fourteen at the above date, would divide the succession not according to the old law as his elder would have done, but according to the modern law, that is to say, he will only be entitled to a single eldership in either line of his parents, and to no more than a double portion over his sisters in the inheritance, and to no eldership whatever if the real property be situated within the precincts of the new barrières. So then there are two conditions required for a son to be entitled to the reserves set forth in the thirtieth article: first,—he must have attained his fourteenth year when the law was promulgated; second,—he must be living at the opening of the succession of his father or mother. But though brothers who had not attained the age of fourteen at that date, could not profit by the old law, yet they, though under that age in right of their deceased parent, could, by representing him, divide with their uncles their grandfather's succession, because they succeed to their father's rights, who having attained his fourteenth year, when the law was promulgated, his rights of inheritance were always reserved to him *quoad* his uncles.

So that while the old law continues in operation, which will be the case for many years hence, inheritances will be differently divided in the same family, grandsons representing their father will divide with their uncles according to the ancient law, whilst sons with their brothers and sisters will divide according to the modern law.

A question may arise.—Would the eldest son, (who had *not* attained his fourteenth year on the third of August, 1840,) after having taken his eldership in his father's succession and divided that inheritance with his brothers and sisters, be debarred from taking, through the representation of his father, the eldership which would have devolved to his father had he survived his own parent? From the text of the seventh article it would appear that the grandson could, after taking his eldership in his father's succession, also take that which would have devolved to his father in the grandparent's succession, but in that case, as the grandson represents his parent, and takes the eldership *quoad* his uncles and aunts, (his father's co-heirs) he will have to account to his own co-heirs (his brothers and sisters) for this eldership, either by dividing it with his consanguine brothers and sisters, or, if he prefers

absolutely retaining his grandfather's eldership, he may do so, by accounting to his own co-heirs for the value which he has already taken in his own parent's inheritance. Such is the sense in which the following terms in the seventh article in reference to the eldest son's rights must be understood, "*It shall be optional with him to divide it with his consanguine brothers or sisters, or keep it himself on bringing back the value of that which he already possesses,*" *id est,* the eldership he has already received from his father's succession.

After having thus levied an eldership in his paternal grandfather's succession, could the eldest son take another in his mother's or maternal parent's succession? It would not appear that he could, by the modern law, for this would be giving him two elderships with regard to his own *co-heirs,* which he connot now have, the grandparent's succession devolving with the parents, which it always does when the grandson represents his parent, both these successions then forming but one, with regard to his brothers and sisters, but one eldership can be raised on both, and an eldership having been already raised by the eldest son, he cannot take another eldership in his grandmother's succession to the prejudice of his father's co-heirs, (his uncles or aunts), who have already lost that of their own father; nor could he take that of his mother, to the prejudice of his own co-heirs, (his brothers and sisters), the eldest son having already taken, through the representation of their father, that portion which would otherwise have devolved to them from their paternal grandfather. So then by causing an evaluation to be made at the time of the eldest son's taking an eldership on his parent's or grandparent's line of succession, he may on accounting for it to his co-heirs, take that which would afterwards fall in, from either of his paternal or maternal grandparents, in reference to the succession of his uncles or aunts, (his parent's co-heirs), for though the eldest son is now only entitled to one eldership, he is always entitled to take that which best suits him. The same may be said of his own co-heirs, (his brothers and sisters) with regard to his own parents, either in the paternal or maternal line, in either of whose successions the eldest son by taking the precaution of making an evaluation of the eldership he first raises, and on accounting for it to his co-heirs,

he may take whatever eldership may fall in from his parent's or grandparent's succession, provided that in every case he is restricted to a single eldership.*

A question has been put whether real property acquired by parents since the promulgation of the modern law will be divided among their children above the age of fourteen at that date according to its provisions or according to the old law? It would have been desirable that it should have been divided according to the provisions of the new law, but the reserve having been made in favour of sons, who at its promulgation shall have attained their fourteenth year to divide the future inheritance according to the old, without any distinction as to the period when the real property belonging to it was acquired, it cannot be doubted but that such property will be divided according to that law.

The reasons assigned for putting off in certain cases the immediate operation of the changes lately effected in the law of lineal inheritance, were, that they might too severely affect the prospects of eldest sons who had attained a certain age, and whose state in life had been materially affected by the reasonable expectations afforded them of deriving certain advantages from the late law of inheritance. Nor were these reasons altogether unfounded, particularly in a place where by far the greatest portion of the real property of every inheritance was bestowed on the eldest son. The committee of the Petitioners represented that the age of twenty instead of fourteen might be fixed upon as that whereby a reserve in favour of the sons might be definitely adopted,† but their suggestion was overuled, though it is difficult to conceive how before that age children could have definitively made up their minds or settled their future prospects in reference to their portions of inheritance.

The second clause of the thirtieth article, which reserves to the *eldest* sons of fourteen years their former right of taking *two* elderships, is too clear to require any comment, and with it we close the commentary on the modern law of inheritance and wills, as sanctioned by Her Majesty in Council on the thirteenth of July, 1840, and registered here on the

* See under the Seventh article, pp. 18 and 19.

† Vide Appendix, letter D, p. 54, last clause of the Petition.

third of August following, an order which has done much to amend the law of real property in Guernsey. But to accomplish the main ends for which all laws are established, that is to say, the security of titles,—the advancement of property,—and its transmission in accordance with its owner's affections and commands,—the legislature should abolish the system of guarantee, place at the disposal of parents a certain portion of their property to bequeath it without restriction whether to their offspring or strangers,—do away with all that worse than useless paraphernalia of distinctions which still encumber real property, under the denomination of *propres* and *acquêts*,—and at once enable the landowner of the present day to free his property from impolitic restrictions, as his ancestors did, in former times, their persons from ignominious shackles. Such is our conviction of what may and should be done, a conviction founded upon what has elsewhere been advantageously done; and if in perusing the foregoing pages the reader shall acquire the same conviction, and the authorities act upon it, our labours will be amply repaid, and the interests of all permanently advanced.

ERRATUM.—Page 69, fifth line; for "the crown no longer excludes a parent from *any* kind of property left by his child," read "from *every* kind of property," &c.

INDEX.

Page.

ANCESTORS—Who were so called at Rome 39
Ascending Inheritance—See Parents.

BARRIÈRES greatly extended..... 21
How children inherit real property therein situated..... Ib.
There is no primogeniture on such property. Reasons assigned why it should be equally divided among sons and daughters.....23, 24
Manner in which the division of property occurs in lineal successions. 31—33

CARRÉ, the eminent professor at the law University of Rennes, his definition of guarantee or warranty, due by all vendors to purchasers.....135, 136
His opinion respecting the power of willing..... 141
Carey, Peter Martin, the benefactor of his country..... 74
Collings, the late Mr. John, unexampled trait of disinterestedness on his part towards an unfortunate debtor..... 126
Children can neither be benefitted nor injured through any bequest which parents may make among them..... 224
This is an impolitic restriction which requires modification..... 225
Collateral heirs—Derivation of the term 39
Wretched system which formerly prevailed.....36 and 46
A different system yet obtains in collateral inheritances where the deceased's estates have been acquired by gift or purchase and when inherited..... 37
To inherited real property collateral relatives succeed precisely as they do in lineal successions.....43, 46—48
Formerly no females could inherit with males in parity of degree. 44
How collateral relatives succeed to personal property and real property purchased—males no longer exclude females in parity of degree..... 48
Defects in the system and remedy pointed out.....50—52
How personal property and real property purchased as contradistinguished from real property inherited would now be divided among collateral relatives..... 54
Code of France—See Napoleon.
Curateur aux biens—See Interdiction.

D'AGUESSEAU—Obligations of his countrymen to him and cotemporary civilians for the improvements introduced by them into the law 57
His ordinance on wills noticed..... 140
Daughters considerably favoured by the modern law 5
Married daughters are no longer excluded from their share of personal property in their parents' inheritance 33
May retain their marriage portion on abstaining to share in the inheritance, but must account for it if they share 33
Anomalies of the ancient law removed 34
Their income may be placed beyond the controul of their husband during marriage 35
An income, although settled by a marriage contract, does not constitute a a marriage portion..... .....
Daughters-in-law have no longer any legal hypothecation on their father-in-law's succession, unless it be stipulated by a marriage contract....221—222
Which daughters-in-law are entitled to a dower and which are not 223
Degrees—Whence the term derived..... 41
Mode of computing degrees in inheritance..... 38
Difference between *parentage* and *relationship*..... ib.
The civil and canonical mode of computing degrees examined 40—41—149—151—152
The canonical very defective..... 151
Delays—Number of them considerably diminished in expropriations of real property 115
Domat's exposition of the grounds on which parents should inherit from their children 61
Character of his writings..... 62

EMERIGON—His views respecting justice 191
His criterion by which the excellence and defects of human institutions should be judged. 225

INDEX.

Page.

Executors and assigns—Folly of exposing them to unatural hardships .....192—193—194
Expropriation of real property—Defective system in vogue here, when amended in 1825 by an Order in Council .....
Comparative view of the unjust effects of our ancient system of expropriation and that of France 93—94—95—96
How the system commenced ; formerly the creditor was bound to dispossess the debtor of all his personal property before he could come upon his real. The ancient system of expropriation preferable to the modern..... 109
Sales of real property by creditors were formerly not unfrequent in Guernsey..... ib.
Proofs advanced from the present system of expropriation that the creditor was formerly held to dispossess the debtor of his personal property before he could come on the real..... 111
The system improved 130
Feudal law, remnants of in Guernsey, noticed..... 140

GUARANTEE—Its origin 85
Its defects 92
The system is peculiar to Guernsey, and originated with the unjustifiable pretentions of the original holders of land..... 116
Redeemable rents would remedy the evil of the system..... 88
Its evils enumerated..... 125
Difference between an ordinary warranty and guarantee 88
Instances of its unjustifiable hardships adduced. .....90—91
It does not exist in Jersey .....
Privileges and extravagant forms are the bane of real property.....93—97
The practice of guarantee diminishes the value of real property .....96—97
After purchased property is not liable to guarantee that previously acquired..... 99
Guarantee should only have the effect of restoring the property originally purchased to the vendor 99
The Royal Court's defence of guarantee 100
Its condemnation.....101—102
Two kinds of guarantee..... 117
How it might be abolished..... 119
Difference between guarantee and ordinary warranties set forth..... 121
How guarantee might be abolished.....128—130—136

HYPOTHECATION—How the respective value of hypothecations is determined after the renunciation of the principal debtor to his estate..... 115
Different kinds of hypothecation .....96—202
Daughters-in-law have no longer any hypothecation for their dower on their father-in-law's succession 223
Heirs, who are, and how determined 137
Unjust liabilities imposed upon them and legatees .....190—191
See Pothier's and Toullier's remarks on this subject ....211—212
Humphrey's, Mr. remarks on the necessity of simplifying the form of wills .....161—162

INHERITANCE—Main features of the modern law of inheritance described..... 33
The difference between real property purchased and real property inherited should be abolished .....71—72
Why the laws of inheritance are so seldom comformable to strict justice .....190—191
Interdiction—Object of appointing a guardian over a person who has attained his majority 155
Professor Toullier's excellent remarks respecting the circumspection which a judge should exercise before he decrees an interdiction 158
Inventory, benefit of, defined 187
Very necessary under the Norman law .....187—213

JAUBERT's exposition of the right of willing 145
Justice—What constitutes true justice 121

LEGATEES—Their rights, duties, and obligations defined .....186—187
Their obligations too far extended 189
Duties of universal legatees .....194—195—196
What legatees are entitled to immediate possession at the testator's decease .....196—197—198
Rights and duties of the legatee of a given portion defined .....200—201
The same with regard to the special legatee .....202—203—204
Injustice of rendering legatees as heirs bound in *solidum* for the administration of the testator's effects adverted to .....206—206
Pothier's judicious views set forth 206
Must deliver title deeds at his expence to the rentholders within a reasonable period, unless the testator have expressly ordered his heirs to provide them .....215—216

INDEX.

Page.

Law—When the modern law comes into absolute operation with regard to lineal inheritance ..... 235—236
Legislation—Evils of restrictive legislation 146
Advantages to be derived from comparing the laws of other states with our own 186
Legitimation of children by the marriage of the parents subsequent to their birth, admitted in Guernsey 229
What children cannot be legitimized by a subsequent marriage ..... ib.
Lesbaupin—Admirable exposition of the power of the law over man's person and property ..... 138—139

MARRIAGE—Children born during a putative marriage inherit with legitimate children, and the consort of good faith partakes of all the rights of a lawful consort ..... 229—230
Married daughters—See daughters.
Women allowed to dispose of their own real property 173

NAPOLEON—Character of his code as far as the laws of inheritance, wills, and pre-emption are concerned, Appendix, letter B. . . . . 26—27—28
Obligations of the French legislators to Pothier in drawing up their code 94
How the code was formed 145

PARENTS may now inherit from their children 57
Fundamental principles on which they should be admitted admirably described by the Roman legislator 58
Why they do not exclude brothers and sisters 64
The male is preferred to the female in parity of degree 66
The present system, by which uncles are allowed to exclude grand parents and where the Crown would still be preferred to parents, might be amended . . . . . 66—67
No reason why the parents and heirs in one line should not inherit the real property come by the other, preferably to the Crown 69
The law of inheritance in the ascending line might still be improved. . 71—72
Parents may succeed to things which they have given in preference to all other heirs 75
Without an acknowledgment of the gift, the parent would not succeed 69
The son of the parent donor could not retake the object given to the donee who leaves no descent . . . . . .
How the hardship may be avoided . . . . . .
Pascal—His character 63
His opinion of the law of inheritance 70
Patrimonial divisions of estates during the life of the parents are illegal 233
Their unjust tendency . . . . . 233—234
Pothier—His character 94
His distinction between the different kinds of rents 133
His opinion upholding simplicity as to the forms of wills 65
His exposition of the folly of rendering heirs bound in *solidum* for the administration of the deceased's estate . . . . . 206—207—210—211
Préciput, or Eldership—Of what it consists . . . . . .
Of personal property 7
Of real property . . . . . 10—11—12—13—16
Is now restricted to a single enclosure 11
The eldest son may at all times have one third of the whole estate allotted to him on indemnifying his co-heirs . . 14—15
Houses which do not communicate and are accessible by separate entrances cannot be given as *one préciput* . . . 16
The eldest son is in future to have but one préciput . . 18
How the right of préciput is regulated in reference to the succession of grand parents . . . . . 237—238
Pre-emption—See Retraite.
Primogeniture—See Préciput.

REAL PROPERTY formerly held so sacred that the creditor was obliged to dispossess the debtor of his personal property before he could attach the real 111
When it can be bequeathed . . . . . 147—149
Can be bequeathed in England without any restrictions . . . 166
Records of births, marriages, and deaths, by whom kept . . . . . 180—181
Extracts from them given by a public officer are reputed to be true, until the instrument is decreed to be a forgery 182
Reform Measures—Some introduced notwithstanding the resistance of the local authority, and now universally approved . . . . . 119—120
Salutary measures introduced by the Court 120
Rents—Perpetual rents should be abolished 26
More particularly on houses 30
Their different kinds 104
Nine years arrears may still be recovered from the principal debtor, but only three can be recovered from his assigns 112

Page.

Rents created for money are of their nature essentially redeemable . . . 119
Reasons assigned why all rents should be redeemable 124
Bad effects of irredeemable rents on house property 132
In France, before the revolution, they were redeemable 133
On what footing were rents rendered redeemable 134
Representation—Its effects 41
The greatest boon of civilization 42
It exists ad infinitum in lineal successions and in collateral to real property inherited 47
Its definition 48
Demand of the petitioners to extend representation one degree further in the collateral line to acquired real property and to all kinds of property rejected . . . . . 52—53
Retraite, or pre-emption should be restricted to real property inherited 29
Its abuses 71
Should be unconditionally abolished 217
No advantage can compensate for the crimes and frauds it engenders . . . 219

SAISIE—See expropriation.
Saisi or suing creditor in an action of expropriation no longer lets for his own account after the renunciation of the debtor 114
Saisis who take to their debtor's real property are now held, within a reasonable period, to pay off a certain portion of the hypothecations due previous to their own claim, or to abandon such property without delay or expence to the prior mortgagees . . . . . .

