

'GAR.': A CASE OF MISTAKEN IDENTITY¹

For George Reid, *Thesaurarius optimus*

From Schulte to García, the author of the standard Commentary on the constitutions of II Lyons (1274) and of the Apparatus to the decretal 'Cupientes' of Nicholas III (VI. 1.6.16) has been remembered as 'Johannes Garsias Hispanus'², and with advocates such as these answering for his *bona fides* he might reasonably be thought to be entitled to rest in peace. Not so, however, for it is the purpose of this Note to propose that Johannes Garsias Hispanus never was.

There appears to be no manuscript authority for this form of the name. Bryson, in his standard guide, cites Sella in support³. But Sella does not provide support⁴. Earlier on, Savigny, Nicolás Antonio, Sarti, Pancirolus and Mariana had all in turn referred either to *Garsias* or to *Garsias Hispanus*⁵. Earlier still, Diplovatatus had lauded *Garsias Hispanus*⁶ —which, whatever else it may have been, was evidently not a misreading of *Johannes Garsias Hispanus*. In 1352 there was a copy of the 'apparatus Grassie [*sic*] super decretale Cupientes' listed amongst the effects of the late Archbis-

1 The present Note provides the justification for an unsubstantiated allegation in my article, 'The will of Synibaldus de Labro', *Rivista Internazionale di Diritto Comune*, 7 (1996), 144, n. 32. In the course of preparing it I have placed myself yet further in the debt of two old friends —Antonio García who procured for me copies of manuscripts in Madrid and Barcelona, and Christopher Brooke who with truly Caian discretion saved me from a serious gaffe.

2 J. F. von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts von Gratian bis auf die Gegenwart*, ii, Stuttgart 1877, 160-62; A. García y García, 'Canonistas gallegos medievales', *Compostellanum*, 16 (1971), 118-20.

3 W. H. Bryson, *Dictionary of Sigla and Abbreviations to and in Law Books before 1607*, Charlottesville 1975, 74: 'Gar.: Johannes Garsias Hispanus MS Sella, Sig'.

4 P. Sella, 'Sigle di giuristi medievali, in specie dello Studio bolognese, tratte dai codici vaticani', *L'Archiginnasio. Bollettino della Biblioteca Comunale di Bologna*, 27 (1932), 187: 'Gar. —Garsias Hispanus'.

5 F. C. von Savigny, *Geschichte des römischen Rechts im Mittelalter*, iii, Heidelberg 1834, 240-41; N. Antonio, *Bibliotheca Hispana Vetus*, ii, Madrid 1788, 93; M. Sarti - M. Fattorini [1769-72], *De claris Archigymnasii Bononiensis professoribus a saeculo xi usque ad saeculum xiv*, 2 vols.; Bologna 1888-1896, i, 481-2; G. Pancirolus, *De claris legum interpretibus libri IV*, Leipzig 1721, 328, 503, 522; J. de Mariana, *Historiae de rebus Hispaniae*, xiv.16, Toledo 1592-1595, 696.

6 'Qui et ipse loculentissimus canonum explanator temporibus supra dictorum floruit...': *Liber de claris iuris consultis*, ed. F. Schultz, H. Kantorowicz and G. Rabotti: *Studia Gratiana*, 10 (1968), 184.

hop Dino of Pisa⁷. And crucially, the *siglum* at the end of the fourteenth-century Escorial manuscript of the Apparatus itself is unequivocally 'Gar.'⁸.

Having deprived 'Gar.' of one of his names it now remains to compensate him with something of an identity.

The Bolognese records mention a number of Spaniards with the name *Garsias* active in the late thirteenth century, Sarti remarked in referring to two in particular from the year 1277, both members of the church of Compostela —Garsias Johannis *decretorum doctor*, and Garsias Sebastiani, canon— and identifying the first of them, recorded as *scolasticus* of Compostela in 1279, as the canonist in question⁹. Here surely Sarti has the edge on Schulte, at least as regards the canonist's Compostela connexion —though whether either or both of these Garsias was also of Galician *origin* is another matter altogether.

Be that as it may, Garsias Hispanus, it is now suggested, is to be identified with the *doctor decretorum* of that name whom in September 1288 Nicholas IV preferred to the see of Sigüenza after the chapter of that church had postulated Bishop Alfonso of Coria, one of the most assiduous of the curial prelates of King Sancho IV of Castile¹⁰.

