Procedure in the Castilian Royal Court, according to the *Leyes del estilo*

El procedimiento en la Corte de Castilla, según las Leyes del estilo

RESUMEN

Las Leyes del Estilo, *una compilación anónima*, *terminada acerca de 1310*, *tratan de la práctica de la corte real de Castilla desde el reinado de Alfonso X hasta el reinado de Fernando IV. Sus 252 leyes clarifican el proceso civil y criminal seguido en la corte*, *con atención especial al Fuero real. Demostraba el autor (o los autores) un conocimiento de los textos principales del derecho romano y canónico y una familiaridad con el funcionamiento de la Corte real. Al organizar las 252 leyes temáticamente*, *uno entenderá mejor como interpretaban o clarificaban los procedimientos establecidos en el Fuero real y las Siete Partidas. Después de introducir el texto*, *se dirige atención a la natura del derecho y el papel del legislador. También se considera el proceso judicial desde el emplazamiento para empezar el pleito; las funciones de los jueces*, *los litigantes*, *sus abogados y personeros; los testigos y la pesquisa; el juicio final y la posibilidad de una apelación. Finalmente se trata de las sustantivas materias legales presentadas a la corte real: el matrimonio*, *la familia y la herencia; el derecho de la propiedad; los deudores y creditores; el comercio; el crimen y el castigo; y el estado legal de los judíos. Durante los siglos siguientes los abogados utilizaban las Leyes del estilo como es evidente por los manuscritos supervivientes y las ediciones impresas. También se ha notado la influencia de las Leyes del estilo en el procedimiento legal en la América latina. Se espera que este estudio de las Leyes del estilo fomente otras investigaciones de este notable documento legal.*

PALABRAS CLAVE

Proceso judicial, *jueces*, *litigantes*, *abogados y personeros*, *matrimonio*, *familia*, *propiedad*, *deudas*, *comercio*, *crimen*, *judíos.*

ABSTRACT

The Leyes del Estilo, *an anonymous compilation completed around 1310*, *concerns the practice of the Castilian royal court from the time of Alfonso X to that of his grandson Fernando IV. Its 252 laws clarify procedures concerning civil and criminal matters brought before the court*, *with special reference to the Fuero real. The author (or authors) displayed a knowledge of the principal texts of Roman and canon law and a familiarity with the functioning of the royal court. By grouping all 252 leyes thematically*, *one will better understand how they interpreted or clarified the procedures outlined in the Fuero real and the Siete Partidas. After introducing the text*, *attention will be directed to the nature of law and the role of the lawgiver and then to the judicial process from the issuance of a summons to initiate a lawsuit. Also to be considered are the functions of judges; litigants and their advocates and attorneys; witnesses and the use of inquests; judgment and possible appeal. Next are the substantive legal issues*, *namely*, *marriage*, *family*, *and inheritance; the law of property; debtors and creditors; trade and commerce; crime and punishment; and the legal status of the Jews. Subsequent generations of lawyers utilized the Leyes del estilo as is evident from the surviving manuscripts and several printed editions. The influence of the Leyes del estilo was also felt in Latin America*, *The present survey*, *it is hoped*, *will encourage other studies of this noteworthy legal document.*

KEY WORDS

Judicial process, *judges*, *litigants*, *lawyers*, *marriage*, *family*, *property*, *debts*, *commerce*, *crime*, *Jews.*

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SUMMARY/SUMARIO: I. Introduction. II. The Lawgiver and the Law. III. The Courts and Jurisdiction. IV. Litigants and Lawyers. V. The Summons to Court. VI. Initiation of Suit in the Royal Court. VII. Proving One's Case. VIII. Judgment and Appeal. IX. Court Costs. X. Marriage, Family, and Inheritance. XI. The Law of Property. XII. Buying and Selling. XIII. The Repayment of Debts. XIV. Commerce. XV. Crime and Punishment. XVI. Treason, Aleve, Riepto. XVII. Conclusion.

I. INTRODUCTION

The *Leyes del estilo*, an anonymous compilation completed around 1310, concerns the practice of the Castilian royal court from the time of Alfonso X

(1252-84) to that of his grandson, Fernando IV (1295-1312). Its 252 laws clarify procedures concerning civil and criminal matters brought before the court[1]. Alfonso García Gallo pointed out that the work consists of (1) a text, probably drawn up during the reign of Alfonso X, recording the custom of the royal court concerning procedure *(LEst* 1); (2) references to the *Fuero de las leyes* or *Fuero real* or citations of its laws *(LEst* 42-43, 47, 49, 50, 52, 54, 66-72, 74, 76-80, 93, 96-97, 102, 119, 121-122, 131, 151, 177, 213-214, 230, 242, 244-247, 252), as well as the *Siete Partidas (LEst* 43, 144) and the *Decretales* of Pope Gregory IX *(LEst* 59, 192); (3) responses given to questions posed by the *alcaldes* of Burgos *(LEst* 184, 243)[2]; and (4) a chapter of a doctrinal character concerning cases that did not have to be adjudicated according to the written law *(LEst* 238)[3]. Mention was also made of the *Libro Juzgo (LEst* 128, 136), the thirteenth-century translation of the *Liber iudiciorum* or Visigothic Code commissioned by Fernando III[4].

The identity of the author(s) or compiler(s) is unknown, but he surely was someone with a direct knowledge of the functioning of the royal court. That is confirmed by his use of the phrase *aqui en la corte* in *LEst* 211. Acknowledging the possibility that more than one person may have been involved, in the discussion that follows I will often refer to «our author». More than likely he was a royal judge trained in both Roman and Canon law, as his citation of the following Latin texts suggests: Justinian's *Digest (LEst* 57, 236); Gregory IX's *Decretales (LEst* 59, 192, 236); Boniface VIII's *Liber Sextus (LEst* 177); and a gloss of Huguccio in the *Glossa Ordinaria (LEst* 59). He was also familiar with Guillaume Durand's *Speculum Iuris (LEst* 60) and the work of Fernando Martínez de Zamora *(LEst* 192). Antonio Pérez Martín concluded that Fernando Mar-

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[1] Abbreviations:

AHDE – Anuario de Historia del Derecho Español.

BRAH – Boletín de la Real Academia de la Historia.

CLC - Cortes de los antiguos reinos de Leon y de Castilla.

DAAX – Manuel González Jiménez, *Diplomatario Andaluz de Alfonso X.*

DO – Jacobo de las leyes, *Dotrinal.*

Extracto - Juan de la Reguera Valdelomar, *Extracto de las leyes del Fuero real con las del estilo.*

FD - Jacobo de las leyes, *Flores de derecho.*

FR – Fuero real.

Glosas - Joaquín Cerdá Ruiz-Funes, *«Las glosas de Arias de Balboa».*

HID – Historia, *Instituciones*, *Documentos.*

LEst – Leyes el estilo.

LJ – Leyes de los juyzios.

MHE – Memorial Histórico Español.

NR – Novísima Recopilación de las leyes de España.

Scholia – Christophorus de Paz, *Scholia ad leges regias styli.*

SP – Siete Partidas.

Leyes del estilo, *in Opúsculos legales del Rey Don Alfonso el Sabio*, *ed. Real Academia de la Historia*, *2 vols. (Madrid: Imprenta Real*, *1836)*, *2:235-352.*

[2] *Leyes nuevas,* in *Opúsculos legales,* 2:181-209.

[3] *Glosas,* 790, quoting CCXL; Alfonso García Gallo, «Nuevas observaciones sobre la obra legislativa de Alfonso X», *AHDE,* 46, 1976, 609-670, esp. 653, n. 99.

[4] *Fuero Juzgo en latín y castellano,* ed. Real Academia Española (Madrid: Ibarra, 1815).

tínez was likely Master Fernando Martínez (d. 1275), archdeacon of Zamora, royal notary for León, and bishop of Oviedo (1269-1275), and the probable author of the *Summa aurea de ordine iudiciario* or *Suma del orden judicial* (*Summary of Judicial Order*). The *Margarita de los pleitos* (*Miscellany of Pleas*), written about 1263, has also been attributed to him[5]. On the other hand, our author does not seem to have known Jacobo de las leyes's treatises on procedure, namely, the *Flores de derecho* and the *Dotrinal.* Jacobo is believed to be one of the principal contributors to Alfonso X's law codes[6].

Any study of the *Leyes del estilo* must be placed in the context of the Alfonsine juridical corpus. Not only did Alfonso X direct the company of jurists who drafted the *Fuero de las leyes* or *Fuero real* as a municipal law code, but he also set them to the task of creating the *Libro de las Leyes*, the standard by which all other laws would be judged. The *Libro de las Leyes*, also known as the *Espéculo*[7], and, in its revised form, as the *Siete Partidas*[8], was a systematic and comprehensive code of law[9]. As the justices of the royal court applied the laws enacted in the Alfonsine codes, they created a style or procedure and established precedents that their successors could follow. Our author apparently intended to create a book of reference summarizing the usage of the royal court since the time of Alfonso X. New generations of justices as well as litigants (or their representatives) having business before the court would likely find it useful in carrying out their duties or preparing their cases. Of particular value were the references to the *Fuero de las leyes*; many of them summarized decisions rendered by the king's judges in response to municipalities requesting clarification of specific laws in the *Fuero real*[10]. In his ground-breaking history of Spanish law, Francisco Martínez Marina (1754-1833), while citing the *Leyes del estilo* several times, remarked that the royal court held that volume in high regard as an appendix to the *Fuero real.* He also made the point that the author of the

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[5] Antonio Pérez Martín, «El Ordo judiciarius "ad summarium notitiam" y sus derivados. Contribución a la historia de la literatura procesal castellana», *HID,* 8, 1981, 195-266 and 9, 1982, 327-423, esp. 232, 254-266; Joaquín Cerdá Ruiz-Funes, «La Margarita de los pleitos de Fernando Martínez de Zamora», *AHDE,* 20, 1950, 634-738.

[6] Rafael Ureña y Adolfo Bonilla San Martín, *Obras del Maestre Jacobo de las leyes, jurisconsulto del siglo xiii* (Madrid: Reus, 1924), 1-184 *(Flores de derecho),* 187-376 *(Dotrinal),* 379-390 *(Summa delos noue tiempos delos pleitos);* Rafael Floranes, «Flores del Derecho: Suma legal del Maestre Jacobo de las Leyes», *MHE* 2:138-248; Jacobo de las Leyes. *Summa de los nueve tiempos,* ed. Jean Roudil (Paris: Klincksieck, 1986).

[7] Robert A. Macdonald, *Espéculo. Texto jurídico atribuido al rey de Castilla don Alfonso el Sabio* (Madison, WI: Hispanic Seminary of Medieval Studies, 1990); Gonzalo Martínez Díez y José Manuel Ruiz Asencio, eds. *Espéculo* (Ávila: Fundación Sánchez Albornoz, 1985).

[8] *Las Siete Partidas del Sabio rey Don Alonso el nono, nuevamente glosadas por el Licenciado Gregorio López,* 4 vols. (Salamanca: Andrea de Portonaris, 1555; facsimile Madrid: Boletín Oficial del Estado, 1974); *Las Siete Partidas del Rey Don Alfonso el Sabio*, ed. Real Academia de la Historia, 3 vols. (Madrid: Imprenta Real, 1807; reprint Madrid: Atlas, 1972).

[9] Joseph F. O'Callaghan, *Alfonso X, The Justinian of His Age: Law and Justice in Thirteenth-Century Castile* (Ithaca: Cornell University Press, 2019).

[10] *Fuero real* in *Opúsculos legales,* 2:1-169; *Fuero real,* ed. Gonzalo Martínez Díez; José Manuel Ruiz Asencio, and C. Hernández Alonso (Ávila: Fundación Claudio Sánchez Albornoz, 1988).

Leyes del estilo, citing *la setena partida (LEst* 43, 144), was one of the first jurisconsults to identify Alfonso X's *Libro de las leyes* as the *Partidas.* Those references also evinced his belief in the legal authority of the *Partidas*[11].

There are several manuscripts of the *Leyes del estilo* from the fourteenth and fifteenth centuries in El Escorial (Z. II.8; Z. II.14; Z. III.11; Z III.17); the Biblioteca Nacional in Madrid (Ms 5764); and the Biblioteca Universitaria of Valencia (Ms 39). Terrence A. Mannetter published paleographical transcriptions of those manuscripts[12]. However, there is no critical edition. It was edited several times from 1497 through the sixteenth century[13], once in the eighteenth, and again several times in the nineteenth. The editions of the Real Academia de la Historia (1836) [14] and of Marcelo Martínez Alcubilla (1885) are the most accessible and I have used them for my essay[15]. The manuscripts cited bear varying titles usually citing *declaraciones* of the royal court in the time of King Alfonso and his son Sancho and beyond. The title *Leyes del estilo* in general use today derives from the first printed edition entitled *Leyes del estilo o declaración de las leyes del fuero* and published by Leonardus Hutz and Lupus Sanz at Salamanca in 1497[16]. As the text makes no attribution to any king and there is no evidence that any king ever promulgated it as the law of the land it is incorrect to refer to its laws, though it is convenient to do so. Galo Sánchez commented that rather than laws in the strict sense, it is a compilation of judicial sentences, jurisprudence, and juridical literature. Rafael Gibert emphasized the

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[11] Francisco Martínez Marina, *Ensayo histórico-crítico sobre la antigua legislación y principales cuerpos legales de los Reynos de León y Castilla, especialmente sobre el Código de las Siete Partidas de Don Alfonso el Sabio,* in *Obras escogidas de Don Francisco Martínez Marina* in *Biblioteca de Autores Españoles,* 2 vols. (Madrid: Atlas, 1966), 1: 189, 269, n. 861, 282. See also his *Juicio crítico de la Novisima Recopilación* in the same volume. His *Ensayo* in two volumes was published several times, e.g., Madrid: Hijos de don Joaquín Ibarra, 1808; Madrid: D. E. Aguado, 1834; Madrid: Sociedad Literaria y Tipográfica, 1845).

[12] Jerry R. Craddock, *The Legislative Works of Alfonso X, el Sabio. A Critical Bibliography* (London: Grant & Cutler, 1986), 32-33. See the manuscript transcriptions by Terrence A. Mannetter: *Text and Concordance of the Leyes del estilo, Biblioteca Nacional MS. 5764* (Madison: The Hispanic Seminary, 1989); *Text and Concordance of the Leyes del estilo, Escorial MS. Z. III.11* (Madison: The Hispanic Seminary, 1990); *Texts and Concordances of the Leyes del estilo, Escorial MSS. Z. II.8, Z. II.14 and the 1497 and 1500 Salamanca Incunables* (Madison: The Hispanic Seminary, 1993). They may be consulted on the Digital Library in the Hispanic Seminary.

[13] *Leyes del estilo o declaración de las leyes del fuero* (Salamanca: Leonardo Hutz and Lope Sanz, 1497); *Leyes del estilo. E declaraciones sobre las leies del fuero* (Salamanca: Juan Gysser, 1506); *Leyes del estilo. Y declaraciones sobre las leyes del fuero* (Toledo: Juan Valera, 1511); *Las leyes del estilo y declaraciones sobre las leyes del Fuero* (Salamanca: Juan Bautista de Terranova, 1569); Craddock, *The Legislative Works,* 65-67.

[14] *Opúsculos legales del Rey don Alfonso el Sabio,* 2 vols. (Madrid: Imprenta Real 1836), 233-252.

[15] Marcelo Martínez Alcubilla, ed., *Códigos antiguos de España. Colección completa de todos los códigos de España, desde el Fuero Juzgo hasta la Novísima Recopilación,* 2 vols. (Madrid: Administración, 1885), 149-174; *Colección de códigos y leyes de España. Primera sección. Códigos antiguos,* 2 vols. (Madrid: R. Labajos, 1865-1866), 1:293-328.

[16] *Vid.* Carlos Garriga, «La ley del estilo 135: Sobre la construcción de la mayoría de justicia en Castilla», *Initium,* 15, 2010, 375-406, Apéndice I: Sobre el título y la tradición de las leyes del estilo.

efforts of the royal court to impose the criteria of the *Fuero real* on local *fueros* but also to confirm those aspects of municipal law that were not superseded by the *Fuero real*[17]. A few of its *leyes* were incorporated into the *Novísima Recopilación de las Leyes de España* compiled by Juan de la Reguera Valdelomar and published in 1805 at the direction of Carlos IV, and thus acquired the force of law[18].

The *Leyes del estilo* concern the practice of the royal court during the reigns of Alfonso X, Sancho IV (1284-95), and Fernando IV. Alfonso X is explicitly cited several times *(LEst* 1, 30, 54, 107, 114, 144, 166, 184, 192, 198, 231, 252). Fernando III *(LEst* 107) and Sancho IV *(LEst* 141) are mentioned once. There are several references to Fernando IV *(LEst* 4, 31-32) and to his mother María de Molina *(LEst* 4, 39). Texts referring to *el rey y la reyna (LEst* 31-32, 54) obviously relate to both of them. Ley 39 related that she adjudicated pleas while he was engaged in the siege of Algeciras, that is, between August and December 1309. In an undated letter in Ley 4 she commented that he was on the frontier; that might refer to his conquest of Gibraltar in 1309 or the siege of Algeciras in 1309-1310 or the siege of Alcaudete in 1312. As noted below, I believe that letter refers to the siege of Algeciras. On that account, composition of the *Leyes del estilo* was likely completed around 1310, though it is possible that some material was included in the time preceding Fernando IV's death on 7 September 1312. References solely to *el rey* suggest that those laws refer to Alfonso X or Sancho IV. A brief caption summarizes the content of each law. Although some topics are occasionally grouped together, the work, unlike the *Fuero real*, was not organized in books, titles, and laws. However, El Escorial manuscript Z. II.8 was divided into nine titles, each with a certain number of laws, but that scheme was abandoned soon after title IX, which began with ley 64 of the Academy edition. There are seventy titles in Ms 5764 in the Biblioteca Nacional in Madrid. *LEst* 151 of the Academy edition refers to the law beginning *Otrosi el que es emplazado (LEst* 22) found in the title *emplazamientos*; but the Academy text is not divided into titles and does not have a title *emplazamientos.* Nevertheless, it is possible that a manuscript arranged in titles and laws may still be discovered.

In his glosses on the *Fuero real*, Vicente Arias de Balboa, bishop of Plasencia (1403-1414), cited a multitude of Roman and canonical authorities as well as the *Declaramiento* or *Leyes del estilo*[19]. In 1608 Cristóbal de Paz, a jurisconsult of Salamanca, edited the *Leyes del estílo* and published an extended sequential Latin commentary on most of the *leyes*. Marcelo Martinez Alcubilla remarked that there were «grave errors» in this edition[20]. The afore-mentioned Juan

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[17] Galo Sánchez, *Curso de historia del derecho,* 9th edition (Madrid: Reus, 1960), 93-94; Rafael Gibert, *Historia general del derecho español* (Granada: F. Román, 1968), 47.

[18] *Novísima Recopilación de las Leyes de España,* 6 vols. (Madrid: Sancha, 1805).

[19] Joaquín Cerdá Ruiz-Funes, «Las glosas de Arias de Balboa al Fuero Real de Castilla», *AHDE,* 21-22, 1951-1952, 731-1141.

[20] Christophorus de Paz, *Scholia ad leges regias styli* (Madrid: Alfonso Martín, 1608). Salustiano de Dios, *El poder del monarca en la obra de los juristas castellanos (1480-1680)* (Cuenca: Universidad de Castilla La Mancha, 2014), 104-105, commented on Paz's defense of royal power.

de la Reguera Valdelomar took a different approach in 1798 when he paraphrased each of the *leyes* and connected them to the corresponding laws of the *Fuero real.* While he did not attempt the elaborate commentary of Cristóbal de Paz, he did provide a useful topical arrangement of the *Leyes del estilo*[21]. The only substantial study of the *Leyes del estilo* in our time is Carlos Garriga's extensive article, «La ley del estilo 135». The title is deceptive, however, as the author discourses on many aspects of the work as a whole, as I will make clear in the course of my discussion[22].

My goal is much more modest than that of Cristóbal de Paz. Grouping all 252 leyes thematically, I hope to review them and explain how they interpreted or clarified the procedures outlined in the *Fuero real* and the *Siete Partidas*[23]. In doing so, I will also consider a related text entitled the *Libro primero de los juysios de la corte de rey*, taken from a late fourteenth- or fifteenth-century manuscript in the Biblioteca Universitaria de Valencia (Ms 39)[24]. The title suggests that this was intended as part of a larger work. The text concludes by referring to Alfonso X's *Libro de las declaraciones e estilo de la corte* and to ley 6 of Juan II's *Ordenamiento* enacted in the Cortes of Guadalajara in 1390. The *Libro de los juysios de la corte de rey* consists of two books, each divided into titles and laws. Book I has twelve titles and thirty-four laws, while Book II has two titles and twenty-eight laws, or sixty-two laws in all, a mere fraction of the 252 laws of the *Leyes del estílo*. The laws are also arranged in a different order.

The title emphasizing that the *Leyes del estilo* are otherwise known as statements or *declaraciones de las Leyes del fuero* suggests that its primary emphasis was on the *Fuero real*. The brief preamble immediately following makes no mention of an author, but informs us that it concerns plaintiffs (*demandadores*) and defendants (*demandados*) and the issues to be decided according to the custom of the court of the kings of Castile Don Alfonso, Don Sancho, and thereafter. An alternative introduction (Escorial 1) refers to the statement of laws made in the time of King Alfonso in his court that are now to be observed as the style of the royal court. Thus, it would seem that the compilation was begun during the reign of Alfonso X[25].

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[21] Juan De La Reguera Valdelomar, *Extracto de las leyes del Fuero real con las del estilo. Repartidas segun sus materias en los libros y títulos del Fuero á que corresponden. Formado para facilitar su lectura e inteligencia y la memoria de sus disposiciones* (Madrid: Marin 1798), esp. 350-52, for his criteria in presenting the text.

[22] Carlos Garriga, «La ley del estilo 135: Sobre la construcción de la mayoría de justicia en Castilla», *Initium,* 15, 2010, 375-406.

[23] *Las Siete Partidas del Sabio rey Don Alonso el nono, nuevamente glosadas por el Licenciado Gregorio López,* 4 vols. (Salamanca: Andrea de Portonaris, 1555; facsimile Madrid: Boletín Oficial del Estado, 1974); *Las Siete Partidas del Rey Don Alfonso el Sabio,* ed. Real Academia de la Historia, 3 vols. (Madrid: Imprenta Real, 1807; reprint Madrid: Atlas, 1972).

[24] Rafael Calvo Serer, «Libro de los juysios de la corte de rey», *AHDE,* 13, 1936-1941, 284-308.

[25] *Opúsculos legales,* 2:235, n. 1: *Declaracion que se fizo en algunos derechos que se fizo en el tiempo del rey don Alfon en la su corte las cuales agora tienen por estilo en la corte del rey.*

In the following discussion, attention will be directed first to the nature of law and the role of the lawgiver. Next to be considered are: the judicial process from the issuance of a summons to initiate a lawsuit; the functions of judges, litigants, and their advocates and attorneys; the procedures of the court, namely, the testimony of witnesses, the use of the inquest, the judgment, and possible appeal. Then we turn to the substantive legal issues presented to the royal court, namely, marriage, family, and inheritance; the law of property; debtors and creditors; trade and commerce; crime and punishment; and the legal status of the Jews.

II. THE LAWGIVER AND THE LAW

Although the *Leyes del estilo* begins with a discussion of plaintiffs and defendants, it may be best to refer to ley 238, described by Alfonso García Gallo as having a doctrinal character because it elucidates a variety of laws and actions that might override written laws. Five were cited: (1) custom (*consuetudo*), if it is reasonable; (2) an agreement (*postura*) between parties; (3) a royal pardon; (4) a new law intentionally enacted to replace an existing written law; (5) and natural law that is contrary to positive law made by men. Natural law should be observed, but when natural law is not evident, men make laws (*leyes*) *(LEst* 238)[26]. This passage reflects the discussion of the types of law mentioned in the Alfonsine Codes, e.g., *ley*, *derecho*, *fuero*, *postura*, *establecimiento*, and *ordenamiento* (*E* 1,1,7; *SP* 1,1,1-2)[27]. The king emphatically declared that written laws were superior to others because they were certain and not subject to varying interpretation or arbitrary judgments *(SP* 1,2,11).

The question arose, however, whether the courts should follow the king's law or the *fazañas de Castilla*, that is, the written collections of oral judicial sentences based on custom compiled in the twelfth century[28]. Our author asserted that that issue was debated in Alfonso X's presence in Seville, at some undetermined date. Simón Ruiz, lord of los Cameros, and Diego López de Salcedo, two of the leading nobles of his court, responded to his query by arguing that the king's judgment took precedence over a *fazaña* that might be cited in litigation. A *fazaña* was only valid if the king or the lord of Vizcaya confirmed it *(LEst* 198). Diego López de Salcedo was *merino mayor de Castilla* from 1253

[26] *Glosas* 746, cites Lib. 4, cap., 36, of the *Declaramiento de las leyes* or *Libro de las Sentencias*; *Scholia* 651-654; *Extracto* 12.

[27] O'Callaghan, *Alfonso X, The Justinian of His Age* 18-20; García Gallo, *Manual,* 1:155-171, esp. 155-156; José Sánchez-Arcilla Bernal, «La "teoría de la ley" en la obra legislativa de Alfonso X el Sabio», *Alcanate* 6 (2008-2009): 81-123; Daniel Panateri, *El discurso del rey. El discurso jurídico alfonsí y sus implicancias políticas* (Madrid: Universidad Carlos III de Madrid, 2017), 94-158.

[28] Alfonso García Gallo, «Una colección de fazañas castellanas del siglo xii», *AHDE,* 11, 1934, 522-531; Amalio Marichalar and Cayetano Manrique, *Historia de la legislación y recitaciones del derecho civil de España,* 9 vols. (Madrid: Imprenta Nacional 1861-72), 2:260-311.

to 1256[29]. Simón Ruiz had the misfortune of incurring the king's wrath and was executed in 1277. The lord of Vizcaya was Diego López de Haro, who was mentioned as the royal *adelantado* in several *fazañas* cited in the *Libro de los fueros de Castiella*. His relationship with the king was strained, however, and he rebelled and died in 1254[30]. The assertion that a *fazaña* would be valid if he confirmed it dates this rule between 1252 and his death in 1254. More than likely this discussion took place in 1252 or 1253 when the king was in residence at Seville. This passage also suggests that the king personally consulted the magnates when work on the *Libro de las Leyes* and the *Fuero real* was in progress.

In the *Espéculo* (1,1,13) Alfonso X emphasized that if counts, judges, and *adelantados*, who were of lesser rank than kings, had pronounced judgment in the past by issuing *fazañas*, he, as king, ruling by the grace of God, could enact laws because he had no superior in temporal matters. The king ultimately resolved the discussion cited in the *Leyes del estilo* by declaring that «no judgment based on *fazañas* given by another is valid, unless that *fazaña* was taken from a judgment by the king. Then one can rightly judge according to it, because the decision of the king has force and ought to be valid as law in that case in which it was given and in other similar ones» *(SP* 3,22,14). That statement explicitly omitted any reference to a *fazaña* declared by an *adelantado.*

III. **THE COURTS AND JURISDICTION**

The king, of course, was the primary lawgiver and was also responsible for the administration of justice, From time to time our text cites an action taken by the king *de su oficio* - «by reason of his office» *(LEst* 55). That expression was intended to distinguish the private person of the king from his public person occupying the office charged with the duty to see that justice was done[31]. While he might sit in judgment, he relied usually on a coterie of judges in his court, as well as territorial judges or *adelantados mayores*, and municipal judges, In order to assure uniformity he appointed all of them (including scribes who recorded legal proceedings) and required them to adjudicate according to the law stated in the *Siete Partidas* and in the *Fuero real*.

The *Leyes del estilo* used the terms *corte del rey* or *casa del rey* interchangeably to describe the royal court, though *casa del rey* appears more frequently. The chancery, where notaries and scribes recorded, sealed and registered royal documents was the heart of the royal court. The *Espéculo* (4,12-13) and the

[29] *Scholia* 559; *Extracto* 48; Rogelio Pérez Bustamante, *El gobierno y la administración territorial de Castilla (1230-1474),* 2 vols. (Madrid: Universidad Autónoma, 1976) 1:342.

[30] Galo Sánchez. *Libro de los fueros de Castiella* (Barcelona, 1924; reprint Barcelona: El Albir, 1981); Joseph F. O'Callaghan, *The Learned King: Alfonso X of Castile.* Philadelphia: University of Pennsylvania Press, 1993), 73-78.

[31] Ernst Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 1957); *Scholia* 287-293; *Extracto* 320.

Siete Partidas (3,18-19) described its organization in great detail but the *Fuero real* did not because it was not a municipal department[32]. Even when the king went on his travels, leaving his chancery behind, it continued to function in his name, so that whatever was done wherever the chancery was (for example, contracts) was valid just as if he were present. That was also true for judgments handed down by his *alcaldes (LEst* 197)[33]. Oftentimes when a new king ascended the throne, individuals and institutions asked him to confirm privileges and charters issued by his predecessors. Fees charged for the issuance of those documents were an important source of revenue, but when the king confirmed several privileges for one supplicant at one time, only one chancery fee would be required *(LEst* 232)[34]. A charter bearing the sign of a public scribe but written by someone else was, nevertheless, valid, unless the *fuero*, privilege, or custom of the locality required that the public scribe not only sign the document but write it as well *(LEst* 189)[35].

