REPORT

OF

THE COMMISSIONERS

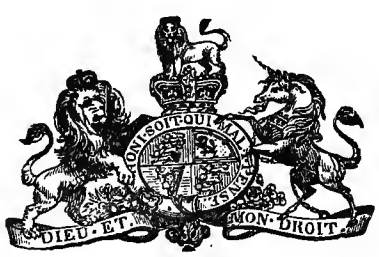
APPOINTED TO INQUIRE INTO THE

CIVIL, MUNICIPAL, AND ECCLESIASTICAL LAWS

OF THE

ISLAND OF JERSEY.

Presented to both Houses of Parliament by Command of Her Majesty.



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PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1860.

COMMISSION.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith ;

To Our trusty and well-beloved Sir John Wither Awdry, Knight;

Our right trusty and right well-beloved Cousin William Reginald, Earl of Devon; and,

Our trusty and well-beloved Richard Jebb, Esquire, Barrister-at-Law,—Greeting.

Whereas the Knights, Citizens, and Burgesses, and Commissioners of Shires and Burghs in Parliament assembled, have presented an humble Address to Us, praying that We would be graciously pleased to issue a Royal Commission for the following purposes, videlicet,—

1. To enquire into and report on the Civil, Municipal, and Ecclesiastical Laws and Customs now in force in Jersey, including the Laws relating to the tenure of Land Trusts and Uses, and also the Rights of the Feudal Lords in the said Island.

2. To enquire into and report on the constitution of the Tribunals by which those Laws, Customs, and Rights are administered, and into the practice and forms of procedure used by them respectively.

3. To enquire into and report on all defects in and abuses of the said Laws and Customs, in the constitution of said Tribunals, and in their practice and form of procedure, and to suggest remedies for amending the same.

4. To enquire into the present state of Prisons in Jersey, and the mode of classifying Prisoners.

5. To enquire into and report on the administration of the several Public Charities of the said Island.

Now know ye, that We, having especial trust and confidence in your wisdom and fidelity, have assigned, nominated, and appointed, and do by these Presents assign, nominate, and appoint, you the said Sir John Wither Awdry, William Reginald Earl of Devon, and Richard Jebb, to be Our Commissioners to go into the said Island for the purposes aforesaid.

And for the better effecting the purposes of this Our Commission, We do by these Presents give and grant to you, or any two or more of you, full power and authority to call before you, or any two or more of you, such persons as you shall judge necessary, by whom you may be the better informed on the subject of this Our Commission, and of every matter connected therewith ; and also to call for, have access to, and examine all such Official Books, Documents, Papers, and Records as may afford the fullest information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

And We do hereby give and grant to you, or any two or more of you, full power and authority, when the same shall appear to be requisite, to administer an Oath or Oaths

to any person or persons whatsoever to be examined before you, or any two or more of you, touching or concerning the premises.

And Our further will and pleasure is that you do and shall, within the space of one year from the date of this Our Commission, report to Us in Our Privy Council, under your hands and seals, your several proceedings by virtue of this Our Commission, as the same shall be respectively completed and perfected.

And We will and command, and by these Presents ordain, that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any two or more of you, may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And We do hereby require all and every Our Officers and Ministers in Our said Island respectively to be aiding and assisting you and each of you in the due execution of this Our Commission.

And for your further assistance in the execution of these Presents, We do hereby authorize and empower you to appoint a Secretary to this Our Commission, whose services and assistance we require you to use from time to time as occasion may require. In witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster, the twenty-first day of April, in the twenty-second year of Our Reign.

By Warrant under the Queen's Sign Manual.

(Signed) C. ROMILLY.

[Under the Great Seal.]

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REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

MAY IT PLEASE YOUR MAJESTY,

AT the end of the month of April 1859 we had the honour to receive Your Majesty's Commission, bearing date the 21st of that month, appointing us Commissioners,—

1. To inquire into and report on the Civil, Municipal, and Ecclesiastical Laws and Customs now in force in Jersey, including the Laws relating to the Tenure of Land, Trusts, and Uses, and also the Rights of the Feudal Lords in the said Island:
2. To inquire into and report on the Constitution of the Tribunals by which those Laws, Customs, and Rights are administered, and into the Practice and Forms of Procedure used by them respectively:
3. To inquire into and report on all Defects in and Abuses of the said Laws and Customs, in the Constitution of said Tribunals, and in their Practice and Form of Procedure, and to suggest Remedies for amending the same:
4. To inquire into the present State of Prisons in Jersey, and the Mode of classifying Prisoners:
5. To inquire into and report on the Administration of the several Public Charities of the said Island;

and directing us, within the space of one year from the date thereof, to report to Your Majesty in Your Privy Council, under our hands and seals, our several proceedings by virtue of the said Commission, as the same should be respectively completed and perfected.