There are four human components to the identification proposed here: (i) the 'dominus Garsias Hispanus, doctor decretorum' who disputed various *quaestiones* at Bologna between 1278 and 1281 while at work on his Commentary on the constitutions of II Lyons¹¹; (ii) the 'magister Garsias, domini pape capellanus et auditor palatii' who acted for the Servite Order at Rome in 1286¹²; (iii) the canonist Garsias Hys-

7 D. Williman, *Bibliothèques ecclésiastiques au temps de la papauté d'Avignon*, I; Documents, Études et Répertoires publiés par l'Institut de Recherche et d'Histoire des Textes, Paris 1980, 189 —with its author duly indexed (p. 352) as 'Joannes Garsias Hispanus'.

8 MS. c.I. 10, fo. 6^r. Cf. G. Antolin, *Catálogo de los códices latinos de la Real Biblioteca de El Escorial*, i, Madrid 1910, 213.

9 Loc. cit. In October 1279 Garsias Sebastiani was a witness to the agreement whereby Mag. Garsias Hispanus undertook to deputise for the sick Egidius de Foscarariis: *ibid.*, ii, 191.

10 *Les registres de Nicholas IV (1288-1292)*, ed. E. Langlois, Paris 1887-1893, no. 341; M. Gaibrois de Ballesteros, *Historia del reinado de Sancho IV de Castilla*, 3 vols., Madrid 1922-1928, i, 44, ii, 69.

11 Ed. C. F. Reatz, *Collectio scriptorum de processu canonico, partim e codicibus nunc primum editorum, partim e libris rarioribus editis recursorum*, I, Giessen 1860, 59-92. Note that in November 1278 he is entitled 'doctor legum' (p. 59) —the terms were evidently treated as interchangeable (cf. nn. 9, 12).

12 A. Giani, *Annalium sacri ordinis fratrum servorum Beatae Mariae Virginis*, i², Lucca 1719, 157; A. Morini and P. Soulier, *Monumenta ordinis servorum Sanctae Mariae*, ii, Brussels 1898, 141, where 'magister Garsias' is described from the records of the Servite archive as 'dominus Garsias'. On 5 August 1286, 'Mag. Garsias domini pape capellanus ac ipsius palatii auditor' (who on 19 May had examined Johannes Jacobi de Racanato there for the *tabellionatus officium*) was one of a number of 'legum doctores et advocati in Romana Curia' from whom *consilia* were obtained regarding the applicability to the Servites of the conciliar constitution 'Religionum diversitatem' (VI 3.17.un): *Les registres d'Honorius IV*, ed. M. Prou, Paris 1886-1888, no. 449; F. A. Dal Pino, *I frati Servi di S. Maria dalle origini all'approvazione (1233ca-1304)*; Recueil de travaux d'histoire et de philologie, 4^e ser., fasc. 49-50, 3 vols., Louvain 1972, ii, 156-7. Since the Order's very survival was at issue the opinion of the accredited authority on the 1274 legislation was crucial to its interests. Cf. Garsias' report in his Commentary of Gregory X's rumoured intentions in this regard (gl. ad v. 'prouidere' *apud* Cambridge, University Library, MS. Dd.VII.

panus, hitherto known as 'Johannes Garsias Hispanus'; and (iv) Garsias, bishop of Sigüenza (1288-99).

It is hardly surprising that the connexion has not been made before, since, on top of Schulte's unaccountable transformation of Garsias Johannis into Johannes Garsias, just forty years later there came Eubel's inexplicable listing of the bishop of Sigüenza in question as Garsias *Martínez*¹³. Eubel's egregious error apart, (i), (ii) and (iii) are plausibly identifiable. For not only, on account of his name alone, must the jurist Garsias have been a Spaniard. Also, 'dominus Garsias' and 'magister Garsias' must have been the *same* Spaniard. What remains to be done then is to demonstrate that (ii) and (iv) were the *same person*. For if so, the rest follows.