TENURE—Evils of the present system of exchanging real property for irredeemable rents . . . . . 124—125—126—127
Toullier—His remarks on INTERDICTION 158
His opinion on the power of willing 160
Remarks on the necessity of simplifying the forms of wills 163
His opinions respecting the execution of wills in reference to the immediate transmission of the testator's effects and which is now the law of Guernsey 197—198—199
His remarks on the single instance of retraite reserved by the French code 219
Twentieth—What it was—Abolished by the modern law . . . . . 2—3

WARRANTIES are of three kinds . . . . . 121—122
Their nature . . . . . 122—123
Essentially just and reasonable 123
Difference between them and guarantee 124
Definition of a warranty or guarantee, by Professor Carré 135
Wills, as inheritance, are creations of the civil law 137
The right of willing one of the most precious boons of civilization. Why the feudal law was opposed to wills. Opinions of different authors on the power of willing 141
How variously regulated in different states and at different periods 143
Real property may now be devised by will . . . . . 146—147
Parents cannot make wills in favour of one child to the prejudice of others, though they may bestow one third of their personal property on strangers . 147
Injustice of this restriction and its evil effects 148
What persons may make wills . . . . . 156—157—158
Interdicts cannot. Prodigals may. Wills should not be subjected to forms either too minute or intricate 161
Forms required in England, by the act of Victoria 162
Very intricate according to the feudal law and why . . . . . 164—165
May be deposited at the Greffe 166
Forms of devising real property should not be different from those of devising personal property 169
How regulated by the modern law . . . . . 170—171
Wills are valid when drawn out according to the forms used in the place where they are framed . . . . . 172—173
They may be absolutely destroyed without observing any particular form . . 174
Why they cannot be modified but on the testator's complying with the same forms as are required to make them . . . . . 174—175
Testators quitting the island may easily secure their wills 177
Wills of real property may be examined at the Greffe office after a person's death on payment of a moderate fee . . . . . 178—179
Mode of proving a will 183
No attesting witnesses required unless the identity of the parties be disputed Ib.
The original will always remains deposited at the Greffe, but the Greffier is empowered to deliver extracts to any party on the receipt of a moderate fee Ib.

FINIS.

APPENDIX.

A.

THE PETITION

Presented to the Baillif and Jurats at the Michaelmas Chief Pleas 1838, *for the purpose of reforming the Laws of Wills and Inheritance, and signed by several hundred Rate-payers.*

Sheweth—

That the members of the Committee appointed to reform the Laws of Wills and Inheritance, after having held repeated meetings upon the subject, deem it their duty to recommend the following changes unanimously adopted by them, as worthy of being enacted into law. Their object as that of your Petitioners has been to maintain the just and wise principles of our laws, to reform those effaced by time and opposed to the ideas and feelings of the present state of society, and to abrogate all that militate against that spirit of benevolence, justice, and rational liberty which should ever constitute the foundation of all civilized government.

When it is borne in mind that our laws have not been reformed within the memory of man, that they originated during the middle ages, the spirit of whose inhabitants they might have suited; that they were remodelled by the Normans during the sixteenth century, it may excite some surprise that the inhabitants have so long remained strangers to reforms which the Normans themselves thought fit to introduce into their laws, and which they retained, until they were merged by the French Revolution into one uniform Code for all France.

The Reforms which the Petitioners more particularly claim, are the following :—

They suggest that in lineal successions two-thirds of the real estate be divided among the sons, and the remaining third among the daughters, as heretofore, with this modification however, that in no case shall the portion of a son exceed double that of a daughter ; a restriction more

agreeable to the spirit of the present law, than the custom which actually prevails, according to which the sons divide among themselves upwards of four-fifths of the inheritance of their parents, whenever the number of daughters exceeds that of the sons. Will it be maintained that there is the slightest justice in allowing, in the succession of a parent for instance, leaving one son and three daughters, the son to take, first, his preciput, (*) then his vingtième, (†) in addition to the remaining two-thirds of the real property, thus leaving each daughter no more than one twelfth of such property, whereas the intention of the legislator evidently appears to be, that the two-thirds bestowed upon the son, should no more than represent double the portion inherited by the daughter.

Your Petitioners demand that the preciput be preserved as well as the enclosure of the estate to the eldest son, to prevent the too extensive subdivisions of land, and as an encouragement for him to remain at home, to augment and preserve his parent's property. The principle of primogeniture is moreover too intimately wound up with our customs and habits, to warrant its abolition with regard to inheritances of real property situated in the country ; nor has public opinion so far decidedly pronounced itself against the principle, to authorise your Petitioners to demand its suppression, they deeming it advisable to limit their demands to such changes only as are most urgently required.

Another reason which has also had considerable weight with your Petitioners, in not requiring the abolition of primogeniture, arises from the great embarassments which must have too often resulted from placing heavy mortgages and hypothecations on the property devolved to the eldest son, which, in many instances, would have compelled him to sell it, from his inability regularly to pay his co-heirs, (more particularly in the event of a numerous family) the

(*) The term preciput is derived from *principua pars* and signifies the main, or chief portion, which in early ages was granted to the eldest son, and in default of sons, sometimes to the eldest *daughter* over their co-heirs. It generally consisted of the principal tenement and adjacent dwellings, with a certain portion of land varying with the extent of the estate, on which the latter were erected for the purpose of cultivating it.

This *preciput* or right of eldership, though somewhat modified, has been retained in the modern law.

(†) The original term is VINGTIÈME, or *Twentieth*, and consisted, as the term indicates, of the twentieth portion of the real estate which, when situated beyond the barrières of St. Peter's Port, was divided exclusively among the sons. The twentieth is now abolished.

yearly value of their portions to which it would have been hypothecated; effects which would have prevented many an individual from erecting tenements of any value, from the moral impossibility of his children at his death any longer possessing the means of adequately supporting them: "Your Petitioners therefore suggested that in lineal succession the sons may divide two-thirds of the real estate of their parents, and the daughters one-third, in such a manner, nevertheless, that in no instance shall the portion of a son exceed double that of a daughter."

Your Petitioners demand that the Twentieth be abolished and where there be only daughters to divide the estate, the youngest shall make the lots, each having the priority of choice, according to seniority.

If the interests of Agriculture require that sons in general, and more particularly the eldest son, should inherit the larger portion of real property situated in rural districts, the same reasons do not exist to extend this principle to all the real property throughout the town parish, and our forefathers on this subject appear to have formed similar views, as the real property situated within the barrières (*) or precincts of the town, was divided among all co-heirs without being subjected to primogeniture. The reasons which lead them to introduce a different system of inheritance with regard to real property situated within the barrières of the town, and that situated in rural districts, still continue. Houses of considerable value are no longer confined within the narrow limits they were formerly, the barrières should therefore be extended, and within their limits all the children without any distinction of sex, should equally divide their parent's inheritance. Is there not the same reason for enclosing within the barrières, the whole of Bordage-street, Smith-street, the Contrée-Mansell, Hauteville, and New Town, as there is that Horn-street and Fountain-street should remain within them. Only let the legislature decide the principle of extending these barrières, and it will not be difficult for the local authority to mark out the confines. That innumerable instances of injustice occur, none will deny, the eldest sons often taking all the real property situated without the barrières, and the sons invariably dividing it to such an extent among themselves, that the portions left the daughters become merely nominal.

(*) The *barrières* are those limits of a town or city within which trade is chiefly carried on, and whose inhabitants, during the middle ages, generally possessed peculiar privileges.

The extension of the barrières will in great measure remedy these abuses, which, coupled with the more equitable division of real property between sons and daughters, will do away with a still greater number of abuses. The Petitioners therefore demand that the barrières of the town be extended, and that within their limits all the children without distinction of sex, inherit in equal proportions.

The 3, 4, 5, and 6 clauses of the Petition, requiring that the eldest son be limited to take his eldership on only one enclosure,—that when the eldest son shall inherit real property from both his parents, he be limited to one eldership —that the eldest son have the choice of the house situated within the barrières on his accounting to his co-heirs for its value, instead of dividing it among them—and that the married daughter who shall have received no marriage portion be entitled, as a matter of right, to share with her brothers and sisters—are all principles evidently too just and reasonable to require any remark. Your Petitioners therefore suggest, that it be enacted that the eldest son be limited to raise his eldership on one enclosure, though such enclosure should not contain the whole quantity of land usually assigned to such eldership, to prevent his taking too many houses for his share—that when both parents leave real property, the eldest son be entitled to take his eldership on either at his choice—that the eldest son have also the faculty of taking the house situated within the barrières at an evaluation, instead of dividing it with his co-heirs—and that in lineal successions the married daughter have the faculty of sharing with her brothers and sisters in her parents' inheritance, on accounting for any marriage portion she may have received at her marriage, and when none has been bestowed, that she be entitled, as a matter of right, to her portion of their inheritance.

To prevent the parcelling of estates, various measures have been suggested; but as it has been difficult to decide upon any particular number of vergees to fix the extent of properties, it has been thought better that the principal heir should take an aliquot portion of the property, and it has been suggested that this proportion should be ONE-THIRD, which he should always be at liberty to take, if he think proper, on giving a just indemnity to his co-heirs. Should the property consist of a single enclosure he will take the whole of it, as heretofore.

Another of the most important principles of the project is that by which a person leaving no descendants shall

have the power of bequeathing his real property,—a most just principle,—a principle which is inherent in the right to property, and from which it should never be separated. In truth, if children have any claim to the property of their parents, and if the property of the latter is justly the patrimony of such children, and if the law, founded upon justice, has frequently confined within assigned limits, the liberty of the parent to dispose of his estate, it is different when the person leaves no issue: then legislators have left to him the right of disposing of his property as he thinks proper. For, by what right can a brother or more distant relative pretend to the property of a relation who may have manifested a wish to the contrary? Property is the creation of civil law, and its preservation equally depends on it: hence is it regulated in a different manner in different countries, in all of which, however, is recognized the right of disposing of property, in the absence of children, excepting where, by the existence of certain feudal customs, the possessors of property are considered rather as life tenants than as owners.—It cannot therefore be understood why a man should be more fettered in the disposal of his real property by will, than in the power of selling, or otherwise disposing of it, when by converting his property into money he has the right of bequeathing the whole produce, when he leaves no children. Who ever heard that a man was bound to leave a reserve to collaterals? This reserve, which sometimes is established in favour of children, may be justified, on the principle that a man ought to be just before he is generous, and ought to satisfy the natural claims of those whom he has brought into life, before he confers benefits on strangers to whom he only owes regard; he ought also to acquit the debt of nature towards his father and mother, and yet by our present system it is precisely they who have no legal claim on the deceased's estate;—collateral relations, and even the crown are preferred! though, upon what principle, it is difficult to conceive.—It is asked then that persons leaving no descendants, shall have the right of bequeathing their real estates, in the same way that they can their personals;—that they shall have the power of rewarding merit,—of making a distinction between those who have served them well or otherwise,—in short, to dispense their bounty to those whom they consider have the greatest claim on their favour and protection. Upon what ground of morality or common sense can the

nature or derivation of an estate deprive the owner of the right of disposing of it? What real difference is there between an inherited estate, (*)—an estate acquired before marriage, (†) or one acquired during marriage? (‡) Why allow a man the right of disposing of his personal property and refuse him the right of disposing of his real estate? Are they not both equally his own, his domain—of which he ought to be the absolute master? It is true that the same unanimity of sentiment has not always existed as to the disposal by will of inherited property as has prevailed with respect to acquired property, although a large majority are of opinion that every man ought to have the power of disposing of his inherited estate, as well as of his personal property, and acquired real property; and your Petitioners rely with confidence on the wisdom of the legislature to dispose of the question of bequeathing inherited real property. It must however be admitted that it would be strange if inherited property which can be sold, or even disposed of by deed of gift, could not be equally disposed of by will. At the same time it is necessary that the will disposing of real estate should be duly registered at the Greffe, previous to its being put in execution, for the purpose of giving a guaranty to third parties.

Moreover in a public point of view the liberty of willing away real estate cannot but have the effect of augmenting the value of houses, lands, and ground rents, by encouraging to purchase them, those who are at present deterred from so doing by the impolitic and unjust restrictions of the present law, restrictions which induce them to continue their capital in the public funds, (as they thereby retain the power of disposing of it by will), instead of investing it in real property, which they would take a pleasure in ameliorating by encouraging industry and labbur, if they had the same liberty of disposing of it, as of their personal property.

Your Petitioners also require that important changes of a just and benevolent tendency, be also introduced into the present system of collateral successions, where it is submitted that the female sex shall inherit with the male; and in the same proportions as in lineal successions; that sisters with brothers, aunts with uncles, and cousins,

(*) Called in our laws a PROPRE.
(†) Called ACQUETS.
(‡) Called CONQUETS.

without distinction of sex, shall succeed to their relatives. Public opinion has openly proclaimed the necessity of a revision of the present laws in collateral successions, with regard to brothers and sisters, and more distant relatives; according to which the female sex is invariably excluded by the male in parity of degree, without there being a shadow of reason for any longer submitting to so unjust a privilege. Why should not a sister who has brothers inherit from her sister? Are then the ties of nature and justice destroyed, whenever females present their claims to an inheritance with males? Is the presence of one or more brothers in a family, to be construed as a reason for excluding the sister from her sister's inheritance? What reason can be assigned thus to deprive sisters of all portion to their sister's inheritance, when brought up under the same roof as their brothers, all have been treated with the same tenderness and care? What the motive of treating them during their lifetime as children, and at the death of their nearest relative, as so many convicts unworthy of participating in the slightest portion of her inheritance? The greatest anomaly in reference to this subject reigns between the spirit and text of our present laws, which whilst they profess to discourage wills, nevertheless hold out the strongest inducement to benevolent persons to have recourse to them, as the only means of relieving the sex who most need protection, and who, in the absence of testamentary bequests, are treated with the most consummate injustice. That in collateral successions the nearest relative should exclude the more distant without any regard to sex, is a principle in accordance with our law, which, however, to harmonize with eternal justice and morality, should do away with all inequality of sex in parity of degree.

But one of the most intolerable abuses of the present law, is that which in collateral successions debars the child of a deceased brother or sister from representing its parent in the inheritance of any personal property, or real property purchased by a deceased relative; here then is the law under whose ægis all are said to derive equal protection for their liberty and property, which wrests from the unhappy orphan his relative's inheritance, because he has had the misfortune of losing either or both his parents! and strange inconsistency, this very child is allowed to represent its parent to succeed to the real property *inherited* by the deceased, as if equal reasons did not exist to au-

thorise the principle of representation to personal property and real property purchased, as for real property inherited. What more powerful reasons can be adduced to reform the law, than the existence of such anomalies at once so subversive of the principle of affection on which hereditary rights should be founded, so destructive of all sense of morality, which thus leaves the deceased's inheritance as a premium to relatives, the greater part of the time so much better circumstanced than the unhappy widow and orphan, thus debarred by a lawgiver, who nevertheless inculcates the necessity of upholding above all the sacred rights of widows and orphans, and specially commits them to the protection of the judge. (*)

In the ascending line of succession the system is worse than ever: neither father nor mother can inherit from his child, a relation in the seventh degree of a kin, the crown itself will wrest a child's property from the author of its days: and that too though the very property so wrested, have originally sprung from the bounty or generosity of the parent thus wronged. This property which under any circumstance should return to the source whence it sprung, will be seized as that of the convict to augment the revenues of the crown, who should never succeed but in the absence of all other heirs, according to the well known maxim of the Roman law adopted throughout all civilized states: *Fiscus post omnes*, the crown only succeeds after all other relatives. It is then suggested that in ascending successions the father and mother, in default of whom, the grandfather and grandmother shall

(*) The oath of office more particularly enjoins the Jurats or Judges to watch over and protect the just claims of the widows and orphans, as the following extract from their oath, the most solemn administered to any public officer, according to the constitution of the Island, will show:

"Vous assisterez et aiderez avec le Baillif ou son Lieutenant en la compagnie d'autres Jurés vos frères, en cours ordinaires à votre tour, et en cours extraordinaires toutes fois et quantes qu'en heure due en serez requis, à rendre bonne et loyale justice entre Sa Majesté et ses sujets, et de partie à partie, tant au petit qu'au grand, et *principalement* aux VEUVES et ORPHELINS; sans aucun supporter ou favoriser par don, promesse, amour, acception de personne ou autrement."

Yet these parties to whom the legislator thus ordained that justice should be more *particularly administered*, where the very persons against whom a sentence disinheriting them, is to be found in almost every section of the old law.