We humbly report to Your Majesty that, immediately after receiving the Commission, we entered upon a course of preparation for the prosecution of the inquiry with which we were charged, by directing our attention to some of the principal works relating to the History, Laws, and Institutions of Jersey. We were thus employed in the months of May and June, and in the course of them we had the advantage of interviews with the Lieutenant Governor of Jersey, and Your Majesty's Procureur-Général there, the latter of whom came over to London at our request. From both these gentlemen we received suggestions which were of use in deciding upon our future course of proceedings.

At the beginning of July 1859 we repaired to Jersey, where we made a stay, in the first instance, of about two months. Immediately on our arrival, in accordance with the constitutional practice observed on former occasions of Commissions issued by the Crown, we presented ourselves before the States of the Island with Your Majesty's Commission, which, having been read, was ordered by the States to be registered. The First Commissioner then shortly explained our view of the duties which we had to perform, and we received from the States, through their President, the Bailiff, their assurance of the respect which they entertained for Your Majesty's Commission, and of their readiness to forward the objects embraced by it.

We visited the Island a second time in March of the present year, and remained there, on that occasion, nearly a month.

The interval between our visits was employed by us in considering and digesting the materials obtained during our first visit, and in preparing for the further prosecution of our inquiries in the Island. We also held several meetings for the purpose of comparing our views and the conclusions at which we had arrived individually upon various points.

Our inquiry in the Island was prosecuted chiefly by means of oral examinations. These, with the exception of the examination of one witness, whose infirm state of health rendered a different course necessary, were publicly conducted in a commodious room, conveniently situated, and liberally placed at our disposal by the Directors of the Jersey Joint Stock Bank. We did not deem it necessary in any instance to administer an oath.

In addition to the oral evidence of witnesses, we called for and obtained various returns. We also received a large number of written and printed communications from persons desirous of affording us information, including several who are dissatisfied with the present state of the law and the existing tribunals in Jersey. Abstracts of some of these returns and communications will be found in the Appendix. Occasionally we

attended the sittings of the different Courts. We visited the Prison, the General Hospital, Victoria College, the Endowed Schools, and other public Institutions. And, on the invitation of the Island authorities, we accompanied the Royal Court in two visitations of the roads, held according to ancient custom.

The witnesses whom we examined included his Excellency the Lieutenant-Governor, the Bailiff, the Jurats, the Crown officers, the Viscount, members of the legal profession, the Greffier, the other officers of the Royal Court and those of the Gaol and Hospital; Your Majesty's Receiver-General; the Bishop of Winchester, the Dean of Jersey, and most of the beneficed clergy of the Island; the masters or regents of the two endowed schools; some of the parochial officers; several of the landed gentry; several gentlemen resident in the Island and engaged in professions or business there; besides a considerable number of persons, both native and English, who had real or supposed grievances or complaints to urge with reference to themselves individually, or who, having devoted their attention to the Laws and Institutions of the Island, were anxious to point out to us the defects and abuses with which they conceived those laws and institutions or their administration to be chargeable. In one or two instances also, we had the advantage of receiving the evidence of persons who appeared to us, from their local knowledge, combined with their experience of other systems, to be capable of affording intelligent and impartial information. From the nature of our inquiry, and with a view to elicit, as far as possible, everything which might be regarded as a defect or an abuse susceptible of a remedy, we deemed it expedient to allow to the witnesses who came before us as complainants considerable latitude, though often at no small sacrifice of time, owing to the introduction of irrelevant matter, or to their urging complaints either of a personal nature, or of a kind not within the scope of our Commission.

It is our pleasing duty to state that our labours were materially aided and lightened by the cordial co-operation and assistance which we received from the Island authorities and officials, and from the professional and other gentlemen who, at a considerable sacrifice of valuable time, gave us the benefit of their knowledge and experience. We have likewise to acknowledge the personal courtesy and attention which we uniformly met with.

In reporting to Your Majesty the results of our labours, we propose to treat of the several subjects of our inquiry in the following order; viz.:—

I. The Sources of the Laws of Jersey.

The Law of Property, including,—

II. Tenures of Land, the Rights of the Feudal Lords, and the different Interests in Land.

III. The Alienation of Property by Acts inter vivos and by Will.

IV. The Law of Guarantee.

V. Uses and Trusts.

VI. Registration.

The Law relating to—

VII. Husband and Wife.

VIII. Persons under Disability.

IX. The Constitution of Tribunals.

X. The Mode and Forms of Procedure therein.

XI. Proceedings in Insolvency.

XII. Municipal Institutions, Prison, and Public Charities.

XIII. Ecclesiastical Law.

I.—The Sources of the Laws of Jersey.

Under this head we shall consider, 1st, the Common or Customary Law, and 2ndly, the Law derived from Legislation.

The Common Law.