In fact, that part of the task has already been attended to. It was ably accomplished by the historians of the Servite Order all of a century ago when they made the suggestion (albeit without appreciating its implications) that the Garsias —*doctor decretorum*, archdeacon of Mayorga in the church of Leon, and *iudex* of Luou—whom Nicholas IV preferred to the see of Sigüenza in 1288 was one and the same person as their Order's sometime proctor of that name¹⁴. Now, *that* Garsias was indeed archdeacon of Mayorga, as the first of the papal letters adduced by those authors confirms. He had been so since at least August 1282, when he had been in residence at León, and more recently, sometime in the year 1286, described as 'Magister Garsias archidiaconus Legionensis', he had been at Compostela¹⁵ —though neither in

18, fo. 271^{ra}, collated with Barcelona, Archivo de la Corona de Aragon, Ripoll MS. 7, fo. 238^{va} [= B]; Madrid, Biblioteca Nacional, MS. 396, fo. 28^{va} [= M]: 'dicebatur [B, M: dicebant] enim quod aliquem ordinem mendicantem non intendebat dimittere nisi predicatores et minores. De non mendicantibus autem intendebat dimittere tres, scilicet Cisterciensem [B, M: Cisterciensem] et ordinem nigrorum et de templariis et hospitalariis [templariis et: *om.* B; M: hospitalariis et templariis] unum ordinem [ordinem: *om.* M] facere' ('Dimittere' here is evidently used in the sense of 'to reprieve'. Cf. Johannes Andreae's version of Garsias' gloss) — ...& dicebatur, quod Gregorius volebat *[sic]* aliquem mendicantium dimittere, nisi Praedicatorum & Minores; de non Mendicantibus tres, Cisterciensem, & ordinem Nigrorum, & de Templariis & Hospitalariis unum ordinem facere': loc. cit. ad. v. 'in solido' [*Liber Sextus Decretalium*, ed. Turin 1620, col. 563]— where its meaning is the opposite. Likewise, Cambridge, St John's College, MS. 4, fo. 58^{va}, though here the text reads '*uoluit...omittere*'. Discussion in 1274 to combine (all?) the military orders was remembered by Jacques de Molay, grand master of the Temple, in c. 1305 as having been abandoned in deference to the Spanish kings' commitment to the peninsular orders ['Et dictus papa Gregorius et sanctus Ludovicus voluerunt habere consilium super facto unionis predictae, et eorum intentio erat de omnibus religionibus armorum facere unam. Sed fuit responsum quod reges hispanie nullatenus consentirent propter tres religiones armorum, que sunt in patria sua stabilite': J. Delaville Le Roulx, *Cartulaire général de l'ordre de Saint-jean de Jérusalem*, iv, Paris 1906, no. 4680]. See also S. Kuttner, 'Conciliar law in the making. The Lyonese constitutions (1274) of Gregory X in a manuscript at Washington': *Miscellanea Pio Paschini*, I, Rome 1949 [repr. S. Kuttner, *Medieval Councils, Decretals, and Collections of Canon Law*, London 1980].

13 C. Eubel, *Hierarchia Catholica Medii aevi*, I, Münster-in-W., 1913, 444. Neither the sources cited by Eubel (*Reg Nich. IV*, nos. 207, 722) nor the papal registers themselves provide warrant for the appellation.

14 Morini and Soulier, ii, 141, citing letters of Nicholas IV of 29 Sept. 1288 and 7 March 1289 (= *Reg Nich. IV*, nos. 341, 716).

15 J. M. Ruiz Asencio and J. A. Martín Fuertes, *Colección documental del Archivo de la Catedral de León, IX (1269-1300)*, León 1994, no. 2419; Santiago de Compostela, Archivo de la Catedral, 'Cons-

the pope's letter appointing him to Sigüenza, nor in the repetition of it, was this connexion with Compostela mentioned¹⁶. The information concerning his occupation of the office of *iudex* of Luou was in fact derived from the archives of the Order itself¹⁷—and in as much as it assists in reconstructing something of the career of Garsias Johannis Hispanus it is information of some interest.