The *corte del rey* was also the principal court of the land responsible for the administration of justice[36]. Aside from the monarch, the personnel ordinarily mentioned in judicial proceedings included the *alcaldes del rey* who adjudicated cases; royal scribes who recorded the proceedings; *porteros* who delivered summonses, usually orally; the *alguacíl del rey (LEst* 34) or *justicia* who maintained order in the court and enforced judgments; the plaintiffs and defendants and their *personeros* and advocates; and witnesses. An *oydor de las alzadas* or auditor of appeals is mentioned, but whether that was his sole function is uncertain *(LEst* 22; *LJ* 2,2,11). A royal scribe, consulting the king's *alguacil* in the *casa del rey*, had to record the names of sureties of prisoners being held for trial *(LEst* 94). The court calendar was attuned to Christian feast days, fair days, and the harvest *(E* 5,6,1-8; *FR* 2,5,1). Our author added that the *alcaldes* of the royal court would not hear pleas on the feasts of the apostles, nor from Holy Thursday until the Thursday following Easter. They also observed a holiday from three days after the Nativity and also at Pentecost *(LEst* 209-210)[37].

The law accepted the idea of judges delegate, who were temporarily authorized to hear specific cases. When appointing a judge delegate, the king ought to prescribe the extent of his jurisdiction. Ordinary judges could only designate judges delegate if they were personally unable to resolve the case *(E* 4,2,4; *SP* 3,4,19-22)[38]. Thus, when a judge delegated another judge to hear all the pleas in a town, his jurisdiction was restricted to that of the judge who appointed him.

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[32] O'Callaghan, *Alfonso X, The Justinian of His Age,* 51-53; Marina Kleine, *La cancillería real de Alfonso X: actores y prácticas en la producción documental* (Seville: Universidad de Sevilla, 2015).

[33] *Scholia* 559*; Extracto* 47.

[34] *Scholia* 633*; Extracto* 108.

[35] *Glosas*. 768, quoting CXCIII; *Scholia* 595*; Extracto* 21.

[36] O'Callaghan, *Alfonso X, The Justinian of His Age,* 99-136.

[37] *Glosas,* 836, citing CCXI-CCXII; *Scholia* 122-128, 173, 454, 623; *Extracto* 21, 71, 79; *FD* 1,1,1-5 (judges).1.9,1-4 (calendar).

[38] Aquilino Iglesia Ferreirós, «La labor legislativa de Alfonso X el Sabio», in Antonio Pérez Martín, *España y Europa. Un pasado jurídico común. Actos del I Simposio internacional del Instituto de Derecho común* (Murcia: Instituto de Derecho Común, 1986), 275-599, esp. 328-330.

For example, he could not impose the death penalty, but he could charge a malefactor who failed to appear in court at the appointed time *(LEst* 129; *LJ* 2,1,4; *FR* 1,7,4). Litigants might also agree to submit their dispute to arbitration by a *juez de avenencia*, who ought to render his decision within three years if no time limit was established *(SP* 3,4,23-35). While confirming the three year limitation, our author stated that if the parties were agreeable the arbiter could go beyond that time *(LEst* 233; *LJ* 2,1,5). If there was more than one judge delegate or arbiter, all were required to be present when they rendered their judgment, unless the parties accepted an alternative arrangement *(LEst* 218; *LJ* 2,1,3)[39].

The king reserved certain pleas or *casos de corte* for adjudication by the royal court. Among them were: destruction of highways; breach of a truce; a noble challenge *(riepto)* resulting in certain death; rape; public theft; outlawry; falsification of the royal seal or coinage; the debasement of gold, silver and other metals; treason against the king or the kingdom; a lawsuit against a powerful individual on behalf of a minor, or a poor or wretched person, who could not obtain justice otherwise *(SP* 3,3,5; *E* 4,2,12)[40]. Our author quoted Alfonso X's Ordinance of Zamora in July 1274 (art. 46) specifying the following *casos de corte*: certain death *(muerte segura);* rape *(muger forzada)* violation of a truce *(tregua quebrantada)* or of security *(salvo quebrantado);* arson *(casa quemada);* destruction of a highway *(camino quebrantado),* treason *(traición),* and the defiance of one noble by another *(aleve and riepto)*[41]. According to our author, the judges of the royal court could hear all of these cases except *riepto*; that should be presented to the king in person. Ordinarily, local *alcaldes* would adjudicate lawsuits according to the local *fuero*, but if either of the litigants, before the issue was joined *(litis contestatio)* in the local court, announced that he wished to present his case to the king, then the king should hear it. However, the king could direct the local *alcaldes* to decide it according to the local *fuero*. Although some local *fueros* imposed fines rather than the penalties of death, dismemberment, or exile, which usually pertained to the king, he ought to refer those cases to the local courts. On the other hand, a case of *camino quebrantado* carrying a monetary penalty should be heard by the royal court. Cases involving widows, orphans, and the incapacitated should also be resolved there *(LEst* 91)[42].

A royal visit to a town might cause confusion concerning the law to be applied when the king or queen held court there. On that account our author distinguished the jurisdiction of the municipal courts from that of the royal court. Thus, he affirmed that when the king or the queen (evidently referring to Fernando IV and his mother María de Molina) wished to hear lawful pleas *(ple-*

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[39] *Glosas,* 880, quoting CCXXI; *Scholia* 493-94, 630-631, 643-644; *Extracto* 126, 15l; *DO* (1,3,1-4, delegados; 1,4,1-7 abenidores); O'Callaghan, *Alfonso X, The Justinian of His Age,* 110-111, 133-135.

[40] O'Callaghan, *Alfonso X, The Justinian of His Age,* 102.

[41] For the text of the *Ordenamiento de Zamora* see *Cortes de los antiguos reinos de Castilla y León,* 5 vols. (Madrid: M. Rivadeneyra, 1861-1903), 1:87-94; Joseph F. O'Callaghan, «On the Ordenamiento de Zamora, 1274», *HID,* 44, 2017, 297-312.

[42] *Glosas,* 822-823, quoting XCV; See Carlos Garriga, «La *Ley* del estilo 135», 381-397; *Scholia* 446-449; *Extracto* 44-45.

ytos foreros) in a town, they ought to issue summonses and render judgment in accordance with the local *fuero*. The process should not be distorted by the introduction of other laws. Upon the departure of the king or queen, he or she should direct the *alcaldes foreros* or validly appointed municipal judges to settle any outstanding pleas according the local *fuero.* However, when adjudicating their own pleas, that is, cases that should properly be heard in the royal court, the king and queen ought to follow the laws, usages, and custom of that court *(LEst* 125)[43]. Similarly, when a man was killed while the king was visiting a royal town, he could order a *pesquisa* to identify the killer. If it was determined that the killer acted with the consent of other men, one of whom was a royal official, the official had to answer in the king's court; but the others would be required to appear before the judge of their judicial district *(LEst* 9; *LJ* 2,1,7)[44].

Most judicial business was resolved in the municipal courts. A municipality ordinarily consisted of a town or city and a more or less extensivc district that included a number of dependent villages. An elected *concejo* or council managed the town's affairs. As the supreme lawgiver, Alfonso X claimed the right to grant the *Fuero real* to the towns and to require its use in the municipal courts, to the exclusion of all other laws, and to amend it if necessary. As assurance that the *Fuero real* would be applied in the courts he also reserved the right to appoint municipal judges and scribes[45]. Our author offered the following example to illustrate the king's power in this regard. If a municipal *concejo* appointed certain persons to ordain *(que ordenen)* certain matters and other citizens were aggrieved by their *ordenanzas* (ordinances) and complained to the king, he should summon the *ordenadores* (ordainers), so that he could determine whether they performed their services well or not *(LEst* 8)[46]. This text acknowledges the right of a municipal council to undertake the legislative task of drafting ordinances regulating some aspect of the community's life, for example, concerning the town market, the obligations of the town militia, repairing the town walls, or many other actions. The use of the verb *ordenar* and the nouns *ordenadores*, and *ordenanzas* makes it clear that this was the business of *statuta condenda* - «enacting statutes», as Cristóbal de Paz described it. Some persons protested the outcome, perhaps because they were not asked to participate in the work, or because they were dissatisfied with what was done. In any case the king asserted his authority to confirm or reject the ordinances drawn up by the ordainers.

From time to time, litigants were unhappy with the decisions handed down by municipal judges and protested to the king. For example, if someone complained to the king that a municipal judge failed to execute a royal charter, and forbade the local scribe to record it, both should be summoned to the royal court. Similarly if the judge refused to admit exceptions or a surety presented

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[43] *Glosas,* 812, quoting CXXVIII; Martínez Marina, *Ensayo,* 267; *Scholia* 487-88; *Extracto* 46.

[44] *Glosas,* 823; *Scholia* 85-87; *Extracto* 40.

[45] O'Callaghan, *Alfonso X, The Justinian of His Age,* 8-13.

[46] *Scholia* 80-84; *Extracto* 66.

by a litigant, or if, by virtue of his office, he ordered the seizure of something belonging to the litigant, the king should instruct him to settle these matters. Should he fail to do so, he would be summoned to the royal court. If the judge, not in virtue of his office, seized someone's property or if the litigant complained of some aspect of the judge's definitive judgment, he should be summoned to appear before the king. Even after the judge left his office he could be held accountable for his decisions. A complaint concerning a criminal case involving the death penalty *(por fecho de justicia de muerte)* had to be settled either in the royal court or by a good man who was a native of the locality where the crime was committed. Judges serving in the same town as the retired judge should resolve non-criminal complaints within thirty days *(LEst* 135)[47]. In his lengthy commentary on this law, Carlos Garriga commented that a municipal judge, like the king, held a public office giving him jurisdiction over certain issues in a specific area. He also pointed to the tension between royal and municipal jurisdiction; the responsibility of the judge for his actions taken in virtue of his office, as well as his extra judicial acts; and his accountability even after leaving office[48]. When a judge, in his official capacity, had to seize someone's property as a pledge or for some other reason, he should enter the house accompanied by good men from the neighborhood and a scribe who would record the process. When that was done, the good men should hand over to the judge whatever property he was permitted to seize, but they should take possession of the rest, so that the owner would not lose his right to it. If the judge took the property as his own, he should be charged with robbery as if he were a stranger breaking into the house *(LEst* 147)[49].

When the king appointed a municipal judge, someone, in accordance with the *Fuero real* (1,7,10) might raise a suspicion concerning him, even to the point of saying that he was an enemy of the municipality. If the accuser could prove that charge, the king ought not to make the appointment. Should a suspicion be raised when the judge was hearing a case, he should be excused so that the suspicion could be verified; meantime, other judges who were above suspicion should adjudicate the plea. In explaining this, our author commented that a lord, because of some suspicion, could dismiss a judge and all the members of his household, his family and his servants, and other familiars. However, a person could not reject his relatives (*parientes*) because he did not have authority over them as a lord did over his men *(LEst* 191)[50]. The integrity of the judge also required the king, with the knowledge and consent of the parties, to designate someone to hear a plea of *riepto* so that the judge would be above suspicion *(LEst* 228)[51].

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[47] *Glosas,* 825, quoting CXXXVII and CXXXIX.

[48] See the discussion by Carlos Garriga, «La *Ley del estilo* 135», 321-371, and his transcription of this law, 399-401. Apéndice II; Martínez Marina, *Juicio,* 388.

[49] *Glosas,* 757, quoting CVI; *Scholia* 497-498, 508-510; *Extracto* 17, 74-75.

[50] *Glosas,* 759, quoting CXCV.

[51] *Scholia* 556, 639; *Extracto* 19.

Our author cited several minor issues that were probably presented to the royal court for resolution. For example, should a traveler's property be damaged while he was crossing a bridge in need of repair, the local community would not be responsible *(LEst* 227); apparently that was not considered an instance of *camino quebrantado*, i.e., breach of the peace of the highway[52]. Moreover, the obligations of the villages dependent on the town were cited in a ruling that required them to contribute to the expense incurred when the town council invited a magnate (*rico-ome*) or other lord to a banquet, even though they had not participated in the invitation. On the other hand, if a few councilors issued the invitation they alone had to pay the bill *(LEst* 226)[53].

Alfonso X created a special jurisdiction to regulate the affairs of the Mesta, a guild organized by the sheepowners between 1230 and 1265, to uphold their interests[54]. The pasturage of sheep was a significant aspect of the economy. However, as the frontiers were pushed steadily southward, the annual migration of sheep from winter to summer pastures provoked frequent conflicts with the municipal districts through which they passed. Our author pointed out that the sheepmen had royal privileges protecting their flocks against robbers or otherwise interfering with them, but complaints should not be presented directly to the king. Rather the *alcaldes de los pastores* appointed by him, together with one of the local *alcaldes*, should hear the case according to the *ordenamientos de los reyes (LEst* 137)[55]. The *ordenamientos* cited probably included the following royal charters. For example, in 1267 at Badajoz, Alfonso X named two officials, later called *alcaldes entregadores*, in each of five districts to resolve disputes concerning the sheepmen. In four privileges issued in 1273, he reminded his *entregadores* to attend three annual *mestas*, to punish wrongdoers, and to protect the shepherds and their flocks[56]. Responding to complaints in 1278, he ordered his *entregadores* to open blocked sheepwalks and enclosed pastures, levy appropriate fines, punish murderers and robbers, and hear all suits involving shepherds[57]. His successors, Sancho IV and Fernando IV, took similar steps to uphold the jurisdiction of the *entregadores*. For example, in 1284 Sancho IV confirmed his father's privilege of 1278 and Fernando IV did

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[52] *Scholia* 639; *Extracto* 253.

[53] *Scholia* 638; *Extracto* 231.

[54] Julius Klein, *The Mesta: A Study in Spanish Economic History, 1273-1836* (Cambridge: Harvard University Press, 1920).

[55] *Scholia* 499-500; *Extracto* 47.

[56] Manuel González Jiménez, *Diplomatario Andaluz de Alfonso X* (Seville: El Monte. Caja de Huelva y Sevilla, 1991), 420-424, no. 398 (3 October 1272); Ángel Barrios García and Alberto Martin Expósito, *Documentación medieval de los Archivos municipales de Béjar y Candelario* (Salamanca: Universidad de Salamanca, 1986), 34-39, nos. 8-11; Julius KLEIN,. «Los privilegios de la Mesta de 1273 y 1276», *BRAH* 64 (1914): 202-219, esp. 205-217 (2 September 1273); O'Callaghan, *Alfonso X, The Justinian of His Age,* 206-208.

[57] Barrios García, *Béjar,* 39-41, nos. 12-13; *MHE* 1:333-335, no. 148 (22 September 1278); Antonio Floriano, *Documentación histórica del Archivo municipal de Cáceres (1229-1471)* (Cáceres: Diputación provincial 1987), 21-22, nos. 9 (15 February 1279), 10 (22 December 1280).

so in 1295[58]. Fernando IV, on appointing an *alcalde entregador* for Cuenca in 1300, directed him to be guided by the privileges of his grandfather Alfonso X and his father Sancho IV and the latter's *ordenamiento*. He also emphasized that only the king could hear an appeal from a sentence of the *entregador*[59]. In entrusting the *alcaldes entregadores* with a special jurisdiction, Alfonso X acknowledged the importance of the transhumance of sheep and its impact upon local communities. In addition, by insisting that these matters should not be presented to him, he intended to alleviate the burden on the royal court. The requirement that the *alcaldes de los pastores* should act in conjunction with a local *alcalde* suggests that the latter, as a representative of the local community, might provide a more balanced judgment than one issued by the *entregadores* alone.

Although Castilian society was predominantly Christian, there was a substantial population of Jews and Muslims, who enjoyed their own jurisdiction[60]. As privileged minorities they were permitted to live according to their own private law, administered by their own judges. The legal status of the Jews was set down in the *Fuero* real (4,2,1-7) and in the *Partidas* (7,24,1-11). The *Partidas* (7,25,1-10) also considered the Muslims, but, unlike the Jews, they scarcely figure in the *Leyes del estilo*[61].

Adhering to those legal codes, our author asserted that the *adelantados* and rabbis of the Jews should adjudicate both civil and criminal cases according to their law. That included all pleas, contracts, witnesses, charters, and other documents produced in litigation among the Jews. Even if the king ordered the seizure of the goods of a Jew who owed a debt or was subject to a fine and the matter was settled by rabbis or Christian judges, Jewish law had to be followed. A Jew could appeal the decision of an *adelantado* to the rabbi and then to the king. If the king determined that a criminal case involving two Jews should be heard by the judges of his court, they should summon the *adelantados* and the rabbis to explain Jewish law and the penalty to be imposed on a Jew convicted of a crime. By virtue of his office the king should ascertain the truth in criminal cases, just as he would in cases involving Christians, that is, through proofs presented, *pesquisas*, questions, admissions, presumption, or torture *(LEst* 87-90)[62].

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[58] José Rodríguez Molina, «La mesta de Jaén y sus conflictos con los agricultores», *Cuadernos de Estudios Medievales* 1 (1973): 67-82, esp. 77-79 (13 January 1284).

[59] Antonio Benavides, *Memorias de D. Fernando IV de Castilla,* 2 vols. (Madrid: J. Rodríguez, 1860), 2:222-224, no. 164 (13 September 1300).

[60] O'Callaghan, *Alfonso X, The Justinian of His Age,* 227-243.

[61] The following works provide an overview but do not refer to the *Leyes del estilo*. Ezequiel Borgognoni, «Los judíos en la legislación castellana medieval. Notas para su estudio (siglos x-xiii)», *Estudios de Historia de España,* 14, 2012, 53-68; Enrique Cantera Montenegro, «Cristianos y judíos en la meseta norte castellana: la fractura del siglo xiii», in Ricardo Izquierdo Benito and Yolanda Moreno Koch, *Del Pasado Judío en los reinos medievales hispánicos: afinidad y distanciamiento* (Cuenca: Ediciones de la Universidad de Castilla-La Mancha, 2005); Yitzhak Baer, *A History of the Jews in Christian Spain,* 2 vols. (Philadelphia: Jewish Publication Society, 1966), 1:212-15; Larry Simon, «Jews in the Legal Corpus of Alfonso El Sabio», *Comitatus,* 18, 1987, 80-97.

[62] *Glosas,* 770, quoting XCIIII, and 1153-1154, quoting XC, XCI, CII, CIII; Martínez Marina, *Ensayo,* 115, n, 331; *Scholia* 445; *Extracto* 241-243.

Our author noted that the *fuero de cibdat*, that is, the *fuero* of Burgos, prohibited a Jew to serve as *personero* in his own case or that of another; however, if the Jew represented himself whatever was decided would be valid, but not if he represented someone else *(LEst* 217). Among the various royal charters given to Burgos I have not discovered a law specifically prohibiting a Jew to serve as a *personero.* The caption of this law uses the word *personero*, but the text says *tiene la voz el judio*, a phrase meaning that the Jew was a spokesman for his client. This seems to blend the functions of the *vocero* or advocate who argued the case and the *personero* or procurator who represented the person of the client in court and was endowed with authority to make decisions in his name. The *Fuero real* (1,9,4) did prohibit a heretic, a Jew, or a Moor from acting as a *vozero* for a Christian in a suit against another Christian, and that law was repeated in the *Fuero real* given to Burgos by Alfonso X[63]. Among other royal privileges granted to the Jews, an aggrieved party was not permitted to appeal to the king a decision concerning a debt. However, a copy of the judgment and the supporting materials could be sent to the king who could decide what action to take. However, if the judge ruled on some issue other than the debt, one could appeal to the king *(LEst* 153)[64].

The comments in the *Leyes el estilo* concerning assault and homicide illustrate the fraught relations between Jews and Christians. For example, if a Jew wounded a Christian, the victim could not demand that his assailant suffer the penalty prescribed in the privilege accorded to the Jews. Such penalties were applied only to the persons to whom the privilege was granted, unless the king declared otherwise. Consequently, a Christian could not invoke a privilege given to Jews. If a *fuero* was silent on the matter, the common law *(derecho comunal)* should be applied. That being so, *quanto es mejor el cristiano que el judío* - «insomuch as a Christian is better than a Jew», the Jew should receive a heavier penalty. Conversely, if a Christian killed a Jew or a Moor, he should be punished according to their privileges; but if there were none, he should be executed or exiled as the king determined. According to law, a Christian who killed a Moor or a Jew should not receive a greater punishment than a Moor who killed a Christian *(LEst* 83-84)[65]. Although these laws generally uphold the jurisdiction of Jewish magistrates, they also emphatically affirm the inferior status of Jews and Muslims in a professedly Christian society.

IV. **LITIGANTS AND LAWYERS**

A plea ordinarily began when a plaintiff (*demandador*) presented his demand and the defendant *(demandado)* gave his response. Each party could be represented by a procurator or *personero* entrusted with a *carta de personería*

[63] *Vid.* the *Fuero de Burgos,* Philadelphia Free Library, Lewis E.-245, transcribed by Ivy A. Corfis, available online in the Digital Library of the Hispanic Seminary of Medieval Studies.

[64] *Glosas,* 892, quoting CLVII; *Scholia* 517, 629; *Extracto* 242-243.

[65] *Glosas,* 1058-1060, quoting LXXXVII; *Scholia* 439-441; *Extracto* 263-264.

or power of attorney authorizing him to act in his principal's name. Each litigant could also employ an *abogado* or advocate to argue his case.

In addition to the brief notice above, the *Fuero real* (1,10,1-19), the *Espéculo* (4,8,1-19) and the *Partidas* (3,5,1-27) explained in some detail the qualifications of *personeros*[66].

The *Leyes del estilo* added further elaboration. For example, no official of the *corte del rey* nor anyone living there could function as a *personero (LEst* 17)[67]. That prohibition was likely intended to avoid the possibility that the appearance of a prominent figure associated with the king would intimidate other parties to the case. Furthermore, inasmuch as a royal official was expected to devote his time to the king's service, his representation of someone else in a court case could be construed not only as a diversion from his primary responsibility, but also as a conflict of interest.

The role of a *personero* once a case was presented in court was also regulated. He had to present his credentials or *carta de personería* to the judge before the trial could begin. Nevertheless, a *personero* named in court in the absence of the opposing party would be permitted to act on behalf of his principal *(LEst* 12)[68]. A non-resident of the community, who did not appoint a surety to guarantee his appearance and his acceptance of the court's jurisdiction, could not name a *personero*, but had to appear in person *(LEst* 11)[69]. A defendant could not replace his *personero* until the *litis contestatio*; at that point his original *personero* would respond to the plaintiff's accusation, and, in doing so, would become, in our author's words, *señor del pleyto* or «lord of the plea». In effect, the defendant acknowledged that he was the object of the plaintiff's complaint. After that was done he could appoint a substitute *personero* if he wished *(LEst* 10)[70]. Whatever a *personero* argued on behalf of his principal prior to presenting his *carta de personería* would be accepted once he offered it, unless it had been revoked *(LEst* 16)[71]. A *personero* whose principal left the court without the judge's permission had to pay the fines imposed by the judge for rebellious conduct before he could represent him further *(LEst* 14)[72]. The *personero's* role in appealing a judge's decision will be discussed below.

Whereas the task of physically representing a litigant in court fell to the *personero*, the responsibility of arguing his case rested with the *vocero* or *abogado*, that is, an advocate. A *mester de los voceros* or guild of advocates provided professional services to litigants. Again, the *Fuero real* (1,9,1-5), the *Espéculo* (4,9,1-9) and the *Partidas* (3,6,1-15) described the functions and obligations of advocates[73]. Our author insisted that every litigant should have an advocate who was entitled to a salary. If one party hired all the advocates in the

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66 O'Callaghan, *Alfonso X, The Justinian of His Age,* 111-113.
67 *Scholia* 110-114; *Extracto* 32.
68 *Glosas,* 772, citing Lib. I, tit. 12, and 773, quoting XII and citing I, VI-VIII.
69 *Glosas,* 773, quoting IX.
70 *Glosas,* 775, citing Lib. 1, cap. X, and 777, quoting X.
71 *Glosas,* 774, quoting XVI.
72 *Scholia* 88-99, 102-104,106-109; *Extracto* 16, 27-28, 31, 33: *FD* 1,3.-10: *DO* 2,1-10.
73 O'Callaghan, *Alfonso X, The Justinian of His Age,* 113-116.

community, the judge should require him to limit his choice so his opponent could choose his own advocate from the others. However, the judge could exclude from the pool of choices any of the first litigant's relatives up to the fifth degree or his potential heirs or good friends. The excused advocate had to swear that he would not act out of malice *(LEst* 19). The court obviously recognized that if one litigant monopolized the legal profession, thereby depriving his adversary of the ability to secure an advocate's counsel, a fair trial was impossible. Although an advocate and his principal might agree on his compensation, the advocate's salary would be limited to no more than 100 *maravedís de la moneda buena.* That amount was set in both the *Partidas* (3,6,14) and the Ordinance of Zamora of 1274 (art. 14). *La moneda buena* is probably a scribal error for *la moneda nueva*, the last coinage issued by Alfonso X around 1277[74]. Moreover, even though a plea might be weighty and involve many parts recorded in the *libellum* or written text presented to the court, it would all be counted as one plea so that the advocate would be allowed only one salary for the whole[75]. If they wished, the judges could estimate anything over and above that *(LEst* 18). The importance of assuring justice to everyone prompted the requirement that an advocate, rather than cause the imprisonment of a poor client unable to pay his salary, should offer his services for the love of God. That anticipated the modern practice of *pro bono* work by members of the legal profession *(LEst* 20)[76].

V. **THE SUMMONS TO COURT**

The litigants and their representatives addressed the issues in dispute after responding to the summons to court[77]. The laws regulating the summons were set forth in the *Fuero real* (2,3,1-8), the *Espéculo* (5,1,1-13) and the *Partidas* (3,7,1-17)[78]. Following that lead, the *Leyes del estilo* devoted extensive attention to the summons. Among the topics considered were the issuance of the summons; the persons and entities that might be summoned; the time allowed to attend to it; the penalty for failure to appear; and the payment of the expenses of the litigant who did appear.

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[74] O'Callaghan, *Alfonso X, The Justinian of His Age,* 203-205; James Todesca, «The Monetary History of Castile-León (ca. 1100-1300) in Light of the Bourgey Hoard», *American Numismatic Society Museum Notes,* 33, 1988, 129-203.

[75] In 1280, for example, the king ordered Burgos to pay Pedro Antolínez, *vocero de la ciudad,* his salary for four years at the annual rate of 100 *maravedís*; Emiliano González Díez, *Colección diplomática del concejo de Burgos (884-1369)* (Burgos: Ayuntamiento de Burgos, 1984), 102-103, no. 102. *FD* 1,2,3 said the fee was a twentieth of the amount demanded, *seguendo que manda uestra ley.* That must refer to the *Espéculo* (4,9,8-9) and the *Fuero real* (1,9,1,5) which set the fee at a twentieth. That seems to indicate that Jacobo was writing prior to the completion of the *Partidas* in 1265.

[76] *Glosas,* 766-767, quoting XVIII, XIX, XXl, and 769, Lib. III, cap. XVIII, XXI (recte XIX), XX; *Scholia* 114-122; *Extracto* 25-26: *FD* 1,2,1-4: *DO* 2,2,1-3.

[77] *FD* 1,4,1-4, and 1,9,1; *DO* 2,3,1-6. *Vid.* James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), 129-134, for comparison with the procedure in ecclesiastical courts.

[78] O'Callaghan, *Alfonso X, The Justinian of His Age,* 119-120.

The king might issue a summons by means of a charter and an *alcalde* might do so as well. A royal *portero* or herald might deliver a written summons or convey it orally. Whereas a sealed royal charter could not be ignored, our author thought it necessary to state that the summons issued by a judge alone or by a *portero* should be believed *(LEst* 21; *LJ* 2,2,3). Even if the one summoned happened to be in the *casa del rey*, whether he was an official or not, he was not required to respond until he was summoned at home. However, if he had entered a contract in the royal court, or was there without being commanded by the king, or had come to pursue a legal matter, his case might be resolved there *(LEst* 35)[79].

A person summoned to appear in the *casa del rey* on a certain day was given nine days to do so. On the three days following that (whether a Sunday or another day), the royal herald (*pregonero del rey*) should summon him to begin the suit with his adversary. Anyone living beyond the Puerto (*allende el puerto* - El Puerto del Muradal, the entrance to Andalucía) was allowed fifteen days; conversely, if the king was *allende el puerto*, the one summoned was given fifteen days to appear *(LEst* 22)[80]. Emphasizing that this was the usage of the royal court, another law added that if the one summoned resided beyond that point, the judge could allow him additional time. If the king happened to be nearby, however, the judge could shorten the time. The usual time allowed was nine days *(LEst* 36). These rules applied whether the issue was an appeal, or a royal order to a municipal judge to hear witnesses or to do something else pertinent to the case. Once that was done the parties were cited to appear before the king on a certain date. The party who failed to appear on that day had to pay his opponent's expenses for nine days, unless he had a legitimate excuse for his absence. If the case concerned an appeal from the decision of a municipal judge, the term of nine days and the citation by the herald on the following three days would still be observed even though the king was in the locality. Should the parties agree to appear before the expiration of the nine-day term, the king, who might have other business to attend to, had to give his consent. If anyone appealed from the judgment rendered in the *casa del rey*, he had to appear before the king or the *oydor de las alzadas* or auditor of appeals and the ordinary term of nine days and the three-day summons would not be observed. Nor would it be if a *merino* or sureties were obligated to come to court on a fixed date *(LEst* 22; *LJ* 2,1,11)[81].

