prison to another without sufficient cause.

The prisoners who shall have been once together in the same chamber, are not to be separately sent to others: all intercourse within the prison will thus be avoided; for it is apparent that when they change their companions they re-
late

late to each other what they have seen. If, however, such a change be indispensable, it shall be mentioned in the proceedings against the person whom it concerns, that he may know the legitimate cause of his removal; a thing of importance, especially when a prisoner shall have revoked or modified his confessions,

LXXI.

Care to be taken of the sick, who are to be provided with a confessor if they require one.

If a prisoner falls sick, besides the inquisitor's being obliged to take the greatest care of him, and to provide him with every thing necessary to the re-establishment of his health, according to the advice of the physicians who shall have him under their care, if he asks for a confessor, one of reputation and worthy of confidence must be given him, and who shall be sworn to secrecy, and that if the penitent should in his confession tell him a secret, praying him

not to speak of it in the world, he will not reveal it; but if before or after the confession the prisoner shall communicate to him any secret, he shall reveal it to the inquisitor, observing to the penitent that seeing he was arrested as an heretic, and has been accused, he cannot be absolved but by making confession of his heresy according to juridical forms: every thing else must be left to the discretion of the confessor, who ought to be a learned man, that he may the better know how to act in such cases. But if the prisoner in good health demands a confessor; the safest method is not to grant him one, unless he has confessed to justice and confirmed his depositions; in this case it appears convenient to give him one to comfort and encourage him; but as he cannot absolve him from the crime of heresy until he has been reconciled to the church, it seems the confession would not have its whole effect unless the prisoner be upon the point of being executed, or a woman ready to be delivered of a child;

child ; in which cases what the law has provided shall be observed with respect to them. If the prisoner do not request a confessor, and the physician thinks him in danger, means must be taken to persuade him to confess. When his confessions, made judicially, shall have confirmed the depositions ; before he dies he must be reconciled in form, pronouncing the [required abjuration ; and when he shall have been judicially absolved, the confessor shall absolve him sacramentally ; and if it be not found inconvenient, he shall have Christian burial in the most secret manner possible.

LXXII.

The witnesses shall not be confronted with the accused.

Although in the other tribunals the judges, the better to come at the proof of crimes, are accustomed to confront the witnesses with the accused, such a proceeding, is and ought to be, unusual in the tribunal of the inquisition ; be-

cause, besides that the secret of the witnesses, which ought to be kept, would thus be violated; experience has proved that if sometimes this has been practised, inconvenience rather than advantage has been the result.

LXXIII.

No persons shall be seized during the visits of the inquisitors, without the advice of the colleagues or counsellors, when it is not suspected that those against whom depositions have been received design to escape.

That the causes relative to the holy office may be treated with proper discretion and authenticity, when the inquisitors shall make their visits and receive offers of depositions, which may bring on the confinement of the persons against whom they are made, the imprisonment shall not take place without the consent of the colleague and the counsellors resident in the district, except the person criminated be suspected of having an intention to escape; in which case the inquisitor, to avoid that danger, may,
after