The two *iudices* of the church of Compostela (whose association with the parochial churches of Luou and Vilvestro was still quite recent in 1288) were canons with duties without precise parallel elsewhere within the peninsular Church, their function being that of defending the chapter's interests before the civil tribunals¹⁸. As to the biography of Garsias Hispanus between 1282, when (it appears) he completed his Commentary on the Lyons constitutions, and 1288, the significance of his occupation of the office is two-fold, the first element of it being the situation of the church of Compostela in 1282. In 1282, as the kingdom of Castile was overtaken by civil war, the church of Compostela was leaderless, Archbishop Gonzalo Gómez having died at the papal curia after being driven into exile by the wrathful Alfonso X¹⁹.

The second element was Garsias himself, who sometime after 1279 ceased to be *magisterscolarum* of Compostela (or *scolasticus*, as the Bolognese records incorrectly described him)²⁰, and became *iudex* of Luou. When this was (whether on his assumption of the Leonese archdeaconry, for example, which is to say in or before 1282, or later) we have no means of knowing—though, since the appointment was in the archbishop's gift, if later then it cannot have been before May 1286 when Honorius IV appointed Rodrigo González de Leon OP to the see²¹.

Whichever of the two archbishops it was who appointed him, however, in Garsias Hispanus he had a thoroughly competent man for the job, just as the Servite

tituciones sinodales y capitulares antiguas' (sig. n. 638bis), fo. 61^v. Also present on the latter occasion was the canon Garsias Sebastiani, with whom Dal Pino conflates the *iudex* of Luou (i. 1387, index; cf. A. López Ferreiro, *Historia de la santa iglesia de Santiago de Compostela*, v, Santiago de Compostela 1902, 250). In March 1291 Garsias Sebastiani, still a canon of Compostela, was at Orvieto, and in February 1294 he was at Perugia, *sede apostolica vacante*, in the company of a substantial contingent of peninsular churchmen: Dal Pino, i. 1181; Toledo, Archivo capitular, X.I.C.2.7.

16 For the repetition of the letter see below, note 23. Morini and Soulier presumably had their information from Langlois' then recently published *Les registres de Nicholas IV* in which the texts of these letters are not printed, and omitted to consult the registers directly.

17 Dal Pino, i. 1150, describing the seal of 'magister Garsias iudex de Luou in ecclesia Compostellana' (Rome, Feb. 1287).

18 F. J. Pérez Rodríguez, *La iglesia de Santiago de Compostela en la Edad Media. El cabildo catedralicio (1110-1400)*, Santiago de Compostela 1996, 71-5—noting the case most nearly resembling it, in the church of León as it happened.

19 López Ferreiro, v. 239-44; P. Linehan, 'The Spanish Church revisited: the episcopal *gravamina* of 1279': B. Tierney and P. Linehan (eds.), *Authority and Power. Studies on medieval law and government presented to Walter Ullmann on his 70th birthday*, Cambridge 1980, 132. The fact that news of the archbishop's death, which had occurred sometime between May 1280 and February 1281, appears not to have reached Compostela by July 1283 is testimony to the confusion of these years: Toledo, Archivo capitular, A.7.G.2.10d; *Les registres de Martin IV*, ed. F. Olivier-Martin, Paris 1901-1935, no. 2; López Ferreiro, v. 247.

20 Above, n. 9. Cf. Pérez Rodríguez, 69-70.

21 *Reg Hon. IV*, no. 536. Cf. Pérez Rodríguez, 75.

Order had —except that, since the Order's business was being attended to by him in Rome in 1286²², by definition the business of the church of Compostela was not—, being attended to in Galicia at least not on a regular basis.

Likewise, when after Nicholas IV's appointment of him to Sigüenza in September 1288, Sigüenza was kept waiting for him until his letters of appointment were repeated in March 1289, it was not on account of any last-ditch stand by the chapter of Sigüenza to force the king's man on the pope that those letters were repeated²³. They were repeated because he had been detained at the papal curia and had meanwhile been consecrated there²⁴. And one of the reasons why he had been detained there was that his expertise was needed, *inter alia* in order to assist together with such luminaries as Berard of Naples and William Durand the Elder at the settlement of the long-running dispute between the Portuguese episcopate and King Dinis²⁵.

And then, but only then, did he return to Castile, a kingdom replete with canonical complications, notably the matrimonial complications of the king²⁶. And *then...* then silence. Then nothing whatsoever happened. 'Take the yoke of the Lord upon you', Nicholas IV had enjoined the new bishop on his appointment, citing St Matthew and developing the text: 'a yoke as light to humble shoulders as it is burdensome to the proud'. 'And have care for the Lord's flock', he had continued, with more in like vein²⁷.