Among those who might be summoned were royal tax collectors who were required to render accounts on a certain day under penalty of 100 *maravedís;* but the nine-day term and the citation on the three-day summons would not be required, unless the king commanded it *(LEst* 24; *LJ* 2,2,12). Our author explained that, as the law often specified a fine of a gold *maravedí*, King Alfonso weighed the gold *maravedí* then circulating and determined that it equaled six of his *maravedí*s. However, it is not clear when that occurred and which of his

[79] *Scholia* 121-122, 175-189; *Extracto* 67, 80-81.
[80] *Glosas,* 821-822, quoting XXIII.
[81] *Scholia* 122-128, 189-190; *Extracto* 67, 71.

three coinages (issued around 1264, 1269, and1278) was meant *(LEst* 114)[82]. When summoned, a municipal council had to send its *personeros* to appear before the king and his *alcaldes*; but if a village council was summoned, the issue should be presented to the *alcaldes* of the town that had jurisdiction over the village *(LEst* 37). Should anyone in the king's service be killed or wounded, an inquest should be held and the accused tried in the royal court. If the accused was not at hand he should be summoned according to the terms set forth in the *Fuero de las leyes* (2,3,4). He was given nine days to appear; if he did not he was allowed two additional terms of nine days. The three nine-day periods totaled 27 days; added to that were nine days for the citation proclaimed over three days during each term. Until those 36 days elapsed the judge should not condemn the accused *(LEst* 119; *LJ* 2,2,10)[83].

Several laws concerned summonses involving royal officials. For example, if an official, summoned by a judge of the *casa del rey* to appear in person before the king, sent a *personero* instead, the *personero* would be accepted and the fine for not responding to the summons would not be imposed. As the summons was *desaforada* or contrary to the law, the king, or the judge, or the scribe who drew it up would have to pay the expenses of the one summoned. Our author pointed out that a judgment had been rendered in the *casa del rey* against Alfonso X because he had summoned 180 men and more from Oviedo to give testimony in a *pesquisa* at his court concerning a *pleyto forero* or valid plea that should have been heard in Oviedo. Judgment in the amount of 73,000 *maravedís* was given against the king, who ordered the money to be paid *(LEst* 30)[84]. Although the king in 1254 prohibited the *merino mayor* of León to execute a *pesquisa* in Oviedo without his approval, he said nothing about summoning witnesses[85]. There seems to be no extant documentation relative to the case cited in the *Leyes del estilo*, but it is evident that there was opposition to the king's use of the inquest. In this instance, he was summoning 180 men to his court, wherever that might be, and whatever the expense might be, rather than allowing their testimony to be taken locally.

An official serving the king or queen (Fernando IV and María de Molina) who was assaulted could ask that the king summon his assailant to defend himself in the *casa del rey.* However, if the accused insulted the official somewhere other than the royal court, he should not be summoned there, but rather to the place where the offense occurred, and he should be tried according to the local *fuero.* The same rule applied if an official, who daily attended upon the king or queen, entered an agreement or contracted to pay a debt in the *casa del rey.* Any dispute over that matter would be heard in the royal court. If the agreement was made elsewhere, however, it would be resolved under the terms of the local *fuero*. On the other hand, offenses involving men accompanying royal officials would not be tried in the royal court, but in their local communities. Persons

[82] Scholia 447-480; Extracto 262.
[83] Glosas, 1132, quoting CXXII; Scholia 130. 190-192, 483; Extracto 59-60, 67, 72.
[84] *Scholia* 155-164; *Extracto* 69-70.
[85] *MHE* 1:22, no. 12 (17 March 1254).

who employed the services of scribes, advocates, and other officials could be summoned to the royal court if they failed to pay what they owed. A delinquent's surety could not be summoned there, unless he was the surety of a municipal council. In addition, anyone who violated a royal charter that provided for a specific monetary penalty could be summoned to the *casa del rey*. If he was convicted the fine should be paid to the king and not to his *alguacil (LEst* 31-34)[86]. As a general rule, the foregoing laws assured that cases involving royal officials, as well as business transacted in the royal court would be adjudicated there. At the same time an effort was made to maintain the jurisdiction of local courts, especially if the persons involved were not in royal service.

Failure to respond to the summons or withdrawal from the royal court without permission was construed as an act of rebellion and was severely punished. Upon being summoned, the litigants had to appear in court every day even if the judge took no action on their case *(LEst* 29). The penalty for not answering a summons to the royal court was 100 *maravedís,* a substantial sum of money, the usual fine imposed for ignoring a royal charter. Royal tax collectors who neglected to render accounts when summoned were subject to the same penalty *(LEst* 24; *LJ* 2,2,12). If the one summoned appeared, but the plaintiff did not, he would have to pay the defendant's expenses for all the days of his absence, unless he had a legitimate excuse. However, he would not have to pay the fine for non-appearance *(LEst* 21; *LJ* 2,2,3)[87]. That summarized the law of the *Partidas* (3,7,8). Our author explained that, according to the usage of the court, the absent litigant had to pay the cost of his adversary's journey to and from the royal court as well as his residence there for four days and the fees for the issuance and sealing of the king's charter. In addition, he would be fined 100 *maravedís* for ignoring the summons three times. The judge could also place the plaintiff in possession of the delinquent's property if he disregarded the summons or if he left the court without permission. If the one summoned appeared but then departed without the judge's consent before the *litis contestatio*, and did not appoint a *personero*, the judge, after the usual three terms of nine days each had elapsed, could authorize the plaintiff to seize his opponent's property and recover the costs of the suit. However, if the litigant left after the *litis contestatio*, he should be summoned to return at once to hear the judge's sentence. If he returned in time to defend himself, he would still have to pay the costs of his delay, which the court perceived as rebellion *(LEst* 27- 28). [88]

A person who named a surety *(fiador)* to guarantee that he would respond to a summons in three days would have to pay the fine of *omezillo* if he did not do so, and his surety would be subject to the same fine. The imposition of o*mezillo* or *omecillo*, a fine levied in case of homicide or other crimes, signified the serious intent of the court when confronted by such an act of rebellion *(LEst* 23; *LJ* 2,2,9)[89]. If someone were summoned orally *(por pregón en casa del rey)* to

[86] *Scholia* 164-176; *Extracto* 70-71.
[87] *Glosas,* 823-824
[88] *Scholia* 134-146, 154-155; *Extracto* 14, 67.
[89] *Glosas,* 822, quoting XXIIII.

appear before the *alcaldes del rey* concerning a killing or some other matter and failed to come within nine days and ignored the three-day summons, he would suffer the penalty of *emplazamiento del fuero*, but not the penalty of 100 *maravedís* which was imposed only if the summons was issued in a royal charter *(LEst* 25)[90]. The mention of the *emplazamiento del fuero* refers to the *Fuero real* (2,3,4) which penalized a delinquent by ordering the seizure of his property; obliging him to pay the costs incurred by the plaintiff; and, for disrespecting the court, to pay a fine of five *maravedís* to the king and five to the judges. When many men of a municipality were summoned and failed to come, not all would incur the penalty of *emplazamiento porque el concejo non es contado mas de por una cosa* - «because the municipality is counted as no more than one thing». That meant that a penalty would be levied on the municipality as a corporate body, but not on every citizen or member of the city council. The law explained that the penalty of 100 *maravedís* was to be understood in terms of the *moneda nueva*, Alfonso X's last coinage[91]. When individuals «who were touched by the affair» (*fuesen a quien atañe el fecho*) neglected to respond to a summons, each one would incur the penalty of *emplazamiento*. That penalty would not be imposed, however, if someone died before he could appear, and his heirs failed to do so or to send a *personero* or to excuse his absence. However, they should be summoned *(LEst* 26; *LJ* 2,2,13)[92].

The law in the *Fuero real* (2,3,4) concerning the summons of someone accused of killing another or of some other capital crime prompted our author to offer some clarification. For example, when the law spoke of a summons by an *alcalde*, that should be understood to mean a summons issued in person by a judge, or by his charter or seal, or by his designated agent as in *Fuero real* (2,3,6). With respect to the words *si non fuere raigado*, *recabdenlo*, that meant that if the accused was charged with a recent crime that merited the death penalty or loss of limb, he should be arrested at once even though he was a resident whose property could be seized or if he gave sureties to guarantee his appearance in court. If the crime was not current, the accused would be permitted to pledge his property or to appoint sureties *(LEst* 66)[93]. If someone was arrested and imprisoned on a civil or criminal complaint in the royal court and his accuser left the court without the judge's permission, the accused would not be released until his accuser was summoned *(LEst* 108)[94]. If a wrongdoer failed to answer a summons to appear in a local court, but, prior to being formally denounced as a *fechor* or malefactor, he appeared before the king in the sane matter, the king out of his mercy might remand him to the local court. However, if the king chose not to do so, the culprit would incur the penalty for refusing to

[90] *Glosas,* 823, quoting XXVI.

[91] O'Callaghan, *Alfonso X, The Justinian of His Age,* 203-205; James Todesca, «The Monetary History of Castile-León (ca. 1100-1300) in Light of the Bourgey Hoard», *American Numismatic Society Museum Notes,* 33, 1988, 129-203.

[92] *Scholia* 121, 128-133; *Extracto* 51-52, 67-69.

[93] *Glosas,* 816, citing Lib. I, cap. LXVIII, and 820, quoting LXIX in part.

[94] *Scholia* 365-381. 470; *Extracto* 52-53, 57. Emilio Bravo Moltó, *Legislación penitenciaria,* 2 vols. (Madrid: Pedro Núñez, 1891), 16 *(LEst* 66).

answer the summons to the local court *(FR* 2,3), unless he was summoned to answer one of the cases reserved to the royal court. If he did so, he would not be charged for ignoring the local summons *(LEst* 48).

VI. INITIATION OF A SUIT IN THE ROYAL COURT

When the litigants finally appeared in the royal court, the plaintiff or his advocate presented his demand or plea orally or in a written *libellum*; the judge then asked the defendant or his advocate to make his response. That stage in the process when the issue was joined was known as *litis contestatio (FR* 2,6,1-2; *SP* 3,10,3; *E* 5,2,1-4). [95]

Once that was done, both litigants had to swear the *juramentum calumniae*, or in the vernacular, *juramento de manquadra*, affirming that they would conduct themselves honorably and without fraud *(SP* 3,11,23-24)[96]. According to the *Leyes del estilo*, someone taking the *jura de calumnia* could not be accused of perjury. A plaintiff might wish to prove that his opponent swore falsely and covered up the truth, but the *jura de calumnia* was not the place to do so, inasmuch as the defendant's oath did not go to the matter in dispute but was only an oath to behave honorably and honestly during the course of the trial. For that reason our author remarked that only God could judge the *jura de calumnia*. He added that whereas the *Libro Juzgo* (2,2,6) provided a penalty for perjury, there was none for the *jura de calumnia.* In effect, the defendant's *jura de calumnia* was to be believed and only God could determine whether he meant it *(LEst* 136)[97].

When the judge ordered someone to swear in church on the cross, the altar, or the gospels, he should require him to name *fieles*, trustworthy persons, before whom he would take the oath. Otherwise a dispute might arise as to whether the oath was sworn or not. In a suit between a Jew and a Christian, even though the Christian proved that he took the oath with good Christian men, the Jew could argue that he had not proved it with a Jew and so all would come to naught *(LEst* 240). The Alfonsine Codes stipulated the distinctive form of the oaths to be sworn by Christians, Jews, and Muslims *(E* 6,11,15-17; *SP* 3,11,19-21). If someone refused to take a required oath, his case collapsed *(LEst* 249)[98].

In the *libellum* stating his initial demand, the plaintiff set forth the essence of his complaint, but the question arose whether he might strengthen it by offering further arguments after the defendant made his response. In general, the additional argument would not be admissible. On the other hand, if the plaintiff

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[95] *FD* 2,1-2; *DO* 3,1,1-3; *Margarita* 1-8; Adolf Berger, *Encyclopedic Dictionary of Roman Law, Transactions of the American Philosophical Society,* New series 43 (1953), 561 *(libellus),* 566 *(litis contestatio).*

[96] *FD* 2,3,1-2; *DO* 3,3.1; *SNTP* 5; *Margarita,* 11,1-10; Juan García González. «El juramento de manquadra», *AHDE,* 25, 1955, 211-255; O'Callaghan, *Alfonso X, The Justinian of His Age,* 121; Berger, *Encyclopedic Dictionary,* 534.

[97] *Glosas,* 844; *Scholia* 497-498; *Extracto* 121.

[98] *Scholia* 655-656, 662; *Extracto* 120-121; O'Callaghan, *Alfonso X, The Justinian of His Age,* 121-122.

alleged that the defendant owed him 100 *maravedís* and the defendant denied it, the judge, in virtue of his office, after attending to whatever proofs the plaintiff offered, and before the stage of argumentation was closed, should ask the plaintiff what action he wanted to be taken. If the plaintiff asked that the defendant be condemned, the judge should pass sentence. His judgment would be valid even though the plaintiff's petition for condemnation was presented after the *litis contestatio*, but prior to closing arguments *(ante que las razones sean encerradas).* If the defendant admitted the charge, the proceeding would be valid even though no petition was presented. However, should the plaintiff, following closing arguments, offer an additional petition beyond his original demand, his suit would be dismissed. This discussion indicates that the plaintiff's original demand did not include a petition for action to be taken by the court. Two decisions concerning this issue, both undated, were attributed to Alfonso X, but I know of no extant document relating to either one. In the first instance, perhaps early in his reign, he confirmed the validity of a judgment given when a petition was presented following the *litis contestatio* and before closing arguments. In the second case, however, he determined that the plaintiff's demand should be set down in a charter drawn up in the royal court and that no additional petition would be allowed; otherwise neither the plea nor the judgment would be valid, *quia juxta petitionem sententia dictanda est* «because judgment is to be declared according to the petition», a phrase borrowed from canon law[99]. In other words, the plaintiff's original written demand should state the circumstances of his complaint and should be accompanied by a petition asking the court to provide appropriate redress. Those two steps appear to have been separate before Alfonso X insisted that they be combined in one. His directive seems to have been prompted by the desire to assert royal control over the process by simplifying it and rendering it less cumbersome *(LEst* 1)[100].

Litigants could present several exceptions *(exebçiones* or *defensiones)* to delay, to exclude from consideration, or to thwart the judicial process. For example, one might challenge the judge's jurisdiction *(exceptio declinatoria)*, or ask to be excused from appearing in court because of illness *(exceptio dilatoria)*, or claim that a debt had already been paid *(exceptio peremptoria) (FR* 2,10,1-8; *E* 5,4,1-11; *SP* 3,3,8-11). Dilatory and declinatory exceptions had to be made before the *litis contestatio*, but peremptory exceptions (so called because they could terminate the entire process) could be raised at any time. The usage of the *casa del rey* allowed peremptory exceptions before *litis contestatio* in three instances, namely, concerning a matter already adjudicated *(cosa juzgada* or *res judicata),* a compromise *(transactio)* or extrajudicial agreement between the parties, and when a case was ended by an oath[101]. In explanation, our author cited the canon law principle: *de re transacta et judicata et*

[99] *Vid. Decretalum Gregorii IX,* 5,1,24: «ut iuxta formam iudicii sententiae quoque forma dictetur». That phrase was used in a discussion of three ways of initiating a judicial process, namely, accusation, denunciation, and inquisition.

[100] *Scholia* 28-51; *Extracto* 131; Jesús Vallejo, «La regulación del proceso en el Fuero Real: desarrollo, precedentes y problemas», *AHDE,* 55, 1985, 495-704, esp. 518, n. 72.

[101] Berger, *Encyclopedic Dictionary,*458-462 *(exceptio),* 740 *(transactio).*

finita per juramentum a parte parti delatum vel per pactum de non agenda, *vel per longam diurnitatem temporis* «a matter completed and adjudicated and finished by the oath offered by one party to the other, or by an agreement not to proceed, or by overly long time»[102]. The *Leyes de estilo,* after noting that canon law recognized the three exceptions, namely, dilatory, declinatory, and peremptory, added a fourth, the prejudicial exception. That might be an allegation that the plaintiff was a slave, or that he was not the heir to an estate, or that the demand presented was not his. The usage of the royal court required the judge to rule on all the exceptions before allowing the case to proceed further and then deciding the principal issue. The text cited the treatment of peremptory exceptions in the *Digest* (5,1,68-74) in the title *de judiciis* and the law *de qua re*[103] and in the Decretals of Gregory IX (2,10,1; *extra de ordine cognitionum,* capit. *Intelleximus)*[104] *(LEst* 235-236)[105].

Our author also explicitly discussed the exception based on excommunication. The *Fuero real* (2,8,9) declared that an excommunicated person could not testify so long as he was under that sentence. The litigant who wished to summon excommunicated witnesses ought first to see that they were absolved. However, if neither the litigant nor the judge knew that a witness was excommunicated, his testimony would be valid. On the other hand, if it was demonstrated that a potential witness was excommunicated, he would not be permitted to testify. That was in accordance with the new decretal *Pia* in the title *de exceptionibus*. That citation refers to Pope Boniface VIII's *Liber Sextus Decretalium* (2.12.1), promulgated in March 1298[106]. Our author's description of this as a *decretal nueva* suggests that he was writing shortly after that date. Moreover, if the judge was manifestly excommunicated, neither the judicial process nor his judgment would be valid. Similarly, a charter obtained by an excommunicated person or drawn up by a publicly excommunicated scribe would be invalid. That was based on the *Decretales* (5,7,15) *(LEst* 177)[107]. The royal court determined that the charge of excommunication had to be proved if a defendant claimed that the plaintiff was excommunicated because he struck a cleric, though

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[102] *Decretalium Gregorii Papae IX Compilationis,* in *Corpus Iuris Canonici,* ed, Aemilius Friedberg (Graz: Akademische Druck- u. Verlagsanstalt, 1959), 2,4,1; O'Callaghan, *Alfonso X, The Justinian of His Age,* 120-121.

[103] *Digest,* 5,1,74 pr.: «De qua re cognoverit iudex, pronuntiare quoque cogendus erit».

[104] *Decretalium Gregorii Papae IX,* 2,10,1: «Clemens III. Alatrino Episcopo. Intelleximus ex literis tuis, quod, quum quaedam mulier peteret quendam in virum, testes ad suae intentionis assertionem induxit, per quos pars viri futurum sibi praeiudicium metuens, exceptionem consanguinitatis obiecit, ex qua intendit petitionem mulieris prorsus elidi. Quia vero nos consulere voluisti, an prius sit de impedimento consanguinitatis agendum, quam super causa matrimonii sententia proferatur, Inquisitioni tuae taliter duximus respondendum, quod, quum exceptione probata quaestio principalis perimatur, ante est cognoscendum de ipsa, quam ad diffinitionis articulum procedatur. Quo facto virum ab impetitione mulieris, prout exposcit ratio iuris, absolvas».

[105] *Glosas,* 848-849, quoting CCXXXVIII; *Scholia* 645-649; *Extracto* 113-14; *FD* 1,15,1-4; *DO* 3,2,1-2.

[106] See Innocent IV's decretal promulgated in the Council of Lyon in 1245, in *Corpus Iuris Canonici,* ed. Friedberg, 2:957. I am very much indebted to Professor Wolfgang Mueller of Fordham University who identified this reference for me.

[107] *LEst* 177 cites this as *De hereticis, cap. Excommunicamus*.

the church had not denounced him or taken action against him; or that he asserted that a particular vicar had excommunicated the plaintiff, but the church ignored the matter and even allowed the culprit to attend the canonical hours; or that he was excommunicated by one authorized to do so; or that a judgment had been entered against him and the affair was notorious and well known *(LEst* 176)[108]. The judge was directed to allow eight days for proving the exception of excommunication *(LEst* 178)[109]. The issue of excommunication was a source of contention between the king and the church. While the prelates complained that the king and his officials ignored ecclesiastical censures, he objected to the excommunication of his officials who failed to enforce the decisions of church courts. In 1279, Pope Nicholas IV, among other things, protested that Alfonso X would not allow the exception of excommunication in his courts. Thus the law cited by our author makes clear that the accusation that someone should be denied his right to pursue his case in court because he was excommunicated had to be submitted to the judgment of the royal court. That implies that the mere charge of excommunication and even a canonical denunciation of excommunication would not automatically exclude an excommunicated person from seeking justice from the king. The text also implies that the ecclesiastical authorities did not always prosecute persons who should have been excommunicated. Their negligence justified intervention by the king's men.

VII. **PROVING ONE'S CASE**

After ruling on the exceptions, the judge determined whether the plaintiff could prove his case by the presentation of witnesses, documents, or by means of a *pesquisa* or inquest. If a defendant admitted the charge against him, an action known as *conoscencia*, the *alcalde* could proceed to judgment. However, if a criminal confessed to a *merino*, but not to the *alcalde*, his confession would not be valid even though there was reason to presume that he was guilty. As the *merino* was primarily an administrative officer, a confession made to him would not have the binding legal force of a confession made to a judge. On the other hand, because of the confession, the court might presume the guilt of the accused *(LEst* 133)[110].

A royal charter would be a valid proof even if there were no other proofs especially in a case concerning a truce or other issue. If there was doubt about the authenticity of a royal charter, however, the charter would not be admitted *(LEst* 182). If a municipal council or an individual gave a letter of credence to another ordering something to be done and then denied writing the letter, no action should be taken in accord with the letter until it was proved that it was authentic *(LEst* 186). If a royal charter granting a pardon was lost, a royal *alcalde* could issue a new charter if the king commanded it and if the royal notary

[108] *Glosas,* 846, quoting Lib. III, cap. XXIX-XXX.

[109] *Scholia* 543-546; *Extracto* 110; O'Callaghan, *Alfonso X, The Justinian of His Age,* 76-77.

[110] *Scholia* 496; *Extracto* 82; *FD* 2,3,1-2; *DO* 3,3,4-7, and 4,1,1-4; O'Callaghan, *Alfonso X, The Justinian of His Age,* 122-123.

reviewed it. Both the *alcalde* who issued the charter and the scribe who wrote it should record that they did so, for example, *Fulano*, *alcalde*, *lo mandó fazer por mandado el rey; et yo fulano*, *escribano*, *la escribi* – «I, fulano, *alcalde*, on the king's command, ordered this to be done. I, fulano, scribe, wrote it». The *alcalde* should do the same with other charters that were not *foreras* that the king ordered him to issue *(LEst* 224)[111]. These rules reveal that one of the judge's fundamental duties was to determine whether a charter or other document presented as evidence was genuine or a forgery.

Ordinarily the testimony of two witnesses was necessary in order to prove a case *(FR* 2,8,1)[112]. Prior to the *litis contestatio*, the names of witnesses had to be presented and if they met the requirements of the *fuero*, the judge should accept them *(LEst* 175). A judge usually allowed witnesses who were summoned three postponements *(FR* 2,8,15-16), but if necessary, prior to receiving the testimony of the witnesses already accepted, he could grant a fourth summons *con la solenudad que el fuero manda* - «with the solemnity that the *fuero* commands» *(LEst* 181). If it were proved that a witness accepted a bribe or was promised something for his testimony, whatever he said would be rejected and the *alcalde* was free to punish him as he wished. If it were proved that a witness lied while giving testimony under oath, the *alcalde* should condemn him for perjury, even though his opponent did not request it *(LEst* 115). Whenever there was reason to believe that witnesses summoned to testify in the *casa del rey* were not truthful, their testimony would not be admitted and other witnesses could be called so that the truth might be discovered *(LEst* 180). In addition to banning persons of ill repute from acting as witnesses, the law also prohibited family members from testifying against one another. In the law *Padres e fijos* the *Fuero real (*2,8,9*)* listed the relatives so excluded, but our author added that sons-in-law may not be witnesses in cases involving their fathers-in-law *(LEst* 245)[113].

The law relative to the testimony of women emphasized their inferior status. According to the *Fuero real* (2,8,8), a woman was permitted to testify only in womanly affairs *(fechos mugeriles)* or in matters touching the king or his sovereignty. Elaborating on this law, *Toda muger*, our author emphasized the separation of the sexes by asserting that the testimony of women in civil or criminal cases should not be given in the presence of men and that in every interaction between women (buying and selling - *que usan de fazer las mugeres;* fighting; witchcraft), only women should testify. If they were eyewitnesses to crimes committed at night or in deserted areas, their testimony given in a *pesquisa* would be acceptable as proof and could provide reason to torture someone. However, if it was certain that an act was committed before men, female witnesses would not be believed unless the men corroborated their testimony *(LEst* 96)[114].

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[111] *Scholia* 549, 553, 638; *Extracto* 88, 107-108; *FD* 2,2,4-5; *DO* 4,4,1-6; *Margarita* 16.

[112] *SP* 3,16,1-42; *FR* 2,8,1-21; *FD* 2,1,10; 2,2,1-3; *DO* 4,2,1-18; *Margarita* 13-15; O'Callaghan, *Alfonso X, The Justinian of His Age,* 123-124.

[113] *Scholia* 480-483, 542-543, 546-549, 659-t660; *Extracto* 90, 93, 95-97.

[114] *Scholia* 456-457; *Extracto* 89-90.

Some local *fueros* excluded the testimony in both civil and criminal cases of a person who was not a *vecino* or citizen of the town or the son of a citizen[115]. Ordinarily, that rule, which guaranteed the autonomy of a town, would be maintained. However, if a criminal case concerned residents of two different towns, the testimony of an outsider would be accepted if good men proved that there was no legal reason for rejecting it. In civil cases involving contracts or obligations between persons from different communities witnesses from both communities were necessary. As assurance that justice would be served, the testimony of good men who were not residents of the community where the contract or obligation was entered into would be valid. When a theft was committed and a culprit was identified by witnesses or by an inquest, the judge should condemn him and levy any appropriate fines according to the *fuero* of his residence. Should a stranger commit murder in a town, the local *fuero* allowing only good men of the town to testify would not be observed. As it was essential to determine the truth, outsiders whose testimony might be more probative ought to be called *(LEst* 64)[116].

Occasionally a litigant, suspecting that a scribe might produce an untrustworthy record of the proceedings, brought his own scribe to record the testimony of witnesses. If he did so, he had to pay for the services of both scribes *(LEst* 179). At times the parties, in the presence of the judges, agreed to designate *receptores*, one for each litigant, to receive the testimony of witnesses before a public scribe in a certain place and at an assigned time. If one of the *receptores* failed to appear, the party he represented had to pay the expenses of that day to the other party *(LEst* 188)[117].

The validity of proofs based on the testimony of witnesses or written documents was illustrated in a dispute concerning the plaintiff's claim that the defendant had taken a shield or other object. The plaintiff might present witnesses to testify that they saw the defendant acknowledge either in court or elsewhere that the plaintiff ordered him to take the item in contention. However, if the plaintiff had not mentioned the issue in his original demand, their testimony would not be admissible because it concerned a matter for which they had not been summoned and put under oath. On the other hand, if the plaintiff presented a signed document or process before a judge in which the defendant admitted that he had taken the object, that would be a valid proof because the defendant could not deny that he had sworn to it and the signed document was certain proof that he had done so. In another instance, a plaintiff demanded that a defendant return something that he had given him in trust *(encomienda),* but the defendant asserted that a third person had stolen it. He presented a public instrument in which the culprit acknowledged that he had taken the object, but

[115] The *Fuero of Cuenca* (20,12) allowed only citizens or the sons of citizens to bear witness against a resident. Rafael de Ureña y Smenjaud, *Fuero de Cuenca* (Madrid: Academia de la Historia, 1935); James F. Powers, *The Code of Cuenca: Municipal Law on the Twelfth-Century Castilian Frontier* (Philadelphia: University of Pennsylvania Press, 2000), 132.

[116] *Glosas,* 1134; *Scholia* 350-362; *Extracto* 102-104.

[117] *Scholia* 546, 595; *Extracto* 93-94.

that proof was inadmissible for two reasons: first, he did not affirm that he had used force; and secondly, even though he admitted in a public instrument that he took it, the admission of a third person could not stand in the way of the plaintiff's demand *(LEst* 183). Another law reaffirmed the plaintiff's obligation to prove that he had lent or entrusted something to another and demanded its return *(LEst* 239)[118].

Among the common procedures for determining the truth was the *pesquisa* or inquest, described at length in the *Partidas* (3,17,1-12) and in the *Fuero real* (4,20,11-12). Alfonso X used the inquest as a multifaceted tool for administrative and judicial purposes, namely, to gather information about taxes due, alienations of royal lands, the export of prohibited goods, and the identification of criminals; and to settle civil cases concerning municipal boundaries, property disputes, and other matters[119]. As an example of its use in the collection of taxes, tax collectors *(cogedores)* appointed certain officials *(fazedores)* in the towns belonging to the queen (María de Molina) to draw up accurate lists *(padrones)* of taxpayers *(pecheros)*. If someone claimed that he had been wrongly recorded, the *fazedores* had to prove that he had taxable income and that they had correctly identified him as a taxpayer. Should there be any doubt about this, the tax collectors could appoint inquisitors *(pesquisidores)* to summon good men and place them under oath to name other persons with sufficient income to be counted among the taxpayers. If the *fazedores* deliberately omitted certain persons whom they knew to be liable to taxation, they would have to pay double the tax themselves, but the taxpayers whom they failed to cite would only have to pay the basic tax rate *(LEst* 127). In another instance, if the taxpayers testified in a *pesquisa* that they had paid the *cogedor* the taxes they owed, he had to pay the king that amount. On the other hand, if he denied their assertion, they had to offer proof that they had done so, and if they could not, they had to pay whatever damages he incurred. This decision applied only to the tax collectors of the king or queen in this circumstance *(LEst* 106)[120].

