

An Account of the Province of Biscay, in Spain.

To Mr Cummyng, Secretary to the Society of Scottish Antiquaries.

SIR,

I HAVE the honour of presenting to the Society a copy of the privileges and municipal laws of the *Senorio* or Lordship of Biscay, in Spain; which, I hope, will not be unacceptable, as the subject is something curious, and the book must, I imagine, be rare in this kingdom. I also flatter myself, that it will not be disagreeable, if I mention a few particulars regarding this province of Biscay, and give a short account of these laws in general, and point out some of them that seem to be most deserving of notice; especially as they are in the Spanish language, which many of the members of the Society cannot be supposed to understand.

The ancient history of Biscay, or of Cantabria as it was called of old, is, like that of many other countries, involved in great darkness;

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nor do we know any thing of it for certain, excepting the little that we meet with in the Roman historians. From them we learn, that the Cantabrians, in conjunction with their Asturian neighbours, defended their liberty against the Roman invaders, with a valour and constancy not unlike to that of our own Caledonian ancestors, though not with equal success; for the Cantabrians were at last entirely subdued by Agrippa, in the reign of Augustus, if credit is to be given to what the Latin writers are pleased to tell us.

One thing, however, seems certain, that the Latin tongue was never spoken in Cantabria or Biscay, as it was for several centuries in the rest of Spain: And what the Biscayans now speak, has all the appearances of being a very old language; nor do I believe that even a distant resemblance between it and any one of the ancient or modern languages can be easily discovered; which singularity is a phenomenon that I look upon as very difficult to be accounted for in a satisfactory manner.

This ancient language of the Biscayans; their being reckoned the remains of a Celtic nation; their inhabiting a hilly country; and their having, for a long time, bravely resisted the Roman arms, are all circumstances which naturally attract the attention of a Scotman: At least, this is what I experienced, when I was there about an year ago.

But, I was likewise not displeas'd to find, that the Biscayans have among them a constant tradition, that their *Senores* or Lords, (for that is the appellation that has been always given to their sovereigns) drew their origin, at least by the female side, from Scotland. They tell you, that a daughter of the king of Scotland came to their country by sea, and landed at a place called *Mundaza*, near the town of *Bermeo*. Florian de Ocampo, in his *Chronicles of Spain*, B. iv. c. iii. and

and some others say, that this princess had been carried hence by a Biscayan adventurer, who had fallen in love with her. Others, again, relate, that after the death of her father, differences had arisen between her and her brother, and that on that account she had left Scotland, with many attendants; that she was driven by storm to the coast of Biscay; where she was well received, and was married to one of the principal persons there. Others, finally, will have it, that being with child, and refusing to tell by whom it was, she was ordered by her father to be sent out of his kingdom.

But, whatever may have been the cause of her leaving Scotland, all are agreed, that, not very long after her arrival in Biscay, she was delivered of a fine boy, who, being of a fair complexion, was called *Curia*, which in their language signifies *White* or *Fair Haired*. This Curia, as he grew up, discovered great strength and agility of body: He was also very comely in his person, and of remarkable sagacity, generosity, and valour; so that he was much esteemed and beloved by all the Biscayans.

When he was arrived at the age of twenty two years, it happened that *Ordone* or *Ordonio*, King of Leon*, being much offended at the Biscayans, because they offered assistance to the Castilians against him, entered into Biscay with an army and began to lay waste all before him. Biscay was at that time divided into five independent *Merindades* or districts, which had each its own elective magistrates. But this hostile attack from their neighbours obliged them to unite their forces, for their common defence; as many other such nations were accustomed to do, when either necessity or choice made them

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* This was Ordonio III. who died in the year 953, or Ufurper Ordonio, who came after him, and was driven from the throne in 960.

go out to war. When they came to deliberate who should be their leader, they all cast their eyes upon Curia as the most proper person, on account of his bravery, popularity, and royal extraction. Accordingly the command was intrusted to him; and a bloody battle was fought in a place called to this day *Arrigoriaga*, which in the Biscayan language means *Red Stone*; and it received that name, because on that day the stones there were died with blood. Here the Biscayans gained a complete victory under the conduct of Curia, and the King of Leon found it necessary to retire home.

The people of Biscay, fearing to be soon attacked again, and being very well pleased with *Curia* for a General, they resolved to make him their *Lord*, and actually raised him to that dignity, upon certain reciprocal conditions; setting apart for him some of the best lands in their different territories, and allowing him certain duties on their iron mines.

This story, with some variety of circumstances, is mentioned by Mariana, Garibay, Camallo a Lope de Salazar, and many other Spanish historians: It is generally believed in Biscay, and, as it has some connexion with Scotland and with Scottish antiquities, I thought it was not unseasonable to take notice of it here.