Such discrepances between the oath and the law, or between the means and the end, now so happily abolished, are constantly occurring in the institutions of feudalism, whose authors it would seem considered those most unwarrantably bad, as the most politically just.

succeed to all the personal property as well as to all the real property purchased by their deceased child who leaves no issue, brother or sister. It is also suggested that they should likewise succeed to the real property inherited unless it be deemed sufficient that they be restricted to the life enjoyment only of such property; the same difference of opinion having manifested itself upon this point as upon that of willing away real property inherited, the matter is entirely referred to the legislature who will settle it as may be deemed most judicious.

It is also suggested that in default of heirs in one line, those of the other be entitled to succeed always according to the principle *Fiscus post omnes*, so conformable to the precepts of justice and humanity.

To secure as far as possible the sacred rights of property and above all the rights of minors and wards, it is proposed that the right of redemption be abolished for all sales of real property which take place *coram judice*, as also in all cases of private sale when made by auction, this will put an end to those frauds and collusions practised between relatives and mock purchasers, who, through threats of redeeming the property when sold, drive away *bonâ fide* purchasers who would have given a fair price for such property, and in the mean time sell it at a diminished price to their abettors for the purpose of ultimately redeeming it themselves at the same rate. The moment a sale by auction has been duly published any relative may go there and bid for it ; a fair and honourable way is thus open to him, to prevent the real property going out of the family, which should be, or at least is legally supposed to be, the object of redeeming real property. If he does not choose to avail himself of such an opportunity, he cannot expect that a system of redemption which fosters fraud and collusion to the prejudice of minors and parties desirous of selling their property to the best advantage, will any longer be kept up for such unworthy purposes. It is then proposed that the right of redemption be abolished in all sales by auction, whether they take place *coram judice*, or at the private consent of the owners, provided that such sales be advertized in the public prints at least one month previously to their taking place.

For the reasons above presented, your Petitioners pray the Royal Court to take such steps as it may deem proper at the hands of the legislative authority of Her Majesty and Her Most Honourable Privy Council, to secure the

following changes which, founded on reason and morality, will spread their beneficent influence over all orders of society,—destroying those odious principles which debar widows and orphans from their relative's inheritance,—abrogating in collateral successions the unjust privileges bestowed upon the male to the prejudice of the female sex in parity of degree,—putting an end to those frauds and collusions practised by interested persons to wrest the property of their relatives at a diminished price by underhand sales,—and finally bestowing upon the owners of real property one of the most sacred rights appended to it, that of willing it at pleasure, in default of issue.

These changes are :—

1.—That in lineal successions, the males share two-thirds of the real estate of their parents,—the females one-third, as formerly : no male, however, in any case, to have more than double the portion of one of the females,—nor a female to have a greater portion than a male. The right of eldership to be continued, but that of *vingtième*, by which the males take one-twentieth part of the estate before the division take place, to be abolished. When there shall be daughters only to divide in the direct line, the youngest shall make the lots, and they shall choose according to seniority.

2.—That the barrières of the town be extended, and the children, without distinction of sex, do inherit in equal proportions within their limits.

3.—That the eldest son take his eldership from one enclosure only, whether it do or do not contain the quantity of land which otherwise would have comprised the *préciput*.

4.—That when both father and mother leave real estate, the eldest son take one *préciput* only, but that he be allowed to choose the inheritance from which he shall take it.

5.—That the principal heir have the option of taking a house situated within the barrières, at a valuation fixed by a competent authority, instead of having the house divided among all the co-heirs, as is done at present. If the principal heir will not take the house, it shall be offered to each of the co-heirs, beginning with the sons, according to seniority. If none of the co-heirs will take it, it shall be sold for the benefit of all.

6.—That in lineal successions it shall be optional with a married daughter to share the personal property of her parents with her brothers and sisters, on accounting to them for what she may have received on her marriage,—and if

she have received nothing from her parents, she shall then share with the other children as a matter of right.

7.—That when the enclosure on which the principal heir takes his eldership is of less extent than the third of the estate, it shall be lawful for him, after having taken his *préciput*, to take part of the nearest land belonging to the estate to complete the said third, subject to his remunerating his co-heirs according to a valuation made by a competent authority ; but if the land nearest to that taken as *préciput*, contains one-half more than is necessary for making up the third of the estate, or if there be a house upon it, the principal heir shall not take it, but shall be obliged to take a piece of land of smaller extent, provided one sufficient to make up the deficit can be found.

8.—That every person having no children and not being under guardianship, may dispose of real property acquired by himself by will, and as to what he may have inherited it is left to the wisdom of the legislature to decide whether he should not also be allowed to dispose of it.

9.—Every instrument conferring a gift or legacy of real property, to be lodged at the Greffe-office, and registered on the records, before it can be carried into execution by the administrator to the estate.

10.—That in collateral successions, brothers and sisters, uncles and aunts, male cousins and female cousins, shall share in the same proportions as in lineal successions ;—that is to say, that males shall take two-thirds, and females one-third, when in parity of degree, without however, in any case, the share of a male exceeding double the share of a female.

11.—That in collateral successions, representation shall be allowed, without distinction as to the nature of the property, whether *propres* or *acquêts* and personal property—that is to say, the child of a deceased brother may represent his father or his mother to the succession of an uncle or aunt.

12.—That in *ascending* successions, fathers and mothers shall inherit from their children, when these leave neither children, nor brothers nor sisters. The ascendants or survivors shall inherit all the real and personal property of their children, and the usufruct of the property they have inherited. As to the latter property it is left to the wisdom of the legislature to dispose of it, either to the ascendants or to the nearest heirs of the line from which the said property shall have descended.

13.—That in default of heirs to the *propres*, this property

shall go to the nearest relative of the deceased in another line.

14.—That the redemption by heirs (*retrait lignager*) be abolished in the public sales of real property by auction, and in sales before *justice*, provided that in all cases, notice have been given in the public papers of such sale, one month at least previous to its taking place.

15.—That the daughter-in-law have no more right than her husband, to the property belonging to the husband's parents, who will be at liberty to sell or hypothecate their real property, without being held to call on the daughter-in-law to renounce to her dower.

Guernsey, 27th June, 1838.

FREDERICK PRICE, JUN., President.
JOHN VALRENT,
JOHN HARVEY,
NICHOLAS LE BEIR,
NICHOLAS DE MOUILPIED,
PETER BIENVENU,
NICHOLAS COLLENETTE,
JOHN VIDAMOUR,
THOMAS LE SAUVAGE,
WILLIAM OGIER,
NICHOLAS ALLES,
FERDINAND B. TUPPER,
ANDREW COHU, to the exception of the first clause of the fourteenth article.
JOHN MAHY, to the exception of the second clause of the second article.

THE ARGUMENTS

Presented before the Court of Chief Pleas after Michaelmas in support of the foregoing Petition, on the 1st of October 1838, when that Court appointed a Committee from its own body to take the subject into consideration.

Some opposition having been made as to whether the Petitioners should be heard by Counsel, and the Court having decided they should :—

Advocate JEREMIE spoke as follows :—On behalf of six hundred of your fellow-countrymen, all of them intimately interested in that security which you, as the administrators of the law, owe to property in every shape,—on behalf of a Committee appointed by them to defend their just rights by demanding changes in your laws on Wills and Successions, two of the most important branches of the civil law, and at present the most defective,—I come to present to you the most serious reforms upon which either you, or your predecessors were ever assembled to deliberate. Is it too much to require your patience and indulgence for a few minutes, whilst addressing you on a subject so intimately connected with the well-being of the country, and to which, for months together, the laborious researches of men deserving your confidence have been directed,—men who, from their position in life, witnessing the unjust and barbarous results of your present laws, are the most likely to prescribe a remedy,—is it too much, I ask, for you to give their petition a few minutes of your patience and indulgence? I flatter myself not; for to what end can your time be better devoted, than to the amendment of the most pernicious and most inhuman system of legislation which ever disgraced civilized man? No one more than he who now adresses you, is aware how delicately the subject of law reform should be handled, how much patience, investigation, judgment and learning, are required of those who are bold enough to enter the hall of legislation with regulations which they would prescribe as at once the most politic and just to govern the actions of their fellow-men. But when such regulations have been maturely considered,—when they are imperatively called for,—and when for months past they have occupied the incessant attention of persons appointed by a numerous assembly of their fellow-citizens,—in one word, practical men holding official situations, through the honourable discharge of

which they have deservedly secured public confidence,—men looked up to by their fellow-citizens as the most fit to suggest the proper mode of removing some of the most vicious institutions which are still suffered in this small community to mar the best feelings of our nature, and the ruthless execution of which, from time to time, draws forth expressions of disapprobation from the administrators of justice, which indeed command for them public esteem, but which at the same time forcibly denounce the unhallowed source whence your laws derive their origin,—it is not too much, I repeat, for you to listen to the sound arguments which such men are enabled to afford. So far do I agree with the Queen's Procureur that the important subject of law reform requires the most serious consideration, that before the Petitioners demand of you to take their prayer into consideration, they request to make known to you their sentiments on the subject; and however skilful and acute a lawyer the Queen's Procureur may be, it is not going too far to state that it is morally impossible he should be as well acquainted with their desires as the person who has assisted at all their deliberations, taken note of all their decisions, and who hopes this day to rivet your attention so completely to the measure, that it will not again be indefinitely put off, as it would appear has been the fate of law reforms at different periods for the last two centuries. To set aside all alarms respecting dangerous innovations which frequently assail, and too often obstruct, the most salutary reforms,—to inspire you, as administrators of the law, with that confidence without which these can never be obtained—to discharge to the best of my ability, and as far as my humble efforts will allow, the trust confided to my care, it will be my province to lay before your eyes the principles which obtain on the subject of those legal reforms, the nature of which you are called upon to investigate,—to point out that in reality the measures now required of you are only those concessions which from time to time, and more particularly in the province of Normandy—(the *reformed* laws of which were accustomed to be styled the "wisest of the wise,") the rulers of different communities have of their free will, or through constraint bestowed upon their people. Once convinced of the truth of this assertion, backed by a numerous Committee who are unanimous in their demands for the reform stated in the Petition, no one need tell you Mr. Bailiff and Gentlemen, how, in these days, not unanimity, but even a bare majority

in favour of any public reform, is difficult to obtain, even in furtherance of the cause at once the most just and most politic: how much, then, must not the particular reforms which are now laid before you be imperiously required, when, in addition to the *unanimous* assent of a numerous and highly respectable Committee, it is laid on your table backed by six hundred rate-payers, men of all others the most interested in the administration of those particular laws, whose more immediate province it is to protect and guard the rights of property. Yet so difficult is reform in the law to be obtained, that if, in the name of the Petitioners, one had on their behalf to present only powerful arguments pointing out the ruinous state of the present institutions, and the excellence of the remedies proposed, one might nevertheless despair of success,—these arguments, even backed by the assent of the greatest legists of gone-by times, at once the ornament of their country and their age —would still be far from ensuring the success they deserve. But if to these criteria of excellence, we add that these remedies have been themselves suggested and adopted, after a far more laborious investigation than even in these enlightened times most rulers would be disposed to bestow, —that they have been found sufficient to govern, not indeed a few hundreds, but millions of our fellow-men arrived at the highest stage of civilization in different ages and in different countries, would it not be the height of human folly and presumption to reject such infallible tests of excellence, and still cling to worn out and degraded institutions, which no men of common sense or honour ought to countenance or support? Animated by these sentiments I shall proceed to examine each individual article of reform proposed; and that the Court may be enabled clearly to follow the course intended to be pursued, the subjects may be classed under the following heads: Lineal, collateral, and ascending successions. Disposal of real property by will. Right of redemption of real property. A proposition that the daughter-in-law and grand daughter-in-law, should no longer, as a matter of course, have a lien on either their father-in-law's real estate, or on that of the grandfather-in-law, as is the case at present.

LINEAL SUCCESSIONS.

On the 1st Article respecting—*The mode of partition in lineal descent of real property situated elsewhere than in*

the barrières *whereby sons can never take more than double the portion accruing to a daughter, nor a daughter more than a son.*

The whole of this proposition is more consonant to the spirit of the ancient law, than the present custom. The intention of the legislator, in giving two *thirds* of the real property to the sons, and the remaining *third* to the daughters, was evidently to secure the former a DOUBLE portion: instead of which, according to the custom of the Island, the sons always take their TWO THIRDS when their number amounts to *more than double* that of the daughters; but will not, on the other hand, allow the same privilege to the daughters, who, however numerous, can never take more than their ONE THIRD between them all. By the proposed reform, the sons will never be allowed to take more than double the portion of real property which may accrue to each of the daughters. As heretofore, a daughter's portion can never exceed that of a son: and it is proposed, and with reason, to abolish the TWENTIETH. In a succession where there are only daughters to divide, the youngest will make the lots, and each will choose by seniority. In this case there is no eldership, and as many well informed persons entertain doubts whether the elder daughter has the privilege of a choice, or whether all should not cast lots, the proposed reform will set that question at rest.

On the 2nd respecting—*The extension of the* barrières *and the equal division of property therein.*

The inhabitants of the Town parish are extremely anxious that this enactment should pass. Even they who live at the Bouët, and other extremities of the parish, who cultivate arable lands and orchards, desire that their property should be equally divided among all their children, and are most anxious to see their property included within the barrières. On the necessity of extending these, there is not a dissentient voice. The only point on which a difference of opinion may arise, will be the extent to which these barrières should be carried, which, as a matter of course, must be left to the discretion of the local authorities, after the legislature have decided on the principle. The proposed enactment, after all, is only keeping up the spirit of the ancient law, which made a difference in the succession of property situated *in the town*, and that situate *in the country*; in the former there was no right of eldership, which has always been the main draw-back on successions, though, as in the country, the sons took two-thirds and the

daughters one-third. Following up the same principle to its legitimate consequences, is only acting in accordance with the spirit of the times, which requires that all the children, of whatever sex, should share alike,—a principle which, after all, constitutes the most just system whenever political considerations do not absolutely oppose it. The argument that boys require a greater share of their parent's succession because their habits are more expensive, is a very poor one to set aside equality, particularly when it is certain they have five times the opportunities and means which girls have to provide themselves with the necessaries and enjoyments of life.

On the 3rd.—*That the eldest son take his eldership or préciput from one enclosure only.*

The préciput here alluded to means the chief mansion or dwelling, which, together with a certain quantity of land attached to it, the eldest son takes as his eldership. The quantity of land given with the house, sometimes in detached places, varies from 15 to 20 perches. As upon this quantity of land several houses may exist, the eldest son begins by taking the portion where there is least naked land and the most valuable dwellings, and generally finishes by taking for the last fractional part, the most valuable dwelling, having perhaps already secured one or two valuable houses. By the proposed change, this injustice will be prevented, as it will be the interest of the eldest son at once to take the most valuable house, and leave the others to his co-heirs: for where he first selects there he must remain; he will not as formerly be allowed to take the greater portion of the real property in detached spots, and reserve the most valuable for the last fractional portion of his *préciput*. Thus again do the committee act in accordance with the *spirit* of the ancient law, which provided great privileges for the eldest son, by his *préciput*, but which was never meant to degenerate into the abuse of serving as a cover for him to take away the greater, and always by far the most valuable, portion of the inheritance. None better than douzainiers, who often make divisions of property among co-heirs, and always grant the portion of land allotted for this privilege, could see the evils of the present system in their most glaring colours. And as most of the members of the committee were taken from these bodies, none were better enabled to guard against those evils which must inevitably accrue from the prevalence of the present antiquated system.

On the 4th.—*That the eldest son be limited to one eldership from both his parents.*

The eldest son has a right to a préciput on the succession of his father, as well as on the succession of his mother, unless both successions happen to devolve at the same time, in which case he can only take one *préciput*, which shows that the law did not regard this prerogative in a very favourable light. By the change proposed, it is still left to the eldest son to choose his *préciput* on the estate of either father or mother, but he will no longer be allowed to take both. As a matter of course, he will select the most profitable, which ought surely to be considered sufficient in an age when the advantages of primogeniture, as a political institution, are becoming more and more doubtful.