A reference in the *Leyes del estilo* (54) to Alfonso X's ordinance concerning general and special inquests suggests that he enacted such a law; though that text does not seem to be extant, it may have been incorporated in the *Espéculo* (4,11,1) and the *Partidas* (3,17,3). The searching nature of royal inquests prompted the Cortes of Seville in 1281 to object to *enquisas de mascarade* - «inquests of deceit»[121]. As noted above, the king paid a fine of 73,000 *marave-*

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[118] *Scholia* 549, 654; *Extracto* 83-85.

[119] *DO* 4.3.1-2; Evelyn Procter, *The Judicial Use of Pesquisa (Inquisition) in Léon and Castille, 1157-1369, English Historical Review,* Supplement 2 (London: Longmans, 1966); Joaquín Cerdá Ruiz-Funes, «En torno a la pesquisa y procedimiento inquisitivo en el derecho castellano-leonés de la Edad Media», *AHDE,* 32, 1962, 483-518; O'Callaghan, *Alfonso X, The Justinian of His Age,* 124-126.

[120] *Scholia* 458-459, 490-491; *Extracto* 95, 321-322.

[121] *Cantigas de Santa Maria,* ed. Walter Mettmann, 4 vols. (Coimbra: Universidade de Coimbra, 1959-74; reprint 2 vols. Vigo: Edicions Xerais de Galicia, 1981), 2:331-33, no. 386; Joseph F. O'Callaghan, *The Learned King: Alfonso X of Castile* (Philadelphia: University of Pennsylvania Press, 1993), 258.

dís to Oviedo for summoning 180 men to give witness in an inquest held at his court rather than in Oviedo *(LEst* 30). Despite objections to the *pesquisa general*, both Sancho IV and Fernando IV continued to use it in a limited way.

The *Leyes del estilo* commented at length on the use of the *pesquisa* in criminal cases, a matter to be discussed below.

VIII. **JUDGMENT AND APPEAL**

During the trial, a judge might make, either orally or in writing, several interlocutory judgments of a preliminary or temporary nature. However, the most consequential was the final judgment. «Every judgment, especially a definitive judgment, should be certain and right as the laws of our book command, and the truth of the matter should be examined, scrutinized, and established» *(SP* 3,22,3)[122]. When a judge rendered a definitive sentence from which there was no appeal, a litigant could enter a supplication *(suplicacio)* or request for mercy. In considering it, the judge should not listen to reasons newly advanced unless they were founded in law. Once a decision was rendered, it was valid and a second supplication was not permitted. Nor was a supplication admissible when the judge made an interlocutory judgment *(LEst* 171-72)[123]. In this instance, the judge was not expected to hear new evidence or new arguments, in effect holding a new trial, but rather to review his decision based on the evidence already presented[124].

When the judge was prepared to render his judgment, he should summon the litigants before him[125]. According to the usage of the court, they should be given nine days to appear, followed by the three-day summons. Even if the judge neglected to do that and, before the expiration of the term allotted, he pronounced sentence against the litigant who did not appear, his judgment nevertheless would be valid unless the party presented a good reason why he could not appear on time. His appeal would set aside the judge's decision. In further explanation, our author stated that a judge in the royal court should observe the schedule of nine days and the three-day summons in the following manner. If he permitted the litigants to leave the court, provided they returned on the day assigned to hear his sentence, he had to adhere to the court's schedule and should not render judgment before that period expired. If he did so, a litigant could appeal the sentence and ask that it be revoked. The judge would have to pay any damages incurred by the litigant on that account. However, if, during the process, and without issuing a mandate, the judge set a date for sen-

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[122] *FD* 3,1,1-6; *DO* 5,1,1-19, and 5,2,1-5; *Margarita* 17-20; O'Callaghan, *Alfonso X, The Justinian of His Age,* 127-129.

[123] *Glosas,* 888, quoting CLXXVI; *Scholia* 530; *Extracto* 139-140.

[124] *FD* 3,2.1 explained that a judgment by the king or the justice exercising judicial authority in his name over the entire realm could not be appealed, but one could ask for mercy, a process known in Latin as *suplicacio*. W. W. Buckland, *A Textbook of Roman Law from Augustus to Justinian* (Cambridge: Cambridge University Press, 1921), 666; Berger, *Encyclopedic Dictionary,* 726.

[125] *FR* 2,13,1-6; 2,14,1-3; *E* 5,13,1-31; *SP* 3,22,1-27.

tencing and a litigant did not appear, the judge did not have to observe the court schedule before rendering judgment. In addition, anyone who neglected to respond to the first summons to appear before the king had to pay the expenses of his opponent and the fine of 100 *maravedís* set down in the letter of summons. He would also be summoned two more times but if he failed to appear the judge should permit the aggrieved party to take possession of the delinquent's property. On the other hand, if both parties appeared and the judge postponed the hearing and gave them permission to depart, provided that they return on a certain day, he should observe the term of nine days and three days; but he was not obliged to allow two additional terms. After resolving the issues arising from the absence of one of the litigants, he should proceed with the principal plea and summon both parties to hear his judgment *(LEst* 138-40; see *LEst* 25)[126]. The failure of a litigant to appear when duly summoned clearly was viewed as disregard for the court's authority and a refusal to admit the damage one had caused.

When two ordinary judges began to hear a case and one of them withdrew before judgment was given, the judgment of the remaining judge would be valid because ordinary judges have jurisdiction in all things. Some towns, however, required two judges to give judgment because there were two parties in litigation. On the other hand, all the judges delegate or arbiters appointed to resolve a case had to be present to give judgment unless it was agreed otherwise *(LEst* 218; *LJ* 2,1,3)[127].

After a royal judge pronounced judgment, he should deliver a copy of his judgment to the *alguacil* in the court. Delivery outside the court was entrusted to a royal *portero. Porteros* did not have that duty within the court but judges could order them to collect 60 *maravedís* on account of a summons or to testify in court *LEst* 211). A valid formula for delivery of property read: *Yo vos entrego en estas cosas de fulano*, *et en todos los otros bienes*, *o en tales bienes quel ha* «I deliver to you these belongings of fulano and all the other goods and such goods as he has» *(LEst* 237). A surety, who guaranteed the appearance of a litigant in court and his acceptance of the judgment, was also obliged to assure the surrender of the litigant's goods if the judgment was against him. Moreover, if there was any deficiency, he was accountable for that *(LEst* 229)[128]. However, if the judge did not order the seizure of the defendant's property or compel him to pay the costs of the trial, and if the plaintiff did not demand it, the judge could not do so after he pronounced his sentence *(LEst* 251)[129].

A defeated litigant, who was required to compensate his opponent, might argue that he had already done so; but if he made no peremptory exception, the judge should fix a term for him to prove it. According to the *Fuero real* (2,8,15-16), the

[126] *Scholia* 500-501; *Extracto* 60-61,122-124.

[127] *Scholia* 630-631; *Extracto* 126.

[128] *Glosas,* 1018, quoting CCXXXII.

[129] *Scholia* 623-624, 639-641, 649-650, 663-674; *Extracto* 127, 219, 227; Bravo Moltó, *Legislación,* 17 *(LEst* 229).

judge should allow him three extensions *(plazos)* of three days each, but if necessary he could grant him a fourth extension, or twelve days in all *(LEst* 190) [130]. Evidently the intention was to give the litigant sufficient time to set his affairs in order and prepare his argument.

The *Fuero real* (2,15,1-9) and the *Siete Partidas* (3,23,1-29), in much greater detail, outlined the procedures for appealing a judgment [131]. The king, having no temporal superior, was the final judge of appeals and as such no one could appeal his decisions. Aiding him in that task were prudent men learned in the law. Though a litigant might be displeased by the king's adverse judgment, he could always appeal to his mercy. As the volume of appeals was probably heavy, the king likely delegated the task of attending to them to the *adelantado mayor (E* 5,14,1-12; *DO* 6,1,10). It is possible that other judges in the royal court were called upon to hear appeals from time to time. Whether the *adelantado mayor* may be identified with the *oydor de las alzadas* cited in *LEst* 22 is uncertain.

The author of the *Leyes del estilo* provided additional details of the appeal process. In order to maintain the king's justice and jurisdiction, a litigant was allowed to appeal a sentence several times until a final appeal was addressed to the king *(LEst* 162). When a judge announced his sentence, a litigant had to make his appeal within three days; otherwise it would not be accepted. However, if the aggrieved party was a woman or a simple person, an appeal could be made on the third day. A litigant's advocate should be fined for not making the appeal on time *(LEst* 150). In accordance with the *Fuero real* (2,15,1-9), no one could appeal a definitive or an interlocutory sentence in criminal cases involving the death penalty or loss of limb *(LEst* 101, 163) [132]. Nor could one appeal a decision made by the judge in the course of the suit; that could only be done after the judge made a definitive judgment *(LEst* 170-171) [133].

Anyone who appealed a case to the *casa del rey* had to appear in court at the appointed time as stipulated in the title *emplazamientos* in the law beginning: *Otrosi el que es emplazado (LEst* 22). As I indicated above, that title does not exist because the text is not divided into titles. Should the appellant fail to appear on time, the appeal would be disallowed. If the litigant left the court without the judge's permission, his appeal would be nullified and the original judgment confirmed, even if he returned later and wished to pursue the appeal. Should he desire to offer new arguments, the judge should summon the other party so that the appeal could be resolved. An appellant who fell ill on his way to the hearing had to present valid testimony of his illness and pay the expenses of the other party who was summoned to court *(LEst* 151; also

[130] *Scholia* 595-596; *Extracto* 112.

[131] *FD* 3,2,1-8; *DO* 6,1,1-27, 6,2,1-4, 6,3,1-4, 6,4,1-5, and 6,5,1-7; O'Callaghan, *Alfonso X, The Justinian of His Age,* 129-131; Buckland, *Roman Law,* 665-667.

[132] *Glosas,* 888, quoting CLXIIII.

[133] *Glosas,* 890, quoting CLXXIIII-CLXXV; *Scholia* 563-564, 511-513, 530-533, 539; *Extracto* 133-134, 139.

see *LEst* 159-160)[134]. Although a *personero's* original *carta de personería* did not explicitly authorize him to pursue an appeal in the king's court, he would be permitted to do so *(LEst* 157). However, his appeal would be rescinded if his principal chose to pursue the appeal on his own; the *personero's* decisions would also be annulled, unless the principal expressly authorized them *(LEst* 13). A *personero* could appeal a judge's interlocutory judgments in criminal cases, provided that they did not concern the penalties of death and dismemberment *(LEst* 15)[135]. Our author's description of a dispute between opposing *personeros* suggests something of the contentious atmosphere of the appellate court. For example, the appellant's *personero*, during the nine days preceding the trial, might demand that the opposing *personero* present his credentials, but he refused to do so until the third day when the trial commenced. The appellant's *personero* could ask the judge to require his opponent to pay the costs from the time of his initial appeal. The judge could decide this as he wished, but if he concluded that the opposing *personero* acted out of malice, he could require him to pay the expenses, unless he swore that at the time he did not have his credentials *(LEst* 152)[136].

An appellate judge might reverse a decision because of a local judge's error (*por mengua del alcalde*). For example, should he find that the suit was not contested, or was null for some other reason, he could refer the case to another judge in the same locality, or settle it himself by agreement (*avenencia*) between the parties, or refer it to another judge in the royal court. A suit nullified because of an error by the plaintiff (*por mengua de la parte*), whose demand was improperly drawn up, should be heard in the *casa del rey*, or referred to another local judge *(LEst* 149)[137]. When the judge incorrectly dismissed an appeal, his decision would be valid, if the litigant or his *personero* did not appeal it. However, if the judge erroneously determined that a plea was valid, his decision would be null, even though no one appealed against it, *ca lo que es ninguno non lo puede fazer alguno* - «because one cannot make something out of nothing». If a litigant complained to the king that a judge refused to allow an appeal, the king could command him to do so *(LEst* 154-155)[138].

At times when a judge decided one article in a plea containing several articles, a litigant might immediately appeal the decision. Nevertheless, it was the usage of the *casa del rey* that the judge on the same day should adjudicate all the other articles, dispose of property at issue, and assess costs. Our author commented, however, that that was contrary to the practice of ecclesiastical courts *(LEst* 158)[139]. The judge, after making his decision, whether it was appealed or not, should publish a charter setting forth the process of executing

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[134] *Glosas,* 883-884, 887, quoting CLVI, CLXIII. CLXIV; *Scholia* 122-128, 513-515; 527-528; *Extracto* 132, 134-35, 137.

[135] *Glosas,* 781-782, quoting XV.

[136] *Glosas,* 883-884, quoting CLVII; *Scholia* 100-102, 104-106, 516-519, 525-526; *Extracto* 29-30,135-136; *DO* 6,1,4.

[137] *Glosas,* 887, quoting CLIII.

[138] *Glosas,* 892, quoting CLVIII; *Scholia* 511, 519-520; *Extracto* 138, 140-141.

[139] *Glosas,* 885-886, quoting II.

it; although the party against whom it was directed might raise a peremptory exception, he was not given a hearing to dispute the terms of the decision *(LEst* 161)[140]. If the appellate judge upheld the ruling of a municipal judge ordering a defendant to return an object to a plaintiff in nine days or pay a penalty of 500 *maravedís,* the nine-day term would commence on the day the municipal judge received the royal mandate directing him to enforce his original judgment *(LEst* 169)[141].

A person who did not attend the judgment pronounced against him was effectively a rebel and could not appeal that sentence unless he presented a legitimate excuse for his absence. If he had none, he was thereby barred from making an appeal, but he could submit a supplication, that is, a plea for mercy. Although he offered no new reasons relating to his conviction, the king by virtue of his office, and not because of the person's request, might be moved to respond positively. For example, the court may have taken action against the man as the heir of another who owed a debt; but the man might argue that he had been wrongly sentenced, because the debt had been paid without his knowledge, and that he had been unable to present documentary evidence of that fact. Our author justified the king's decision to show mercy *porque el rey es sobre los derechos* «because the king is above the laws» *(LEst* 173)[142]. That phrase was not intended to assert that the king was not bound by the laws, but that he had the ultimate authority to interpret them.

After a malefactor was convicted, there was always the possibility that he might be pardoned, but by whom? Our author presented the following dilemma. The queen (María de Molina) or another lord, who held towns in lordship from the king, had jurisdiction within their lordships to condemn someone for homicide or another crime. The matter became complicated, however, when, before the sentence was carried out, the king transferred ownership of the town to a new lord, who then pardoned the offender. That raised the question: was that pardon valid? The response: Only the king could make that decision *(LEst* 126)[143]. That seems to suggest that the king had the sole authority to pardon serious criminals.

IX. **COURT COSTS**

Once the court declared judgment or resolved an appeal, there remained the matter of determining the payment of court costs. Setting aside time for an accounting to determine the amount of the costs, the judge required the attendance of both parties. If the litigant who prevailed in a case left the court without the judge's permission, he would be required to pay the costs *(LEst* 167)[144]. If a litigant complained to the king that a judge denied his right to appeal to the

[140] *Glosas,* 886, quoting CLXV.

[141] *Glosas,* 889-890, quoting CLXXIII; *Scholia* 526-529, 538-r39; *Extracto* 126-127, 130, 141; *DO* 6,1,13.

[142] *Glosas,* 888; *Scholia* 539-542; *Extracto* 133-134.

[143] *Scholia* 488-489; *Extracto* 46.

[144] *Glosas,* 824 quoting CLXXI.

royal court, the king could authorize payment to the litigant of the expense of his stay in the royal court for four days and for the four days of his round trip from home. In calculating those expenses, anyone living more than two days journey from the *corte del rey* could not include *ferias* or holidays set aside for the harvest or saints' days when the court was not in session. However, a litigant who lived less than two days away would be allowed to exclude the ferial days, even after arguments were closed *(razones encerradas)* and a time was set for sentencing *(LEst* 155-156)[145]. Thus, it would seem that expenses were limited to a maximum of eight days, four days in court and four days round trip.

An appellant who lost an appeal in the royal court had to pay the expenses of his opponent. If the appeal touched on two or more articles and the judge confirmed the judgment on one but revoked the other, the appellant had to pay the full court costs incurred by his opponent. Those costs were: 16 *dineros* if his opponent rode an animal to court and 8 if he came on foot. The appellant who lost his appeal had to pay double those costs. The feeding and lodging of the animal was the reason for the greater expense. If someone entered a supplication and it was denied, he had to pay four times as much. Anyone who wrongly testified concerning a charter had to pay the same. In the case of a supplication, the costs were 6 *maravedís* and 3 *dineros* per day if the litigant rode an animal to court or 3 *maravedís* and 1 *dinero* if he walked. Ferial and non-ferial days spent in the court were counted. Even if the judge prolonged the case by delays, the one who lost an appeal had to pay for all the days that his opponent spent in court as well as his journey to and from the court *(LEst* 164-165)[146]. When a municipality sent more than one *personero* to court and won its case, it would be awarded court costs for only one *personero* because the municipality was counted as one entity. On the other hand, if three persons were represented by one *personero* and were victorious, Alfonso X decided (*et es agora guardado* - «and it is still observed») that all three were entitled to court costs; but if there were more than three, they would be allotted costs for only one person. The rationale for that was to eliminate any dispute among them. The same problem would arise if several persons, each with his own issues, were represented by the same *personero.* He would be entitled to court costs for each case that he won *(LEst* 166). The judge himself might be obliged to pay court costs if he required a litigant to prove something that did not advance his case *(LEst* 174)[147]. Anyone condemned in the *casa del rey* to pay the costs of litigation should be arrested, no doubt as assurance that he would pay what he owed before he returned home and attempted to evade payment *(LEst* 99, 168)[148].

After considering the mechanics of the administration of justice, our author turned attention to the law concerning several significant matters, namely,

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[145] *Glosas,* 890, 892, quoting CLX, CLIX; *Scholia* 519-525, 536-538; *Extracto* 138-139, 202.

[146] *Glosas,* 888-889, quoting CLXVIII, CLXIX.

[147] *Glosas,* 839; *Scholia* 541 omits the words *el alcalde* in the sentence, *mas el alcalde ha de pechar las costas. Extracto* 102.

[148] *Scholia* 462, 533-536, 538-539; *Extracto* 199, 200-202; Bravo Moltó, *Legislación,* 16 *(LEst* 99).

family relations; disposal of property; lending and borrowing; buying and selling; and crime and punishment.

X. **MARRIAGE, FAMILY, AND INHERITANCE**

Marriage and the family were the foundation of society. Marriages were often arranged as families strove to attain greater wealth, social position, influence, and power. Children born to the married couple gave promise that the family estates would be handed down to future generations. Creating and maintaining that inheritance was one of the principal ends of marriage[149]. While the *Fuero real* (3,1-9) reflected the customary law on marriage, the *Fourth Partida*, drawing on canon law, gave a lengthy discourse on the many aspects of marriage *(SP* 4,1-20)[150]. The *Leyes del estilo* presented a more limited discussion, focusing on the exchange of marital gifts; the couple's rights of ownership; and their responsibility for debts contracted.

As a means of establishing an economic foundation for their life together, the bride and groom customarily exchanged gifts: namely, the dowry (*dote*) provided by the bride's family, and the groom's dower (*dotarium*) or *arras* as it was known in Spain[151]. As the dower was intended to maintain a widow after her husband's death, it remained under her control. According to the *Fuero real* (3,2,1), a man might give his bride as *arras* no more than a tenth of his estate. Our author affirmed, however, that, prior to the exchange of wedding vows, he could sell to her or to anyone else more than a tenth, because a man was entitled to sell his goods as he wished. Therefore, that transaction, according to law, would be valid *(LEst* 246; *LJ* 1,9,1)[152].

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[149] O'Callaghan, *Alfonso X, The Justinian of His Age,* 137-149; Heath Dillard, *Daughters of the Reconquest. Women in Castilian Town Society, 1100-1300* (Cambridge: Cambridge University Press, 1984); Cristina Segura Graiño, «Historia de las mujeres en la Edad Media», *Medievalismo,* 18, 2008, 249-272.

[150] Esteban Martínez Marcos, *Las causas matrimoniales en las Partidas de Alfonso el Sabio* (Salamanca: Consejo Superior de Investigaciones Científicas, 1966), and «Fuentes de la doctrina canónica de la IV Partida del código del rey Alfonso el Sabio», *Revista Española de Derecho Canónico,* 18, 1963, 897-926; José Maldonado y Fernández del Torco, «Sobre la relación entre el derecho de las Decretales y el de las Partidas en materia matrimonial», *AHDE,* 5, 1943, 589-643; Eduardo Fernández Regatillo, «El derecho matrimonial en las Partidas y en las Decretales», *Acta Congressus Iuridici Internationalis VII saeculo a Decretalibus Gregorii IX et XIV a Codice Iustiniano promulgatis* 3 (Rome: Pontificum Institutum Utriusque Iuris, 1936): 315-384; Patricia T. Ramos Anderson, *Las Siete Partidas, Título II, «De los casamientos» de Alfonso X, el Sabio: Edición crítica y exposición analítica* (New York: Edwin Mellen Press, 2009).

[151] José Antonio López Nevot, *La aportación marital en la historia del derecho castellano* (Almería: Universidad de Almería, 1998), esp. 65-73; Alfonso Otero Varela, «Las arras en el Derecho español medieval», *AHDE* 25 (1955): 189-210; María Luz Alonso, «La dote en los documentos toledanos de los siglos XII-XV», *AHDE* 48 (1978): 379-456; Isabel Beceiro Pita and Ricardo Córdoba de la Llave, *Parentesco, poder y mentalidad. La nobleza castellana. Siglos xii-xv* (Madrid: Consejo Superior de Investigaciones Científicas, 1990), 173-96.

[152] *Glosas,* 904-905, quoting Lib. IIII, ley XLIIII; *Scholia* 660; *Extracto* 148.

With respect to the married couple's assets, our author pointed out that the law presumes that ownership of everything belongs to the husband unless the wife can demonstrate that some property is hers. Nevertheless, custom dictated to the contrary, namely, that husband and wife held all their goods jointly, except those things that either one could prove that he or she held separately *(LEst* 203; *LJ* 8,1; *NR* 10,4,4-5)[153]. If necessary, a husband could sell property acquired by the couple, provided that the wife received half of the profit from the sale and that he did not act maliciously *(LEst* 205; *LJ* 8,2)[154]. As a general rule husbands and wives shared equally in whatever property they owned *(FR* 3,3,1-2). In the case of a merchant family his estate might consist chiefly of movable goods while hers might be a landed estate. If the husband sold her property with or without her consent, he was entitled to half the profit, just as she was entitled to half of his estate *(LEst* 206)[155].

Whenever a married couple jointly contracted a debt, they were equally responsible for paying it *(FR* 3,20,14). Even if the husband incurred a debt and his wife did not give her consent and even if her acceptance was not mentioned in the charter recording the debt, she was still liable for half of the debt. Furthermore, if husband and wife bound each other to pay a debt jointly acquired, she could be obliged to pay the whole amount. If a wife was under age, as stipulated in the *fuero*, and, together with her husband, took out a loan (*empréstito*) she was accountable for half. However, if the couple bound one another, she would have to pay the entire sum even though she was a minor. Our author explained that *el casamiento cumple la edad*, *et la malicia cumple la edad* - «marriage brings one to adulthood and wickedness brings one to adulthood». Just as husband and wife share in the benefits, so also do they share in the debts. However, if an underage wife did not bind herself in the charter recording her husband's debt, she would not have to pay it. An underage husband would be liable for any loan or debt that he contracted. In those instances when restitution was granted to minors he could demand restitution *(LEst* 207)[156].

The husband's control of his family's property was strongly asserted in another law. Should a debtor make a donation to his creditor on condition that his oldest son should inherit it and the creditor then forgave the debt, the donation, the condition, and the remission of the debt would be valid. Consequently, the creditor's wife and his other children, after his death, could not challenge this accommodation. Our author justified that rule by stating the following:

> *ca el marido es señor de las debdas quel deben et de los frutos et del otro mueble que ganaron en uno marido et muger para mantener la casa et a su*

[153] *Glosas,* 910, citing CCVII; *Scholia* 609-610; the text begins on two unquoting pages following and preceding, p. 609; *Extracto* 151. Paul H. Dué, «Origin and Historical Development of the Community Property System», Louisiana Law Review, 25, 1964, 78-95, esp. 85-87, emphasized Spanish influence on Louisiana's community property law.

[154] *Glosas,* 910, quoting CCIX and Lib. IIII, cap. IIII.

[155] *Glosas,* 909, quoting CCVIII; *Scholia* 610-616; *Extracto* 151-152; O'Callaghan, *Alfonso X, The Justinian of His Age,* 143.

[156] *Glosas,* 1049, quoting CCIX; *Scholia* 617-618; *Extracto* 233.

> *muger et a su compaña et puede dello fazer lo que quisiere en tal que non sea destruidor. Ca estonce puede demandar la muger al juez que las sus arras et los sus otros bienes sean puestos en poder de otro porque se gobierne el marido et ella de los frutos.*
>
> The husband is master of the debts that are owed to him, and of the income and other movable goods that the husband and wife jointly acquire to maintain his wife and his household, and he can do with it whatever he wishes, provided that he does not destroy it. The wife, therefore, can ask a judge to place her arras and her other belongings in the power of another so that her husband and she can be supported by the income therefrom *(LEst* 208)[157].

The marital union also bound a woman to the financial obligations contracted by her husband if he was a *mayordomo*, a tax farmer (*arrendador*), or a tax collector *(cogedor).* She was liable, together with her personal property, for his debts, unless she declared, in the presence of good men, that she did not wish to be accountable for his affairs, and that she did not seek to gain any advantage or suffer any harm by her association with him *(LEst* 223; *LJ* 1,5). The *Fuero real* (3,20,13) stated that a woman could not incur a debt without her husband's consent but if she bought or sold anything or was active in trade any debt that she contracted thereby would be valid. The royal court understood that to mean that the debt would not be beneficial to her, nor, presumably, to her husband as well. Moreover, she was obliged to pay for her purchases, loans, or anything else that was to her advantage. Minors were similarly bound by this rule *(LEst* 244; *LJ* 7)[158].

The *Leyes del estilo* have little to say about the children born to a married couple, save with respect to the guardianship of minors and rights of inheritance. The *Fuero real* (3,7,1-3) commented briefly on the legal responsibilities of guardians *(tutores)* of minor children, but the *Partidas* (6,16-19) presented a comprehensive exposition derived from Roman law. Guardianship *(tutela)* could be established for boys under fourteen years of age and girls under twelve. A guardian was required to be a male of twenty-five years of age[159]. The *Leyes del estilo* commented on two aspects of the relationship between guardians and their charges. For example, guardians were authorized to represent the children committed to their care in all civil and criminal proceedings in the royal court *(LEst* 2)[160]. If a guardian ignored a judge's summons concerning lands or houses belonging to his ward, the judge could seize them. Nevertheless, after a year the properties in question would be restored to the minor so that he would not lose his true tenancy. His guardian, however, had to pay court costs, and any damages received by the minor or by the other party to the suit *(LEst* 225)[161].

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[157] *Scholia* 618-623; *Extracto* 233-234.

[158] *Glosas,* 1048, quoting Lib. III, cap. XVIII; *Scholia* 635-637, 658-659; *Extracto* 232, 234.

[159] *Inst.* 1,13-26; Antonio Merchán Álvarez, *La tutela de los menores en Castilla hasta fines del siglo XV* (Seville: Universidad de Sevilla, 1976); O'Callaghan, *Alfonso X, The Justinian of His Age,* 147-148.

[160] *Glosas,* 775, 942, quoting II.

[161] *Glosas,* 945, quoting XXVIII; *Scholia* 51-54, 638, referring to ley 28; *Extracto* 173-174.

The right of children and other heirs to inherit property was usually established in a will. The *Fuero real* discussed wills (3,5,1-14) and inheritances (3,6,1-17). The royal jurists devoted the entire *Sixth Partida* to this subject[162]. The *Leyes del estilo* remarked on the process of drawing up a will. A testator, resident in a certain place, should do so upon the order of the local judge; if he was not a resident, he could make his will in the presence of a *merino*. If the will referred to goods in a lodging house *(posada),* it was understood that it only included the testator's property and not that of other persons living there. However, if the property of other residents was included in the will, and one or all of them had departed, taking their belongings with them, the *alguacil* could levy the penalty of 100 *maravedís* of the *moneda nueva* on the person remaining in the house, because he did not raise his voice to protest that the property was being taken away, perhaps by force. The penalty would not be imposed on those who had left the house. If the beneficiary of the will removed the property without the consent of the testator or the judge, he had to return it, in order not to suffer the same penalty *(LEst* 194). When a person asked the chancery to issue a charter containing his will, he had to appear within three days for it to be issued; if he did not come he would not be summoned and the charter would be sealed *(LEst* 195)[163].