Lord Curia, or *Jaun Curia*, as the Biscayans call him in their own language, commenced his government after the middle of the tenth century, and was succeeded by his posterity for nineteen generations, down to the time of Peter the Cruel, King of Castile, who caused the last of them, *Dona Juana*, and *Dona Isabel de Lara*, to be put to Death; and then it was that Biscay was united to Castile, about the middle of the fourteenth age.

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But the Biscayans on that occasion were not inattentive to their liberties. They did not admit of a Lord of a foreign family, but with the express condition, that all and every one of their former laws, customs, and privileges, should be inviolably preserved. This was agreed to, and, in as far as I could learn, has been pretty punctually observed to this day; so that there is not perhaps any part of Europe, where more true and genuine liberty, without licentiousness, is enjoyed, than in the *Lordship* of Biscay, the *Province* of Guypuzcoa, and the *County* of Alava, which all three are united together, and go under the general name of Biscay.

This people have a very ancient custom of holding their general meetings for treating of their public affairs in the open fields, under a large tree near to the town of *Guernica*. These meetings consist of the *Corregidor* or President named by the King, who is always a gentleman bred to the law; of the two deputies of Biscay, of the knights, squires, gentlemen, and the *procuradores* or representatives of the towns, and of their small districts, which they call *republicas* or *ante-iglesias*. This last word means *church-porch*, (porch of the church) and all the villages of the district come under that name, because they are wont to meet and consult about what concerns their common interest and tranquillity, in the porch of the parish church, where there are seats of stone for that purpose.

In one of these meetings, which was held in the month of July 1476, Ferdinand of Arragon, who had some years before married Isabel or Elizabeth (for the Spaniards, instead of the name Elizabeth, always use that of Isabel) of Castile, confirmed to the Biscayans all their laws and privileges, in the church of St. Mary of Guernica, and swore in the most solemn manner before the altar, to observe them, and make them be observed; and immediately after this, going out to the famous tree, and being seated on a chair

of stone under it, he received the homage of the chiefs and representatives of the nation, who acknowledged him for their Lord, and in testimony of it kissed his hand; as fully related in the 225th page, and in the seven following pages, of this book which I send you. The same laws were also confirmed by his daughter Queen Jean at Burgos, in the year 1512, as may be seen, page 233 of the same book.

But, in the following reign, the Biscayans observing, that the body of their laws had some imperfections; that several of their written laws had fallen into disuse, and that many of their customs generally received, had not been committed to writing; in their meeting under the Tree of Guernica, on the 5th of April 1526, at which there were present about 60 representatives of their little republics, besides many other respectable persons, it was unanimously resolved, that their laws should be revised; and power for so doing was given to 14 persons, the most esteemed they had for knowledge, experience, and integrity, who promised on oath to reform the laws, in the manner that should seem to them, before God, the most conducive to the good government of the country, and to the peace and prosperity of its inhabitants. For this end, they were allowed only 20 days; and the *Corregidor* or chief judge was joined with them in the commission. It was also ordered by the meeting, that the code of laws, thus reformed, should be read and examined by the ordinary deputies, and *regidores* of Biscay, and that a clean copy of it should be made out, and two *procuradores* or commissioners should be sent with it to Court, in order to obtain the confirmation of it from the Emperor Charles V. who was at that time their Lord.

All this was executed with great punctuality. The Emperor approved and confirmed these laws at Valladolid, on the 27th of June
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of the following year 1527, and they were promulgated, received, and ordered to be obeyed in the National meeting held under the Tree of Guernica, on the 3d of July of that same year. It is a copy of these laws, in a small *folio*, that I have the honour of presenting to the Society; and at the end of them are subjoined the confirmations of the five following Kings of Spain, including that of Philip V. in 1702, in which year this copy was printed.

These laws are simple, and not many in number, as may be seen from the size of the book in which they are contained. Those of them that seem to me the most remarkable, are the following:

In the first place, when a new Lord of Biscay comes to succeed by the death of his predecessor, or any other way, if he is 14 years of age, he is obliged to go in person to Biscay, if the Biscayans formally require it, and swear solemnly the observance of the laws, and the conservation of all the privileges of the country, at the gates of Bilboa, under the Tree of Guernica, and in the churches of *Larrabezua* and *Bermeo*; and, if he should neglect to do this for a whole year, after it has been required of him in form, then the rents that are payable to him from certain houses and villages, are to be retained, and only the duties on the iron-mines are to be paid into his treasury, until he shall comply with the requisition. Nor are his orders in the mean time to be executed; but only received with respect. Yet the judges placed by him are to have their ordinary power and jurisdiction, because this is necessary for the common good.

There is a certain sum of money that is long since fixed, to be paid to the Lord by the possessors of certain houses and villages, which must always be kept in repair, and are always sold and bought with

that burden. The Lord is also to have certain determinate duties, which are very moderate, on the ore that is taken out of the iron-mines, of which there are very many. No other tax or duty is ever, upon any account whatsoever, to be laid on the Biscayans; and the Lord is to allow a sufficient salary to the *Corregidor*, and to the other judges that he places, out of his own treasury.