1. The common or customary law of Jersey is based upon the common law of the ancient Duchy of Normandy. The Channel Islands, forming originally a part of the

Duchy, alone remained to the Sovereigns of England, on the loss of the continental part in the time of King John. From a very early period the Islands have formed two Bailiwicks, that of Jersey and that of Guernsey. They have ever since retained their ancient Norman law, except so far as it has in the course of time been modified or corrupted by subsequent enactments or usages. It was indeed contended before us, that the common law of England has been introduced into Jersey. We do not see any proof of this, and it is certain that the contrary was asserted and allowed on the occasion of attempts, in the time of Edward II., to bring the Island under the jurisdiction of the Courts at Westminster. It is true that there are numerous instances of identity or close resemblance between the laws of Jersey and the English law in its infancy; but they are much more referable to the Norman origin of the English Justiciers, and of the dominant race in England at that period, than to any introduction of English law into Jersey. The subsequent divergence, under institutions which have been undeniably separate in fact, has certainly been greater than any assimilation resulting from the habits of mind of the English appellate authorities, or from the application, erroneous or not, of English enactments.

Le Grand Coutumier.

The principal authority as to the ancient customary laws of Normandy is "Le Grand Coustumier du Pays et Duché de Normandie," a work to which different dates have been assigned, but which was compiled probably late in the reign of Henry III. Some texts of it anterior to the use of printing are known. The edition ordinarily cited is that of 1539, containing, besides the original text, a French gloss,—or rather a collection or amalgamation of glosses of various dates,—brought down to 1539, a Latin Commentary by Rouillé, of Alençon, in 1533, and some supplemental treatises and documents. Other works are cited in Jersey, as evidencing or illustrating the ancient customary law of the Duchy of Normandy, amongst which the Commentaries of Terrien (Lieutenant Bailiff of Dieppe in the middle of the sixteenth century) upon the Vieux Contumier hold a conspicuous place. The "Coutume Reformée," a French compilation of a much later period (circiter 1585), representing the then existing state of the law of Continental Normandy, and the commentaries thereon of Basnage, (a celebrated French lawyer of the succeeding century,) as well as the works of other French writers, are constantly referred to by the Jersey lawyers. The latter declare, it is true, that such works are not of authority on Jersey law; yet in point of fact they are frequently used as books of reference, and this has naturally, perhaps unavoidably, led to the gradual introduction of much foreign matter, so that what is now practically received as the common law of Jersey, may be described as consisting of the ancient Norman law, with subsequent accretions, some of which are mere developments of the earlier customs, and others interpolations of French law. It may be added, that the circumstance of the Jersey lawyers receiving their legal education chiefly in France, helps to impart a modern French complexion to the jurisprudence of the Island.

Terrien.

Basnage.

Precedents.

The next evidence of the customary law is derived from judicial precedents. None are extant prior to 1503, in which year, all the public Records are said to have been consumed by fire; but the regular series commences about twenty years later. The judicial Records of the Royal Court contain merely the pleadings (*prétentions*) of the parties, and the proceedings and decisions of the Court thereon. They are readily accessible to the lawyers of the Island at the *Greffe*, or office belonging to the Royal Court; but they exist only in manuscript, and no digest of them has been made. There is no system of published Reports such as exists in England, the demand in a small jurisdiction like Jersey being too limited to make an undertaking of the kind remunerative. From the constitution of the tribunals, (except the Supreme Court of Appeal before Your Majesty in Council,) and the want of means of notoriety, judicial precedents are less consistent, and altogether of less weight than in England. The decisions of the *Inferior Number* of the Royal Court, (a tribunal the nature of which will be explained hereafter,) are, as we were told, not considered to be precedents for the future guidance of the Court in similar cases. It is obvious, however, that the course of practice before this tribunal cannot be without its influence, although upon many points no other and more strictly authoritative decisions may exist.

Reports do not exist.

Records.

Besides judicial precedents entered on the Rolls of the Royal Court, there are various other records, particularly returns to inquisitions, made under competent presidency, by bodies in the nature of juries. The earlier are the most authentic records of the contemporary public rights and claims of the Islanders; the later are chiefly conversant with the dues of the Sovereign in the Crown Manors. But as the customs of all manors are, or at least are presumed to be, uniform, they are referred to as affording much information on subjects of tenure generally. Those most noted are two *Extentes*, bearing date respectively 1331 and 1668.

Text-writers.