It is noteworthy that the *Fuero real* (3,5,9) refers to the preferential bequest to one heir of a third of the testator's estate. While a testator was forbidden to dispose of more than a fifth of his property for the good of his soul, if he so wished, he could advantage one of his sons or grandsons by granting him a third part of his estate, less the cited fifth. Commenting on this law, our author emphasized that in calculating the third, the entirety of the estate, rather than one element alone, had to be taken into account, because houses, towers, and similar properties could not be carved up without damaging the whole. Moreover, before the heir received his third, the fifth pledged for the good of the testator's soul had to be paid *(LEst* 213-214)[164].

The interaction of local *fueros* and *fueros* later granted by the king was discussed in a case in which a man, in accordance with his local *fuero,* bequeathed a third of his assets *(tercia parte de mejoría)* to one of his sons in preference to other sons. The king, however, might grant the locality a new *fuero* forbidding a father to bequeath more to one son than to the others[165]. The *Fuero real* (3,5,9) did exactly that. If the father was still alive and had not altered or replaced his will, his original disposition would be valid. Whatever the king stated in the new *fuero non se extiende a las cosas pasadas*, *et de ante fechas*, *o mandadas*, *o otorgadas*, *mas a las porvenir* - «did not extend to past affairs, and those previously done, commanded, or granted, but to those to

[162] O'Callaghan, *Alfonso X, The Justinian of His Age,* 149-153.
[163] *Scholia* 557-558*; Extracto* 47, 50.
[164] *Glosas,* 931, quoting CCXVII; *Scholia* 625-628; *Extracto* 161-162.
[165] The *Fuero* of Cuenca, art. 27, forbade parents to give more to one heir over another.

come» *(LEst* 200; *LJ* 1,11,3)[166]. In effect, the rule set down in the *Fuero real* would not supplant the local *fuero* that permitted a father to favor one son over another. He would not have to alter his will to conform to the new law. Our author also stressed the king's right to override the *Fuero de las leyes (FR* 3,5,9) that forbade the recipient of a donation from a municipality to bequeath to one of his sons more than a third of his property and a fifth for his soul. On the other hand, by virtue of a *privillegio en la corte del rey*, the beneficiary of a royal donation was not restricted in the same manner; he could freely dispose of the bulk of his estate, allotting even more than the third or the fifth as he wished *(LEst* 234)[167].

Aside from the situations just described, our author also considered several other claims of potential heirs, two of whom served the church. The first had to do with a father's attempt to evade the payment of taxes. If, with that malicious intention, he bequeathed his entire estate to a son who was a cleric, his donation would not be valid. He could, however, give his son as much as 100 *maravedís* of the *moneda nueva* so that he could be ordained, and that sum would not be taxable; but if the father had no more than 100 *maravedís* and more than one son, the cleric would not be entitled to any more than his brothers *(LEst* 212)[168]. Although churchmen and their property were not subject to taxation, this seemed to be a scheme to defraud the king who was insistent that every eligible taxpayer pay his taxes. Another instance concerned a *freyle*, a member of a religious order, who, without the approval of his superior, could ask the king or a judge to uphold his right to an inheritance.. This accorded with the law stating that a son still under his father's authority can seek justice without his father's consent *(LEst* 6)[169]. Now, it seems unusual that a monk or a friar, bound by a vow of poverty, would assert a claim to an inheritance. That would make sense if he had not yet made his profession and taken his vows of poverty, chastity, and obedience, but the text says nothing of that. He may have intended to donate his inheritance to his monastery, or perhaps he wished to leave the monastery altogether and return to a life in the world, but the text says nothing of those possibilities. The statement that he could take this matter to court without first seeking his superior's authorization would seem to circumvent his vow of obedience and would likely strain his relationship with his superior. Ordinarily a son, until he reached his majority, was under his father's control. Just as his father was known in law as *pater familias*, so the son was called *filius familias.* The final sentence in the text cited above, however, freed the son from his father's power, at least in this instance, and probably referred to the law in the

[166] *Glosas,* 930, quoting CCIIII; José Martínez Gijón, «Textos castellanos de la Baja Edad Media sobre los efectos temporales de las leyes», *HID,* 22, 1985, 307-328, esp. 320-323; Martínez Marina, *Juicio,* 449.

[167] *Glosas,* 930-931, quoting Lib. IIII, cap. XIII, and CCXVIII; *Scholia* 551-609, 644; *Extracto* 162, 195-196.

[168] *Glosas,* 984, quoting CCXVI,

[169] *Glosas,* 811, quoting VI; *Scholia* 70-74, 624-625; *Extracto* 44, 195.

Partidas (4,17,12) that allowed a son living apart from his father to seek redress in court without the permission of his absent father[170].

Speaking of the age of majority, our author commented that the words *nin ome sin edad* in the law beginning *Defendemos* in the title *de las acusaciones (FR* 4,20,2) were understood to mean sixteen years, because that was the age set in the *Fuero de las leyes.* However, our author noted that the *fuero de Castilla* fixed the majority age at twenty-five *(LEst* 70). When our author referred to the *fuero de Castilla*, he clearly meant the *Siete Partidas* (6,19,2) which, following Roman law, fixed the age of majority at twenty-five. At that age one had full juridical capacity to exercise rights and incur obligations under the law[171].

A nephew's right to an inheritance was another instance. Common law *(derecho comunal or ius commune),* that is, Roman law, recognized that a nephew had a right of inheritance to his deceased uncle's estate that was equal to that of his uncle's surviving brother. Our author noted, however, that in some places it was the custom that the deceased's brother, as his nearest relative, had a preferential right to the inheritance. If that were the case, that custom would be upheld, even if it could not be demonstrated when it first arose *(LEst* 241; *LJ* 1,12,2)[172]. This is of particular interest as it reflects the dilemma facing Alfonso X after the death of his oldest son and heir, Fernando de la Cerda, in 1275. The king had to decide whether to designate as his successor Fernando's oldest son, Alfonso de la Cerda, a boy of five, or his own son Sancho, a young man of seventeen. Whereas Alfonso de la Cerda represented the direct line of descent, Sancho could claim a more immediate proximity to the king as his nearest relative. The new law embodied in the *Partidas* (2,15,2) favored Alfonso de la Cerda, but ultimately the king chose to follow *derecho antiguo e la ley de razón*, *según la ley de Espanna* - «the ancient law and the law of reason according to the law of Spain», and acknowledged Sancho in 1276. The king also realized that given Sancho's age, he would be better able than the child Alfonso de la Cerda to face the Marinid challenge. In this instance, the uncle was preferred over his nephew[173].

The right of inheritance was usually favorable to an heir, but it might entail certain disadvantages. For example, the *Fuero real* (4,13,9) required the heir of a thief to make amends for the crime just as the thief would be compelled by a judge to do if he were alive, presumably by returning the stolen property or its equivalent. Our author added that the heir would also be responsible for other crimes committed by his benefactor while he was alive, although he may not

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[170] O'Callaghan, Alfonso *X, The Justinian of His Age,* 149.

[171] *Glosas,* 1124, quoting LXXIII; *Scholia* 387-392; *Extracto* 314; Vallejo, «Regulación», 506; O'Callaghan, *Alfonso X, the Justinian of His Age,* 156-157.

[172] *Glosas,* 935-936, quoting CCXLIII; *Scholia* 656; *Extracto* 165-166.

[173] Manuel González Jiménez, *Diplomatario Andaluz de Alfonso X* (Sevilla: El Monte. Caja de Huelva y Sevilla, 1991), 549, no. 518 (1283); Jofré de Loaysa, *Crónica de los reyes de Castilla, Fernando III, Alfonso X, Sancho IV y Fernando IV, 1248-1305,* ed. Antonio García Martínez (Murcia: Academia Alfonso X el Sabio, 1982), 90-92, ch. 219.19-20; *Crónica de Alfonso X según el Ms. II/2777 de la Biblioteca del Palacio Real (Madrid),* ed. Manuel González Jiménez (Murcia: Real Academia Alfonso X el Sabio, 1998), 193-194, ch. 68; O'Callaghan, *Alfonso X, The Justinian of His Age,* 37-39.

have been formally charged before his death. Just as the heir was accountable for any debt incurred by his benefactor *(FR* 3,20,6), he was obliged to pay any fine imposed on him by the court, but not otherwise *(LEst* 67-68)[174].

XI. **THE LAW OF PROPERTY**

The possession and ownership of property with all its attendant obligations figured prominently in book three of the *Fuero real* and the Third and Fifth *Partidas*[175]. The *Leyes del estilo* also discussed the subject. Landed property was broadly classified as *realengo* (the royal domain), *abadengo* (church property), and *solariego* (lands held by others). The king was very much concerned about alienation of the royal domain especially to the church[176]. Our author pointed out that the Castilian Cortes of Nájera and the Leonese Cortes of Benavente declared that the lands of the royal domain *(realengo)* could not be acquired by the church *(abadengo)*. However, nobles holding *behetrías* (a type of lordship that allowed the tenants to choose their lord) and other lands not part of the royal domain could sell them to religious orders, even though the orders did not have a privilege permitting them to purchase them or receive them as a gift. A non-noble or a noble woman holding land pertaining to the royal domain could not sell it to the church, unless the church had a privilege allowing it to obtain such lands[177]. This privilege was confirmed by other kings. Nevertheless, when Mascarán leased the right to collect royal revenues, he demanded that the church in the kingdom of León surrender property belonging to the royal domain. However, it was decided that in the kingdom of León only royal granaries *(cilleros)* would be counted as royal domain and that other estates would be *behetrías*. Alfonso X declared that landed estates could not be sold to the church nor purchased by the church, unless the church had a royal privilege allowing it to do so. All of this was contrary to the *señorío del rey (LEst* 231)[178].

Let me clarify some allusions in this text. The Cortes of Nájera and Benavente mentioned above can be identified as the Curia convened by Alfonso VIII of Castile at Nájera in 1184 and the Curia of Benavente summoned by Alfonso IX of León in 1228. Both were cited frequently over the years as kings sought to safeguard the royal domain from depletion[179]. Mascarán, who obtai-

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[174] *Glosas,* 1042-1q043, quoting Lib. I, cap. LXVIII, LXX, and 1109, quoting LXVII; *Scholia* 381-385; *Extracto* 287-289.

[175] O'Callaghan, *Alfonso X, The Justinian of His Age,* 175-92.

[176] O'Callaghan, *Alfonso X, The Justinian of His Age,* 73-74.

[177] The text reads: «Mas ningin otro que non sea fijo-dalgo, o muger que sea fija-dalgo».. The sixteenth-century editions, as well as *Scholia* omit *muger.* The nineteenth-century editions include it.

[178] *Scholia* 642; *Extracto* 188.

[179] Julio González, *El reino de Castilla en la época de Alfonso VIII,* 3 vols. (Madrid: Consejo Superior de Investigaciones Científicas, 1960), 1:357-61, and, «Sobre la fecha de las Cortes de Nájera», *Cuadernos de Historia de España* 61-62 (1977): 357-61; José Luis Bermejo Cabrero, «En torno a las Cortes de Nájera», *AHDE* 70 (2000): 245-49; Julio González, *Alfonso IX,* 2 vols.

ned the right to collect royal revenues in the kingdom of León, was likely that David Mascarán who served Pedro III of Aragón in a similar capacity. The date of his activity in León is unknown, but it was probably in 1278[180]. Meantime, the king on several occasions attempted to curtail the loss of royal lands. In 1254, for example, Alfonso X commanded Badajoz not to permit ecclesiastical institutions to acquire property paying tribute to the crown[181], and in 1258 he directed that an inquest to recover royal lands be carried out in Ledesma[182]. Responding to complaints by the bishops, in 1275 Fernando de la Cerda condemned the seizure of church lands by nobles and others, on the pretext that they belonged to crown[183]. Despite that attempt to placate the bishops, in 1278 the king ordered an inquest concerning royal lands acquired by the church and church lands incorporated into the royal domain[184]. I suspect that David Mascarán may have been responsible for that. In the following year, the king's son Sancho, seeking to appease the pope and the bishops, cited the Curia of Nájera, and then recommended that no tribute would be demanded if the church acquired previously exempt property. Tributary land already held by the church would remain unchanged. Future purchases, however, could only be made with the king's permission and would be subject to tribute[185]. Perceiving the church's accumulation of property as a threat to royal power, Alfonso X endeavored to curb future acquisitions by insisting on his right to give consent and to levy tribute on lands newly acquired by the church.

Our author also commented briefly on a particular part of the royal domain, namely, *salinas* or salt mines. Wherever there were whose boundaries were known and observed from antiquity, storehouses for salt (*alfolis de sal*) should be established. If someone found salt, he was entitled to a year's supply for the

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(Madrid: Consejo Superior de Investigaciones Científicas, 1945), 2: 23-26, esp. 26, no. 11; Joseph F. O'Callaghan, «Una nota sobre las llamadas cortes de Benavente», *Archivos Leoneses,* 37, 1983, 97-100; Rafael González Rodríguez, «Las cortes de Benavente de 1202 y 1228», El Reino de León en la época de las cortes de Benavente: Jornadas de Estudios Históricos, Benavente, 7, 8, 9, 10, 15, 16 y 17 de mayo de 2002 (Benavente: Institución Ledo del Pozo, 2002), 191-221.

[180] David Romano, *Judíos al servicio de Pedro el Grande de Aragón (1276-1285)* (Barcelona: Universidad de Barcelona, 1983), 209-210.

[181] *MHE* 1:18, 21-22, nos. 9, 11; *DAAX* 116, no. 117.

[182] Antonio Ballesteros Beretta, *Alfonso X, el Sabio* (Barcelona: Espasa-Calpe, 1963; reprint, Barcelona: El Albir, 1984), 1078, no. 394.

[183] Ángel Barrios García, *Documentación medieval de la catedral de Ávila* (Salamanca: Universidad de Salamanca, 1981), 90-91, no. 101; Mateo Escagedo Salmón, *Colección diplomática. Privilegios, escrituras, y bulas en pergamino de la Insigne Real Iglesia Colegial de Santillana,* 2 vols. (Santoña: Dialco Mnemaen, 1927), 1:155-158; Ramón Menéndez Pidal, *Documentos linguísticos de España. Reino de Castilla* (Madrid: Junta para Ampliación de Estudios e Investigaciones científicas, 1919), 300-302, no. 229.

[184] F. Javier Pereda Llarena, *Documentación de la catedral de Burgos (1254-1293).* Burgos: J. M. Garrido Garrido, 1984), 210-211, no. 148 (28 April 1278).

[185] *Memoriale* art. 5, F in Peter Linehan, «The Spanish Church Revisited: The Episcopal Gravamina of 1279», in Brian Tierney and Peter Linehan, eds., *Authority and Power. Studies on Medieval Law and Government Presented to Walter Ullmann on his Seventieth Birthday* (Cambridge: Cambridge University Press, 1980), 127-147, esp. 144-147; O'Callaghan, *Alfonso X, The Justinian of His Age,* 69-70, 75-76.

needs of his household, namely 5 *fanegas* (a *fanega* or bushel was about 55.5 litres *(LEst* 202)[186].

Moving on from that tussle between church and state, our author considered the rights of individual property owners. The relationship between ownership and possession was discussed in the light of both civil and canon law. According to the law *cogi possessorem* in Justinian's Code (3,31,11, *De Petitione Haereditatis),* no one was obliged to show the title on which his possession was based[187]. Although a litigant alleged that he had possessed property for a year and a day, a judge, prompted by a lawful presumption and suspecting that he lacked a legal title, could require him to produce it. That was noted in Gregory IX's *Decretales* (2,26,17, *Prescriptiones*, *Si diligenti)* and was so understood by Master Fcrnando de Zamora *(LEst* 192)[188]. Comparing that text with the *Margarita de los pleitos*, tit. 9, which cited the law *cogi possessorem* in the title *De peticione hereditatis*, Joaquín Cerdá Ruiz-Funes argued that Master Fcrnando was probably the royal notary of León mentioned above, and the author of the *Margarita*[189]. With respect to possession, our author referred to the *Fuero real* (2,11,1) which declared that a man who held an estate for a year and a day *(por año e dia)* publicly and peacefully *(en faz e en paz)* could not be dispossessed. The judges of the *corte del rey* determined that the phrase *en faz e en paz* meant that a plaintiff who visited the town or place where the property was located and failed to claim it within a year and a day could not do so later. The tenant was not obliged to respond to a claim made after the expiration of that time. That decision concerned *tenencia* or possession, but not *señorío* or ownership, which the plaintiff could assert. Nevertheless, if the tenant could prove that he purchased the property or held it by a lawful title for a year and a day, publicly and peacefully in the presence of the plaintiff *(en faz e en paz del demandador),* he could not be required to respond to a claim of possession or of ownership *(LEst* 242)[190]. The principle of a year and a day (*per annum et diem*) was common to all western European legal systems.

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[186] *Scholia* 610; *Extracto* 48.

[187] *Codex Iustinianus* (3,31,11) in Paul Krueger, Theodor Mommsen, Rudolf Schoell, and Wilhelm Kroll, *Corpus Iuris Civilis,* 3 vols. (Berlin: Weidmann, 1877-88): *Imperatores Arcadius, Honorius.* Cogi possessorem ab eo qui expetit titulum suae possessionis edicere incivile est praeter eum, qui dicere cogitur, utrum pro possessore an pro herede possideat. ARCAD. ET HONOR. AA. AETERNALI PROCONS. ASIAE. A 396 D. XII K. APRIL. CONSTANTINOPOLI ARCADIO IIII ET HONORIO III AA. CONSS. *The Code of Justinian* in *The Civil Law,* trans. S. P. Scott (Cincinnati: The Central Trust Company, 1932), vol. 12: «The Emperors Arcadius and Honorius to Aeternal, Proconsul of Asia. It is unjust for the possessor of property to be compelled to disclose his title to possession to anyone who demands it, except that he should be obliged to say whether he holds the said property as possessor or as heir. Given on the twelfth of the *Kalends* of April, during the Consulate of Arcadius, Consul for the seventh time, and Honorius, Consul for the third time, 396».

[188] Martínez Marina, *Ensayo,* 195; *Scholia* 557; *Extracto* 116.

[189] Joaquín Cerdá Ruiz-Funes, «La Margarita de los pleitos de Fernando Martínez de Zamora», *AHDE,* 20, 1950, 645-646.

[190] *Scholia* 657; *Extracto* 115-116. *El Fuero Viejo de Castilla* (4.4,9), ed. Ignacio Jordán de Asso and Miguel de Manuel (Madrid: Joachín Ibarra, 1771), stated that if someone built a new structure and held it publicly for a year and a day, no one could complain about it.

XII. **BUYING AND SELLING**

The business of buying and selling real estate as well as a variety of movable goods was an everyday activity that received ample attention in the *Fuero real* (3,10,1-17) and the *Siete Partidas* (5,5,1-67)[191]. At times the king confiscated property and then ordered it to be sold. The one responsible for the sale had to observe the *solemnidad de derecho* - «the solemnity of the law», by publicly proclaiming at the times set by the *fuero* his intent to sell. If he neglected to do so, both he and the purchaser would be summoned before the king. The sale would be nullified, the purchase price would be returned to the buyer, and the property would be returned to its original owner as the law required. However, the purchaser could bring charges against the seller for assuring him that there were no complications for the sale; or that he suffered a loss by borrowing money or selling some of his property in order to meet the purchase price *(LEst* 219)[192].

The *Fuero real* (3,10,5) acknowledged the possibility of rescinding a sale if the price paid was twice the value of the object sold. In that case the purchaser could either nullify the sale or pay the lawful price and retain what he bought. Reflecting on the sale of property at auction, our author emphasized that the object offered for sale was worth the price at which it was sold and nothing more. Furthermore, neither the seller nor his closest relatives could object that the sale price was less than half the lawful price, that is, the *justo precio* cited in the heading to this law. Something sold at auction on the order of a judge or tax collector could not be withdrawn, unless the family of the owner, within the nine days established by the *fuero*, offered to reimburse the purchaser for the price he paid. Only a family member of the seller, and no stranger, could demand that something be withdrawn from the auction. If, after the buyer retained the object in peace for a year and a day and it was then discovered that the sale was illegal, it would not be undone. However, the judge who directed the sale might be required to compensate those who suffered a loss because of his action. The caption for this law states emphatically that the *ley del engaño en meytad del justo precio* did not apply to sales at auction *(LEst* 220)[193]. That refers to two Roman legal principles, *justum pretium* and *laesio ultramidium.* The idea of a just price arose in post-classical Roman law and ordinarily was the price that something would fetch in the market. The notion of *laesio ultramidium* protected a seller from suffering a loss if he received less than half of the just price, that is, the actual value of the object being sold. However, as we have seen, those principles were not applied to sales at auction[194] The caption to the foregoing law also declared that the *ley del tanto por tanto* was not applicable when goods were offered for sale at an auction.

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[191] O'Callaghan, *Alfonso X, The Justinian of His Age,* 196-199.

[192] *Glosas,* 965, quoting CCXXII; *Scholia* 631-633; *Extracto* 180-181.

[193] *Glosas,* 963, 965, 972, quoting in part Lib. III, cap. XIX.

[194] *Scholia* 633-635; *Extracto* 181-182. Silvia Valmaña Valmaña, «Evolución histórica del concepto de justo precio y de la rescisión por *laesio ultradimidium*», *Revista de Derecho UNED,* 16, 2015, 741-778, esp. 756-763; Ramón Fernández Espinar, «La compraventa en el Derecho medieval español», *AHDE,* 25, 1955, 293-528, esp. 420-421; Raymond de Roover, «The Concept of the Just Price: Theory and Economic Policy», *The Journal of Economic History,* 18, 1958, 418-434.

That emphasized that, whatever value a seller might put on an object for sale, it was worth no more and no less than the price at which it was sold.

Another issue concerned the right of a seller's relatives to purchase property that he offered for sale. The *Fuero real* (3,10,13) stated that, before anyone else, the seller's nearest relative should be given the first opportunity to purchase the property, *tanto por tanto*, that is, at the same price as any other prospective buyer. Commenting on this law, our author declared that the law *tanto por tanto* was valid in both León and Castile. He explained that when an owner in the kingdom of León sold lands belonging to the family patrimony, his nearest relative, according to the *Fuero de las leyes*, had the right to halt the sale. The relative previously had a year in which to make his exception and that rule would be applied if the seller failed to notify his relative about the sale. *(LEst* 230; *LJ* 1,12,1)[195].

Among the questions presented to Alfonso X by the *alcaldes* of Burgos, one concerned the period of time allowed the seller to prove that he had not received payment from the buyer for land, a house, or an animal. The king decided that he had two years to do so *(Leyes nuevas* 20)[196]. Our author stated that the seller was not allowed to claim an exception after two years on the grounds that he had not been paid. Nevertheless, it was the usage of the royal court that a judge, by virtue of his office, and not at the request of a litigant, could require the buyer to swear that he had paid the seller or his representative *(LEst* 184)[197]. On a very mundane level, if someone complained that another had taken an animal of a certain color and the latter proved that he had been authorized to do so by a judge, no one could take action against him, even though the animal's color was not specified *(LEst* 185). If a man bought an animal and it was claimed by someone resident in a locality governed by a different *fuero*, the purchaser could not ask that the case be adjudicated according to his *fuero*. If he appointed an *otor* or agent, he had to oppose the claim in the court where the demand for the animal was made. The case would be settled there, rather than in the purchaser's judicial district *(LEst* 5)[198].

In addition to landed and movable property, the buying and selling of human beings was a common feature of thirteenth-century Castilian society, especially as persons caught up in frontier warfare were often captured and sold as slaves. The *Fuero real* (4,8,1,4-5) commented briefly on slaves, but the *Siete Partidas* (4,21,1-8; 4,22,1-11) discussed the subject of slavery and freedom at length[199]. Our author commented on the peculiar case of a freeman who, with or without his consent, might be sold into slavery. The *Fuero real* (3,10,8) forbade anyone to sell a freeman into slavery, but if a man, in order to share in the sale

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[195] *Glosas,* 971, quoting CCXXX; Martínez Marina, *Ensayo,* 147, n. 459; *Scholia* 641-642; *Extracto* 186; Roncesvalles Barber Cárcamo, «Antecedentes históricos del retracto gentilicio (Estudio paralelo de las fuentes castellanas y navarras)», *Revista jurídica de Navarra,* 9, 1990, 99-150, esp. 110-111.

[196] *Leyes nuevas,* in *Opúsculos legales,* 2:190-191; José López Ortiz, «La colección conocida con el título "Leyes Nuevas" y atribuida a Alfonso X el Sabio», *AHDE,* 16, 1945,: 5-70.

[197] *Glosas,* 850, quoting CLXXXIII, and 1002, citing Lib. III, cap. XXXVI

[198] *Glosas,* 802, quoting V; *Scholia* 68-70, 550-552; *Extracto* 39, 84-85, 112.

[199] O'Callaghan, *Alfonso X, The Justinian of His Age,* 167-172.

price, agreed to be sold, the seller could not undo the sale at a later date. On the other hand, the man being sold could recover his liberty by returning his share of the sale price. If someone sold a freeman without his knowledge, he had to pay a fine of 100 *maravedís* to the man he sold; if he lacked the funds to do so he would be enslaved. He would not be penalized, however, if he did not know that he was selling a freeman. A man willing to sell himself into slavery must have been extremely desperate and in dire economic straits.

Although fathers had great power over their children, they could not sell or pledge them, or give them away. Whoever bought them or accepted them in pledge would lose his money and a donation of a child would be invalid. Reflecting on this, our author declared that both the seller and the purchaser, who knew that the person being sold was a freeman who objected to the sale, should be executed in accordance with the *Fuero real* (4,14,1-2), That law stated that anyone who seized and sold another's slave would be fined four times the sale price, to be divided equally between the owner and the king. If the robber retained the slave in his service he had to return him to his owner and was fined an additional sum. The penalty of execution was meted out to anyone who knowingly sold a free man into slavery, or donated him or exchanged him against his will, as well as the one who accepted the slave, and anyone who imprisoned or sequestered a free man with the intention of enslaving him. Our author, after citing this text, reiterated that both the seller and the purchaser deserved to die. However, if the freeman knew that he was being sold and did not object even when he could do so, the seller would not be penalized. On the other hand, if the freeman did not know that he was being sold, the seller would be fined 100 *maravedís* or could be reduced to slavery as stated above *(LEst* 80; *LJ* 2,1)[200].

The *Fuero real's* statement that a father has great power over his children is a reflection of the Roman law of *patria potestas.* Whether Alfonso X enacted a specific law forbidding fathers to sell or give away their children is unknown, but it is implied in two laws in the *Siete Partidas* (4,17,1-2). The first law states that a father who was on the verge of starvation because of his poverty could sell or pledge his child in order to feed himself and his family, and thereby save them from death. Indeed, a man besieged in a castle that he held for his lord, and having nothing to eat, could eat his son, rather than surrender the castle without his lord's consent. The second law authorized the father to redeem his child by paying the price for which he was sold. However, if the owner taught the boy a trade, he was entitled to a greater price that reflected the boy's new value.as estimated by reliable men.

XIII. **THE REPAYMENT OF DEBTS**

Borrowing and lending money were essential characteristics of the thirteenth-century economy. On that account both the *Fuero real* (3,20,1-17) and

[200] *Glosas,* 967-968, quoting LXXXIII; *Scholia* 429-435; *Extracto* 184.

the *Partidas* (5, 14,1-54) regulated the repayment of debts and the penalties for failing to do so[201]. The *Leyes del estilo* commented on many aspects of this matter, which seems to have drawn considerable attention in the royal court. As already noted, a wife was responsible for her husband's debts *(LEst* 223)[202]. If a debtor was summoned before the *alcaldes del rey* in the *casa del rey* or elsewhere and claimed that he should be judged according to his *fuero*, the royal judges should remit the case to his judicial district for trial and appoint a time for him to do so *(LEst* 7; *LJ* 1,3)[203]. Responding to questions posed by the *alcaldes* of Burgos[204], Alfonso X declared that a man who incurred a debt or posted his property as surety could not sell any part of it until he had resolved his debt. However, the court later ruled that if he was a settled member of the community, he could sell other properties that were not committed to payment of his obligations *(LEst* 243)[205].

Ordinarily when the plaintiff demanded payment, he expected the return of the funds or property specifically mentioned in his original demand; but if the debtor had other resources that could fulfill his debt, they could be appropriated. If a creditor could not locate his debtor, but discovered that someone else had possession of his property, he could require him to respond in court. If the possessor denied both the debt and having made any payment on it, and offered various exceptions, the plaintiff had to prove his claim. On the other hand, if the defendant refused to answer he would be dispossessed of the debtor's property *(LEst* 3; *LJ* 1,1)[206].

Although a debtor acknowledged in a charter written by a public scribe that he owed so many *maravedís,* he might allege that his promise and his obligation to pay the debt were invalid because of his creditor's absence. The judges of the *casa del rey* determined that both the debtor and the creditor had to be present when the promise was made *ca esto es de la sustancia del prometer uno a otro* - «because that is the substance of the promise made by one to another». Otherwise neither the debtor's promise nor the obligation it entailed was valid. The court assumed that all the other solemnities necessary to create a legal obligation were fulfilled. Therefore, a public scribe could not record a plea to present to a judge if both parties were not present when the contract was made *(LEst* 187)[207]. As an example of a debt, our author mentioned the case of a man who leased 100 sheep and the profit therefrom (e.g., fleece) for five years for a certain annual rent. However, should the lessee claim that the lease was for three years and that he had paid the rent for that term, he had to prove that that was so *(LEst* 250; *LJ* 1,10,1)[208].