On the 5th.—*That the eldest son and others, according to seniority, have the option of taking the house within the barrières at a valuation, and on their refusing to take it, then that it be sold by auction for the account of the succession.*

The third and fourth articles deprived the eldest son of impolitic privileges, on the score of the public good;—the fifth grants him an important one, on the same principle, by preventing the subdivision of property, which is always a great evil. The eldest son, by paying a reasonable sum for his parent's dwelling, will now be always able to secure it, which in many instances may prove an immense advantage,—for instance, to a tradesman who succeeds to a parent's business. The faculty thus bestowed on the eldest son by the reformed law, will show that its authors are animated throughout by the sole desire of promoting the public good, giving the eldest son privileges when they can be bestowed without injury, and only depriving him of such as are injurious to, and therefore unjust towards, the remainder of the family. The faculty allowed to each of the children in succession, to accept or repudiate the privilege, proves the anxiety of the framers of the new act to prevent the subdivision of property; and the clause by which it will be sold to the highest bidder, in case all the parties refuse it, is in strict accordance with the common law, which provides a sale by auction, either among the parties themselves or among strangers, whenever two or more joint proprietors of any object cannot agree among themselves as to the mode of disposing of it.

On the 6th.—*That the eldest daughter divide, as a matter of right, with her brothers and sisters, on accounting to them for her marriage portion.*

In the present state of the law, it is presumed that every daughter, on her marriage, receives a marriage portion,—a presumption which frequently turns out most false, but for which there is no remedy; the received axiom of the present custom of the island being, that a "parent can marry his daughter with a rose." The only remedy is for the parent to reserve the married daughter to succeed with his other children to his personal property, which in many cases he neglects doing, naturally conceiving it to be unnecessary. Nor is this the only unjust and inconsistent part of the present law, as it allows a parent, who may have already given his daughter more than her share by means of a marriage portion, again to reserve that daughter to divide his inheritance with his other children, without even accounting for what she has received,—an act of great injustice, but which assumes the feature of an unparallelled inconsistency in a law which strictly forbids a parent to give a greater portion of his inheritance to one child than another. These unjust and inconsistent features will be done away with by the proposed law, which provides that, when no marriage portion shall have been received by the daughter, she shall, as a matter of *right*, share the inheritance with her brothers and sisters; and when she shall have received her marriage portion, she may be at liberty to share—in which case she will have to account for her marriage portion—or to keep what she has received without sharing.

On the 7th.—*That the eldest son be at liberty to have one-third of the whole estate left by his parents assigned to him.*

This regulation is proposed, in order to prevent the too great subdivision of lands so injurious to agriculture. With this view, the eldest son will be at liberty to take one-third of the estate, for which, as a matter of course, he will have to indemnify his co-heirs for so much as may exceed his portion. He will, also, have to account to them for the value of any house that may be built on the ground which he selects to complete the third allotted to him as his right of eldership; and he will only be allowed to select the ground on which such house is erected, in case there exists no other land from which he can make up his third.

On the 8th.—*That a person leaving no descent be allowed to will the whole of his real property.*

This is beyond doubt the most important principle set forth in the petition. It is no less than a restoring to the inhabitants one of the most sacred rights of property which they lost owing to the usurpations of feudalism, whose rulers put every obstacle in the way of willing away real property, in the hopes of obtaining it themselves in the absence of heirs,—it being out of the power of a proprietor of real property, from one moment to another, to sell or otherwise dispose of it to a stranger. The restoration of this prerogative to the owners of real property will be invaluable, as many individuals of fortune are at present deterred from purchasing real property, which they would do were they at liberty to dispose of it by will, as they have a right to do, of at least one-third thereof, during life, by deed of gift. The right of disposing of property by will, will therefore only be an extension of the principle sanctioned by the present law; and as a proprietor of real property, who HAS CHILDREN, can give one-third of it during life by deed of gift, he should surely be allowed to dispose of it by will when he has NO CHILDREN; but at present he cannot. This is *another inconsistency* which the proposed Reform Act will do away with. In fact, whoever expects to find either justice, humanity, consistency, or honourable principle, embodied in the present laws of Wills and Inheritance, will be extremely deceived,—those sacred standards of morality and justice, which should form the basis of human legislation, were sacrificed by the feudal lords to their own private ends and unhallowed policy. Upon the necessity of reforming this part of our laws unanimity prevails, the only difference of opinion that exists is as to the extent: some considering it just to allow a person to dispose of any real property he may have ACQUIRED by gift or PURCHASED, but that such a faculty should not be extended to the property he may have INHERITED.

On the 9th.—*That the will of real property be duly registered for the purpose of maintaining the rights of third parties.*

This article is a natural consequence of our system of registry or hypothecation, by which it is absolutely necessary that all claims upon REAL PROPERTY should be clearly ascertained.

ON COLLATERAL SUCCESSIONS.

On this subject it will be necessary for one moment to arrest your attention, and to state before-hand that this, of all other portions of the law, is at once the most unnatural, defective, and obscure, that ever disgraced a civilized community; for neither common sense, nor common honesty, nor common justice, can serve you as guides to lead you through its labyrinths. Widows and orphans, —the female sex in general,—in a word, all who mostly require the assistance of the law, are by its decrees sacrificed in the most merciless manner to the disgraceful policy of a gone-by system. The ablest commentator on your laws, the venerable Thomas Le Marchant, centuries ago invoked the legislature to amend this cruel system, but all to no purpose. When some years back his valuable treatise on our laws was printed by order of this Court, its members stated that there was much valuable matter that might be extracted from it, and that the truths which their author in his day revealed to the world respecting the vicious institutions of the island, were not over-agreeable to the ears of men in power. Prove then, Mr. Bailiff and Gentlemen, that acquainted with the extent of the evil, you have the will, and the power to adopt the remedy, —that you are desirous that your constituents should no longer be deprived of it, and that, keeping pace in your legal reforms with the two great nations which surround you,—the applause of whose visitors many so frequently court and justly obtain for that appearance of cleanliness and comfort which so strongly marks the exterior of this little community,—you are no less desirous that the most important institutions by which you are surrounded, should also be worthy of commendation.

On the 10th.—*That in collateral successions the female be no longer excluded by the male heir in parity of degree.*

At present, in collateral successions, the heir male is preferred to the female in an equal degree of relationship, —thus, brothers exclude sisters, even to the succession of a SISTER—uncles exclude aunts, and male cousins exclude female cousins,—females being allowed to succeed only when in a nearer degree of relationship, in which case they exclude males who are not so closely allied. It is proposed to make females inherit with males when in an equal degree, but then only to give them the same prerogatives as they will possess in lineal successions—that is,

the males to take two-thirds, and the females one-third, in such a manner, however, that in no case the portion of the males shall exceed double that of each of the females. We hardly consider this fair or politic in *collateral* successions, where the female should be on a par with the male relative: in *lineal* successions, where the children look upon their father's property as their patrimony, some political reason may be assigned for giving the male a greater portion of the inheritance than the female; but in collateral successions, where neither male nor female has a right to look upon their relative's property as their own, and in whose affections all his relatives should be placed on the same footing, the same reasons do not apply. It is true that by the present reform, the relative will be enabled to dispose of his property as he thinks proper by will, in which case he may equalise or favour any of his relatives. Still it appears that it would have been better for the law to have placed both male and female relatives on a par, and then left it to the relative to alter their respective portions, if he deemed any change necessary.

On the 11th.—*That representation be allowed to the children of brothers and sisters to inherit with their uncles and aunts in collateral succession.*

One of the most intolerable principles of the existing law, is that which, in collateral succession, prevents the child of the brother or sister of the deceased from representing his parents, either as regards personal or acquired property. Here is a law according to which all are promised equal protection for their persons and property, which nevertheless deprives the unfortunate orphan of the succession of his parents, because he has had the misfortune to lose his father or his mother; and, to complete the inconsistency, this same law allows him to represent his father or mother with regard to property inherited by either parent, —as if the same reasons which authorize the representation to inherited property did not authorize it with regard to personal and acquired property!—What stronger reasons can be assigned for the reform of our legislation than the existence of abuses like these, which destroy the principle of affection upon which hereditary rights ought always to be founded,—which confound all moral sentiments, and leave the property of the deceased as a premium to those who, most frequently, are the least in want of it, to the prejudice of widows and orphans whom the legislator, at the same time, declares to be the special objects of his protection,

and over whose interests he requires of the magistrates (his organs) to watch with care!!

On the 12th:—*That parents and grand parents be no longer excluded from their parent's inheritance.*

In ascending successions the present system is still more barbarous; neither father nor mother can succeed to their children—a relation in the 7th degree,—even the Crown seizes the property of the child to the prejudice of the author of its days! This child, loaded with the benefactions of its parents, has, perhaps, received in advance its share of their succession, and yet all this, which at the least, ought to return to the source whence it proceeded, goes like the property of a criminal to augment the revenue of the crown, which should never take any share of the property except in the absence of all known relatives, according to the maxim *fiscus post omnes*,—the crown last of all,—the crown only coming in for a man's estate when no one else can put forth any claim to it.

On the 13th.—*That in default of heirs in one line, the property should go to the nearest of kin in the other line.*

This proposition reminds us that it will be opposed by the law officers of the Crown, inasmuch as the Crown takes the real property of a person who leaves no relatives in the line whence the property came. Let us suppose it came in the paternal line, though the individual may have near relatives in the maternal line, such as an uncle or cousin, neither of them can inherit, as they belong to a line different to that whence their relative came to his property. This is a great injustice, for the law chiefly bases the right of inheritance on the affection and respect which it desires and commands relatives should have for each other. We are aware that the Crown officers in this jurisdiction, beginning with the Queen's Procureur, and not omitting the Queen's Receiver, have all Argus's eyes over Her Majesty's revenues,—that they watch over and foster them with as much care as they do their own. But if, on the one hand, the revenues of the Crown are to be guarded, on the other, the rights of individuals deserve protection also; and the more legitimate, the more just, the source whence the Crown revenues spring, and the less likely are they to be tampered with. Besides, what just expectancies can the Crown form when there exist near relatives, who, after all, are the best entitled to the property left by a deceased individual?—It was an axiom even in feudal times, that the cause of the Crown "was never so bad as

under a just Prince," meaning that, where a doubt existed on any point, the subject should derive the benefit, and that it was the interest of the throne to place its revenues on such a footing, that it could be drawn from its subjects without injuring either the cause of justice or humanity. And again, the Romans, those masters in the science of legislature, had their "*fiscus post omnes*" which prohibited the officers of the Crown from meddling with an estate whenever any relative of the deceased presented his claim to it. It would be instituting a cruel contrast, and one not very likely to further the ends of constitutional governments, thus to see despotic power yielding to its subjects concessions which rulers appointed by the choice of numbers of their constituents are unwilling to grant. Let it not be supposed there is no occasion for a change in this part of our law. You all remember the case of Miss De Rozel, who left near relatives who could not inherit her real property, and you are aware that the Crown is now seized of it,—that by your laws she was debarred from making a will, though she positively had no relatives in the line whence the property sprang, and thus might have left destitute near relatives which just laws would have enabled her to provide for. Such discrepances exist, and yet none of the judicial authorities seem much to care about them, probably from an unwillingness to bestir themselves about measures which till now have not excited much public attention. Besides, who could better have undertaken the work of reform than the law officers of the Crown,—themselves the eye witnesses of these unjust effects of the law. But from them, as from lawyers generally, reform is not to be expected. Bound down by the force of precedent to antiquated ideas, which from long experience they are accustomed to respect, they in time look upon the principles that constitute the law as the acmé of perfection, and the worst circumstance attending this matter is, that the most learned and experienced in the profession, whom one would fain look up to as examples, are, on these subjects, precisely those whom one would consult with the least advantage,—a circumstance that has always had a powerful effect in counteracting law reform. One would suppose that, accustomed as professional men are, to espouse only one side of the question, their minds in time become contracted within a certain circle, the limits of which it is out of their power to transgress. This, rather than any pecuniary advantages

which vicious institutions can procure, is the great obstacle to their becoming as zealous promoters of this great cause, as they ever are of the least important confided to their care, never for a moment considering that those legal principles, the abrogation of which is now so earnestly demanded, however politic it might have been deemed in the origin, to introduce them, have long since ceased to be of any advantage. And when, or where, was reform more imperatively needed than within this jurisdiction, where there are not twelve men perfectly acquainted with the laws and all their ramifications? It would be folly for him who addresses you to exempt himself from the common rule, for experience has taught him, when sitting with that Committee who framed the regulations you are called upon to sanction, how ignorant he was of the many unjust consequences to which your laws give rise, a circumstance which more than ever convinced him how necessary it was to bring the subject to the immediate consideration of the ruling authorities.

On the 14th.—*Respecting the abolition of the right of redemption in all sales* CORAM JUDICE, *as well as in all cases where the real property has been sold by public auction.*

This is a principle which all the members of the Court have often expressed their desire to see enacted. Sales before Justice are too frequently made a mere cloak to serve the views of interested relatives, who threaten to redeem the property of their relatives, by which means it is often sold at prices much below what it would have fetched, had no redemption been allowed. Now, the relative will lose no right, as he will have an opportunity of purchasing his relative's property by means of a public sale; if he does not choose to avail himself of this opportunity, it will be his fault; and the interest of minors and wards must not be allowed to suffer for the sake of propping up a system fraught with injustice, and which can never answer any valuable purpose.

On the 15th.—*That the daughter-in-law have no dower on the real property of her husband's parents, unless they have formally granted an hypothecation by an express stipulation.*

This is a principle too obvious to require any remark, as in point of fact, every parent who now consents to the marriage of his son, may be said to appoint a guardian over his own real property.

For the adoption of these Reforms, which you are called upon to sanction, you have the highest authority,—the Roman law, which since its reformation has been styled "written reason," and the Norman customs of your ancestors, which since their reformation have been known as the "wisest of the wise." (*) But why revert to distant nations, or to times gone by, for precedents to reform your laws? Have you not had an example set before you, on the other side of the Channel, by Napoleon Buonaparte, the greatest sovereign that has swayed the sceptre since the days of Julius Cæsar, (†) whom you saw—though the conqueror of Italy, the scourge of Austria, Prussia, and the German States, the eyesore of England, the dread of the North—account all his celebrated military achievements, and his unbounded conquests, as nothing, compared to the triumph he had earned by the perfection of his code, which he boasted would take down his name to posterity. In the discussions that took place during the preparation of the code, he laid the foundation of a fame that will survive the remembrance of his victories, which after all can never be thought of without calling to mind recollections of unbounded sacrifices of life and treasure; whereas that monument—his code—by which he destroyed for ever the worst principles of feudalism, will cause his name to be held in grateful remembrance by his people,

(*) The Chancellor De L'Hopital ordered the Norman Laws and Customs to be revised at the close of the sixteenth century, a work which occupied the Legists of that Province, six years, and as Louis the XIVth's famous ordinance *De la Marine*, of 1681, and Napoleon's Code, it only became law after the Royal authority had maturely weighed the observations and reflections presented by the different orders of the community or *bailliages de la Province*, whose suffrages were sought after on that occasion. The Reformed Custom of Normandy passed the great seal and was sanctioned by Henry the IIIrd in 1585, and was known as *la sage coutume*, or as others, and among them Mr. Touiller, termed it, *la sage par excellence*. These laws were followed in the Province of Normandy when the Revolution broke out which rendered Legislation uniform throughout France. It need not be said that the *Reformed Law of Normandy* was not in force in Guernsey previous to the Order in Council of the 3rd of August, 1840, for the laws which it abrogates were anything but *les sages par excellence*, Justice and Reason would have termed the abrogated Laws *les détestables par excellence*, as a careful perusal of the documents which lead to their abrogation will show.

(†) Of whom that profound historian and eminent lawyer, Sir James Mackintosh has so happily observed, that Napoleon Buonaparte as much surpassed Julius Cæsar, in genius for war, as he and all other warriors must yield to the great Dictator in the arts and attainments of peace.

Of Cæsar, it has been said by Suetonius, that he conceived the plan—*Jus civile ad certum modum redigere atque ex immensâ diffusâque legum copiâ, optima quæque et necessaria in paucissimos conferre libros. Cæsar, cap. 44.*

long after the splendour of his victories will have ceased to dazzle them. It may be asked, what then did he do? I would answer, precisely what you are called upon to perform. He rendered the condition of children more equal,—preventing the eldest son continuing any longer a lord, by reducing his brothers to the condition of either menial or official servants, and his sisters to be inmates either of the convent or the workhouse. (*) In collateral successions, he abolished the law which treated the brothers as relatives and the sisters as bastards. (†) He came to the assistance of the widow and the orphan, whom he restored to their family by allowing them the right to represent their deceased relative; and stigmatized as unworthy even to rule savages that law which, treating them as criminals, deprived orphans of the right to succeed to an uncle or aunt's property, because Providence had deprived them of their parent. (‡) He restored all proprietors of land to the dignity of men, and removed the law which, for centuries, had degraded them to the condition of serfs of the glebe, (§) by allowing them to bequeath their property whenever they left no children. (‖) He abolished the right of redemption in almost every shape, as fraught with injustice, and tending to no good purpose; (¶) and under no circumstances would he ever allow it for sales before justice. He restored to parents the right

(*) By the 745 of his Code, now termed the Civil Code, which abolishes primogeniture and enacts that all children shall divide in equal portions their parents' inheritance, without making any distinction as to sex.