In the next place, there are a few text-writers on the Law of Jersey, besides general historians from whom incidental information is to be gathered. Of the former the most noted are Poingdestre, Lieutenant-Bailiff, A.D. 1669–1676, and Le Geyt, Lieutenant-Bailiff 1676–1711. From the smallness of the population and the frequency of almost revolutionary conflict for the possession of the office of Chief Magistrate before the Restoration, the two writers above named probably represent the first generation under which the debates of the Royal Court were much influenced by professional jurisprudence, Poingdestre's works, consisting of a Commentary on the *Coutume Réformée* (particularly relating to the law of real property), and a work on the old Custom of Normandy, extant only in manuscript, are considered of authority. The works of Le Geyt were published by the States in 1846–7, with a preface by Robert Pipon Marett, Esq., Your Majesty's present Advocate-General in the Island. Le Geyt's essays, as is not surprising, are characterized by the multifariousness of the authorities cited, and the uncertainty of the conclusions. As these defects are imputable not so much to himself as to the obscurity of the subject at that period, and to the fact that these writings were not prepared by the author for publication, they only show a dread on his part of hasty and peremptory judgment, and we therefore feel justified in attaching the greater value to any such clear information of reasonable customs, consistently followed, as may be gathered from him, from Poingdestre, and from contemporary records. He was at one time engaged in the compilation of the Laws of Jersey, but no copy of this work was comprised amongst his papers which came into the hands of the States. What purports to be a more modern but not very recent copy of it was produced to us, and was stated to have been occasionally quoted in the Court; but we are not in a condition to pronounce an opinion on its authenticity. It may not here be out of place to mention also two compilations in 1790, respecting the practice and procedure in civil, criminal, and mixed actions prepared under an Order of the Privy Council, one by MM. Pipon and Durell, the Law Officers of the Crown at the time, and the other by Mr. Hemery, a Jurat, and Mr. Dumaresq, the Constable of St. Peter's parish, and afterwards, as Sir John Dumaresq, Lieutenant-Bailiff of Jersey. An account of the circumstances which attended their preparation is contained in the first Report (p. xii.) of the Commissioners appointed by Your Majesty in 1846 to inquire into the state of the Criminal Law in the Channel Islands. Both compilations are considered to give a fair representation of the law as it then stood, and as it has, in substance, since continued; and they are frequently referred to as of authority upon the points to which they relate. They have been published, but are now scarce. We were fortunate in being favoured with the loan of a copy.

Pipon and Durell.

Hemery and Dumaresq.

Report of Commissioners of 1846.

Legislative Sources.

2. The legislative sources of the law of Jersey may be thus classified:—

(1.) Royal Charters.
(2.) Orders of the Sovereign in Council.
(3.) Laws passed by the States, or before 1771 by the Royal Court, and allowed by the Sovereign in Council.
(4.) Local Ordinances by the States, in force for three years without the express allowance of the Crown, if not expressly disallowed.
(5.) Acts of the Imperial Parliament.

Royal Charters:

(1.) Royal Charters.—Of these a list, commencing in the reign of King John, and brought down to recent times, is inserted in the Appendix (p. 260) to the First Report of the Commissioners of 1846 already referred to. The series, as there given, commences with an alleged charter of King John, the original of which is said to be lost. This charter was, until of late, we believe, universally, and is still by many, accounted the Magna Charta of the Channel Islands. The document is printed in the same Appendix just referred to (p. 72) Strong doubts are now entertained of its authenticity; but whether it be authentic or not, or whether it has been ascribed to a wrong era, is of little practical moment, for, of the privileges which are supposed to take their origin from it, some unquestionably existed long before, and all have been since established or confirmed by subsequent charters. The chief privileges granted or confirmed to the inhabitants of the Channel Islands by their charters, so far as they have any connexion with the subjects of our inquiry, are in substance these: a local judicature for each of the Islands of Jersey and Guernsey respectively, consisting of a Bailiff, appointed by the Crown, and 12 Jurats, elected from the native Islanders, with jurisdiction (subject to certain reservations and exceptions) in all cases civil and criminal arising within the Island; exemption of the Islanders from taxation without their own consent; and the right of importing into England duty free all articles of the growth, produce, or manufacture of the Islands.

(2.) Orders of the Sovereign in Council.—This mode of legislation is plainly derived from the supreme legislative power possessed originally by the Dukes of Normandy; and for a length of time it was the mode commonly pursued. Though now almost entirely superseded by the other modes, it has in modern times been occasionally, and may still be resorted to. But before Orders in Council can be executed in the Island, they must be registered by the Royal Court, and a command to this effect always accompanies them. This requirement is prescribed by an article in the code of 1771 (to be presently noticed), which at the same time allows the Royal Court to suspend its registration of an order considered to be contrary to the charters and privileges of or burthensome to the Island, until the pleasure of the Crown be taken (Code, pp. 159, 160); but if the Crown thereupon does not give way, there is no legal alternative but to register the order.

Orders in Council.

Registration of Orders in Council.

In an Order in Council of the 11th of December 1837, which established the present Prison Board, the following direction occurs, "And Her Majesty is further pleased to "order and direct that this order shall be immediately registered by the Greffier of the "States of the said Island of Jersey." The States, in ordering the Registration, made the following comment on the direction contained in the Order in Council: "Considérant "que la conclusion dudit ordre n'est point conçue dans les termes ordinaires, d'autant "qu'elle ordonne au Greffier des Etats de l'enregistrer immédiatement, ce que le Greffier "ne peut faire sans la sanction des Etats, les Etats ont ordonné que ledit Ordre sera "enregistré." We conceive that if an Order to register were, in the first instance, addressed by Your Majesty in Council, to their officer, instead of to the States, it would be a valid ground of objection, as it would tend to derogate from the privilege, above referred to, of taking the pleasure of the Crown previous to registration and its consequences.