With about half the sees of the kingdom of Castile vacant, the Lord's flock in those parts was certainly in need of care —and the faithful of Sigüenza at least as much as most, having been shepherdless for six or seven years while the deplorable dean of Seville, the vulpine Ferrán Pérez, had circled the see²⁸. However, rather than

22 Molini and Soulier, ii. 141.

23 As Gaibrois de Ballesteros alleged (ii. 37), hypothesising from Langlois' summary of the letters (*Reg. Nich. IV*, no. 722), again without consulting the papal registers themselves.

24 As emerges from the differing form of address of the successive papal letters, the texts of which are otherwise identical: Archivio] Slegreto] Vaticano], Reg. Vat. 44, fos. 49^v, 122^v-3^r. Thus, when he swore obedience to the archbishop of Toledo at Guadalajara on 16 August 1289 it was recorded that he had been 'in Romana curia consecratus': Toledo, Archivo capitular, X.1.F.1.1a.

25 February 1289: Coimbra, Arquivo da Universidade, Pergaminhos do Cabido da Sé de Coimbra, no. 7; Lisbon, [Arquivos] [N]acionais da] [T]orre do] [T]ombol, Gaveta XVII. 3-16 (printed, As *Gavetas da Torre do Tombo*, vii, Lisbon 1968, 23-36) = *Reg. Nich. IV*, no. 716. Apart from the fact that the only other attendant on that occasion, apart from Portuguese churchmen and their peninsular associates, was Laurentius *scolasticus* of Bratislava (why?), it is surely significant that the letter for the bishop of Sigüenza follows immediately after a clutch of letters concerning the Portuguese issue (ASV, Reg. Vat. 44, fos. 117^v-22^v) and that after it there ensues a series of privileges in his favour: *Reg. Nich. IV*, nos. 903-4. Like Garsias, in 1287 Berard of Naples had submitted a *consilium* on the question of the constitutional situation of the Servite Order: Dal Pino, i. 1151.

26 P. Linehan, *History and the Historians of Medieval Spain*, Oxford 1993, 447, 472-3.

27 'Tolle igitur iugum domini...': ASV, Reg. Vat. 44, fos. 50^r, 123^r. Cf. Matt. 11:29. This was a standard text on such occasions, repeated (for example) to Archbishop Gutierre Gómez of Toledo in March 1311: ASV, Reg. Vat. 58, fo 77^r, ep. 314 (*Regestum Clementis Papae...* cura et studio monachorum O.S.B. editum, Romæ 1885-1892, no. 6707).

28 The witness list of a royal privilege of 2 May 1286 records 13 of the kingdom's 27 effective sees as vacant: Lisbon, ANTT, Mitra de Braga, mç. 4, doc. 137. Cf. T. Minguella y Arnedo, *Historia de la diócesis de Sigüenza y de sus obispos*, i, Madrid 1910, 229-32; P. Linehan, *The Spanish Church and*

emulating the pastoral initiatives of his former chief, Rodrigo González of Compostela in his similarly neglected archdiocese, once installed Bishop Garsias chose to concentrate on bricks and mortar rather than souls and salvation, and directed his attention to the completion of his cathedral²⁹. But this is not altogether surprising. Academic lawyers are not as a rule noted for stirring things up.

As Antonio García indicated in a dictionary article of 1967, much work remains to be done on Garsias Hispanus³⁰. And it still does. For the time being, however, the purpose of the present Note will have been amply served if thirty years on scholars are at least clearer regarding the letter of the alphabet under which to look him up.

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the Papacy in the Thirteenth Century, Cambridge 1971, 230. Minguella's account of these years requires thorough revision, further confusion regarding the affairs of the church of Sigüenza at this time having recently been introduced by R. González Ruiz's misattribution to 1288 of evidence relating to the year 1283: *Hombres y libros de Toledo*, Madrid 1997, 367-8.

²⁹ Minguella, i, 233-8, who is unaware of the bishop's antecedents. Cf. A. García y García, *Synodicon Hispanum*, i, Madrid 1981, 272-80.

³⁰ *The New Catholic Encyclopedia* 7, New York 1967, 997.