(†) By the 750, 751, and 752 articles which in COLLATERAL SUCCESSIONS put the daughters or sisters on the same footing as the sons or brothers, without any distinction of sex.

(‡) By the 742 which grants the benefit of Representation to all the children and grand-children of *brothers and sisters* indistinctly, and who, without exception, may succeed with their uncles or aunts, great uncles or great aunts, to the property of any such relative.

(§) By the 8th article of his Code, which decrees that ALL Frenchmen shall enjoy civil rights independently of political ones.

(‖) By the 916 which decrees that the testator or donor may dispose of the whole of his property when he leaves neither ascendants nor descendants. In no case, however, is he debarred from willing the whole from his leaving either brother or sister.—915.

(¶) Except where a stranger had purchased from a co-heir a certain portion or the whole of his hereditary right, in that case all or any of the CO-HEIRS can, on repaying the sum disbursed to the purchaser, reject him from any participation in the deceased's succession. This faculty is allowed for the purpose of preventing strangers meddling in successions, and creating

of succeeding to their children, when these left no descendants, and thus introduced one of the strongest links to keep up the peace of families, when those of affection had faded, by binding them to each other by the ties of mutual interest and good will, (*) and, last of all, he emphatically declared that the Crown should never succeed to the property of a subject, whilst the most distant of his relatives could make out a claim to it. (†) Such was the performance of this, the greatest ruler, and at the same time the greatest despot of modern times, in following whose examples on this point, you will deserve and obtain the confidence and affection of all your constituents. And at what moment were you ever more in need of either, than at the present, when your political and judicial institutions are fast crumbling to the dust,—when they have ceased to command the respect of those whom they should govern,—and when the peace of this small community is only upheld by the respect and affection, which you, gentlemen, as a body, continue to inspire. It is now in your power to get rid of them, by taking the lead in this good cause; and your succeeding in it will draw down upon you the heartfelt gratitude of all your constituents. And if you are unable to boast of going down to posterity with the code in your hand, you will still have it in your power to pronounce a more glorious, because more useful, declaration, that of putting the code in the hand of all your fellow-citizens, who, instead of having to resort for the law, as in times past, to voluminous folios sufficient to break the firmest resolution, and to vague sentences which readily admit of different interpretations, it will be in the power of each at once to refer to a small book of the law, which, being suited to the wants of the age, and moreover based for the greater part upon immutable principles, will supply him

disturbances in families. It is evident that such a right bears little analogy to redemptions exercised in the event of sales, and which have no such foundation for their existence.

In all other cases the right of redemption was abolished as fraught with wholesale perjury, litigation, and fraud.

(*) By the 746, 747, and 748 articles where it is determined that parents and in their absence grand parents shall succeed when the deceased leaves no *descendants;* their portion being greater or less as they succeed or not with the deceased's brothers or sisters, or their issue.

(†) By the 767 and 768, wherein it is stated that if the deceased leaves no relative within the twelfth degree of kin, nor natural child, nor surviving consort, his succession devolves to the State. *Fiscus post omnes.*

with what would at present be very difficult for him satisfactorily to obtain. In fact, you will thus realize what to many still appears a dream, " bringing justice home to every man's door." But, in effecting this regeneration in your judicial and political institutions, besides the support of your constituents, you require the confidence of your Sovereign, and how can you better secure it than by setting aside iniquitous institutions and replacing them by others at once so just, so honourable, and so humane, that they will stifle all opposition, even from those who would profit by the continuance of present abuses. (*) Place yourselves, then, in the van of reform ; let it be sufficiently ample at once to do away with all idea of further complaint or appeal. Hand in hand let the authorities and petitioners meet each other before the Supreme Tribunal, and then, depend upon it, the young and benevolent Sovereign who rules the great empire " on whose proud domain the sun never sets," will confirm your laws, and uphold your administration, because conformable to those eternal rules of justice and humanity which ever obtain among the great and good.

The BAILIFF thought that a Committee consisting exclusively of members of the Court should be named, and that they should take occasion to confer with the Committee appointed by the petitioners.

Nearly all the jurats having expressed themselves to the same effect, a Committee, composed of the following members, was then appointed :—The Lieutenant-Bailiff, Messrs. Carré and Le Retilley, Jurats, the Crown Lawyers, and Advocate MacCulloch.

(*) The terms used by Her Majesty in Council, at her accession on the 20th of June 1837, are remarkable :—" I esteem it also a peculiar advantage that " I succeed to a Sovereign whose regard for the rights and liberties of his " subjects, and whose desire to promote the amelioration OF THE LAWS AND " CONSTITUTIONS OF THE COUNTRY, have rendered his name the object " of general attachment and veneration."

THE REPORT

Of the Committee appointed by the Court, on the proposed Reform of the Laws of Wills and Inheritance.

To the Bailiff and Jurats of the Royal Court of Guernsey.

Gentlemen,—The Committee you appointed to draw up a Report on the Petition which was presented at the Michaelmas Chief Pleas of 1838, and which proposed to introduce certain changes in the laws of this Island relative to inheritances and wills, have devoted to this honourable, but difficult task, all the attention it deserved. They dare not, however, flatter themselves with having executed it in a manner worthy of a subject accompanied by so grave a responsability, and by considerations so complicated. They have felt that, to do it full justice, required abilities to which they make no pretensions. Nevertheless, whatever judgment may be pronounced on the opinions put forth in the Report, the Committee will at least enjoy permanently the internal satisfaction of feeling, that they have been dictated by the most sincere attachment to the public interests.

It does not require much penetration to perceive that the continual changes inevitably wrought by time, in manners and customs, will always expose imperfections in different laws which originated in a state of society that no longer exists; and it is often easy to suggest reforms which, at the first blush, appearing equally simple and efficacious,—and harmonizing with the spirit of the age in which we live, contrast advantageously with the usages of distant times. But that which is truly difficult, is to foresee the consequences of a change which we deem just and necessary. Who knows whether a new law, though applying a remedy to a recognised evil, may not generate abuses still more serious, either directly in its very operation, or indirectly by its unexpected effects on manners and customs?

For these reasons, how powerful soever may be the objections raised against certain laws, if it were proposed for the first time to introduce them, such objections have no longer the same force when these laws, from having existed for many centuries, have imprinted a peculiar character on the ideas, habits, and complicated relations of society.

When it is proposed to change a long-established law, it is not sufficient to expose its apparent injustice; we must also demonstrate that it has ceased to produce effects advantageous to society in general, or that it is directly opposed to the wants, desires, and welfare of the community.

We incur another danger when we touch too lightly on laws which society has been long used to obey, and which it still respects. We should bear in mind, that the imperfection inherent in the nature of man is necessarily infused into his wisest institutions. It is impossible to conceive any law whose operation may not, more or less directly, inconvenience every member of a community. Now, it cannot be expected that all men will be capable of appreciating the indirect, and often remote advantages, which spring out of a law of which they keenly feel the effects. It requires something more than cold reasoning to subject individual wills. Nothing therefore is so necessary to public tranquillity—we may had to individual happiness—than to foster the veneration which all people naturally entertain for their ancient laws. Once destroy this illusion by imprudent innovations, and we shall hear every one murmur when he meets a law which thwarts his desire or his will,—and in a community, once happy and contented, a general state of restless discontent will arise, much more insupportable than the evil sought to be eradicated.

In making these remarks, the Committee do not wish to produce an impression unfavourable to the Petition, or declare themselves the enemies of all reform. They, on the contrary, are well aware that so complete a revolution has taken place throughout society, that some of our ancient customs now appear to be stamped with such revolting injustice, that their abrogation cannot be deferred. They also acknowledge that certain laws, which particularly relate to inheritances of real property, have no longer the same relative importance they formerly had, now that property of this nature does not always constitute the bulk of fortunes. They may therefore be modified, without hazarding any derangement in the state of society. But at the same time the Committee wish it to be understood, that those who are charged with the execution of our ancient laws, should never lend themselves too easily to pretended reforms. It is their duty to be first of all assured of the almost universal wish of the com-

munity ; afterwards to weigh maturely each of the changes proposed, always remembering that it is better to suffer some slight inconveniences than to risk the overthrow of a system which, with all its faults, may yet be advantageously compared with those of other countries, and which, on the whole, is perhaps better suited than any other to our small community.

We shall now proceed to examine each article in the Report.

The first article contains three or four distinct propositions. It is first asked, " That in the direct line sons share two-thirds of the real property of their parents, the daughters one-third, as formerly, with, however, this modification, that in no case shall the portion of a son exceed double the portion of a daughter, nor the portion of a daughter ever be greater than that of a son."

The Committee are of opinion that this demand, which accords with the changes which usage had gradually introduced into the ancient customs of Normandy, may be granted.

Originally, daughters were far from being so much favoured as they now are. The sons alone were admitted to the succession ; they alone became proprietors of the whole inheritance,—without doubt because, at the first establishment of fiefs, they alone were able to render the services by virtue of which they held their estates from their lords or suzerains. Daughters could claim nothing in the succession from their brothers, *whether real or personal.* All they had a right to demand was, that their brothers should find them suitable marriages, " without disparaging them." The brothers, it is true, generally had to endow their sisters. Nevertheless, the law expressly decrees, that if, without any disbursement, they can find them husbands of equal rank and condition, the sisters can demand no more. A daughter had only a right to a portion of the third of the inheritance, on condition that she declared she would not marry, and promised " to live chastely." Even then she only had a life interest. (Terrien, p. 206. Rouillé, folio 44.) By degrees this custom was so far modified in favour of daughters, that it gave them a complete proprietary right in the third of the inheritance, whether they were married or remained single, and a portion of the personal property equal to that of the sons, provided they were not married at the time of the opening of the succession. The changes effected in the feudal

system, by the progress of civilization, have thus had the effect of always raising more and more the condition of daughters; and it now appears just to render this condition more uniform in divisions of property, by granting this part of Article I.

As to the division of personal property among children, the Petitioners seem to have forgotten, that according to our custom the eldest has always had, up to the present time, a right to an eldership which has been fixed sometimes at a sixth, or a seventh of the moveable furniture, sometimes at one piece of each species of furniture, at his choice. This advantage, which seems to have been given as a compensation for the cost and trouble of settling the affairs of the succession, seems to us most just. For some time, through ignorance or otherwise, it has not always been claimed in town, particularly in very rich successions. But it has always been claimed in the country, down to our days; and we think it advantageous to continue this right, such as we have stated it to be, or in some other modified form.

For example, it might be permitted to a father to order in his will that, on the payment of a reasonable compensation, the moveable furniture should belong to the eldest son. The enormous loss sustained on furniture, when removed from the place to which it is adapted, and which alone it suits, particularly if it has been long in use, is well known. The succession generally benefits little by the division made, while to the eldest, who takes possession of the furnished house, the furniture would prove of the greatest value.

Could we not also leave a father the privilege of bequeathing to his eldest son his library, in room of his eldership? It is really a crime against literature and science, to disperse a well-selected collection of books. This, however, happens frequently among us, in consequence of the law being as it is. It is, therefore, very seldom that a good library lasts longer than the life of him who formed it; and this is the more to be regretted, as many persons, whose taste would have prompted them to form one, are discouraged from the attempt, from knowing that the object for which they had laboured would be in a great measure destroyed at their death. Moreover, a good library ought to be considered indispensable in a good house, and almost as indivisible as the house itself. Would it then be unjust to give the power of preserving

it? We may reasonably expect that fathers would use this power with discretion, and it is difficult to suppose that it would be abused.

We offer these reflections to the Court, without any positive recommendation, in order to give the opportunity of discussing what relates to the eldership of personal property, and of making such new regulations on the subject as the Court may deem advisable.

In the last part of the article, it is proposed, "That when there are only daughters to share the succession in a direct line, the youngest shall make the portions, and that they shall select according to eldership, and not according to lot."

This is conformable to the custom of Normandy, but as a contrary usage is sometimes insisted on here, it is much better to have the point formally settled.

Article II. demands first, "That the barrières of the town be extended." In our days, the town has so greatly extended itself beyond its ancient limits, that it is time to change the barrières. The difficuly is to know where to stop. The principle that we have thought most just, is to include within the new limits nearly all the commercial part of the present town.

It is asked secondly, "That in these limits all the children may share equally, without distinction of sex."

We do not think we ought to recommend this change in the existing custom. Houses in town generally belong to persons engaged in trade, the bulk of whose fortunes consists in personal property. The condition of daughters in their successions is already more advantageous than in successions in the country; and moreover, the sons who would wish to continue the business of their father, might find themselves cramped in their affairs, if they had too great returns to make to their sisters.

Article III., which limits the eldest son to take his *préciput* on a single enclosure, has received the approbation of the Committee.

The principle established by Article IV. which limits the eldest son to a single *préciput*, taken at his option on the inheritance of his father and mother, certainly deserves to be adopted. But from the manner in which this article is drawn up in the Petition, it is not explained how the eldest son can have the free choice of a *préciput*, unless it happened that the two inheritances were divided together; and in that case the present law would only give

him one. If, at the opening of the first succession, the eldest son should forego his right in the hope of obtaining a better *préciput* at the opening of the second, it might occur, by the sale of the inheritance or otherwise, that he would be deprived of his *préciput* altogether. To obviate any such inconvenience, the Committee propose that the eldest son who may have taken a *préciput* on the estate of the first succession, may take another on the second, in accounting for the value of the first *préciput*, estimated at what it was worth when taken.

This principle is applicable not only to successions, from father and mother, but to those from grandfather and grandmother, when the principal heir of an eldest son represents his father. In this case, he ought first to take on account of his paternal succession the *préciput* to which his father would have been entitled. Then, if the grandson has already taken a *préciput* on the succession of his father or mother, he should have the option of dividing the new *préciput* with his brothers and sisters by consanguinity, or to retain it for himself, on throwing into the division the value which he had already received. For, provided only one *préciput* be taken in each degree of succession, the co-heirs in the same degree will have no right to complain.

The Committee recommend Articles V. and VI., subject to some verbal alterations. We approve the principle of Article VII. Nevertheless we think that it would be better not to oblige the eldest son to take the third of the inheritance assessed in the manner proposed, but to empower the Douzaine to convey to him that third in the manner hereinafter pointed out.

The change proposed in Article VIII. demands the most serious consideration, as it introduces a principle hitherto unknown in our laws, which prohibit all testamentary bequests of real estates. The ancient laws of all countries have been little favourable to WILLS. This department of legislation commenced by following the simple and natural idea that the will of man, ceasing with life, ought not to extend its influence beyond the grave. It was not before civilization had made some progress that permission was granted to make bequests in certain favourable cases, or in matters of importance; as in certain countries, for remuneration of services, or, as in the ancient custom of Normandy, of personal property only,—which in ancient times usually formed a very inconsiderable

portion of successions. When the custom was reformed in Normandy, the right of bequeathing was extended to one-third of the *Acquêts*, but only in cases where there were no children; and even it was forbidden "to give to his wife or her relations." It was also necessary that the will should be made three months before the death of the testator, and that he had not already disposed of the said third *inter vivos*.

Nevertheless, as our custom already gives the power of disposing of personal property by will, and as every *acquêts* represents a value which has already existed in the shape of this kind of property in the hands of the purchaser, we do not think there is any sufficient reason to refuse the power of bequeathing, provided there are no descendants, and with such formalities which will have the effect of giving to wills of *acquêts* the solemnity of a contract for the alienation of an inheritance. This innovation in our laws only follows the ordinary course of changes which time has introduced into the laws of other countries.