We are, however, bound to state that the opinion which we have expressed as to the competency of the Sovereign in Council to legislate for the Island is at variance with that of Your Majesty's Procureur-Général for Jersey and some other learned members of the Island bar, whose opinions are entitled to respect. They consider that this important constitutional question has been settled, in accordance with the view which they take, by the late Order of Your Majesty in Council, dated the 29th of December 1853. The general nature of the circumstances attending the issue of that order may be thus briefly stated. Your Majesty in Council on the 11th February 1852, was pleased, without previously receiving the advice of the States of Jersey, to issue three orders; 1, for establishing a Court for taking preliminary proceedings in criminal cases and of summary jurisdiction; 2, for establishing a Civil Court for summary jurisdiction for the more easy recovery of small debts; and 3, for the establishment in the town of St. Helier and its vicinity of a new police in lieu of the then present establishment. By the first of these Orders certain salaries were directed to be paid by the States of the Island to the Judge and Greffier of the Court proposed to be thereby established. By the 2nd Order certain fees are prescribed to be paid by the suitors in the Small Debts Court and others, to the officers executing the process of the same Court; and the 3rd Order makes provision for the payment of the salaries and expenses of the new police, partly out of the revenues of the harbour of St. Helier and partly out of a new rate to be levied on certain of the owners and occupiers of property in the Island. These orders with the usual direction for their registration having been transmitted to the Island officials, the registration of them was suspended and a remonstrance against them was addressed to Your Majesty by the States, in which they contended generally for their right to initiate all laws intended to bind the people of Jersey, and pointed out specially "that while one of "the most important privileges of this Island is that of not being taxed by the Imperial "Parliament, in which it is unrepresented, no tax can be imposed upon the people of "Jersey except with the consent of the States by whom they are represented;" and, lastly, offered various objections of detail to the measures as framed in the Orders. Petitions from different bodies in Jersey for and against the orders were likewise addressed to Your Majesty; and in addition, six Acts of the States, framed with the same objects as the Orders in Council, and regularly passed by the States, were transmitted to Your Majesty in Council for Your Majesty's approval. All these several documents having been referred by Your Majesty to Your Privy Council, that body heard the various parties by their counsel at considerable length, and reported to Your Majesty that, "with respect "to the Orders in Council of the 11th of February 1852, although they appear to their "Lordships in their main provisions well calculated to improve the administration of justice "in Jersey, yet, as serious doubts exist whether the establishment of such provisions by "Your Majesty's prerogative, without the assent of the States of Jersey, is consistent "with the constitutional rights of the Island of Jersey, their Lordships have agreed to "report their opinion to Your Majesty, that it may be expedient to Your Majesty to

Three Orders of 1852.

Six Acts of the States in 1852.

" revoke the said Orders." And they further reported their opinion that it might be proper to give Your Majesty's assent to the six Acts passed by the States. Upon this report Your Majesty was pleased, by the Order in Council of the 29th December 1853, above referred to, to revoke the three Orders of the 11th of February 1852, and to confirm the six Acts of the States. Another and more recent instance relating to the prerogative in question was referred to before us. In 1857 an Act relating to taxation was passed by the States and transmitted to Your Majesty in Council for confirmation; it
1857. was returned confirmed, but with certain additions. The States having remonstrated against the additions so made, Your Majesty in Council was pleased to recall the Order. From the above we are not able to infer more than this,—that the prerogative of Your
The Royal Prerogative limited by the Charters; Majesty to legislate in Council for Jersey may be subject to some limitation, as, for example, when the proposed object of legislation trenches upon any of the chartered privileges or liberties of the Island, in which, as we have pointed out, is included the exemption of the Islanders from taxation except with their own consent. But we cannot reconcile the right claimed of initiating all acts of legislation in the States with the facts, first, of the admission without question for a long period of time previous to 1853 of many successive Orders of the Sovereign in Council, which had not been submitted to the
but not destroyed. States, and, secondly, of the recognition, now as well as heretofore, of the authority of the Imperial Parliament to legislate for the Island, in like manner without the concurrence of the States.

Acts of the States confirmed in Council. (3.) Laws passed by the States, or, before 1771, by the Royal Court, and allowed by the Sovereign in Council.—A full description of the constitution of the States, previous to 1856, and of the mode of choosing the members of that body, will be found
The States: their former in the first Report of the Commissioners of 1846 (p. ix.) The States then consisted of the Bailiff, as President, and 36 members possessing votes; viz., the 12 Jurats elected for life by the ratepayers at large of the entire Island, the Rectors of the 12 parishes, and the 12 Constables of the same parishes, elected for three years by
and present Constitution. the *Principaux* of their respective parishes. To these have since been added, by a law passed in 1856, fourteen Deputies elected for three years—three for the parish of St. Helier, and one for each of the other parishes. The States cannot meet without the consent of the Governor or Lieutenant-Governor; and he may negative any Act passed by that body. The Bailiff has the power of temporarily suspending the decisions of the States by his dissenting voice; but he is in that case bound to state his reasons to the Secretary of State.