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[201] O'Callaghan, *Alfonso X, The Justinian of His Age,* 189-191.

[202] *Glosas,* 1049, quoting CCIX.

[203] *Glosas,* 947, citing XIII, and 1038 quoting VII.

[204] *Leyes nuevas,* 197: Título de las fiaduras y de las debdas. *LEst* 243 repeats this exactly.

[205] *Scholia* 657-658; *Extracto* 188.

[206] *Glosas,* 1038, quoting CCLIII, and 1039-1040, quoting III;. *Scholia* 54-60, 74-80; *Extracto* 40, 80.

[207] *Glosas,* 764, quoting CXCI; *Scholia* 553-554; *Extracto* 105-106.

[208] *Scholia* 663; *Extracto* 213.

A man who contracted a debt obviously had to repay it. He might stipulate that he would do so on a certain date and in a certain place and he might also agree that if he failed to do so he would be subject to a financial penalty. In many instances that was a means of concealing the payment of interest (or usury as it was known) because the church forbade Christians to lend money at interest[209]. Moreover, if a debt was not paid a judge might permit the creditor to seize the debtor's property until payment was made.

The *Leyes del estilo* described several situations of this nature. For example, the *Fuero real* (1,11,5) stipulated that it was inappropriate *(cosa desaguisada)* for a man to subject his person or all his property to such an extreme penalty for failure to repay a debt. On the contrary, the penalty should be no greater than whatever was demanded, but if the demand was in money the penalty could be increased to two times, not counting the demand itself *(FR* 4,5,10). Our author reiterated that the penalty in these cases should be no more than double the amount demanded; otherwise the plea would be invalid *(LEst* 247; *LJ* 6,1). According to the *Fuero real* (3,20,2) a debtor might agree that if he failed to pay the debt on time his creditor could seize his goods wherever they were and sell them. That transaction would be valid. Our author added that if the creditor was unable or unwilling to proceed in that way, he could have recourse in court; in doing so he would not lose any rights accorded him in his original agreement with his debtor *(LEst* 248)[210].

A man who agreed to pay a debt on a certain day or suffer a certain penalty if he did not, might pledge some property as assurance that he would pay the debt on time. The pledge should be sold for failure to pay the debt, but if not, the debtor had to pay the stipulated penalty *(LEst* 215; *LJ* 4,1)[211]. Should a judge order a debtor to pay his debt and the daily penalty for not doing so, the penalty would be counted for every day from the day when payment of the debt was due *LEst* 216; *LJ* 1,4). If someone made a promise in the *casa del rey* to pay a debt in a certain place such as Atienza, and his creditor wished to establish the conditions of payment, he should do so in the *casa del rey que es lugar comunal a todos* – «which is a place common to everyone», so that any dispute that might arise between the parties in Atienza could be adjudicated by the king or his judges *(LEst* 193). When a plaintiff complained that a debtor had not paid his debt, whether it was 10,000 *maravedís* or some other sum, the *alguacil* should arrest the debtor. If the debtor acknowledged his debt, though not the amount demanded, the *alguacil* should take a tenth of whatever the plaintiff demanded. If the court determined that the debtor owed a lesser amount the *alguacil* was still entitled to a tenth *(LEst* 196)[212]. A debtor who paid part of a debt would not have to pay the full penalty, but only for the outstanding portion. This was a matter of equity *(piedad)* rather than of the force of law. In this case *la piedad escripta salva el derecho* - «written equity overrides the

[209] O'Callaghan, *Alfonso X, The Justinian of His Age,* 180, 205.
[210] *Glosas,* 1038, quoting CCLI; *Scholia* 660-61; *Extracto* 35, 224-225.
[211] *Glosas,* 1021, quoting CCXVIII, and 1045, quoting in part CCXX.
[212] *Glosas,* 753-754, quoting XCIX, and 1041 quoting CC.

law» *(LEst* 199). Sergio Martínez cited this as evidence of a desire to humanize the harshness of Roman law concerning debtors[213].

The *Fuero real* (3,18,1-14) and the *Partidas* (5,12,1-37; 5,13,1-50) summarized the obligations undertaken by sureties who guaranteed various types of contracts, e.g., sales and debts. A debtor, for example, might appoint a surety to guarantee that he would repay his debt, but if he did not the surety would be accountable. Our author added that if the surety's property was insufficient to cover the debt, he would not be imprisoned unless he had previously bound himself and all his goods to pay the debt *(LEst* 134)[214].

As a consequence of a debtor's failure to pay his debts, a judge might direct a *merino* to seize his movable goods and deliver them to the creditor. However, if the *merino* neglected to do so and left office and took those things with him, the debtor would be free of his debt to the extent of the value of his goods. The former *merino* or his successor would be accountable for the missing belongings, even if their value was greater than the debt *(LEst* 222)[215]. If someone owed a debt to the king or to the Jews who collected royal revenues, his property would be sold to cover the debt or his taxes even if he was out of the country. However, on his return, if he argued that he had paid the debt or paid his taxes or offered a good reason why he had not done so, he was to be heard. If he proved his case and the one who purchased his property held it publicly and peacefully *(en paz et en faz)* for a year and a day, the one who sold it had to compensate the debtor for his loss. Nevertheless, if a year and a day had not elapsed, the sale would be nullified *(LEst* 221)[216]. Assuming that a judge determined that the debtor's property should be sold, it would seem that the judge should not be personally responsible for providing financial compensation to the debtor. One would expect that the royal treasury would be liable if the judge served in the royal court; if he were a municipal judge, liability would rest with the municipality.

The law acknowledged that a creditor could seize the property of a debtor who defaulted on his debt and could also attempt to recover it if it were held by someone else. However, it was the custom of *the casa del rey* that if the property was in another's possession, the creditor should not attempt to seize it on his own, but should rather seek the approval of a court. If the possessor had purchased the property, knowing that it was part of a debt, he could surrender it voluntarily. So too, if a cleric or a layperson acquired the property of a royal tax collector *(cogedor)* or tax farmer *(arrendador),* the king could yield it. Anyone having a claim on this property should make his case before the king who would hear the case himself or assign it to a judge to decide according to the law. This was in fact declared by Maria de Molina in an undated letter responding to the

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[213] *Glosas,* 1045, quoting CCIX, and 1085-1086, quoting CCIII; *Scholia* 551, 557-559, 628-629; *Extracto* 34, 40, 220, 227, 230; Sergio Martínez Baeza, «La protección del deudor: El beneficio de Competencia», *Revista chilena de Historia del Derecho,* 16, 1990, 383-390, esp. 384.

[214] *Glosas,* 1015, quoting CXXXII; *Scholia* 497; *Extracto* 218; O'Callaghan, *Alfonso X, The Justinian of His Age,* 187-188.

[215] *Glosas,* 1041, quoting CCXXV.

[216] *Glosas,* 965-966, quoting CXXIV; S*cholia* 635-636; *Extracto* 187-188, 224.

alcaldes of Toledo. The text of her letter was included in this law, the longest one in the *Leyes del estilo.*

The letter noted that the queen's son, King Fernando IV, had directed the *alcaldes* of Toledo to seize the property of Gutierre Pérez, who had leased the revenues from the of Espartinas (in the province of Madrid)[217], and sell it so that 12,000 *maravedís* could be transferred to his uncle, Infante Juan. However, the dean and Gonzalo Pérez, a canon of Toledo, had acquired a portion of Gutierre's property and when summoned before the *alcaldes* they argued that the matter should be decided by an ecclesiastical judge and refused to respond to the demand of the *alcaldes* that they surrender the property. Thereupon the dean threatened to excommunicate the *alcaldes* if they did not return the property. As the king was on the frontier, the *alcaldes* turned to María de Molina, who consulted with men learned in the law. They emphasized that tax collectors and tax farmers, from the time they began to collect the king's revenues until they rendered accounts, were bound to him in their persons and property. No one should protect them in a church, monastery, castle, or other lordship. According to the *fuero* of Spain, and the usage and custom of previous kings, this issue could not be decided by any udge other than the king, Safeguarding the rights of the king and of the church, María admonished the *alcaldes* not to summon the dean and the canon. However, she commanded the *alcaldes* to determine the properties belonging to Gutierre Pérez and to occupy them in the king's name and to send Infante Juan the 12,000 *maravedís,* as the king directed. If anyone had a claim to Gutierre's property, he should bring that before the king who would appoint good men to decide it in accordance with the law. Maria also wrote to the dean, warning him not interfere with the king's jurisdiction or his rights, because the king always upheld and would uphold the rights of the church. Moreover, the dean had no reason to threaten to excommunicate the *alcaldes* who were obeying the king's mandate. She added that the *alcaldes* knew that the church acknowledged that the jurisdiction of the church in spiritual affairs and the king in temporal matters should be protected. Finally, she affirmed that any great lord had the right to seize the property of his tax collectors or tax farmers *(LEst* 4; *LJ* 1,4)[218].

Although the text of this letter is undated, the queen's statement that her son was on the frontier suggests that it could be dated in 1309, 1310, or 1312 when he was involved in the seizure of Gibraltar, the siege of Algeciras, and the capture of Alcaudete. Fernando IV's insistence that 12,000 *maravedís* from the sale of Gutierre Pérez's property should be transferred to Infante Juan more than likely may be dated in 1309 during the siege of Algeciras. In July the king, accompanied by his uncle, initiated the siege. At some time, the king promised Infante Juan 26,000 *maravedís* for five days service, but apparently was unable

[217] Las Salinas de Espartinas is not to be confused with the town of Espartinas in the province of Seville.

[218] *Glosas,* 1032, 1039, 1084, quoting in part Lib. I, cap. IIII; *Scholia* 60-68; *Extracto* 225.

to pay him. Thus, in October, Juan deserted, thereby incurring the bitter enmity of his nephew[219].

Gutierre Pérez was a businessman who apparently hoped to exploit the by leasing the revenues from the king; but he was unable to meet his obligations. The dean and cathedral chapter of the archdiocese of Toledo, which had acquired rights in the Salinas de Espartinas in the twelfth century, prepared to defend them, by demanding that the issue should be settled in an ecclesiastical court and even threatening to excommunicate the *alcaldes* of Toledo. María de Molina, after consulting men of law, determined that only the king had jurisdiction over his tax farmers and commanded the *alcaldes* to proceed with the sale[220]. That seems to have ended the matter.

XIV. **COMMERCE**

Although the revival of trade and commerce opened the Castilian economy to the wider world, th *Leyes del estilo* commented only briefly on that development. Alfonso X established customs stations at the principal ports on the Bay of Biscay from Santander westward to La Coruña, as well as at Seville in Andalucía and Cartagena in Murcia with access to the Atlantic and the Mediterranean[221]. Perhaps because there may have been variation in the customs duties, our author declared that the duties *(diezmos)* taken should be the same in all ports of entry *(LEst* 201). While welcoming imports, Alfonso X also limited the export of the so-called *cosas vedadas*, certain goods deemed essential to the domestic economy. Among them were horses, hides, seeds, silk, mercury, cattle, pigs, goats, sheep, hawks, falcons, and other items. Our author stressed that the royal *establecimiento* prohibiting the export of *cosas vedadas* should be observed as the king commanded in his charter. That prohibition remained in effect after his death, but no one would incur a penalty for violating it until the

[219] Jaspert de Castellnou informed Jaime II on 17 October 1309 of the king's debt of 26,000 *maravedís* owed to Infante Juan and his desertion; Ángeles Masía Ros, *Relación castellano-aragonesa desde Jaime II a Pedro el Ceremonioso,* 2 vols. (Barcelona: Consejo Superior de Investigaciones Científicas,1994), 2:245-247, esp. 246; *Crónica de Fernando IV: Estudio y edición de un texto postalfonsí,* ed. Carmen Benítez Guerrero (Seville: Universidad de Sevilla and Cátedra Alfonso X el Sabio, 2017), 155, cap. 16.71. *Vid.* Joseph F. O'Callaghan, «La cruzada de 1309 en el contexto de la batalla del Estrecho», *Medievalismo,* 19 (2009): 243-260, and *The Gibraltar Crusade: Castile and the Battle for the Strait* (Philadelphia: University of Pennsylvania Press, 2011), 131-136.

[220] Susana Villaluenga de Gracia, «Los derechos del Cabildo Catedral de Toledo en las Salinas de Espartinas y Heredados», *Creer y entender: Homenaje a Ramón Gonzálvez Ruiz,* 2 vols (Toledo: Real Academia de Bellas Artes y Ciencias Históricas de Toledo, 2014), 1:335-366. The author does not mention the instance discussed above.

[221] O'Callaghan, *Alfonso X, The Justinian of His Age,* 197-198; Américo Castro, «Unos aranceles de aduanas del siglo xiii», *Revista de Filología Española,* 8, 1921, 1-29; Enrique de Vedia y Goossens, *Historia y descripción de la ciudad de La Coruña* (La Coruña: Domingo Puga, 1845), 148-150, no. 7; Juan Torres Fontes, *Documentos de Alfonso X* (Murcia: Nogues, 1963), 257-258, no. 221.

new king issued a directive about it. Furthermore, if anyone exported something not mentioned in the king's charter, even though it was customarily included among the *cosas vedadas*, he would not be penalized *(LEst* 204)[222].

The reference to the king's *establecimiento* and his charter is imprecise in that it could refer to Alfonso X[223], Sancho IV, or Fernando IV[224], each of whom enacted laws on this matter in the Cortes. Moreover, Alfonso X addressed the issue in the *Espéculo* (4,12,57) and the *Siete Partidas* (5,7,5). In 1281, while assuring merchants that they would have to pay customs duties only once at the port of entry or exit, he also maintained his ban on exporting prohibited goods. He had in fact ordered an inquest to determine whether they were violating that ban[225].

XV. **CRIME AND PUNISHMENT**

The *Fuero real* (4,1-25) and the *Seventh Partida* extensively treated criminal law and the penalties appropriate for a range of crimes[226]. The *Leyes del estilo* commented on several issues cited in the *Fuero real.* For example, if someone accused a third party and demanded that the judge take action against him, the judge should not do so until the accuser presented a charter or other evidence of the crime *(LEst* 92)[227]. When a plaintiff accused another of committing a crime, the judge should summon the accused; if he refused to appear, the judge should determine the truth of the accusation and declare the accused a *fechor* or malefactor *(LEst* 95)[228]. Thereafter, he would be pursued, arrested,

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[222] *Glosas,* 1007, quoting CCLIII; *Scholia* 609-610; *Extracto* 48, 264-265; Miguel Ángel Ladero Quesada, *Fiscalidad y poder real en Castillo, (1252–1369)* (Madrid: Editorial Complutense, 1993), 164-173.

[223] Cortes of Seville in 1252 (art. 19-21), Valladolid in 1258 (art. 12), Seville in 1261 (art. 19), and the Assembly of Jerez in 1268 (art. 14). Antonio Ballesteros, «Las Cortes de 1252», *Anales de la Junta para Ampliación de Estudios e Investigaciones científicas,* 3, 1911, 114-143; Georg Gross, «Las Cortes de 1252. Ordenamiento otorgado al concejo de Burgos en las Cortes celebradas en Sevilla el 12 de octubre de 1252 (según el original)». *BRAH,* 182, 1985, 95-114; Ismael García Ramila, «Ordenamientos de posturas y otros capítulos generales otorgados a la ciudad de Burgos por el rey Alfonso X», *Hispania,* 5, 1945, 204-222; Manuel González Jiménez, «Cortes de Sevilla de 1261», *HID,* 25, 1998, 295-312; *CLC* 1:54-63 (1258), 64-85 (1268).

[224] Cortes of Haro, 1288, and Cortes of Burgos, 1301; *CLC* 1:106-117, 145-150.

[225] González Díez, *Burgos,* 191-196, nos. 106-08 (13, 15 February 1281); Miguel Ángel Ladero Quesada, *Fiscalidad y poder real en Castillo (1252–1369)* (Madrid: Editorial Complutense, 1993), 155-164; Miguel Pino Abad, «La saca de cosas vedadas en el derecho territorial castellano», *AHDE,* 70 2000, 125-241.

[226] O'Callaghan, *Alfonso X, The Justinian of His Age,* 210-226; Román Riaza Martínez Osorio, «El derecho penal en las Partidas», in Luis Jiménez de Asúa, ed., *Trabajos del Seminario del derecho penal: curso 1916-17* (Madrid: Reus, 1922), 19-65; María Paz Alonso, *El proceso penal en Castilla (siglos XIII-XVIII)* (Salamanca: Universidad de Salamanca, 1982), 3-63; Enrique Álvarez Cora, «El derecho penal de Alfonso X», *Initium: Revista catalana d'historia del dret 16,* 2011, 223-296; Ángel López-Amo Marín, «El derecho penal español de la baja edad media», *AHDE,* 26, 1956, 337-367.

[227] *Glosas,* 1127, quoting XCIII; *Scholia* 450; *Extracto* 317.

[228] *Glosas,* 1129, quoting VIII; *Scholia,* 454-455; *Extracto* 315.

and brought to trial. The accused, however, was not permitted to appoint sureties (*fiadores*), but had to appear in person; once he did so the judge might then be willing to accept his sureties *(LEst* 65; *LJ* 2,2,2). Sureties pledged their own funds to assure the accused's presence when demanded; but before accepting them, the judge required the attendance of the accused so that he could determine whether he might be tempted to flee. If the judge concluded that he would not, he could accept the sureties.

In a criminal case a surety would be required to post 100 *maravedís* with the *alguacil*, or 500 *sueldos* in a case of homicide. In other instances the judge could determine the amount. The *alguacil* was forbidden to take anything without the judge's consent, but if he took more than was authorized that would be valid unless the king, in his mercy, agreed to a lesser amount. Should anyone claim that he had no sureties, some old municipal *fueros* required him to make a pledge of security or a truce so he would not incur a fine *(LEst* 116-117)[229].

Our author also referred to a law in the *Fuero real* (4,20,15) concerning a man who accused another of injuring his relative. The accused might argue, however, that he did not have to respond because the accuser had a closer relative who should bring that charge. The judge, therefore, should ask that relative if he wished to do so. If he were out of the country, in the army or on pilgrimage or otherwise and would be gone for a year, the one who first made the accusation should present it in court. Our author added that the original accuser was not obliged to seek out his absent relative. That being so, the judge should allow the accuser a year in which to present his accusation, that is from the time that it was determined that the closer relative was unavailable *(LEst* 79)[230]. According to the *fuero* of Castile *(FR* 2,8,17-20), if the accused denied the charge in court, and it was subsequently proved that he was guilty, he was not permitted to make any exception *(defension)* that would delay or impede the proceedings, but would be judged according to the proofs presented *(LEst* 100)[231]. As noted above, he could not appeal a definitive or an interlocutory sentence in a criminal case involving the death penalty or loss of limb *(FR* 2,15,1-9l; *LEst* 101, 163). If the judge fined the accused, the king, by reason of his *señorío*, was entitled to receive his share of the fine before the plaintiff; but if the accused did not have the wherewithal to pay the fine, he should be handed over to the king rather than the plaintiff to work it off *(LEst* 105)[232].

Elaborating on the law in the *Fuero real* (2,3,4) concerning a man accused of homicide who ignored the summons to court and was declared a *fechor* or malefactor, our author asserted that if the *alguacil* apprehended him, he could kill him forthwith. However, if he imprisoned the offender, the judges should give him a hearing, especially if he claimed that he had a legitimate excuse for not appearing on time. He should also be allowed to present his *defensiones* or

[229] *Scholia* 485; *Extracto 218.*

[230] *Glosas,* 35, quoting LXXXII.

[231] *Glosas,* 850, 851-852, quoting Lib. I, cap. CIII.

[232] *Glosas,* 1112-1113, 1115, 1117, quoting CIII; *Scholia* 362-365, 427-429, 462-465, 467-468, 532-533; *Extracto* 65, 102, 139, 236, 327; Bravo Moltó, *Legislación,*16 *(LEst* 65).

exceptions. If he had a royal letter pardoning him for rebellion for ignoring the three summonses, and also saving him from possible execution, that would be admissible. When a crime of this nature was committed, the court would formally declare the perpetrator an enemy of the victim and his family. In the circumstance just described that would not be so. However, if an inquest or other means identified the murderer, he ought to be declared an enemy, despite the royal pardon, unless he could prove that at the time of the killing he was in another remote place. In that case, he had to be released. The judge should not admit the defendant's exception that he killed someone in self-defense, but, if he concluded that the inquest was indecisive, he could accept that argument and release the accused. The king should not blame him if he made his decision without prejudice, though he could change the judge if he wished. Commenting on the words *e denlo por fechor* in the law beginning *E pregónelo (FR* 2,3,4), our author affirmed that someone proclaimed a *fechor* or malefactor could be executed. The plaintiff, however, should not kill him, and if he did he would be denounced as an enemy of the dead man's family and obliged to pay *omecillo*, the homicide fine. He incurred those penalties because he acted before the judge declared the defendant an enemy, according to the law *Si aquel* in the title *De los omecillos (FR* 2,17,4). Entirely different was the situation of a man who, after lawfully defying his enemy, killed him before the king or the local judges declared him an enemy. On the petition of the plaintiff, the judge could declare a *fechor* an enemy of the plaintiff *(LEst* 47)[233]. Emilio Bravo Moltó commented that this law assured an imprisoned man of the right to be heard in court and compared the prison to *un asilo sagrado para el reo* - «a sacred asylum for the accused» insofar as the *alguacil* was forbidden to execute him at once. Also noteworthy was the refusal to allow anyone to take the law into his own hands and kill an enemy without the judgment of a court; by doing so, he incurred the penalty of *omecillo*[234].

It might happen, however, that no one lodged a complaint about a crime and the identity of the perpetrator was unknown. To take no action in that case was tantamount to encouraging lawlessness. As crime was considered an offense against the community, rather than a private affair, such a possibility was unacceptable. Therefore, the king, and the king alone, as protector of his people, had the responsibility of ordering an inquest to seek out and punish criminals, who might otherwise escape detection. Local persons were summoned to the inquest and sworn to charge those that they believed had committed crimes in their community. Individuals were thereby relieved of the risk of suffering retribution if they accused someone of a crime. The *Leyes del estilo* (50-61, 102, 119, 121, 123) cited the use of the inquest in cases of arson; death in another's house; the death of someone in the king's service; rape; fighting; larceny; and robbery.

Our author explained how the details of the inquest should be reviewed and confirmed before publication. The entire affair had to be taken into account, including the place where the crime, whether theft, robbery, or something else,

[233] *Glosas,* 818-819, quoting in part Lib. I, cap. XLVIII, and 825-826, quoting. XLVIII.
[234] Bravo Moltó, *Legislación,* 1:14.

occurred. Step by step, from beginning to end, the actions of the accused should be laid out. Each article should be corroborated and the name or names of the accused should be recorded separately. Clerics should be distinguished from laypeople, because, while the judge had power over the laity, he had none over the clergy. The names of the clergy should be reported separately to the king who would decide what action to take against them. Those summoned to give testimony in the inquest should be identified either as eyewitnesses, or as those who believed that certain events occurred, or those who heard of them *(LEst* 123)[235]. Obviously the testimony of someone who actually saw a crime being committed was more valuable than that of someone relying on rumor or hearsay. By laying out the method to be followed in conducting an inquest, our author hoped to avoid a haphazard or confusing process that might devalue the findings. The distinction between clerics and laypeople accused of crime reflected the ongoing conflict between ecclesiastical and royal jurisdiction. Although the church claimed the sole right to try and punish clerics accused of crime, our author's comment that the king would determine what action to take against them indicates that they would not automatically be handed over to church courts for trial. Alfonso X's insistence that they should be tried in secular courts drew fire from Pope Nicholas IV[236].

As an additional example of tension between the king and the church, Alfonso X reserved the right to seize criminals seeking refuge in a church and enacted a law forbidding churchmen to protect them *(FR* 1,5,8; *SP* 1,11,4). With reference to that law, our author stated that when someone committed a crime while the king was present in the locality, the king (presumably Alfonso X was meant) ordered the arrest of the culprit even if he took refuge in church so that he could be brought to justice *(LEst* 97). Moreover if a *pesquisa* identified a criminal, the king should order the municipal judges to seize him. If they allowed him to appoint sureties to secure his release, they would be fined 100 *maravedís* of the *moneda nueva* as stipulated in the king's charter. However, different rules came into play if the *pesquisa* did not accuse the man who fled to the church and he voluntarily abandoned it and submitted to the judgment of a court. Though one might presume that he was guilty because he took refuge in the church, the fact that he willingly left the church prompted the presumption that he was not guilty and that someone else was. As *la verdad vence a la opinion* - «the truth conquers opinion»[237] - the judge's second presumption overrode the first[238]. The man could gain his release by naming a surety and the judges, by accepting him, would not incur the fine of 100 *maravedís*. This law exemplifies the evidentiary principle of presumption, a form of proof that *quiere tanto dezir como grand sospecha que vale tanto en algunas cosas como aue-*

[235] *Glosas,* 1132-1133, quoting CXXVI; *Scholia* 486; *Extracto* 324-325.

[236] O'Callaghan, *Alfonso X, The Justinian of His Age,* 74-76.

[237] This seems to be a quotation from the Fragments, no. 38, of the Greek philosopher Epictetus (d. c. 135). See The Discourses of Epictetus: With the Encheiridion and Fragments, trans. George Long (London: George Bell. 1877), 414: «It is better by assenting to truth to conquer opinion, than by assenting to opinion to be conquered by truth».

[238] Bravo Moltó, *Legislación,* 1:15.

riguamiento de prueua - «means a great probability and in some instances is worth as much as the ascertainment by proof» *(SP* 3,14,8). Presumption was a logical inference from circumstances and was not based on direct proof[239]. Although this text says nothing of it, ecclesiastical authorities objected strongly to the violation of the right of sanctuary by public officials. For his part, the king was insistent that criminals had to be brought to justice and should not be sheltered by the church *(LEst* 130)[240]. In addition to the above, our author remarked that if a cleric collecting royal revenues was in arrears, the royal judges could arrest and imprison him *(LEst* 118)[241]. It seems odd that a cleric would be authorized to collect the king's revenues; nevertheless, one can understand that the bishops would be angered by his imprisonment.

Among the issues of concern were the identification of the criminal especially if no one came forward to make an accusation, and the circumstances of the crime, e, g., whether it occurred in secret or in a public place, and whether there were witnesses or not. For example, the *Fuero real* (4,20,11) stated that if an individual could not prove a charge of homicide or arson, whether committed by day or by night, in a populated area or a deserted place, the king, by virtue of his office, should direct that an inquest be carried out *ca razon es que los fechos malos e desaguisados non finquen sin pena* - «because it is right that evil or wrongful deeds should not go unpunished». Commenting on that law *(Cuando omezillo o quema),* our author affirmed that an inquest ought to be performed when a fire, caused perhaps by a spark, a candle, or an arrow, broke out during the day in a populated place and was not discovered immediately. The same was true if evil deeds were done in a house or in enclosed place *(corral)* even though there might be men and women dwelling there. Despite their presence, the law evidently assumed that the criminal acted outside of public view. However, if a crime was committed publicly in the presence of many persons, an inquest was not necessary. In that case, the evidence of eyewitnesses would seem to be sufficient. An inquest should not be done on mere suspicion of a crime, but when it was undertaken, witnesses should be asked whether someone advised or directed that a crime be committed *(LEst* 50)[242].

Of special importance were inquests ordered by the king in six cases even though no one brought a complaint before him. The first two concerned his officials or actions that touched his sovereignty. Upon completion of the inquest in those instances, the king, rather than adjudicate the case himself, should assign that task to someone else. As such a case affected him directly, it obviously seemed best to assure impartiality by entrusting responsibility for the proceedings to others. By designating a *personero* to represent him, the king removed himself from the courtroom where his presence might intimidate everyone. In addition to the two cases mentioned, the king might also require a

[239] Berger, *Encyclopedic Dictionary,* 646.

[240] *Glosas,* 1133, quoting CXXXIII,

[241] *Scholia* 458-460, 482, 495-496; *Extracto* 50, 229, 322; Bravo Moltó, *Legislación,* 14-15 *(LEst* 130).

[242] *Glosas,* 1129, quoting LI; *Scholia* 265-275; *Extracto* 319-320.

pesquisa in two others concerning homicide, arson or another crime. Once the perpetrators were identified, the relatives of the dead person or the victims of the crime should be asked to bring charges. If they chose not to (perhaps out of fear of retribution), the king would not appoint someone to prosecute the case, but he would require the accused to name sureties to guarantee that he would be answerable in court. However, if the aggrieved parties initiated proceedings after completion of the inquest and the accused declared his innocence, the inquest would be set aside and the usual procedure for proving the case would be followed. The fifth case in which the king might order an inquest concerned a dead man who had no relatives in the area. Finally, when no complainant came forward and the crime occurred during the day and in a settled area, the king, and no other judge, could order an inquest concerning *sus judios o sobre sus moros* - «his Jews or his Moors». When the truth was determined, the king should act upon it as seemed fit, even though no one had expressed a grievance *(LEst* 51)[243]. Should several persons complain that a royal official abused his office, the king, by reason of his office, should order an inquest to determine the truth; but if only one person lodged a complaint, the official should be summoned for trial before the king. If he denied the accusation, the complainant had to prove it in court *(LEst* 55; *LJ* 2,1,6)[244].