As to *propres*, the same reason cannot be adduced for permitting them to be disposed of by will. There are indeed powerful reasons against it in several cases. Let us bear in mind the fundamental principles which have never ceased to be as rigorously observed since the Reform of the Norman law as before. "It seems," observes Basnage, "that the custom has considered each individual as simply the trustee of his *propres*, and that it only gives them to him on the tacit condition of preserving them in the family." So true was this, that when an individual had alienated all or part of his *propres*, the value of what he had so alienated was replaced in his succession out of his *acquêts* and personal property. So strict was this rule, that there could be neither *acquêts* nor money in a succession, until the *propres* were replaced. Our particular custom has not lately been so strict. It is certain that in our days every one is free to convert his *propres* into *acquêts* and personal property. The Committee, therefore, have not thought themselves bound rigidly to adhere to the principles of the custom of Normandy; nevertheless, they are far from subscribing to the opinion of those who would wish to abolish all distinctions between *propres*, *conquêts*, and *acquêts*, a distinction which has seemed to them reasonable in itself, and which is, without doubt, conformable to the habits formed under the influence of our ancient laws.

He who purchases real estate may be presumed to have acquired it by his industry and economy. It is natural therefore that he should consider himself the absolute proprietor. It is the fruit of his labour and toils, —it is an object which, so to speak, he has created himself. If he dies without descendants, he may reasonably complain if the law does not allow him to dispose of it according to his last will, as he could have done the money with which he purchased it. It is very different when the inheritance has become a *propre*. Then the first acquirer manifested his will. In preserving it to be transmitted to his heirs, he seems to have wished to devote it to the use of his family, and consequently to be appropriated to it, so long at least as its alienation did not become necessary or advantageous. If then this same inheritance is found such as it was given in the succession of one of the members of the same family, it is just that the law should dispose of it according to the presumed will of the original acquirer. On the other hand the possessor of a *propre* cannot with justice complain if he has not so absolute an authority over the estate, of which he is not the creator, but which he holds from the will of another. Moreover, the affection which usually springs out of the ties of blood ought to reconcile him to a law which puts some bounds to the exercise of his will in favour of his relations. These principles are so conformable to our manners, that when a question arises on property transmitted from a common ancestor, it is deemed quite natural that the heirs in this line should attribute to it certain equitable rights, and we cannot help pitying them when they are deprived of them, as though they suffered a sort of injustice.

It is true that these considerations lose their force in proportion as they are removed from the stock of the original acquirer. The bonds of family only exist in our days among near relations. They cease to be recognised long before the relationship is distant from the last degree of inheritance. It would be unjust to fetter the will of a man in favour of relations for whom he cannot be presumed to entertain any particular affection, especially when our custom, in allowing the alienation of *propres* without requiring it to be replaced, already offers him a means, inconvenient it is true, but still possible, to change the ordinary course of the succession.

We think, therefore, that every person should be permitted to will away his *propres*, whenever he has only collateral relations beyond the second degree—that is to say, more distant than cousins germain.

As to the restriction that the Petitioners propose to put on the power of willing away real estate, in only extending it to those who are under guardianship, the Committee do not advise its adoption, but think it best to allow it in all cases in which it is now permitted to will away personal property.

On Article IX.—As to the forms to be observed in the drawing up and executions of wills of real estate, it is important to fix them with precision, to simplify the relations between heirs and legatees, which may sometimes be found complicated.

We are of opinion, that in the very outset, wills of real estate and of personal property should be entirely separated. Wills of real estates ought to be signed by the testator, in presence of two Jurats, in cases where an oath is not required—and in presence of the court in cases where it may be necessary to have the oath of a married woman. These formalities, however, ought not to prevent the testator from revoking such will at any time, without formality, nor to his making the changes he may desire, provided he follow the same formalities. As a precautionary measure against the abstraction or destruction of a will by an heir, it should be permitted to be lodged at the Greffe in a sealed envelope.

On the death of the testator, the legatees, or one of them, should be obliged to obtain permission from the Royal Court to have the will registered at the Greffe, on the book of contracts; such permission to be granted after proof of the death, and without prejudice to the rights of others.

We consider an executor absolutely useless. In matters of inheritance of real estate it is not admitted by the laws of England or France. The wish of the testator can be easily accomplished without any such intervention, as may be seen.

Three general cases appear to us to include all that may occur in Wills—

1.—That of the universal bequest of the whole of the hereditary succession disposable by will, or of the residue, if there are legacies. In this case the universal legatee, or the residuary legatees, would be deemed to be seized of

the said succession, by the mere fact of the death of the testator.

2.—That of bequest *à titre universel ;* that is to say, of an aliquot part, (as a third, a fourth, or other defined proportion) of what is is disposable from the hereditary succession. In such case the heirs or residuary legatees, would be seized of the entire succession, and each of the legatees for an aliquot part could demand to divide with them.

3.—That of particular bequest; that is to say, of a defined object, (as a house, a rent, a field.) Then the legatee could demand its possession, either from the heirs, or the residuary legatees, as the case may be.

In each of these cases, by following the plan we have traced out, an opportunity will always present itself to the legatee to have his rights to the article bequeathed defined, and the charges to which he will be subject.

If rents were due on the property bequeathed, it would be necessary to give to each of the rent-holders a document under seal, which should serve as a sufficient title to claim such rents from the legatee. For it is a rule that a rent-holder is not bound to know any other debtor than the one named in the title-deed, except only in two cases—that of a *saisie,* which is a procédure whose forms admit of entire publicity,—and that of a succession, where the law itself, in indicating who are the heirs, indicates also who are responsible. The bequest of a real estate, with reference to rent-holders, ought to assimilate rather to a sale than to either of these two cases. Since then the rent-holders can exact their titles, the question arises whether it is on the legatee or the heir that the obligation should be imposed of guaranteeing those rights. This duty usually falls on him who wishes to charge another with a service for which he is himself responsible; nevertheless, in this particular case, the Committee have thought it just to consider this expense as a charge attached to the objects bequeathed, rather than burden the heir, to whom, had there been no will, the law would have conveyed the whole of the succession free of all charges of this nature.

It would therefore be fitting to oblige the legatee to give the titles within six months after being put in possession of the bequest. In default of his fulfilling this obligation, it would be necessary to compel the heirs to fulfil it, giving them a right to claim from the legatee all their costs, and somewhat beyond, to compensate them for their trouble and to punish the neglect of the legatee.

Article X. proposes to admit females to share in collateral successions, in parity of degree with males, in the same proportions as in direct successions. It is a privilege which may be granted with as much justice as the new advantage in their favour in direct successions, which we have adopted.

It is not perfectly clear from the manner in which Article XI. is worded, to what length the Petitioners wish to extend collateral representation. If the second paragraph has been added to explain and define the first, it is certain that the latter is expressed in terms much too general. But whatever may have been their intention, we are decidedly of opinion to adhere to the last part of the Article, which precisely accords with the reformed custom of Normandy, Article 304, and to that of Paris. This change would only affect personal property, *acquêts* and *conquêts*. Representation already takes place *ad infinitum* for *propres*.

It is impossible not to approve of the proposition contained in Article XII., that fathers and mothers be admitted, in certain cases, to inherit from their children. Our local custom, by which they are always excluded, appears to us singularly unjust and unreasonable. It is also directly at variance with the ancient custom of Normandy. We are of opinion that it would be proper to follow the principles which the latter custom had established on this subject, and adding to it, that the father shall, in all cases, have the right to take back from the estate of a child dying without descendants, all advances made to him, for which he shall have obtained either an acknowledgement in writing from such deceased child, or an Act of Court stating such advance as having been made.

The change proposed in Article XIII. does not appear to us to be of our competency,—the fiscal revenue being interested therein. It is perhaps better to leave things as they are, particularly as the article which we recommended, with regard to the faculty of bequeathing inherited real property, will, if adopted, always present a means wherewith to supply this defect in the law.

By Article XIV., the abolition of the right of redemption, in all cases where the property has been sold by public auction, is prayed for. We are persuaded that the experience of the Court has long since demonstrated the necessity of abolishing this right in cases of *judicial* sales by auction; it is, therefore, what we strongly recommend with regard to such sales. But it appears to us that so long as the right

of redemption exists, it will not suffice, to deprive relatives of that right, that an estate be sold by auction, even with all possible publicity, if without judicial forms. We are, therefore, of opinion to reject this part of the demand.

Besides the changes proposed in the petition, which we have thus separately examined, there is another, not comprised therein, but which was proposed and reduced to writing when that petition was presented, and which, in our opinion, deserves to be adopted. According to the ancient custom of Normandy, to which in this respect ours is conformable, from the moment a son marries with the consent of his father, his wife acquires a right of hypothecation on the whole of her father-in-law's estate, for her dower on the proportion thereof that would come to her husband were the father then to die. This law has often so obstructed real property transactions, as to prove most prejudicial to the proprietors, who in some cases were not aware of its existence, and have, therefore, to their great surprise, suddenly found themselves, after the marriage of a son, unable to dispose of their real property according to their will. It appears to us very like an anomaly to allow to a wife an incohate right on property, on which her husband himself can exercise no such right. It is, at any rate, going too far to say, that it suffices for a father to consent to the marriage of his son, without any other expression of his will, in order to his being understood to concede so important a right. We think it would be expedient to abolish this right, without, however, preventing a father, on the marriage of his son, from granting it, by a formal contract, to his daughter-in-law.

It also appears to us that a favourable opportunity now offers to reform an anomaly which has recently introduced itself in our jurisprudence, and which, though sanctioned by some decisions of the Court, is without doubt, as contrary to the ancient custom, as it is to the reformed custom of Normandy. (Coutume Réformée, Article 424.) A mother who is a widow, is at present allowed to benefit a child by legacy, to the prejudice of the others,—a right which is positively refused to the father. The Committee is unanimously of opinion to recommend to the Court, that in future the mother be placed in the same position as the father,—for the influence of a favourite child is more to be dreaded in the case of a mother than in that of a father.

The Committee has found itself rather embarrassed on the question of fixing the time when each of these various

changes should commence having its operation. The principle, that incohate rights ought not to be disturbed, cannot alone suffice. Our custom has always had so much regard for the prospective rights of heirs, particularly heirs in a direct line, and our usages have become so conformed thereunto, that it would be dangerous to introduce laws, the immediate operation of which would disturb arrangements of families already made, or perhaps frustrate the expectations of sons already of a certain age, whose education has been adapted to the fortune they had in prospect.

To meet this difficulty, two alternatives have presented themselves to the Committee,—the one, to suspend the operation of the law which changes successions in a direct line, with regard to families where the eldest child had attained a certain age; the other, not to give effect to the law except after a determinate period. The first had appeared to us, not only the more just of the two, but also that which would leave less uncertainty in each family. It appears to us that all families in which the eldest of the children shall have attained the age of fourteen years when the law is promulgated, ought to be excluded from the operation of the principal changes in the laws relating to direct successions. The father who has a child of this age may be presumed to have made his calculations, and formed his plans, as to the future destination of the members of his family.

We do not think it will be necessary to retard the operations of the changes relative to collateral successions and wills, because the expectations of relatives in a collateral line cannot be deemed of the same importance in family arrangements.

Such are the opinions which, after mature examination, and frequent discussion, we have formed on the various changes proposed. In a report, like the present one, which we have done our utmost to condense, it would not have been possible to explain at length all the reasons that have influenced our judgment; still less to enumerate the objections that might be made, and answer each of them in detail. Should these objections present themselves to the Court, it will itself be able to appreciate them, and to give them all the weight it may deem proper.

In order to simplify and facilitate the discussions that may take place on each of the points in our Report, we have prepared the following draft of the law, such as it might be promulgated were our opinions wholly adopted.

We have arranged the articles in what appeared to us the most natural order; and we have endeavoured to draw them up with all the clearness and precision indispensable to written laws. We do not pretend having attained this object: it is difficult, in this respect to form a correct judgment of one's own work. Others will be better able to discover its defects, and in adopting or modifying each article, it will be easy to correct its phraseology.

[*Here follow thirty Articles which, after having been submitted to the States, and somewhat modified, more particularly in the greater extension of the barrières, received the sanction of Her Majesty in Council.*]

1.—The right of the sons to the *vingtième*, or twentieth part of the estate, (before a division takes place) is abolished.

2.—In successions to real property in a direct line, when sons and daughters succeed together, they shall share as formerly, (not reckoning the twentieth, which is abolished by Article 1.) excepting in cases where, by this method, the portion of a son would exceed double that of a daughter, in which cases the portions of each of the sons (without reckoning the *préciput*) shall be reduced to double the portion of each of the daughters.

3.—(A regulation to be made respecting the eldership on the personal estate.) It has since been decreed that it shall consist in one seventh of the whole household furniture.

4.—In direct successions, when there shall be only daughters to share, the youngest one will make the lots, after which they shall choose according to seniority.

5.—The *préciput* of the eldest son shall not extend beyond a single enclosure, notwithstanding such enclosure may not contain the quantity of land usually given as *préciput.*

6.—When an enclosure on which the eldest son has taken his *préciput* shall not contain one-third of the land to be divided, the said *préciput* included, the Douzeniers of the parish shall assign him, besides the said enclosure, land to the extent of the said third in such part of the estate as they shall think proper. And the said eldest son shall remunerate his co-heirs for the value of the said third, (the *préciput* excepted) according to an estimate that shall be made by the said Douzeniers.

7.—The eldest son shall take no *préciput* on the estate of the survivor of his father, or mother, unless he have caused a valuation to be made, by the Douzeniers of the

parish, of the *préciput* already taken by him on the estate of his first deceased parent, at the period when he took it; and he shall bring back the said value, that it may be divided, if he intends taking the second *préciput*. The valuation shall be made by the said Douzeniers, both in rents and in money, so that the said eldest son may have the choice to bring back the value in either way. If the value be brought back in rents, these rents shall be assignable in the same manner as all other rents created to equalize lots among co-heirs. A grandson who shall already have taken a *préciput* on the estate of his father and mother, may always take, in the succession of a grandfather or grandmother, the *préciput* to which his father (if he was the eldest son) would have had a right, in the same manner, and on the same conditions, with respect to the co-heirs of his said father. And it shall be optional with him to divide it with his consanguin brothers or sisters, or to keep it himself, on bringing back the value of that which he already possesses.

8.—Stones, bearing the inscription "Barrières de la Ville, An 1840," shall be erected at the following places :—

1. South Beach, at the south-east angle of the house belonging to Mr. Moses Vaudin.
2. Hauteville, at the north-west angle of the house formerly belonging to the late Isaac Carey, esq.
3. Charotterie, at the south-east angle of the Mill Pond.
4. Mount Durant, at the top of Boulogne-steps.
5. Vauvert, at the south-west angle of Salem Chapel.
6. Constitution-steps, at the north-west angle of Mr. T. J. Mauger's house.
7. Berthelot-street, at the north-west angle of the house formerly belonging to William De Jersey, esq.
8. Smith-street, at the south-west angle of the house formerly belonging to P. De Jersey, esq.
9. Truchot, at the south-west angle of the Brewery formerly belonging to Mr. Joseph Bennett.
10. Glatney, at the north-east angle of the inferior Parochial School.

Properties situated on the district bordered on the east by the sea, and in other respects by straight lines drawn from stone to stone, shall be divided among co-heirs in the same manner as those situated within the ancient barrières of the town.

9.—Properties situated within the barrières of the town becoming divisible in direct successions, shall previously

be valued by the Douzeniers of the Town, and each of them shall be successively offered, at the price of the valuation, first to the sons, and afterwards to the daughters, according to seniority. Such of them as are refused by all the co-heirs at this price, shall be sold by public auction for account of the co-heirs.

10.—Married daughters shall have the right of sharing the personal property of their father and mother, provided they bring back, in order to its being divided, such personal property as they may have received from the deceased parent whose estate is to be shared. But it shall always be optional with them to retain what they have received, by declining to share with the other children.

11.—In collateral successions, males shall not exclude females who are in parity of degree, but brothers and sisters shall share the personal property in equal proportions,—and the real property in the manner pointed out in Article 2. Representation of sex, in parity of degree, shall obtain with regard to real property, that is to say, the descendants shall subdivide among themselves, in the same manner, the portion that would have fallen to those whom they represent.

12.—In collateral successions to personal property and purchased real property, representation of degree shall obtain when the nephews or nieces shall succeed to an uncle or aunt along with the brothers and sisters of the deceased, and not otherwise.