The Royal Court. The Royal Court, consisting of the Bailiff and the 12 Jurats, appears for several ages to have been regarded as the only legislative body within the Island. It is probable that at first the Sovereign made laws without consulting, as a matter of course, any body of persons there. Afterwards, he appears to have previously required, but not invariably, the advice of the Bailiff and Jurats; with these were sometimes associated the Rectors, Constables, and other notable inhabitants. It was not until the latter end of the 16th century that the recent composition of the States as a regularly organized body appears to have been recognized; and for nearly two centuries afterwards, laws were passed sometimes by the Royal Court and sometimes by the States, both kinds being deemed of equal authority, if sanctioned by the Sovereign in Council and duly registered
The Jersey Code, 1771. in the Island. In 1771, "*the Code*" was compiled and published. It consists of a little volume of 335 pages, containing the substance if not of all, at least of most of the written laws then in force, with some additions. It was agreed upon by the States, and received the Royal sanction. The Order in Council ratifying it declares " That all other political and written laws heretofore made in the said Island, and not " included in the said Code, and not having had the Royal assent and confirmation, " shall be from henceforward of no force and validity. And His Majesty doth hereby " order that no Laws or Ordinances whatsoever, which may be made provisionally, " or in view of being afterwards assented to by His Majesty in Council, shall be passed " but by the whole Assembly of the States of the said Island; and with respect to such " provisional Laws and Ordinances so passed by them, that none shall be put or remain " in force for any time longer than three years, but that the same, upon its being " represented by the States to His Majesty that such Laws and Ordinances are found " by experience to be useful and expedient to be continued, shall, having first obtained " His Majesty's Royal assent, and not till then, be inserted and become part of the " Code of the Political Laws of the said Island." The last article in the Code provides for any omissions from it of laws then in force. It runs thus:—" Il est entendu ne " point déroger en aucune manière, aux Priviléges, Droits, Immunités, Franchises, " ou Libertés, accordées à cette Isle par Sa Majesté et Ses Prédécesseurs, ni impugner " ou infirmer les Ordonnances, ou Loix établies par autorité Royale, et non rappellées

" quoique tels Priviléges, Droits, Immunités, Franchises, Libertés, ou Loix, ne soient " point insérés, ni rapportés dans ce Recueil."

Since the publication of the Code, from 80 to 100 laws have been passed, and have received the Royal sanction. In 1845 a collection of most of them down to that date was published by authority of the States in a moderate-sized 8vo. volume, entitled " Lois et Réglemens des États de Jersey qui ont reçu la Sanction Royale depuis 1771." Additions have since been made to it. According to the present practice, as laws are passed and registered, they are printed and published by the authority of the States. The whole of what may be termed the Statute law of Jersey does not equal in bulk the Acts of a single short session of the Imperial Parliament. Lois et Réglemens.

Ordinances, having or supposed to have the force of law, were, in the course of our investigation, occasionally cited, under the designation of *Ordinances of Royal Commissioners*, and sometimes in a mode calculated to convey an impression that a delegated authority had been committed by the Crown to such Commissioners to make and pass laws for the Island. It may reasonably be questioned whether the Crown ever did or could delegate such a power. But it appears, on investigation, that, in every such case, the Commissioners, independently of judicial powers in some instances conferred upon them, had authority only to inquire and report what new laws were required, or else to frame laws which were to be submitted to the consideration of competent authority. For instance,—certain Ordinances of 1562, usually termed "The Ordinances *of the* " *Commissioners of Queen Elizabeth*," were framed (as stated by Mr. Le Quesne, formerly a Jurat of the Royal Court, in his Constitutional History of Jersey, a work of which we have occasionally availed ourselves in the preparation of this Report,) " with " the advice, the concurrence, and assent of the Bailiff and Jurats of the Island;" but we have reason to believe that they were afterwards remodelled by the Queen, and in that form received Her assent. We shall have occasion to refer to them hereafter, with reference to certain prohibitions they contain, on the forensic practice of executive officers and others. Their binding validity was much debated before us, but with reference more to the question of their registration or non-registration, than to the source from whence they emanated. Ordinances of Commissioners.

(4.) Local Ordinances of the States, in force for three years, without the express allowance of the Crown, if not expressly disallowed. Of these there are generally a few in force, and occasionally some of them are renewed from three years to three years. The enactment of them is of course subject to the same restrictions on the part of the Governor and Bailiff as are before mentioned with reference to permanent laws framed with a view to receive the Royal assent; and they must not be contrary to established law. Local ordinances.