Remarking further on these circumstances, our author, with reference to the *Fuero de las leyes (FR* 2,8,3, *de las testimonias*, *todo ome),* considered the possibility that the victim of a crime that took place in a deserted area or at night in a town was unable to frame his accusation in the proper form *porque non sabe las sotilezas del derecho* - «because he does not know the subtleties of the law». That being so, the king, to whom the administration of justice was entrusted, ought not to abandon his responsibility to ascertain the truth and guarantee that justice would be fulfilled *porque los yerros non escapen sin pena* - «so that errors do not escape punishment». Given the isolation of the situation, he ought to order an inquest. However, if the crime was committed in the daytime in a town and the accuser identified the criminal, an inquest would not be necessary, perhaps because there might be corroborating witnesses. The complainant could make his accusation in the king's court and identify the purported criminal and the trial could then proceed. On the other hand, should a stranger be killed and should no one, including any relatives that he might have, bring an accusation (a reference to the paragraph *e si ome estraño fuere muerto que non haya quien querelle su muerte*), it was understood that the royal court would order an inquest *(LEst* 52)[245].

When someone was charged with a capital crime in a *pesquisa* or by the testimony of witnesses, he should be summoned to appear within nine days to hear the reading of the *pesquisa*. If he failed to appear, he was allowed another nine days, but if he remained obdurate, still another nine days. Should he again ignore the summons, the *alcalde* should render judgment against him as char-

[243] *Glosas,* 1130-1131, quoting LII.
[244] *Glosas,* 1132, quoting LVI; *Scholia* 275-277, 287-293; *Extracto* 323-324.
[245] *Scholia* 277-279; *Extracto* 87.

ged in the *pesquisa (LEst* 148; *LJ* 2,2,7)[246]. At times, when a properly executed *pesquisa* was opened and read and the complainant accepted it as proof of his charge, the accused might deny it. If the injured party then declared that there were other proofs and asked for time to present them, they would not be accepted *(LEst* 53; *SP* 3,16,34)[247]. In that case the testimony of eyewitnesses given in an inquest would seem preferable to any other form of proof that the complainant might wish to offer.

Upon opening a *pesquisa* in the presence of the litigants, the *alcalde* might determine that its findings were inconclusive. Then, by virtue of his office, and not at the request of either party, he could question other persons not previously interrogated. He had the right to do so because, as our author emphasized, *el oficio del alcalde siempre dura fasta en la sentencia* - «the office of the *alcalde* always persists until judgment». The interrogation of additional witnesses was permissible only if the crime occurred at night or in an isolated area. If not, then only those questioned in the first *pesquisa* should be examined again, and then only concerning issues not previously raised. In the first case, the lack of eyewitnesses justified further probing by the judge. In the latter case, the judge, by interrogating the jurors a second time, likely expected that they would confirm their original testimony, or reveal discrepancies. If the published inquest concerned the killing of an official of the king or queen (Fernando IV and María de Molina), the judge ought to seek as much additional information as possible; but if it concerned wounds suffered by an official, the judge was not obliged to make further inquiries. Although the *Partidas* (2,16,1) did not condemn the killing or assault on a royal official as treason, the crime was seen as an offense against the king and his official and merited severe punishment to be determined by the king and his court. Should a dead man be found in a house, the homeowner would be held accountable, according to the *Fuero de las leyes (FR* 4,8,3). If the killing occurred in the daytime and in a public place, the judge had only to rely on the evidence provided by the inquest. Alfonso X had ordained this for both general and special inquests. While the judge should also interrogate anyone who abetted the criminal, he need not believe him, but he might determine that there was reason to suspect the criminal and, unmoved by malevolence, gift, or malice, he ought to proceed against him *(LEst* 54)[248]. `Commenting further on this law, our author stressed that if any one of the jurors offered multiple explanations so as to cloud the issue, his testimony should be suspect. Moreover, if a juror swore that he heard that so-and-so (*fulano*) had committed the act being investigated and that the culprit had told him so, the accused should not be tortured even if he denied that he had ever spoken about it *(LEst* 110)[249].

The royal *alguacil* had a major responsibility in the arrest and punishment of criminals. According to the *Partidas* (2,9,20), the *alguacil*, always acting at

[246] *Glosas,* 824, quoting CLII.
[247] *Glosas,* 1131, quoting LIIII; *Scholia* 280-282, 510; *Extracto* 61, 99.
[248] *Glosas,* 1131-1132, quoting LV.
[249] *Glosas,* 1130, quoting CXIII; *Scholia* 282-287, 471-472; *Extracto* 99-101.

the direction of a judge, had to detain persons accused of crime, hold them for trial, supervise their torture, and their execution. Our author added that when anyone of the royal household was assaulted or killed in any town, even one held in lordship, it was the royal *alguacil's* task, and not that of the local *alguacil*, to arrest the malefactor and bring him to the king's court to be tried by the royal *alcaldes (LEst* 120). However, if the king ordered the accused to be brought to his court, the local *alguacil* had to bring him at the expense of the accuser, and not of the accused or of the city council. Yet, once the accused was convicted, he would have to pay that expense and all the other costs of the trial *(LEst* 113). The royal *alguacil* was forbidden to kill anyone without the order of a judge, but if he shouted *matadlo*, *matadlo* - «kill him, kill hin», as he pursued a criminal, and someone not in the *alguacil's* service killed the culprit, the *alguacil* would be responsible for the killing, rather than the one who did it. However, if the killer bore a grudge against the deceased, both he and the *alguacil* would be at fault *(LEst* 132). If a prisoner died while being transported to the royal court, and the jailer alleged that he threw himself into a river and drowned, he had to prove that or be held accountable for the prisoner's death *(LEst* 111). During the reigns of Fernando III and Alfonso X, when a knight or other person was executed in the royal court as a matter of justice, the king's *alguacil* could take his bed, his mule, his silver drinking cup, and the clothes he wore, but not his other clothes, his horse, or anything else *(LEst* 107)[250].

Our author offered further detail concerning the perquisites of the *alguacil*. Whenever the king pardoned a criminal who had been condemned to death in his court, the *alguacil* was entitled to 340 *maravedís,* as in the time of Sancho IV[251]. The person receiving the pardon evidently had to pay that amount as the following sentence in the text makes clear. The queen's *alguacil* ((María de Molina's) was paid 150 *maravedís* by those whom she pardoned in her household and in her towns. If the plaintiff asked that the person who was pardoned should pay him the *omecillo* fine, the king should authorize it and also require him to pay the costs of the trial, *porque los yerros non escapen sin pena* – «because errors ought not escape punishment»[252]. The *alguacil* was to have his share of the *omecillo*, namely, three-fifths, but he could not claim anything else, unless the plaintiff was awarded a share of the fines and *omecillo*. Nor was the *alguacil* allowed a share of the fines if the parties made an agreement, because such an agreement was invalid, unless it was ordered by a judge or *merino.* If the plaintiff came from another locality, he should name a surety to pursue the case. An accord in other criminal cases involving *justicia de sangre* or physical punishment was equally invalid, unless the king gave his consent, and so the *alguacil* was not entitled to *omecillo.* Nor could he claim *omecillo* or other fines if the king pardoned a criminal and ordered all his property to be returned to him. That was because the king ordered the *alguacil* to deliver the culprit's goods to him, *que dicen en latin restituere* - «which is called in latin *restituere*».

[250] *Scholia* 459-460, 472, 475-477, 483,495-496; *Extracto* 45, 101, 129, 199-200, 307.
[251] The text in the Biblioteca Real, 2, reads 250 *maravedís.*
[252] Our author used that phrase in *LEst* 52.

The royal charter conceding the pardon should specifically affirm the plaintiff's right to his share of fines *(LEst* 141)[253].

The case of a person who was condemned for homicide or another crime by the queen (María de Molina) or the lord of a town was complicated if ownership of the town was transferred to someone else before the sentence was carried out. If the new lord pardoned the culprit whom the queen had condemned, the question was: is that pardon valid? Only the king could make that decision *(LEst* 126)[254].

After considering the procedures to be followed in bringing a criminal to trial, our author discussed a variety of specific crimes. The *Fuero real* (4,17,1,9) and the *Partidas* (7,8,1-16) discoursed in detail on one of the most serious crimes, namely, homicide, the willful killing of another human being[255]. The assassination of a royal official, especially a judge, was a grave matter, not only because the relatives of the deceased had the right to demand that the murderer be brought to justice, but so too did the king and queen, namely, Fernando IV and Maria de Molina. As the judge represented the king's person and as his killing was an attack *contra su señorío* - that is, on royal sovereignty, the king and queen should pursue the murderer even if the deceased's relatives did not wish to do so. As our author noted, there were two demands, but one did not cancel the other. Even if the crime occurred during the day and in a public place, an inquest should be carried out to determine the truth, because of the offense against royal sovereignty and also because it was a *fecho desaguisado*, an unjust act *(LEst* 142)[256]. If a judge was killed, wounded, or dishonored by men in his jurisdiction, the king should punish them as he wished and compel them to make amends for attacking a royal official, just as they would for a nobleman (*fijodalgo*). That last phrase refers to the fine of 500 *maravedís* for assaulting a noble. The attacker should be tried according to the *fuero* of the district where he was captured or according to *derecho comunal*, the common law *(LEst* 143; also see *LEst* 85)[257]. The assassination of a royal official or a judge was number eight among the fourteen acts of treason or *laesae maiestatis crimen* listed in the *Siete Partidas* (7,1,2). When a man was killed while the king was visiting a royal town, he could order a *pesquisa* to identify the killer. If it was determined that the killer acted with the consent of other men, one of whom was a royal official, the official had to answer in the king's court; but the others would be required to appear before the judge of their judicial district *(LEst* 9; *LJ* 2,1,7)[258].

Among the many other aspects of the matter, our author considered the following situation. If a man died of a wound inflicted by another, the perpetrator might argue in his defense that the victim could have recovered from the

[253] *Glosas,* 1116-1117, quoting CXLV; *Scholia* 501-503 referring to *LEst* 25 and 27; *Extracto* 128-129.

[254] *Scholia* 488-489; *Extracto* 46.

[255] O'Callaghan, *Alfonso X, The Justinian of His Age,* 214-215.

[256] *Glosas,* 1077, quoting CXLVI.

[257] *Glosas,* 1078-1079, quoting CXLVII.

[258] *Scholia* 81-87, 503-505; *Extracto* 40, 264, 307-308.

injury, and died of other causes (for example, involving himself with women). Thus, the assailant, if the court accepted that reasoning, would be punished for his attack, but not for murder. In other words, the victim died not because of the wound received, but because of his own negligent actions. His death was his own fault *(LEst* 61)[259]. As a general rule, anyone who was not at fault ought not to suffer the ordinary penalty for his offense, but, on account of his negligence, the judge ought to impose an extraordinary penalty *(LEst* 63)[260].

Our author described a different circumstance at night when a malefactor, while killing a guest in an inn, stirred an outcry among the other guests. In the ensuing melee, an armed man from another inn cast stones or used his weapons against those attempting to protect the victim, or threw up ladders to enable the killer to escape. An inquest might not be able to identify the killer's accomplice, nor whether he wounded or killed the victim or whether he was in the plot from the outset. Despite the pleas of the dead man's relatives, the judge should not execute or torture anyone unless it was proved that he knew in advance of the plot or took part in it either by striking or killing the victim. Even if he himself was wounded and knew for certain how and by whom the wounds were inflicted, the judge could take no action against him and advised the relatives to bring some other charge. They could argue that the accused abetted the killer by impeding those who tried to defend the man being assaulted. In support of their plea, they could cite the *Fuero* of Toro that allowed the *vecinos* or citizens of the town to seize those who abetted killers. If the judge was convinced of their argument, he should set a date for bringing the killers before him. Should they not appear, he should punish those who abetted them as he would the killers. If the killers were produced, their accomplices should not be summarily executed or tortured, but rather tried according to the *fuero (LEst* 56)[261]. The reference to the *Fuero* of Toro is uncertain. In 1222 Alfonso IX granted a *fuero* to the town[262], and in 1283 María de Molina confirmed its *fueros* and privileges, but the articles in both referring to malefactors do not seem to concur with our text[263].

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[259] *Glosas,* 1076, quoting LXII.

[260] *Scholia* 319-325, 335-350; *Extracto* 262, 306.

[261] *Scholia* 293-301; *Extracto* 301-303.

[262] González, *Alfonso IX,* 2:536-37 (4 May1222), art 2: «Et do et concedo vobis in perpetuum istos foros cum aliis quos vobis dedi per aliam cartam de foris quam habetis meam, videlicet: Quod si forte filius homicidium fecerit, et potueritis illum prendere, faciatis de illo pertitiam, et pater et mater eius non perdant pro illo suum habere in sua vita, et vendant et comparent; et, si composuerit se cum rege aut cum regis homine aut cum maiorino, sint quiti pater et mater et filius; et si se non composuerint cum voce regis pater et mater, post mortem patris et matris intret ille qui tenuerit vocem regis bonam suam pro parte forfutifis». The vernacular reads: «Que si un hijo comete homicidio y pudiera prendérsele, hagáis pertitia de él, pero el padre y la madre suyo no pierdan por ello su haber, y vendan y compren; y si se compusiera con el rey o con el hombre del rey o con el merino, queden libres el padre, la madre y el hijo; pero si el padre y la madre no se compusieran por el representante del rey, tras la muerte del padre y de la madre entre aquel que tuviera la voz del rey en posesión de la herencia por parte del malhechor».

[263] *Fueros locales del reino de León (910-1230). Antología,* ed. Santos M. Coronas González (Madrid: Boletín oficial del Estado, 2018), 171-174 (2 November 1283), art. 14: «Otrosi, vos do et otorgo, que si por aventura acaesció que á vos el concejo ó algunos de vos enposieron, ó

When a man died after being assaulted by several men, the one whose blow struck him and killed him would be charged with murder; the others would be held responsible for wounding him. However, if it was not known who killed him, all would be accused of the crime. Elaborating on those general principles, our author added that when someone was killed in a fight between rival bands (whether they were bound by a truce or not), all those who ordered, counseled, or abetted the crime would be charged with murder. However, if the victim died of a single blow and it was unknown who struck it, none of the participants in the fracas would be indicted. Although the king might show mercy, they should suffer an extraordinary penalty such as *omezillo* or something else that the judge deemed appropriate. That accorded with the law *Sed si plures servum* cited by Ulpian in the Digest (9,2,11,2). Ulpian's comment reads as follows:

But if several people do a slave to death, let us see whether they are all liable as for killing. If it is clear from whose blow he perished, that person is liable for killing; but if it is not clear Julian says that all the assailants are liable as if they had all killed; and if the action is brought against only one of them, the others are not released from liability; for under the *lex Aquilia* what one pays does not lessen what is due from another, as it is a penal law[264].

Our author also commented that the judge, in order to identify the culprit, could order all those who took part in the assault to be tortured. A boy, accompanying his father, or a man with his lord, who did not join in the attack, or did so only when ordered to, would not be punished; but he would be if he acted voluntarily, without being commanded to do so *(LEst* 57)[265].

A matter of particular interest was a malefactor's claim that he carried out an assault or other crime at the direction of his lord. The *Fuero real* (4,4,10) ruled that the lord, rather than the perpetrator, should be penalized because he ordered the commission of the crime. Our author explained that if the defendant could prove by witnesses or by the presentation of valid charters, such as royal charters, confirming that his lord commanded him to commit the crime, he would not be punished. Excluded, however, were the sealed charters of the lord, perhaps because there was some suspicion that they were drawn up by the accused himself. His lord, who might even admit his responsibility in court, would be

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fizieron dalguna cosa, ó la dixeron porque meroscan pena en los cuerpos de muerte, ó de nembro perdido, ó otra cosa que vos caia á vos el concejo en deshonrra, ó en desfamamiento de las personas de cada unos de vos fasta el dia de la era desta carta, assi contra cavalleros como contra otros hombres et mugieres qualesquier que sean, perdonovos lo todo de bona voluntad, pero tengo por bien et mando que fagades derecho a los querellosos que les demandaren por vuestro fuero quanto en razon de pecho si lo hi obiere por fuero». María de Molina also granted a *fuero* to Toro in 1301, but it does not refer to this issue; Benavides, *Memorias de D. Fernando IV,* 2:265-66, no. 186 (28 August 1301).

[264] Book 9,2, concerns the *Lex Aquilia.* In *Ulpian's Edictum, Bo*ok 18, he discusses this issue. D.9.2.11.2 «Sed si plures servum percusserint, utrum omnes quasi occiderint teneantur, videamus. et si quidem apparet, cuius ictu perierit, ille quasi occiderit tenetur: quod si non apparet, omnes quasi occiderint teneri Iulianus ait, et si cum uno agatur, ceteri non liberantur: nam ex lege Aquilia quod alius praestitit, alium non relevat, cum sit poena». The English translation was edited by Alan Watson, *The Digest of Justinian,* 2 vols. (Philadelphia: University of Pennsylvania, 1985), vol.1.

[265] *Glosas,* 1074-1075, quoting LVIII, LVIIII; *Scholia* 301-309; *Extracto* 303-304.

held accountable before the law and might suffer banishment, confiscation, or some other penalty. Our author added, however, that in the time of King Alfonso (presumably Alfonso X), it was ruled rather differently: that is, if the culprit acted in the presence of his lord and on his command, he would not be charged; but if he committed the crime in the lord's absence, he would be tried according to *el derecho comunal.* Although King Alfonso agreed that this should be so, I am unaware of any document supporting that statement *(LEst* 252)[266].

Raising the question whether a man has the right to defend himself after being assaulted, our author posed the following situation. A man attacked and wounded a noble *(fijodalgo),* whom he had not publicly challenged on account of some dishonor and who had not been declared his enemy according to law *(por fuero)*. The perpetrator fled, but his victim, immediately and without delay, pursued him and killed him. Given that circumstance, he would not be accused of murder. In justification of this, our author cited the legal maxim: *quia ea que incontinenti fiunt*, *inesse videntur* - «for those things done immediately are considered to be included;» that is, the entire sequence of actions would be viewed as a whole. That text may have originated with Ulpian as suggested by Accursius (ca. 1235) in his *Glossa ordinaria*[267]. Furthermore, if the victim killed his opponent in a house, he would not be charged with *quebrantamiento de casa* - «violation of the household» *(LEst* 58)[268]. In other words, the attack was unprovoked and not in accord with the formal process of defiance of a designated enemy, and, most importantly, the victim acted at once to chase and kill his aggressor. If he had delayed acting, he could have been accused of seeking vengeance and would thereby be open to the charge of murder. This law reflects the principle expressed in the *Partidas* (7,8,2) that a man attacked by another has a right to defend himself and would not be liable for killing his assailant. As the law guaranteed a man's right to dwell securely with his family in his own home *(SP* 3,7,3), a murder committed there was a grave crime, but in the case described above the killer was excused from punishment. A related question was whether a man could preemptively attack someone who was determined to kill or wound him. In response, our author cited the title *de homicidio* in the *Decretals* (5,12,3) beginning *Si perfodiens inventus fuerit* - «if anyone should be found breaking in», and quoted the canonist Huguccio (d. 1210) in the *Glossa ordinaria*, who argued that while one could immediately repel force with force, one could not initiate an anticipatory strike against another *(LEst* 59)[269].

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[266] *Glosas,* 856, quoting Lib. IIII, cap. XCIV, and 1067 quoting CCLV; *Scholia* 675; *Extracto* 248.

[267] [*Dig.* 3.2.4.4] ad vv. *ex utraque*: … De hac autem calumnia punietur officio iudicis incontinenti cum reum absoluit ut infra ad Turpil‹lianum› l. i § calumniantibus ibi reo absoluto et caetera *(Dig.* 48.16.1.2-3), non postea ex interuallo, ut C. de calum‹niatoribus› l. i (*Cod.* 9.46.1), nisi solenni accusatione proposita, nam que incontinenti fiunt, uidentur inesse, ut infra si certum pe‹tetur› Lecta *(Dig.* 12.1.40), I am most grateful to Professor Wolfgang Mueller of Fordham University for identifying this reference for me.

[268] *Glosas,* 1076, quoting LX; *Scholia* 310-312; *Extracto* 305.

[269] *LEst* 59 quotes the gloss: «Pone quod si aliquis vult me interficere, numquid possum eum prevenire ? Dicunt quidam quod sic. Sed pone quod percussit me et recessit: numquid possum eum insequi, ut percutiam. Huguitius dicit quod non; quia injuriam sic vellet ulcisci, et non repellere

Another problem was the identification of a killer. For example, the dead body of a man who had been threatened by another might be discovered, but the perpetrator of the crime was unknown. If the victim's tormentor was shown by irrefutable proofs or inquests to be the culprit, he should be punished. However, if the identity of the criminal was still uncertain, the aggressor should be tortured. In support of that argument, our author cited Guillaume Durand's *Speculum iuris* in which he said that if someone was known to be a bully he should be held responsible for the crime. On the other hand, if that were not the case, the man should be tortured to ascertain the truth *(LEst* 60)[270].. This was another nstance when the judge was justified in acting on the principle of presumption which supposed that there was a great probability that a known criminal was guilty of a specific crime. The problem of identification also arose when a dead body was found in a house. The *Fuero real* (4,17,3) stipulated that if the homeowner *(señor de la casa)* could not identify the murderer, he would be held accountable in court, though he might allege that he acted in self-defense. Expounding on this, our author emphasized that the judge had to use every means to discover the perpetrator. If he concluded that the homeowner was responsible, he could sentence him to death, though the king might pardon him. On the other hand, if the homeowner was not convicted by testimony given in an inquest or by any other proof, he had to be cleared of all charges. According to our author, this law was applied in the kingdom of León as well as in the king's other dominions. However, if someone were wounded in the house while the homeowner was there, he would be asked to name any men or women who might have been present. If he did not identify the guilty party, the judge would charge him with the crime *(LEst* 102)[271]. In effect, if no one else could be shown to be the wrongdoer, the court could presume that the homeowner was guilty of murdering or wounding the person found in his house.

The killing of another person was punished by a fine called *omecillo* often levied on a community where a dead body was found, but the killer was not

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eam, quod non licet; quia incontinenti, et sine intervallo licet vim vi repellere». That text coincides with the gloss in the *Decretales D. Gregorii Papae IX suae integritati cum glossis restitutae,* in *Corpus juris canonici emendatum et notis illustratum,* 3 parts in 4 volumes (Rome: In aedibus Populi Romani, 1582), 2:1697. See http://digital.library.ucla.edu/canonlaw/librarian?ITEMPAGE=CJC2&PREV.

The editor of *LEst* 59, on p. 264, n. 1 commented: «Dice esta glosa de esta decretal así: "Pongo que si alguno me quiere matar, si puedo salir a él ante que me fiera dicen algunos que sí. Mas pongo que ferió, e fuese, si puedo seguirlo o ferirlo o non, digo que non; que si la injuria yo quiero vengar, no debo impugnar contra él, que non cumple a mi, salvo si luego incontinenti, e sin nengun detenimiento lo puedo matar"». The note indicates that the Spanish text was taken from B. R. 2 (Bibloteca Real). The Spanish version, instead of the Latin *Dicunt quidam quod sic,* reads *digo que non* and omits Huguccio's name entirely. Professor Wolfgang Mueller of Fordham University kindly directed me to the source of this gloss and pointed out that Huguccio's *Summa* (1188-1190) has not been edited. See Professor Mueller's study *Huguccio: The Life*, *Works*, *and Thought of a Twelfth-Century Jurist* (Washington: The Catholic University of America Press, 1994).

[270] *Speculum juris,* 2 vols. (Lyons; P. Tinghi, 1577), 2:178v, para. 8, lib. 2, part. 2, *de praesumptionibus*; *Glosas,* 1077, quoting LXI; *Scholia* 315-319; *Extracto* 305-306.

[271] *Glosas,* 1115-16, quoting CV; *Scholia* 464-465; *Extracto* 297.

known. The fine was intended to place the responsibility for the crime on the entire community and perhaps thereby prompt someone to name the real killer. If a dead Christian were found in a town, and it was not known who killed him, the town did not have to pay the homicide fine, nor did those making the *ronda* that is, patrolling the streets; but they did have to pay for any goods stolen. If the dead man was a Jew or a Moor *(moro del rey),* the town had to pay the king 1,000 *maravedís* de *los buenos. The aljama* of the freemen among the Moors would not be fined if they had a royal exemption *(LEst* 103; *FR* 2,3,4;4,17,1-9)[272]. In accord with the *Fuero real* (4,17,4), it was the practice of the royal court to levy only one *omecillo* when all the killers were summoned and convicted. However, if several of the accused ignored the summons, each one would have to pay the fine *(LEst* 69)[273]. The fine should be paid, according to local *fueros* and customs, to the lords or relatives of those who were killed *(LEst* 124). Also as noted above, the fine could be imposed on someone and his surety if he failed to attend to a summons to court *(LEst* 23; *LJ* 2,2,9). Furthermore, if a layman killed a cleric, a sacrilege fine (*sacrilegio*) should first be paid to the church, and then the homicide fine to the king *(LEst* 104)[274].

Assaulting another person and perhaps killing him or injuring him was a grim event, but robbery, larceny, and theft, which incidentally might lead to the same result, were also of grave concern[275]. For example, should anyone wantonly rob a traveler, he would have to make restitution four times over but he would also have to pay the king 100 *maravedis* of the *moneda nueva por camino quebrantado* - «for violating the peace of the highway». The law beginning *nengun ome* in the title *de las fuerzas (FR* 4,4,18) refers to this but makes no mention of the fine owed to the king *(LEst* 71)[276]. On the other hand, the penalty was somewhat less if the culprit was not a *ladrón conoscido o encartado* – «a known or identified thief», but had some reason for committing highway robbery; for example, he might forcibly seize the property of a debtor or his surety. The *Fuero real* (4,5,7) required him to reimburse his victim twice the value of the stolen goods and pay the king a fine of 100 *maravedí*s. If the robber was a known highwayman, in addition to making restitution, he would be executed. After citing the relevant passages of the title *de las penas*, our author remarked that judgment on this matter had been given in the *casa del rey*. Moreover, laws in the title *de las fuerzas (FR* 4,4,11-12, *Quando alguno* and *Qui quier)* were to be understood in the same manner *(LEst* 72)[277].

The law made a sharp distinction between a well-known robber and one who was not, and between a robber caught red-handed and one who was not. The judge should condemn to death a man already in custody, perhaps for some other crime, who was accused of highway robbery by many persons, and if he

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[272] *Glosas,* 1115, quoting CVI.

[273] *Glosas,* 1117, quoting LXXII.

[274] *Glosas,* 1115, quoting CVII, CVIII; *Scholia* 385-387, 465-467, 486; *Extracto* 297-299, 306-307.

[275] O'Callaghan, *Alfonso X, The Justinian of His Age,* 216-217.

[276] *Glosas,* 1081, quoting Lib. I, cap. LXXIIII.

[277] *Glosas,* 1071, 1083, quoting Lib. I, cap. LXXXIV; *Scholia* 392-397; *Extracto* 251, 259.

was captured with stolen goods or was a notorious robber. However, an accusation against someone not known as a robber, and not of evil reputation, and not in possession of stolen property, had to be proved in court or by a valid inquest. He would be fined and punished according to the local *fuero*. A highway robber also had to pay a fine of 100 *maravedís* of the *moneda nueva* to the king. Although the accused was a man of ill repute and his accusers were many, they had to prove their charges against him; the judge should order him to save himself by an oath. The judge could also order the arrest of a person of evil reputation and allow him to save himself from prison *(LEst* 73)[278].

According to the *Fuero real* (4,5,6), the death penalty was inflicted on anyone, intent on stealing, who broke into a house or a church. Our author expanded on the circumstances of the break-in, citing the possibility of entry by climbing a wall, removing roof tiles, entering through a window or an open door, or using a key, as well as the discovery of the offender hiding in the house *(LEst* 74)[279]. However, the *Fuero real* added that if the culprit stole anything worth 40 *maravedís* or more, he had to pay the homeowner two-ninths of its value and seven-ninths to the king. If he could not pay he would lose his ears and his fist for the first offense and be executed for the second. Anyone captured with stolen goods *(furto),* even though it was his first offense, would be executed. Evildoers caught in the act or apprehended by a *merino* while making their getaway, would suffer the same penalty. If the crime occurred in public during the daytime an inquest would be unnecessary, probably because there would be many eyewitnesses *(LEst* 75)[280]. At times men tracking rustlers of livestock to the boundary of their municipality lit a fire and sent smoke signals to alert the judge in the neighboring district, so that he could cause the arrest of the malefactors. He was also obliged to do so upon receipt of a complaint from the owner of the stolen property living in a different district *(LEst* 76)[281]. Anyone who stole an animal or something else in the royal court would be accountable to the king. In like manner municipal judges were expected to bring robbers to justice *(LEst* 109)[282]. A habitual rustler was condemned to death *(SP* 7,14,19).

When someone absconded with money or property belonging to the lord or master with whom he lived, that should be decided according to the Seventh *Partida* (7,14,17), which provided that if a child under ten and a half, or a madman, or someone intellectually challenged, stole anything and was caught with the stolen property he should not be sued in court. If a servant stole something of lesser value, his master should punish him privately provided he did not kill or maim him. If the property taken was of great value (the judge should make that determination) the owner could sue the culprit[283]. Our author observed that anyone who fled with his master's money or goods, whether accompanying him

[278] *Glosas,* 1082-1083, quoting LXXVI; *Scholia* 398-399; *Extracto* 251-252.