13.—Ascendants having no descendants living, shall inherit the personal property and purchased real property of the last of their descendants. In ascending successions, the father shall be preferred to the mother, and the paternal to the maternal line in parity of degree. In the same cases as above, the ascendants shall also inherit respectively the inherited real property of their line only. The father shall, in all cases, have the right to take from the estate of his child, deceased without descendants, such advances in anticipation of his own death as he may have made him, and for which he has obtained an acknowledgment in writing, or an Act of the Court stating the advance so made.

14.—Every person leaving no descendants shall be at liberty to dispose by will, or by gift to take effect at his death, of the whole of his purchased real property; and also in the same manner of his inherited real property, provided he have no relatives in the second degree, inclusively, belonging to the line whence that inherited real property has been derived.

15.—The will of the real property shall be made distinct from that of the personal property.

16.—Every instrument giving real property to be enjoyed at the donor's death, and every legacy of real property, shall be signed by the donor or testator, in the presence of two Jurats of the Royal Court,—or before the Bailiff and two Jurats in the case of a wife under coverture, whose oath shall be required. The instrument thus authenticated may nevertheless be changed or modified at any time by another similar instrument; it may even be destroyed, without any formality, by the donor or testator.

17.—Every will of real property may be deposited by the testator himself at the Greffe of the Royal Court, on paying ——— to the Greffier. The testator may require the will to be put under a sealed envelope; in which case this envelope shall be put in the presence of the Greffier, who shall assure himself that the instrument thus secured is really the will of the party depositing it. This will shall at any time be delivered up, without payment, on the demand of the testator.

18.—Any person shall be at liberty to obtain permission from the Royal Court, on furnishing proof of the decease of an individual, to examine at the Greffe whether the deceased had deposited there a will. For this examination and reading of the will, the Greffier shall charge two shillings; after which any person may have the will read on paying one shilling to the Greffier.

19.—After the decease of a testator, the legatees, or one of them, shall obtain permission from the Royal Court to cause the will to be registered on the book of contracts, which permission shall be granted after proof of the said decease, without prejudice to the rights of others.

20.—After the registration of a will, the Greffier may give copy thereof to any one, as of a contract, and at the same cost,—but the original shall always remain deposited at the Greffe.

21.—In the event of a universal legacy, that is to say, when the testator shall have given to one or several persons the totality of his real property disposable by will, or the residue thereof, if there are other legacies, the universal or residuary legatees shall be entitled to take possession of the entire real property disposable by will, without being obliged to ask delivery thereof from the heirs.

22.—Universal legatees, that is to say, those to whom the testator shall have bequeathed a given share of the real pro-

perty which the law allowed him to dispose of by will, shall be bound to ask the division thereof from the heirs or residuary legatees, as the case may be, which latter shall be entitled to seize or possess themselves of the property.

23.—The special legatee, that is to say, one to whom a definite object shall have been bequeathed, shall be bound to ask the delivery thereof from the heirs, or residuary legatees, as the case may be.

24.—The special legatee shall not be liable to anything beyond the real charges to which the property bequeathed to him was specially held, unless the other properties ofthe estate should be insufficient to pay the testator's debts.

25.—Universal legatees shall be liable, in connection with the heirs or the residuary legatees, for their proportion of such real charges as are due on the whole estate generally, and to which no separate part thereof is specifically liable. They shall, in the same manner, be liable for their proportion of the excess of personal debts, after all the personal property of the estate has been applied to the discharge of the same.

26.—Within six months from his being put in possession, the legatee shall deliver to each of the rent-holders to which the property bequeathed is indebted, a copy, under the seal of the bailiwick, of the will, or of the part thereof that concerns him. If he is not the sole universal or residuary legatee, he must deliver a copy, thus authenticated, of the "*bille de partage*," or other document, correctly defining the part of the estate bequeathed to him, and the debts due upon it. In default of his doing so within the said period, the heirs, in order to discharge themselves of their responsibility towards the rent-holders, may make the delivery of the said instruments, and in that case shall recover all the expenses they may be at, and half the amount thereof besides, from the legatee. The rent-holders themselves may also, after the said period, procure the said instruments, and exercise the same right of recovery against the legatee.

27.—The right of redemption is abolished with regard to all real property disposed of by judicial public auctions.

28.—A married woman shall have no hypothecation for her dower, on any part of the estate of her husband's ancestor, (notwithstanding he may have consented to the marriage) unless the said ancestor have expressly granted her the said hypothecation by a special judicial contract.

29.—Mothers, as fathers, shall not be at liberty to give by will, a greater portion of their personal property to one child than to another.

30.—Articles 1, 2, and 8, shall not apply to families in which the eldest of the children shall have attained the age of fourteen years when the present law is promulgated. Article 7 shall not apply to eldest sons having attained the age of fourteen years at the said period.

(SIGNED)

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HILLARY O. CARRÉ, } Jurats of the
THOMAS LE RETILLEY, } Royal Court.
CHARLES DE JERSEY, Queen's Procureur.
J. T. DE SAUSMAREZ, Queen's Comptroller.
R. MACCULLOCH, Advocate of the Royal Court.

Guernsey, 5th April, 1839.

D.

THE REPORT

Of the Committee appointed by the Inhabitants to obtain a revision of the existing Laws which regulate Inheritances and Wills.

TO THE BAILLIF, LIEUTENANT-BAILLIF, AND JURATS OF THE ROYAL COURT,

Gentlemen,—Your Petitioners, after mature deliberation, having taken into consideration the Report of the Committee of your Royal Court, deem it their duty to express their entire and unanimous approbation of the Report prepared by the members of the magistracy and the bar, on the laws of their country. Without doubt the intelligence and experience of the members of your Committee offered an ample guarantee that their Report, on the reform of the laws, would be worthy of the body from whom they received their important commission; but what they could not have so easily expected is the candour and liberality by which they have risen superior to those prejudices which, unknown to themselves, so often fetter the judgment of the most instructed and best disposed men, and the earnestness with which they have devoted themselves exclusively to compass the public good.

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If, on the one hand, your Committee have paid homage to the feelings and sentiments which, for so long a time, have demanded the revision of the laws, by having adopted the greater part of the changes recommended, your Petitioners, on the other hand, acknowledge that your Committee have the merit of having assured their execution by the wisdom of the rules they have framed for carrying them into effect.

Penetrated with these sentiments, your Petitioners, after having maturely considered the Report of your Committee, think they ought to show the necessity, not only of extending the barrières of the town, but also of proving that, within the limits of those barrières, all the children, without distinction of sex, should equally share the real property of their parents.

This division, demanded by the immutable principles of justice, is not opposed to a wise policy; the real property situated in the heart of the town may easily be brought under a scale of equal division among children. No proposition is better established than this: that agriculture and commerce, those main springs of public prosperity, require different regulations in the transmission of property to co-heirs; commerce has no need of primogeniture, nor of any inequality among the children of different sexes; the prosperity of agriculture, on the contrary, neither admits of the piece-mealing of an inheritance, nor of the division of the buildings attached to it among co-heirs; consequently your Petitioners pray that you will introduce into the law a difference so clearly pointed out by the very nature of things. This measure of justice accorded to the proprietors of real property, situated in the barrières, must increase their value, which, by fortuitous and unforeseen circumstances, having been greatly reduced of late years, will not fail of improvement under a wise alteration in the law.

The opinions of your Petitioners are more confirmed than ever in favour of a much greater extension of the barrières, and particularly of the equal division of the real property therein situated among co-heirs, without distinction of sex.

Moreover, they rest their argument on the authority of Article 270 of the Ancient Custom of Normandy, which, in so many respects, accords with the law now in force in this Island; it provides, that where the property is situate in boroughs or towns, an equal division shall take place among co-heirs, without distinction of sex. It is thus worded:—" *Brothers and sisters share equally inheritances*

in boroughs or towns throughout Normandy, even in the bailiwick of Caux, in cases where daughters are allowed any share of the succession."

The distinction between real property situate in towns or boroughs, and that situate in fields and farms, is so clearly established and supported by the wishes of the inhabitants and the authority of the ancient laws, that it cannot fail to receive the sanction of the legislature.

To show how strongly the equal division of real property situated in the barrières or in towns or boroughs accords with the spirit of the custom of Normandy, we see that, although in farms, the daughters took but a third, while the sons took the other two thirds, as is the practice in this Island, nevertheless in towns, all the children, without distinction of age or sex, equally shared the real property of their parents. Your Petitioners are happy in being able to support this distinction by the authority of the modern Cyclopedia of Jurisprudence, which has defined and determined the sense of the 270th article already cited in the following words, after which all comment would be superfluous.

After having declared that property in town and boroughs, according to the custom of Normandy, are *socage* (roturier) tenures in a town or enclosed borough, which owe no feudal dues to the king or seignorial barons, the authors of the Cyclopedia declare: "That properties in burgage are more than properties of any other description; for, although the custom gives different and unequal proportions between sons and daughters in such successions, yet by article 270, *brothers and sisters share equally such inheritances as are in burgage throughout Normandy, even in the bailiwick of Caux, in such cases where daughters are admitted to share.*" (*) And in the following article it is stated, "that although the daughters have no claims on farm buildings in the country, when there are not more buildings than brothers, they may nevertheless take their share of houses situate in towns or boroughs."

The inference deduced by the Editors of the Cyclopedia is fully confirmed by Basnage in his commentary on this article, and by the Norman writers who have treated on the subject.

(*) Which was the case whenever the daughter was not married, or if married that she had been reserved by her parents to succeed to their inheritance.

When we reflect on the high and influential authority which Basnage, universally recognised as the most profound jurisconsult of Normandy, has always enjoyed,—when we consider that he also states that rents charged on property in burgage partake of the character and quality of the property on which they are charged, and are consequently subject to an equal division among the children without distinction of sex, we cannot repeat too often that the distinction so clearly imprinted on the very nature of things must obtain the sanction of the legislature.

Respecting these rents, Basnage, in his Commentary on the 270th Article, expresses himself in the following terms: "Rents due by owners of property situated within boroughs; daughters entitled to share in their father's succession, will take a portion equal to that of their brothers."

Independently of these reasons, is it not admitted by all writers, even during the reign of feudalism, that the privileges granted to towns and boroughs, by holding out inducements to inhabitants to settle there, have perhaps, more than any other event, powerfully contributed to the emancipation of mankind—to the promotion of Commerce and Agriculture —which so eminently depend on each other for mutual prosperity.

The Petitioners recommend that the Town Douzaine be consulted respecting the proposed extension of the barrières. With regard to the furniture and household property left in a succession, the Petitioners conceive that the whole, together with the library, should form but one lot, to be taken at a valuation by either of the children, giving the first choice to the sons, and afterwards to the daughters, according to seniority. They at the same time fully admit with your Committee, that the value of such property is considerably diminished when removed from the spot for which it was originally intended, and for which it is best adapted.

The Petitioners recommend that it be formally regulated that the plate and linen shall be considered as no part of such household property. With regard to any other measures that may be deemed necessary respecting the *eldership* on this kind of property, the Petitioners leave this to the Royal Court to decide.

Respecting the 7th Article, relative to the *préciput*, or eldership on real property, the Petitioners admit that the

subject is attended with great difficulty; they, however, assent to the propositions of your Committee, though attended with the great disadvantage of allowing two estates to be held by one person. They, however, consider that most, if not all, the disadvantages attending this system would vanish, were the Douzaines to rate the property thus taken as *eldership*, at a price more nearly approximating to its real value.

Respecting the 9th Article.—The Petitioners conceive that when there are several houses within the barrières, they should in the first place be all valued at one time, that the eldest son be restricted to the choice of one house, after which the sons and daughters, according to seniority, might choose the remainder, and should all refuse, then that the property should be disposed for account of the estate.

Respecting the 12th Article.—The Petitioners pray the Court to extend representation one degree further in a collateral line, that is, to the grand nephews and grand nieces in case of the death of their parents and grand parents. They acknowledge that this representation will not often be required to enable grand children to succeed to a grand relative, but their condition, as in most cases they will be orphans, is a severe one, and therefore entitled to every consideration from the legislator. Did such an occurrence happen only once in twenty years, it would still be a satisfaction to have provided for it. Representation, even in a collateral line, exists *ad infinitum* with regard to real property *inherited*; extended one degree further relative to real property purchased or otherwise acquired, it could not be attended with the slightest inconvenience, and then would the Royal Court enjoy the inestimable satisfaction of having provided efficient measures against any possible hardships occurring in collateral successions.

Respecting the 14th Article.—The Petitioners regret that your Committee has not recommended that any person may dispose of his *inherited* real property by will when he leaves no descent. Such a distinction must have the effect of depreciating this kind of property, as it will enjoy less privileges than that he may have purchased. Should, however, the Royal Court think proper so far to follow the recommendation of its Committee, as not to place INHERITED property on the same line as purchased, with

regard to its disposal by will, at least the Petitioners humbly beg that they may be allowed to dispose of the life enjoyment or *usufruct* to any person, were it only to enable the proprietor to bestow such enjoyment on his wife, on his father, mother, or near relative. Such a disposition could, moreover, only have the effect of securing this kind of property to the branch of the family whence it originally sprang, as a proprietor, under such circumstances, might not feel so much disposed to sell it, as he otherwise would to accomplish so reasonable a desire.

The Petitioners beg of the Court to establish, by a formal disposition, that, in cases of Wills by married women, the Baillif, Lieutenant-Baillif, or a Jurat, be allowed to administer the oath required on such occasions. Without some measure of this kind it is not difficult to foresee that, in many instances, they will be debarred of the advantages it is the object of the legislature to confer on them. They conceive that, in all wills, excepting those entirely written, dated, and signed by the testator, the forms recommended by your Committee might be adopted; but with regard to wills entirely written by the testator, they conceive that all further forms might easily be dispensed with. What stronger assurance can be obtained of the testator's real intentions, than his thus recording his dictates with his own hand?

With regard to the proposition contained in the 13th Article of the petition respecting the right claimed in behalf of the relatives of one line, to inherit the real property in another line, preferably to the crown, and which your Committee has not thought proper to entertain, conceiving it was not within its competency, your Petitioners beseech you not to abandon it, as they persist in believing that their benevolent Sovereign will deem it the glory of her reign to cause justice to flourish, and to entertain the peace of families by granting them the right to succeed to each other's property, so long as the ties of relationship exist between them.

What stronger bond can be found to call forth and entertain those friendly regards which the members of a family owe each other,—than the conviction that disunion and discord will not only disturb their peace of mind, but mar their future prospects? Your Petitioners humbly hope

that those principles of humanity will prevail on this point, which have already prevailed on so many others connected with inheritance and wills. A petition presented at the foot of the throne, breathing the united wishes of the authorities and inhabitants, could not fail to be favourably received by a Sovereign who, abandoning rights that owe their origin to an age when the state and morals of society were wholly different from what they are at present, would rejoice at having so favourable an occasion to acquire the lasting gratitude of her people. If, then, the Committee of your Royal Court, through respect for Royal authority, has proclaimed its incompetency to entertain this measure, your Petitioners hope and trust that your Royal Court will at least recommend her Majesty to grant them their request.

Your Committee has terminated its report, by declaring that the operation of the changes respecting heirs in a direct line shall not affect the eldest of children who shall have attained fourteen years of above when the law is promulgated; and it has assigned as a reason for this, that our custom has always had too much regard for the prospective rights of heirs, particularly heirs direct, and that our usages have so conformed themselves to it, that it would be dangerous to introduce laws, the immediate operation of which would disturb family arrangements already made, or frustrate the hopes of sons of families already of a certain age, who may have received an education adapted to the fortune they had in prospect.

Your Petitioners respect the motives which have induced so much sollcitude on the part of your Committee, not only respecting acquired rights, but also for rights which, in the course of nature, must ere long become such. They would nevertheless assert it as their belief, that this would be putting off to a far too distant period the operation of just laws, which the legislature is about to grant the country; and, fathers of families themselves, they unanimously venture strongly to urge it upon your Royal Court, that the age of twenty years should be the lowest fixed upon to exempt heirs in the direct line from being affected by the proposed law. Before this age, no son can exercise civil rights: he cannot, therefore, expect that his parents shall have definitively decided upon his proportion of their property. Before this period, he is neither of age major, nor capable of exercising any functions, civil or public. How, then,

can it be supposed that his parents have, with respect to him, finally decided on the distribution of their estate?

For the reasons above stated, your Petitioners beseech your Royal Court to take into its serious consideration the reforms contained in this petition, which, with very few exceptions, have been suggested by the report of your Committee, and are so to speak its legitimate consequences.

And they will ever pray.