(5). Acts of the Imperial Parliament.—The competency of Parliament to legislate for Jersey is unquestionable; but the interference of the British Legislature, except in matters of a fundamental nature, *e. g.* for regulating the succession to the Crown, &c., or upon other subjects universally applicable to the whole empire, and perhaps in some other special cases, is unusual, and would be viewed by the Islanders generally with dissatisfaction. The ordinary legislature of Jersey consists of the Sovereign in Council and the Island States. Acts of the British Parliament do not apply there unless such an intention distinctly appears. What words would be sufficient for this if the Island be not named has been a subject of discussion; but as it must always be a question of intention in each case, we see no object in anticipating it. The Code of 1771 says (p. 160), " Quant aux actes de Parlement où l'Isle est rapportée, et dans lesquels elle est " intéressée, ils doivent être exemplifiés en forme, sous le Grand Sceau d'Angleterre, et " envoyés en ladite Isle, et là être enregîtrés, et publiés, afin que les habitans en aient " la connoissance pour s'y conformer, et éviter les peines des transgressions." An Act of Parliament intended to apply to the Island is, by the modern practice, transmitted in print and not by exemplification under the Great Seal, and is accompanied by an Order in Council directing its registration, with a protestation that registration is not necessary to give validity in the Island to the Order or to the Act, but that the registration is merely by way of notification to the inhabitants. This form was first used in 1806, in transmitting the Mutiny Act of that year; subsequently it was used on several occasions, until 1833, since which year it has been invariably followed. There was much discussion before us as to the effect of registration. The following appear to be the conclusions derivable from our examination of the Island lawyers, and embody our opinion upon this branch of the subject.—1. Where the whole Act in terms includes Jersey, it is obligatory by its own force without registration, though registration is convenient for promulgation. 2. Where part only of the Act in its terms applies to Jersey, such part only is law there, and the Order of Council in general terms for registering the Act does not extend the Acts of Parliament. Their authority.

rest of the Act to Jersey. 3. Where an Act of Parliament, not either wholly or in part applied to Jersey in express terms or by necessary implication, is applied to Jersey by an Order in Council, it derives its force there from the Order in Council, and falls within the second head of the present division of the subjects.

Great uncertainty prevails as to the law.

We have thus indicated the regular sources of the law of Jersey. But we think it right to add, that an extraordinary degree of uncertainty prevails as to what is or is not law; and that many practices and rules of law exist of which no traces can be discovered in the old Coutume, and which cannot be referred even in a slight degree to any of the sources above enumerated.

II.—Tenures of Land, the Rights of Feudal Lords, and the different Interests in Land.

Real Property.

The basis of the Law of Real Property in Jersey is the general Feudal Law, as qualified by local circumstances, but much less altered by legislation than in England.

Allodial land said to exist.

Some very small parcels of land are said to be allodial; but whether this is strictly the case, or whether the evidence of tenure has been lost, may not be clear, as the boundaries of manors are subject to dispute. With these trifling exceptions, if they be such, the Sovereign is the feudal lord paramount of the entire soil of Jersey, comprising an area of about 40,000 acres, at the highest estimate, and divided into numerous manors.

Manors. Customs are uniform.

There are no tenures by special custom of particular manors. The customs of the several manors are nearly uniform; so that what is evidence of the customary law in one manor is, in most cases, evidence of the custom in others. There are no copyholds in the Island.

Alien priors.

There are now in the hands of the Crown several manors, most of which belonged of old to abbeys and priories in Normandy and Brittany, and were held by them in Frankalmoign. These latter were confiscated by Henry V. in the beginning of his reign, and they have since remained in the hands of the Crown, with the exception of some granted to mesne lords.

Manors.

The manors held immediately of the Crown are stated to be about 33 in number. About 12 of these are held by Knight service, to which Homage is annexed; and the remainder by Fealty and Homage. In several instances, additional services of various kinds are reserved. Again, there is a considerable number of manors, carved out of the fiefs in chief, and held by inferior lords, *en Vavassorie*, by tenures corresponding with our Socage tenure. Though subinfeudation is not forbidden by any law ever applicable to Jersey, it has for a long period been obsolete. One instance of it, indeed, was mentioned to us as having occurred as recently as about 1732; but according to the existing practice, whenever a tenement is sold, the purchaser is considered to take the place of the vendor absolutely, and to hold immediately of the lord of whom the vendor previously held. On some of the manors there are common lands, upon which the tenants of the manors have certain rights, the freehold being in the lord. With the exception of the common lands, and of such portions as the lords retain in their own hands, the lands of the several manors (for the most part extremely rich and productive) are parcelled out, generally in small portions, amongst a very numerous body of freeholders, tenants in fee, who usually cultivate their own properties, and may be characterized as a thrifty, intelligent, and, for their station in life, well-educated body of persons. The number of owners of real property in the Island was stated in evidence before us to exceed 4,000. This estimate, which we do not think exaggerated, includes, we believe, the owners of *rentes*—fixed annuities charged upon land, which by the law of Jersey are real property. It also includes the proprietors of houses in the town of St. Helier, containing 35,000 inhabitants, out of an entire population of 65,000. Still, allowing for both of these classes, the number of rural proprietors is very large compared with the acreage: 20 acres are considered to constitute a good sized farm; and there are no large estates. Scarcely any, as we were informed, exceed 300 acres, and there are very few of that extent. Most of the owners of land have other means besides their landed property. We mention these circumstances in order to indicate in some degree the social position of the class of persons who are mainly interested in the questions with which we have to deal in reference to the present branch of the subject.