The Lord cannot establish any new city or borough in Biscay; unless it be done under the Tree of Guernica, and with the common consent of the Biscayans.

Every Biscayan is declared to be an *Hidalgo* or Gentleman, and to have all the privileges belonging to such, not only at home, but even throughout all Spain; because they have always kept their blood pure from all mixture of that of the Jews and Moors. And, in order to preserve this their purity of blood, which is of so great consequence to them, and gives them so honourable distinctions all over the kingdom, no Jew, nor Moor, nor any person descended of either, is to be allowed to settle in Biscay on any pretence whatsoever.

The Biscayans are to be judged only by their own laws in all civil and criminal causes, not only in Biscay, but in every part of Spain. For this reason, in the Chancery of Valladolid, which is a supreme, civil, and criminal court for all that part of the kingdom, that lies on the north side of the *Tagus*, there is a particular court for the Biscayans, and a judge in it called the *Guezmayor de Viscaya*, or the Great Judge of Biscay.

Whatever order comes from the King, is to be examined in a *junta* or meeting of the Biscayans; and if it shall appear to them to be

be contrary to their liberties or privileges, it is to be received, indeed, with all due respect; but not to be put into execution.

No Biscayan can be imprisoned for any debt, if it be not joined with a crime. But the creditor having obtained the sentence of the judge, can get the goods of his debtor arrested, and these goods, with certain formalities, may be sold by public auction for the payment of the debt. And if the debtor should secrete any of the arrested goods, then he may be proceeded against as a malefactor and rebel; and consequently imprisoned. No Biscayan's house, nor his riding horse, nor his arms, can be arrested.

The criminal law is also sufficiently mild. No man can be imprisoned without a formal accusation lodged against him; and that followed by the order of a judge. Nay, further, unless the guilty person be apprehended within 24 hours after the commission of the crime, or that the crime be one of the excepted ones, which are, high treason, the murder of a stranger, violence used to a woman, and some few others, he cannot be imprisoned, until he has been three times called by a notary public under the Tree of Guernica, to deliver himself up at some one of the public prisons, that so he may be tried; ten days must pass between each of these calls, and they must be notified to him in person, or an instrument of them left at his house, or at his parish church-door, in the presence of two witnesses. During the 30 days of the calls, he may be harboured with impunity; nay, he may without any fear converse even with the judge himself. But if, before that time expire, he does not give himself to be judged, then he is denounced a rebel; and whoever receives him into his house, or assists him, is liable to punishment.

No Biscayan's immoveable estate can be confiscated; but is always to descend to his lawful heirs, whatever his crime may have been.

been. I was glad to see a law, wherein it is declared, that no Biscayan, on any account, is to be put to the torture; but I was sorry afterwards to find those cases excepted, in which one is tried for high-treason, heresy, sodomy, or the coinage of false money. It is something remarkable, that no Biscayan can be an executioner: this is considered as entirely repugnant to the honour of an *Hidalgo*; nay, by the very laws, even the jailors must be from some other province; their expression is, that they must be *from beyond the Ebro*, which river runs on the south side of Biscay.

When a man is to sell any piece of land, he must give notice of this his intention, by a public proclamation on three Sundays, at the parish church where the ground lies; and if any of his relations within the fourth degree chooses to buy it, he may do it. In that case, each of them names an appraiser, and the judge names a third, to settle the price. The appraisers that are chosen are obliged by the laws to accept of the commission. The buyer and seller must each of them also bring a sufficient person to be surety for the performance of his part of the bargain. If lands are sold in any other way, the relations may reclaim them within year and day after the sale; or even within three years, if the claimer shall declare that he had not sooner heard of the transaction.

The age at which one is ordinarily allowed to be *major*, is that of 25 years complete; but, as soon as one has ended 18, he may present himself to a judge and declare, that he is capable of managing his own affairs; and if the judge, upon getting proper information, shall think him capable, he may order his curators to deliver his effects to him, allowing to the tutors and curators what he shall judge reasonable for the trouble and expences they have been at on their pupil's account.

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The firing of a gun or pistol against any person is declared capital, even though no hurt should be done.

The ancient custom that the women had, it seems, had there, as in many other places, of accompanying burials with dishevelled hair, and with howlings and songs of lamentation, is forbidden under a fine.

It is also forbidden to go out of one's own parish to a wedding, unless it be that of a relation; and the practice of going to visit women newly brought to bed accompanied with girls carrying eatables, and other ostentatious and expensive presents, is prohibited.

But I am afraid of being tedious, and therefore, shall conclude, wishing great success to the Society; and I am, with great esteem,

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Your most obedient humble servant,

JOHN GEDDES.

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