[279] *Glosas,* 1080, quoting LXXVI.

[280] *Glosas,* 1080, quoting LXXVII.

[281] *Glosas,* 1079-1080, quoting LXXIX; *Scholia* 396-404; *Extracto* 251-253, 258.

[282] *Scholia* 471; *Extracto* 285.

[283] *LEst* 144 cited this as in the title *los furtos* and the law *Mozo* in the chapter *E otro si decimos que si algun mancebo.*

on a military campaign, a pilgrimage, or on the king's service, or acting as a messenger, deserved a greater penalty as Alfonso X established. Whether the theft was great or small, the culprit should be executed. Otherwise he should not be killed, or lose his hand or his ears. Rather he should be handed over to his master and compelled to serve him until he had made full compensation for the stolen property. Then they should deliver him to the one who ought to have *las setenas (LEst* 144)[284].

Las setenas, derived from Proverbs 6:31 that called for a thief to be punished sevenfold, referred to the seventh part of the fine owed to judges or other officials charged with the administration of justice. If a royal official or a member of the king's household stole anything, the king should punish him as he wished, but no *alcalde* should judge the theft except as directed in the previous article *(LEst* 145). According to the custom of Zamora and Salamanca, a judge was bound to believe a lord who swore that the *mayordomo* who managed his finances was stealing from him, but if there was some doubt the judge should make every effort to ascertain the truth. The lord was permitted to compel a guilty *mayordomo* to make restitution and to dismiss him from his service *(LEst* 112)[285]. The law even considered the possibility that a municipal council might commit robbery or other crimes within or without the municipal district. In that case, the council had to prove the legality of its actions by citing its *fuero* or royal privileges. If need be, witnesses who were not involved in the action should be summoned. If the action occurred outside the municipal district witnesses could not be subject to the municipality's jurisdiction or acting at its command *(LEst* 146)[286].

From the king's point of view, the evasion of taxes, carried out in a multiplicity of ways devised by the human imagination, was, nevertheless, a serious crime, akin to robbery or theft. In order to secure the military force needed for his planned African crusade, Alfonso X in 1252 required every man who had a horse and arms to be prepared for war. Hoping to make military service more attractive, in ensuing years, and culminating in his Ordinance of Extremadura in 1264, he granted numerous tributary exemptions to the *caballeros villanos* or urban cavalry. Twice-yearly musters were held to determine whether each man owned a horse and was properly equipped[287]. As one might suspect, many men attempted to shirk that obligation. Our author cited the example of a man summoned to a muster who attempted to avoid payment of taxes by falsely claiming ownership of a horse. After being caught in a lie, he had to pay double the tax. The same penalty was imposed on anyone who falsely asserted that he did not

[284] *Glosas,* 1081, quoting CXLVIII; *Scholia* 505-506; *Extracto* 289-290.

[285] *Scholia* 473-474; *Extracto* 236.

[286] *Glosas,* 1083, quoting CLX; *Scholia* 506-508; *Extracto* 104, 290.

[287] O'Callaghan, *Alfonso X, The Justinian of His Age,* 87-88; James F. Powers, *A Society Organized for War: The Iberian Municipal Militias in the Central Middle Ages, 1000-1284* (Berkeley: University of California Press, 1988), 112-135, and «Two Warrior Kings and their Municipal Militias: The Townsman-Soldier in Law and Life», in Robert I. Burns, *The Worlds of Alfonso the Learned and James the Conqueror: Intellect and Force in the Middle Ages* (Princeton: Princeton University Press, 1985), 95-117.

have the money to pay the tax. Although the *Libro Juzgo* imposed the penalty of perjury in other cases, here it was limited to these instances *(LEst* 128)[288].

Counterfeiting the coinage was a serious crime as it attacked the royal sovereignty and credibility and threatened the integrity of commercial transactions. Anyone who knowingly falsified the coinage would be executed. A man who treated the coinage with lime or clipped it would lose half of all that he had and be at the king's mercy *(FR* 4,12,7-8). Treating coins with lime was a way of altering their appearance, thereby increasing or decreasing their value. By clipping or shaving the edge of coins, the culprit could accumulate enough silver or other material to counterfeit coins. Our author remarked that if anyone who knowingly used false coinage named the person who gave it to him, the judge should punish him as he saw fit; but if the culprit could not or would not do so, he should be punished as a counterfeiter *(LEst* 78). The penalty in that case was burning at the stake and confiscation *(SP* 7,7,9-10)[289].

Crimes of a more personal nature included adultery, rape, and insults, all of which could lead to violence[290]. Certain signs could be taken as proof of adultery. Adultery could be presumed if a couple, suspected of illicit behavior, were found hiding in a house, even if they were not alone and not naked. Household servants could be required to testify as to their knowledge of the matter and slaves could be tortured before giving evidence *(LEst* 62). The *Fuero real* (4,7,1) permitted a husband to punish his adulterous wife and her lover, even declaring that he could kill them both, but he could not spare one or the other. Our author stipulated, however, that the *alcaldes* had first to convict the guilty pair before handing them over to the aggrieved husband for punishment *(LEst* 93)[291].

If a man forcibly carried off a single woman with the intention of having sex with her, he would be executed. If he did not lie with her he would be fined 100 *maravedís,* half payable to the woman and half to the king. If he was unable to pay he would be imprisoned until he worked off the fine *(FR* 4,10,1). Our author commented that if the woman's clothes were ripped, her hair pulled, and she screamed and complained immediately to the officials, they should carry out an inquest among the men and women in the house where the rape took place. If need be, they should be tortured. If the man who assaulted her was found in the house and the accusation was proved, justice should be done to him, that is, he would be executed; but if he denied the charge witnesses should be summoned. Although some *fueros* stated that a man who raped a woman became her enemy if he did not respond to the threefold summons of nine days each, the king amended that by ordering the execution of the rapist, in accord with the *fuero de las leyes (FR* 4,10,1). That being so, the scheduled periodic

[288] *Scholia* 492-493; *Extracto* 121-122.

[289] *Glosas,* 1100-1101, quoting Lib. I, cap. LXXXI, and 1104, quoting LXXVIII; *Scholia* 404-415; *Extracto* 282-283; O'Callaghan, *Alfonso X, The Justinian of His Age,* 215.

[290] O'Callaghan, *Alfonso X, The Justinian of His Age,* 218-219.

[291] *Glosas,* 1088, quoting Lib. I, cap. LXXXIIII; *Scholia* 325-335, 451-454; *Extracto* 268-269.

summons in the *Fuero real* should be observed rather than in the older *fuero*, even if the king did not explicitly amend it *(LEst* 121-122)[292].

In the course of daily life, both men and women quarreled with one another and attempted to demean their opponents by hurling insults at them[293]. A response in kind could often cause a brawl. Should anyone call another an idiot *(gafo),* a homosexual (*fodudinculo*), a cuckold *(cornudo),* a traitor, a heretic, or if a husband called his wife a whore, in the presence of the judge and good men, he should be fined 300 *sueldos*, half payable to the king, and half to the one insulted. If the accused denied it and it could not be proved that he said it, he should save himself as the law commanded, but if he refused he should pay the fine. If anyone called a convert a renegade, he would be fined 10 *maravedís* payable to the king and another 10 to the one insulted *(FR* 4,3,2). With respect to calling a married woman a whore, our author asserted that the fine for insulting a noble should be 500 *sueldos.* In assessing the fine for insulting a commoner the judge should take into account the status of the culprit, the insult, and the place where it was uttered *(LEst* 131)[294]. If insults were thrown in the midst of a fight, the penalty would be imposed for the most serious insult. Although one party might hurl greater insults, minor insults were not equal to greater ones *(LEst* 81). An inquest should not be undertaken when insults were flung even at night; nor should there be an inquest if someone were wounded in a fight unless there were scars *(LEst* 98)[295]. When the *fuero* established penalties to be imposed *por calumnia* on a married woman, that would also be understood for a newly espoused woman *(LEst* 82)[296].

XVI. **TREASON**, **ALEVE**, **RIEPTO**

In the most important sense treason *(traición)* was an offense against God, the king, and the kingdom *(SP* 7,2,1-6). *Aleve* or perfidy was a lesser form of treason because it was a breach of a truce *(tregua)* or pledge of security (*seguranza*). The law distinguished between *tregua* and *seguranza* as follows. By committing to a *tregua* or truce nobles pledged to cease hostilities and to maintain peaceful relations with one another. On the other hand, *seguranza* or security was an agreement between non-nobles to set aside their enmity and to give mutual assurances to live in peace *(SP* 7,12,1). An aggrieved noble, in the procedure known as *riepto*, might defy another, accusing him of *aleve.* He had to substantiate his charge in the royal court in the king's presence by the presentation of documents, witnesses, the results of an inquest, or trial by battle. These matters were treated in the *Fuero real* (4,25,2-7), in the *Partidas* (7,3,1-9; 7,4,1-6)[297]. Inasmuch as *seguran-*

[292] *Glosas,* 1095, quoting Lib. II, cap. X; *Scholia* 484-485; *Extracto* 273-274.
[293] O'Callaghan, *Alfonso X, The Justinian of His Age,* 215-216.
[294] *Glosas,* 1057-1058, quoting Lib. II, cap. CCXXXIII.
[295] *Glosas,* 1130, quoting CI.
[296] *Glosas,* 1058; *Scholia* 435-439, 461-462, 494-495; *Extracto* 244-245, 316.
[297] O'Callaghan, *Alfonso X, The Justinian of His Age,* 213-214.

za, by definition, was an arrangement between non-nobles, our author explained that the Castilian nobility could not consent to a valid *seguranza* and the procedure of *riepto* did not apply to *seguranza*. Nor was any truce valid among the nobility unless they first defied one another; if they quarreled and then agreed to a truce, it would be valid *(LEst* 46)[298].

The *Leyes del estilo* devoted a series of laws to the business of assuring peace and friendship in a contentious society by means of truces or pledges of security. For example, an injured party might wish to bring the charge of *aleve* against a criminal, who was condemned to death, but pardoned by the king, except for the crimes of *traycion* or *aleve*. In accordance with the *Fuero de las leyes (FR* 2,3,4,7), the accused should be summoned within three months to appear before the king *(LEst* 38). If the criminal failed to answer the summons the *alcaldes* could order the seizure of his property, in accordance with the *fuero.* If he was killed after being captured by the *merino*, he would not be declared *alevoso.* However, if he was taken alive, he had to be tried for *aleve*. but if it could not be proved that he violated *tregua* or *seguranza*, he could not be condemned as *aleve (LEst* 40)[299]. Aside from physical and financial penalties, someone declared *alevoso*, as well as his family, incurred the stigma of infamy.

Those laws were illustrated in a case presented in the court of Maria de Molina while her son Fernando IV was engaged in the siege of Algeciras (August-December 1309). The case concerned a man who ignored a summons by local *alcaldes* to answer the accusation of killing another man's relative during a truce. While he was in the queen's household the royal *alcaldes* summoned him but he took refuge in a church. When the *alcaldes* declared him a *fechor* or malefactor, he produced a royal charter granting him a pardon, except for *aleve* or *traycion*. He also showed that letter of pardon to the judges of the place where he was first accused, in effect undercutting his accuser who charged him with *aleve* for violating *tregua* and *seguranza* and demanded his execution. The matter then came before the royal court. Juan Rodríguez de la Rocha, an *alcalde del rey* who served both Sancho IV and Fernando IV[300], adjudged that it was the usage of the royal court, that the king and no one else should judge an issue of *aleve*. The royal pardon also prohibited anyone from arresting the accused or requiring him to name sureties; nor did the queen issue a charter in the king's name ordering that such actions be taken. Rather the court directed the local *alcaldes* to summon both parties (and the accused's sureties) to appear before the king at a certain date. If the accuser failed to pursue the case, he would be at the king's mercy *(LEst* 39)[301]. The resolution of this case is unknown.

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[298] *Glosas,* 829, quoting XLVI; *Scholia* 242-44; *Extracto* 54, 328.

[299] *Glosas,* 818-819, quoting in part XLI; *Scholia* 192-202, 206-214; *Extracto* 72-73.

[300] Juan Rodríguez de la Rocha, *alcalde del rey,* on 12 February 1290, on the orders of Sancho IV, set down the boundaries of Trujillo. On 15 July 1301 he drafted a charter in which María de Molina resolved a dispute between the bishop of Coria and the Order of Alcántara. María de los Ángeles Sánchez Rubio, *Documentación medieval del Archivo municipal de Trujillo* (Cáceres: Diputación Provincial, 1992), no, 4; Alonso Torres y Tapia, *Crónica de la Orden de Alcántara,* 2 vols. (Madrid: Gabriel Ramírez, 1763), 2:459-463, esp. 462.

[301] *Glosas,* 820-821, quoting XL; *Scholia* 202-206; *Extracto* 72.

An altercation might arise when a man entered and began to work the land of another man with whom he had a truce. After demanding that the intruder withdraw, the landowner might wound or kill him. If this was a quarrel between nobles (*fijosdalgo*) the procedure of *riepto* would not be invoked, If men of lesser rank were involved, no one would be charged with killing or wounding. However, the landowner had to identify the lands in dispute by walking them off and if it was proved that he was on his own land when he wounded his adversary, he would not be penalized in any way *(LEst* 41)[302]. Citing the words *de mientra que con él toviere tregua* in the law *Ningun traidor* in the title *De los rieptos* in the *Fuero real* (4,25,15), our author noted that if anyone violated his truce with another, the procedure known as *riepto* could be invoked. However, if the other party tried to provoke a challenge, he could not do so while the truce was in effect. Nor could he be challenged if his offensive action occurred before a truce was concluded, unless it was agreed when the truce was established that he could do so *(LEst* 42)[303].

If the process of riepto resulted in the conviction of one party as *alevoso*, he would be expelled from the realm and half his property would be confiscated for the benefit of the king, but he would not be executed on account of *aleve* if his action did not merit the death penalty *(FR* 4,25,23). Our author explained that this referred to nobles *(fijosdalgo)*. On the other hand, a non-noble who wounded or killed another with whom he had a truce would die on that account. A wound to the body had to be visible and was a dishonorable act to be punished as the judge saw fit. The death penalty would not be meted out because of an insult or injury concerning property under a truce, but the offender would suffer the penalty set down in the Seventh *Partida* in the title *Las treguas* and the law *Los quebrantadores (SP* 7,12,3), that is, he would be required to pay four times the value of the damage done; if the victim suffered dishonor the king would determine the penalty. Nobles would resolve these issues by the process of *riepto*, Should a townsman violate a truce punishment should accord with the local *fuero*. Otherwise penalties should follow the law of the *Partidas* cited above. A truce usually included knights and their retinues. If a knight killed or wounded another knight's man, that would be a violation of the truce to be settled by *riepto.* However, if a knight's men were involved in a brawl and someone was killed that would not be violation of the truce, unless they fought over an issue mentioned in the truce. Then they had to determine who started the fight, thereby violating the truce *(LEst* 43). No one would be summoned before the king for insulting another during a truce, unless his adversary declared that the truce was violated. The difference in the penalties for violating a truce *(tregua quebrantada)* and insulting or wounding someone was the reason for that. Only when someone complained that a truce was violated would the offender be summoned to the *casa del rey*. Even if a royal official was insulted, that case would not be brought before the king's court *(LEst* 44; *LJ* 2,1,8[304].

[302] *Glosas,* 817-818, quoting XLII.
[303] *Scholia* 214-225; *Extracto* 331, 337.
[304] *Glosas,* 819, quoting XLV.

When a complaint of wounding or killing during a truce was presented to a judge, he ought to punish the crime in accord with the law concerning violation of a truce *(tregua quebrantada) (LEst* 45)[305].

According to the *Fuero real* (4,25,2), whoever wounded or killed another during a truce even though he was not a noble *(fijodalgo)* became *alevoso* and should die on that account. The royal court repeated that, but commented that a noble in the process of *riepto* should not be executed *por aleve*, unless the act that he committed was such that whoever did it should die. That sentence accorded with the *Fuero real* (4,25,23) which stipulated that a noble who killed someone during a truce should suffer the death penalty *(LEst* 77)[306]. The law clearly favored nobles over other members of society, stating *el fijo-dalgo non será asi juzgado como otro que non es fijo-dalgo* - «a noble will not be judged like someone who is not a noble». Whereas the penalty for dishonoring a noble was 500 *sueldos*, a person of inferior rank was entitled to the penalty stated in his *fuero*; but if there were none he should be awarded less than 500 *sueldos* because it was not right that he should receive as much as a noble. As noted above *(LEst* 143), anyone who killed or wounded a royal judge should be required to make amends for the dishonor, as if the victim were a noble *(LEst* 85; *LJ* 2,1,1). A man who was the son of a knight on his father's side, but whose other relatives were not nobles *(fijosdalgo)* was to be admitted to *riepto* and all the honors of *fijosdalgo*, because he was judged to be a noble *(LEst* 86)[307]. In effect, his descent from a noble knight on the paternal side determined his status as a noble and allowed him to participate in the process of *riepto.*

Some of the old *fueros* of Extremadura required an accused killer, who was defied by the relatives of the murdered man, to respond to the charge through the process of *riepto*. If he admitted the crime but disregarded the summons according to the *fuero*, he would be denounced as an enemy of the deceased's relatives and had to leave the town and the district. Our author stressed that the procedures in the old *fueros* should be observed fully. However, if someone was killed at night or in a deserted place and an inquest was to be carried out, it should be done according to the *fuero de las leyes (FR* 4,20,11) and not according to the old *fueros.* Although some said that a *desafiamiento* or defiance was tantamount to a summons and the accusation should be adjudged according to the local *fueros,* our author stressed that if the aggrieved relatives wished to argue that the killing violated a *tregua o salvo* - «a truce or pledge of security», they should ask the judge to order an inquest. The judge should summon the person accused by the inquest within the terms set by the old *fuero*; but if there were none, he should follow the terms in the *fuero de la leyes*. The accuser could then ask the judge to order the execution of the murderer *(LEst* 49) [308].

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[305] *Glosas,* 819-820; *Scholia* 226-242; *Extracto* 339-41.
[306] *Glosas,* 1114-1115, quoting LXXX.
[307] *Glosas,* 1137, quoting XC; *Scholia* 404, 442-44; *Extracto* 263-264, 296, 336.
[308] *Scholia* 256-264; *Extracto* 328-330.

XVII. **CONCLUSION**

After this lengthy overview of the substance of the *Leyes del estilo*, it may be helpful to summarize its principal contributions and assess its importance. Our discussion began with *LEst* 238, at the very end of our text, because it mentioned five types of laws, ranging from unwritten custom and written law to natural law, which should always be observed. In the absence of natural law, however, the king could enact written laws which would always take precedence over customary law, including the *fazañas de Castilla (LEst* 198). The written law was drawn up and enforced in the royal court, variously identified as the *corte del rey* or the *casa del rey*, which included all the principal offices of royal government. Perhaps the most important was the chancery, responsible for drafting, sealing, and registering all royal documents. Ordinarily the chancery accompanied the king on his travels, but if it should lag behind, its actions would still be valid *(LEst* 197). The chancery collected fees for its services *(LEst* 232) and took care that documents were properly drawn up by public scribes *(LEst* 94, 119).

The *corte del rey* was also a judicial body responsible for the administration of justice. Although the king might preside over its sessions, most cases were adjudicated by the *alcaldes del rey*, with the assistance of scribes who recorded the proceedings, *porteros* who summoned litigants, and the *alguacíl* who maintained order and enforced the court's decisions *(LEst* 34). The court calendar observed the chief festivals of the Christian religion *(LEst* 209-210). The law also accepted the role of judges delegate and the possibility that litigants might resolve their dispute by mutual agreement *(avenencia) (LEst* 129, 218, 233). Major crimes such as treason, counterfeiting, rape, violation of a truce, and so forth were among the *casos de corte* reserved for judgment by the royal court *(LEst* 91).

As a general rule, most litigation was settled in municipal courts where the king appointed the judges and scribes and held them accountable for their actions *(LEst* 8, 135, 147, 191, 228). The law also acknowledged the special jurisdiction of the *alcaldes entregadores de la Mesta*, charged with settling disputes involving transhumant sheep *(LEst* 137). The Jews, too, as a protected people, were permitted to be governed by their own law and their own magistrates. However, when they came into conflict with Christians, the law required them to swear a distinctive oath and generally favored the Christians *(LEst* 83-84, 87-90, 153, 217). Muslims were accorded similar rights, but our text scarcely mentions them.

The judge's task, after attending to the demand of a plaintiff *(demandador)* and the response of a defendant *(demandado),* and evaluating whatever proofs were presented, was to resolve the issue in accordance with the law. In addition, the judge regulated the conduct of the procurator or *personero* bearing a *carta de personería* or power of attorney permitting him to act on behalf of his client *(LEst* 10-17). An *abogado* or professional advocate hired to present his principal's plea or his defense was subject to similar oversight *(LEst* 18-20).

Litigation commenced when someone was summoned to court, but the lengthy consideration given to that matter by the *Leyes del estilo* indicates that it could be complicated. A summons might be issued to a private person, a royal official, or a corporate entity such as a municipality. In assigning a date for appearance, the court had to take into account the distance to be travelled. The refusal of the person summoned, especially for the third time, was viewed as an act of rebellion and disrespect for the court and was penalized by heavy fines. The delinquent was also required to pay the expenses of the litigant who did appear *(LEst* 21-39, 48, 66, 119). Once the parties were assembled in court, the judge required them to swear the *juramento de manquadra* or *jura de calumnia,* an oath to conduct themselves rightfully and justly *(LEst* 136, 240, 249). The defendant might delay the proceedings by advancing one or more exceptions or challenges, for example, by questioning the court's jurisdiction, the judge's impartiality *(LEst* 235-236), or claiming that a litigant was excommunicated *(LEst* 176-178).

After those problems were disposed of and the defendant responded to the plaintiff's demand, the stage known as *litis contestatio*, the trial could continue. It might end if the defendant admitted the accusation against him *(LEst* 133). Otherwise the judge asked for proofs such as documents and tried to gauge their validity *(LEst* 184,186, 224); he also had to determine the truthfulness of witnesses *(LEst* 64. 96, 115, 119, 175, 177, 180-182); or he might conduct a *pesquisa* or inquest *(LEst* 30, 54, 106, 127). In the course of the trial the judge might issue one or more interlocutory judgments of a temporary nature. At last, however, after weighing all the proofs presented, he had to pronounce a definitive judgment, attend to a litigant's *suplicacio* or plea for mercy, assess court costs, impose fines and order the seizure of property *(LEst* 138-140, 171-173, 190, 211, 218, 237). If the defeated party wished, he could ask the judge to grant his appeal to a higher court. A reference to an *oydor de las alzadas* or auditor of appeals suggests that that task could be handled by any one of the *alcaldes del rey (LEst* 13, 15, 22, 149-164, 169-173). Another text implies that only the king could pardon a convicted man *(LEst* 126).

Following the commentary on the judicial process, our author directed attention to several issues that likely came before the royal court for adjudication. Although the *Fuero real* (3,2,1) limited to 10% of his estate the *arras* that a groom could give to his bride, our text enabled him to circumvent that, before the marriage was formally contracted, by selling to her as much of his property as he wished *(LEst* 246). The law presumed that all the couple's property belonged to the husband unless the wife demonstrated that some holdings were hers. Custom assumed, however, that they shared equally in whatever they possessed, and that they were equally responsible for their debts *(LEst* 203, 205-208, 223, 244). Although the law is silent on the care and upbringing of children, it did regulate the obligations of guardians to care for the interests of minor children *(LEst* 2, 225). Incidentally, our author acknowledged that the age of majority was twenty-five *(LEst* 70). Our text also discussed the complexities of inheritance, including the proper form of a will; the distribution of assets among several heirs (clerics

among them), after the testator set aside a fifth for his soul; and the possible burdens that might prompt an heir to reject a bequest *(LEst* 67-68,194-195, 200, 212-214, 234, 241).

In his discussion of the law of property, our author distinguished between ownership and possession *(LEst* 192, 242). He also remarked on the acquisition of royal estates by the church with the consequent loss of income, and he noted that the Cortes of Nájera in 1184 and of Benavente in 1228 attempted to restrain that development *(LEst* 231). He also commented on the exploitation of *salinas* or salt mines as part of the royal domain *(LEst* 202). As buying and selling was an everyday affair, the royal court was often called upon to resolve the many intricacies involved, for example, the possible cancellation of a sale, the determination of a just price, and the inapplicability of the *ley del engaño en meytad* or *laesio ultramidium*, and the principle of *tanto por tanto.* On the other hand, when two or more prospective buyers offered the same price, *tanto por tanto* was applicable *(LEst* 220, 230). Claims of non-payment were likely common and had to be settled within two years in the district where the sale was made *(LEst* 2, 5, 184-185). The sale of human beings was also common, especially as so many, captured on the frontier, were sold into slavery. Although the law prohibited the sale of a freeman and forbade a father to sell his children, those laws apparently were not always enforced *(LEst* 80).

The repayment of debts occupies a goodly portion of the *Leyes del estilo.* Among the topics discussed were the adjudication of cases of debt in the local courts; observance of the legal formalities when a debt was contracted; and a wife's liability for her husband's debts *(LEst* 3, 5, 7. 223). At times the payment of interest or usury was hidden when a debtor agreed to incur a penalty if he did not repay a debt by a certain date; both he and his creditor knew that he would not do so. Ordinarily the penalty should be no more than double the amount demanded. A debtor who failed to pay his debt could be arrested, and his property and that of his sureties who pledged to guarantee repayment could be sold *(LEst* 134, 187. 193, 196, 199, 215-216, 247-248, 250-251). Maria de Molina's undated letter directing the *alcaldes* of Toledo to dispose of income from a debtor's confiscated property illustrated this process *(LEst* 4).

As Castile experienced a revival of trade and commerce, our author emphasized that customs duties *(diezmos)* should be the same in all ports of entry and he confirmed the royal statute prohibiting the export of *cosas vedadas (LEst* 201, 204).

The extensive commentary on crime and punishment in the *Leyes del estilo* testifies to the preoccupation of the royal court with this issue. The court, after determining who best among the victim's family members should bring an accusation, required an accused man to appear in person and permitted him to name sureties. If he ignored the summons and sought sanctuary in a church, he would be extracted *(LEst* 97, 130). In other circumstances he could be killed or imprisoned by the *alguacil (LEst* 1-7, 111, 113, 120, 132, 141). Once in court, he could not delay the proceedings by alleging exceptions nor could he appeal the court's interlocutory or definitive judgments in capital cases. The judge,

after imposing fines, had to apportion them between the king and the accuser *(LEst* 47, 65, 79, 97, 100-101, 105, 107, 111, 113, 118, 129-130, 132, 141, 148, 163, 166). In many instances when the perpetrator was unknown, the judge might order an inquest *(LEst* 50-55, 123). Among the specific crimes that drew attention were homicide, especially the assassination of a royal official *(LEst* 56-63, 85, 89, 102, 119, 142-143); robbery *(LEst* 71-76, 144-146); counterfeiting *(LEst* 78); tax evasion *(LEst* 128); adultery *(LEst* 62, 93); rape *(LEst* 121-122); and insults *(LEst* 82, 98 131).

Finally, the *Leyes del estilo* attempted to restrain hostilities among a turbulent nobility by encouraging them to adhere to a truce (*tregua*). A pledge of security *(seguranza)* among non-nobles would achieve the same goal. Should a noble have a grievance against another, he could invoke the procedure known as *riepto* and defy his adversary, charging him with *aleve*, treachery or perfidy. The royal court would adjudicate that accusation *(LEst* 38-46, 49, 77, 85-86).

Reflecting on the significance of the *Leyes del estilo*, an anonymous tract compiled about 1310, we should first note that the author's purpose was to clarify, explain, and interpret the usage of the royal court from the late thirteenth through the early fourteenth, or from the reign of Alfonso X through that of Fernando IV, with special reference to the *Fuero de las leyes* or *Fuero real.* The attention given to the *Fuero real*, promulgated by Alfonso X as a code of law for the municipalities of Castile and Extremadura and intended to replace all the older *fueros*, demonstrates its continued usage into the early fourteenth century. Parenthetically, the citation of the *Siete Partidas (LEst* 43, 144) indicates the royal court's acceptance of that text and undercuts the notion that the *Partidas* did not have the force of law until Alfonso XI's declaration in 1348. The author (or authors) of the *Leyes del estilo* displayed a knowledge of the principal texts of Roman and canon law and a familiarity with the functioning of the royal court. He may have served there as a judge or in some other official capacity. Subsequent generations of lawyers utilized the *Leyes del estilo* as is evident from the surviving manuscripts from the fourteenth and fifteenth centuries and several printed editions from the late fifteenth century through the late nineteenth. Moreover, Cristóbal de Paz's nearly 800 page edition and commentary, written in the early seventeenth century, was intended for the guidance of the legal profession. The influence of the *Leyes del estilo* was also felt in Latin America, as Cristián Oliver Gómez demonstrated in his review of the citation of the *Fuero real* and the *Leyes del estilo* in the courts of Chile between 1841 and 1856[309]. Studies in other countries in the Spanish-speaking world would likely reveal similar results. I hope that my survey of the *Leyes del estilo* will encourage other studies of this noteworthy legal document.

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[309] Cristián Oliver Gómez, «Aplicación judicial del Fuero Real y de las Leyes del Estilo en Chile entre 1851 y 1856», *Revista de Derecho* 7.7, 2018, 53-165.