(SIGNED) FREDERICK PRICE, JUN., President.
JOHN VALRENT,
NICHOLAS LE BEIR,
THOMAS LE SAUVAGE,
NICHOLAS COLLENETTE,
FERDINAND B. TUPPER,
JOHN HARVEY,
GUILLAUME OGIER,
NICHOLAS DE MOUILPIED,
ANDREW COHU,
JOHN VIDAMOUR,
PETER BIENVENU,
JOHN MAHY,*
NICHOLAS ALLEZ, *Cas Rouge.**

* With the exception of the clause relating to the equal partition of real property within the barrières.

On the 21st of June, 1839, the Petitioners were heard by Counsel in support of the different propositions set forth in the foregoing report, and on the 27th of December following, the States met to discuss the 30 Articles contained in the report of the Court's Committee, which having already appeared under LETTER C., it would be superfluous to repeat. Some of these articles were, however, considerably modified, as will appear from a comparison between them and those definitively sanctioned as law by Her Majesty in Council. The articles subjected to modification were the 3, 5, 6, 7, 8, 10, and 29, particularly the 8th and 29th, in reference to the extension of the barrières, and the right of the parent to put the married daughter's portion in trust

during her marriage, without subjecting his other children to a similar restriction.

On the 7th of February 1840, the propositions of the States as thus amended were, through the medium of the President, transmitted to Her Majesty in Council, when on the 13th of July, having received the royal sanction, they were, on the 3rd of August following, promulgated or rather registered as law of the Island; the Court having specially met for that purpose, as the preamble to the Registry of the Order in Council clearly shows.

So that nearly two years and a half elapsed from the period of the first meeting of the Petitioners to that when the reforms prayed for received the ultimate sanction of the legislature, which, embodied in thirty articles under LETTER E., concludes the APPENDIX.

E.

REGISTRATION

Of the Order in Council, of the 13th of July, 1840, by the Royal Court of Guernsey.

On the 3rd of August, 1840, before DANIEL DE LISLE BROCK, ESQ., *Baillif*, and JOHN GUILLE, JOHN LE MESSURIER, JOHN HUBERT, HILLARY O. CARRÉ, PETER B. DOBRÉE, and THOMAS LE RETILLEY, ESQRS., *Jurats*, and the only Jurats at present in the Island.

The Baillif having communicated to the Court assembled for the express purpose, an Order in Council dated the 13th of July, 1840, which confirms in all its clauses the Project of Reform of a portion of our laws approved of by the States on the 14th of February, 1840. The Court, after having heard the opinion of the Crown Lawyers, orders, that the following Order in Council, together with the changes in the laws recommended by the States, and approved of by Her Majesty in Council, such as they are to be found in the project of law, shall be registered on the Records of the Island, and shall be binding as law from the above date :—

At the Court at Buckingham Palace, the 13th of July, 1840.
Present: the Queen's Most Excellent Majesty, Lord President, Lord Privy Seal, Marquis of Normanby, Lord Steward, Lord Chamberlain, Earl of Albemarle, Earl of Minto, Lord John Russell, Viscount Palmerston, Viscount Melbourne, Viscount Duncannon, Lord Holland.

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council, for the affairs of Jersey and Guernsey, dated the 22d of June last, in the words following, viz.:—

Your Majesty having been pleased by your Order in Council, of the 5th of March last, to refer to this Committee the humble Petition of the States of the Island of Guernsey, setting forth that the law of Normandy, in all matters of succession and inheritance, is still the law of Guernsey. That the lapse of ages, and the altered state of society, may, without any departure from the principles of that law, be said to necessitate changes recommended by justice, experience, and general consent. That the propriety and nature of these changes have not originated with the States, but in the public feeling expressed by Petitions of the most intelligent inhabitants, and particularly by one presented to the Royal Court, on the 27th June, 1838. That a Committee named by the Court to take that Petition into consideration, after much research, laid before the Court its report, dated the 6th April, 1839. That the Court, having taken all the means in their power to ascertain the wishes of the inhabitants, and the merits of the case, submitted a project of reform to the States, by whom it was discussed in all its parts, modified in several, and ultimately adopted in its present form, as it was with the said Petition humbly submitted. That the said Petitioners beg with due submission to assure your Majesty that the said project, far from being the result of agitation, wild innovation, or party zeal, was temperately proposed, maturely discussed, and considerately adopted. And humbly praying for themselves, and in behalf of the inhabitants of the said Island of Guernsey, that your Majesty may be graciously pleased to approve and sanction the changes in the laws of succession and inheritance proposed in the said project, and to order that such changes should in future have force of law in the said Island. The Lords of the Committee, in obedience to your Majesty's said Order of Reference, have this day taken the said petition and project

of law into consideration, and do agree humbly to report, as their opinion, to your Majesty, that it may be advisable for your Majesty to approve and sanction the changes in the laws of succession and inheritance proposed in the said project, and to order that such changes shall in future have force of law in the said Island of Guernsey.

Her Majesty, having taken the said report into consideration, was pleased, by and with the advice of her Privy Council, to approve thereof, and doth hereby approve and sanction the changes in the laws of succession and inheritance, proposed in the said project of law, (copy whereof is hereunto annexed) and doth order, as it is hereby ordered, that such changes shall in future have force of law in the said Island of Guernsey. And her Majesty doth hereby further direct, that this order and the said project of law be entered upon the register of the said Island, and observed accordingly. And the Governor, Lieutenant-Governor, or Commander in Chief, Baillif and Jurats, and all other her Majesty's officers in the said Island for the time being, and all other persons whom it may concern, are to take notice of her Majesty's pleasure hereby signified, and govern themselves accordingly.

(Signed) W. L. BATHURST.

1.—The right of the sons to the *vingtième*, or twentieth part of the estate, is abolished. The eldest son's right to the *préciput* shall be continued, subject however to the modifications stated in the Articles that follow.

2.—In successions to real property in a direct line, when sons and daughters succeed together, they shall share, after the *préciput* of the eldest son has been taken, the sons two-thirds, and the daughters one-third; excepting in cases where, by this method, the portion of a son would exceed double that of a daughter, in which case the portion of the sons shall be reduced to double the portion of each of the daughters; excepting also in cases where, by this method, the portion of a daughter would exceed that of a son, in which latter cases the sons and daughters shall share in equal portions.

3.—In successions to personal property, the eldership shall be one-seventh of the household furniture, after the third of the widow has been taken; and also all family portraits, and pieces of plate, or other objects given to the father, or other ancestors, by public bodies.

4.—In direct successions, when there shall be only daughters to share, the youngest one will make the lots, after which they shall choose according to seniority.

5.—The *préciput* of the eldest son shall not extend beyond a single enclosure, notwithstanding such enclosure may not contain the quantity of land usually given as *préciput*, which is from fourteen to twenty-two perches.

6.—When an enclosure on which the eldest son has taken his *préciput* shall not contain one-third of the land to be divided, the said *préciput* included, the Douzeniers of the parish shall assign him, should he require it, besides the said enclosure, land to the extent of the said third in such part of the estate as they shall think proper. And the said eldest son shall remunerate his co-heirs for the value of the said third, (the *préciput* excepted) according to an estimate that shall be made by the said Douzeniers.

7.—The eldest son shall take no *préciput* on the estate of the survivor of his father, or mother, unless he have caused a valuation to be made, by the Douzeniers of the parish, of the *préciput* already taken by him on the estate of his first deceased parent, at the period when he took it; and he shall bring back the said value, that it may be divided, if he intends taking the second *préciput*. The valuation shall be made by the said Douzeniers, both in rents and in money, so that the said eldest son may have the choice to bring back the value in either way. If the value be brought back in rents, these rents shall be assignable during forty years, in the same manner as all other rents created to equalize lots among co-heirs. A grandson who shall already have taken a *préciput* on the estate of his father and mother, may always take, in the succession of a grandfather or grandmother, the *préciput* to which his father (if he was the eldest son) would have had a right, in the same manner, and on the same conditions, with respect to the co-heirs of his said father. And it shall be optional with him to divide it with his consanguin brothers or sisters, or to keep it himself, on bringing back the value of that which he already possesses.

8.—The houses, buildings, and lands, situated within the barrières of the town, shall be divided between co-heirs in a direct line, in the manner indicated in Article 2, without a *préciput* being allowed to the eldest son. The limits of the barrières shall be traced as follows:—All properties found to the left of the line, traced as far as the sea, will be included in the barrières, viz., the line to commence on

the sea shore at Long-store, passing in front of the said building, taking the road leading to St. John's Church,—through the Amballes, as far as the road leading to the Côtils,—through the Côtils road to the East of Mr. Tupper's estate, and to the South of Castle Carey,—then descending by Vauxlorens pump as far as the North-West wall of the Town Hospital,—following the line of the said wall as far as Hospital-street, ascending that street,—passing in front of the principal entrance of St. James's Church,—up Grange-road as far as Vauvert-road, by the top of Vauvert to the West of the house belonging to the heirs of the late William Le Cocq, esq.,—descending the lane leading to the Petites Fontaines to the East of the land belonging to Mr. J. Crick. From this point the line will cross the lands in a straight direction as far as Mount-Durand pump—and from thence also in a straight direction, to the East angle of the Charoterie pond,—then ascend Park-lane steps, descend Vardes-road, and through Havelet-road as far as the sea.

9.—Properties situated within the barrières of the town becoming divisible in direct successions, shall previously be valued by the Douzeniers of the Town, and each of them forming a lot with its dependencies shall be successively offered, at the price of the valuation, first to the sons, and afterwards to the daughters, according to seniority. If the eldest son chooses the first lot, the second shall be first offered to the second, and so on in this manner. If the eldest son refuses the first lot, he shall have the choice of the second, and so on in this manner. Such of them as are refused by all the co-heirs at this price, shall be sold by public auction for account of the co-heirs.

10.—Married daughters shall have the right of sharing the personal property of their father and mother, provided they bring back, in order to its being divided, such marriage portion (*) as they may have received from the deceased parent whose estate is to be shared. But it shall always be optional with them to retain what they have received, by declining to share with the other children.

11.—In collateral successions to *propres*, neither males nor their descendants shall exclude females or their descendants; but the relatives of both sexes belonging to the

(*) The original term is 'Dot,' or sum of money advanced to the married woman to enable her to defray the expenses incident to the marriage state, and is generally bestowed upon her by the parents previous to the marriage being solemnized. The conditions on which it is bestowed usually forms the subject of a marriage contract.

line whence the property descends, shall divide the estate by branches, in the same proportion as in successions in the direct line.

12.—In collateral successions to personal property, and purchased real property, neither males nor their descendants shall exclude females nor their descendants in parity of degree; but the nearest of kin to the deceased, in parity of degree, both males and females, shall share the property in the same proportions as property of this nature, whether personal or real, would be shared in successions in the direct line; and representation of degree shall be allowed when nephews and nieces shall come to the succession of an uncle or aunt with the brothers and sisters of the deceased, and not otherwise, in which case the said nephews and nieces shall subdivide among themselves, in the same manner, that portion of the succession which would have fallen to their father or mother, had he or she been alive.

13.—Ascendants having no descendants living, shall inherit the personal property and purchased real property of the last of their descendants. In ascending successions, the father shall be preferred to the mother, and the paternal to the maternal line in parity of degree. In the same cases as above, the ascendants shall also inherit respectively the inherited real property of their line only. The father shall, in all cases, have the right to take from the estate of his child, deceased without descendants, such advances in anticipation of his own death as he may have made him, and for which he has obtained an acknowledgment in writing, or an Act of the Court stating the advance so made.

14.—Every person leaving no descendants shall be at liberty to dispose by will, or by gift to take effect at his death, of the whole of his purchased real property; and also in the same manner of his inherited real property, provided he have no relatives in the second degree, inclusively, belonging to the line whence that inherited real property has been derived.

15.—The will of the real property shall be made distinct from that of the personal property.

16.—Every instrument giving real property to be enjoyed at the donor's death, and every legacy of real property, shall be signed by the donor or testator, in the presence of two Jurats of the Royal Court,—or before the Baillif and two Jurats in the case of a wife under coverture, whose oath shall be required. The instrument thus authenticated may nevertheless be changed or modified at any time by

another similar instrument; it may even be destroyed, without any formality, by the donor or testator.

17.—Every will of real property may be deposited by the testator himself at the Greffe of the Royal Court, on paying two shillings and six pence to the Greffier. The testator may require the will to be put under a sealed envelope; in which case this envelope shall be put in the presence of the Greffier, who shall assure himself that the instrument thus secured is really the will of the party depositing it. This will shall at any time be delivered up, without payment, on the demand of the testator.

18.—Any person shall be at liberty to obtain permission from the Royal Court, on furnishing proof of the decease of an individual, to examine at the Greffe whether the deceased had deposited there a will. For this examination and reading of the will, the Greffier shall charge two shillings; after which any person may have the will read on paying one shilling to the Greffier.

19.—After the decease of a testator, the legatees, or one of them, shall obtain permission from the Royal Court to cause the will to be registered on the book of contracts, which permission shall be granted after proof of the said decease, without prejudice to the rights of others.

20.—After the registration of a will, the Greffier may give copy thereof to any one, as of a contract, and at the same cost,—but the original shall always remain deposited at the Greffe.

21.—In the event of a universal legacy, that is to say, when the testator shall have given to one or several persons the totality of his real property disposable by will, or the residue thereof, if there are other legacies, the universal or residuary legatees shall be entitled to take possession of the entire real property disposable by will, without being obliged to ask delivery thereof from the heirs.

22.—Legatees *à titre universel*, that is to say, those to whom the testator shall have bequeathed an aliquot share of the real property which the law allowed him to dispose of by will,(*) shall be bound to ask the division thereof from the heirs or residuary legatees, as the case may be, which latter shall be entitled to seize or possess themselves of the property.

(*) The legacy *à titre universel* is that by which the testator bequeaths a *definite quantity* either of his real or personal estate; such as one half, one third, or any other definite portion, in contradistinction to a universal legacy or a legacy of any definite object.

23.—The special legatee, that is to say, one to whom a definite object shall have been bequeathed, shall be bound to ask the delivery thereof from the heirs, or residuary legatees, as the case may be.

24.—The special legatee shall not be liable to anything beyond the real charges to which the property bequeathed to him was specially held, unless the other properties of the estate should be insufficient to pay the testator's debts.

25.—Universal legatees shall be liable, in connection with the heirs or the residuary legatees, for their proportion of such real charges as are due on the whole estate generally, and to which no separate part thereof is specifically liable. They shall, in the same manner, be liable for their proportion of the excess of personal debts, after all the personal property of the estate has been applied to the discharge of the same.

26.—Within six months from his being put in possession, the legatee shall deliver to each of the rent-holders to which the property bequeathed is indebted, a copy, under the seal of the bailiwick, of the will, or of the part thereof that concerns him. If he is not the sole universal or residuary legatee, he must deliver a copy, thus authenticated, of the "*Bille de Partage*," or other document, correctly defining the part of the estate bequeathed to him, and the debts due upon it. In default of his doing so within the said period, the heirs, in order to discharge themselves of their responsibility towards the rent-holders, may make the delivery of the said instruments, and in that case shall recover all the expenses they may be at, and half the amount thereof besides, from the legatee. The rent-holders themselves may also, after the said period, procure the said instruments, and exercise the same right of recovery against the legatee.

27.—The right of redemption is abolished with regard to all real property disposed of by judicial public auctions.

28.—A married woman shall have no hypothecation for her dower, on any part of the estate of her husband's ancestor, (notwithstanding he may have consented to the marriage) unless the said ancestor have expressly granted her the said hypothecation by a special judicial contract.

29.—A mother, in the same manner as a father, shall not be at liberty to give, by will, to one child more than to another. Fathers and mothers may order the proportion of their married daughters to be placed in trust, and the dividend to be paid to such daughters during their coverture,—

well understood that if they survive their said husbands, the capital shall be transferred to the said daughters, and that if they die before their husbands, the capital shall be transferred to their heirs, unless the said daughters should, in cases where this is allowed, have willed away the said capital.

30.—Articles 1, 2, and 8, shall not apply to families in which the eldest of the children, living at the opening of the succession, shall have attained the age of fourteen years when the present law is promulgated. Article 7 shall not apply to eldest sons having attained the age of fourteen years at the said period.

Transcribed from the original as registered on the Records of the Island.

(*Signed*) CHAS. LEFEBVRE,

H. M.'s GREFFIER.