Subinfeudation scarcely known.

Knight service.

We have spoken above of Knight service as an existing mode of tenure. It has not been abolished by any law in Jersey answering to the English Statute of 12 Car. II. c. 24, and in strictness its performance might be required in case of an invasion of the Island. By one of the ancient privileges of Jersey, neither it nor Homage can be demanded out of the limits of the Island. The formal abolition of Knight service

would, we consider, be unpalatable to the seigneurs of the military fiefs, who appear to take a pride in holding by a tenure so ancient and honourable, and it is not attended with any practical inconvenience.

Of the 12 manors held by Knight service, five—namely, St. Ouen, Rozel, Melesche, Trinité, and Samarés—claim to be *Fiefs Haubert.* As such they enjoy a superior degree of dignity above the remaining seven. They owe, besides ordinary Knight service, certain honorary services (varieties of Grand Serjeanty) in case of the presence of the Sovereign in the Island. In other respects they are distinguished by several peculiarities: the seigneurs are entitled to certain prerogative precedence—at the Royal Court, for instance; they may vote by their guardians in Parish Assemblies; in name they are *Hauts Justiciers;* their fiefs, on a descent to females, are divisible into as many portions as there are heirs, not exceeding eight, and each parcener is entitled to hold a separate Court for her portion; whereas the other fiefs are indivisible. Formerly the *Fiefs Haubert*, and they alone, were subject to Wardship (*Garde Noble*); the last instance of the exercise by the Crown of this right occurred in St. Ouen's manor about 250 years ago; since which time the right has been abolished by an Order in Council of Charles II. Whether these fiefs can be sold without the licence of the Crown seems disputable: inferior fiefs, it would appear, may be so sold. On the death of the seigneur of a *Fief Haubert* without issue, his collateral heir succeeding to the fief is exempt from the *Année de Succession* (of which we shall have to speak presently with reference to other manors and tenements); this exemption was established in 1830 by the Privy Council in the case of the Attorney-General *v.* Symonds, 1 Knapp, 390. We are not aware of any other generic difference between the *Fiefs Haubert* and other fiefs.

Fiefs Haubert,

their peculiar descent.

Wardship.

There is some variety of inferior services—varying in different manors—due from the tenants in capite to the Crown, from inferior to superior lords, or from the tenants to the lords of manors; such as small annual rents (seignorial rents) in money or in kind (often of very trifling amount), or villein services of different sorts, *e. g.*, a certain number of days' labour annually, the carriage of the lord's crops, &c. Some of these latter have been commuted for money payments. In the eastern part of the Island, the freehold tenants of certain of the Crown manors, are bound to furnish a specified number of halberdiers for escorting prisoners, attending the *Cour d'Héritage*, and assisting at executions of criminals; in other manors in the same part of the Island every freeholder is bound to furnish one such halberdier for similar purposes. The Viscount summons as many as he thinks necessary when an occasion arises for their services; but owing to modern arrangements which in a great measure supersede the necessity of calling them out, this kind of duty has now become extremely light. No complaints of it were made to us.

Inferior services.

Suit of Court is one of the feudal services known to the law of Jersey and still observed. It is due to the Crown from about 16 of the tenants in capite, once every term, or twice a year, at the Cour d'Héritage. "At the Assize d'Héritage, or first day of sitting," says Le Quesne, "the principal feudal seigneurs, or lords holding "*in capite* from the Crown, are bound to appear, and to answer to their names, either "by themselves or by procureurs duly authorized by them, when called on by the "Procureur-Général. Three consecutive defaults are followed by the resumption of the "fief by the Crown. The Lieutenant-Governor is usually present at the Assize "d'Héritage, where he owes comparence et suite de Cour as the representative of the "bishops, abbots, and abbesses of former days, who possessed fiefs and property in "the Island, till they were taken possession of by the Crown." The appearance is merely ceremonial, no substantial duties being performed by the seigneurs. We believe no instance is known of a forfeiture of a fief for non-appearance.

Suit of Court.

The manors which have come into possession of the Crown by escheat or otherwise, and also manors belonging to subjects of Your Majesty, have each their separate feudal Courts. In some instances, where several manors have been united in the hands of the same lord, a single Court is held for the united manors. The seigneur cannot sit in person in his own Court as judge: he appoints a Sénéchal—generally a professional lawyer—who acts for him, and who is sworn into office in the Royal Court. The form of oath, prescribed by the Code of 1771, contains the words "que vous admin-"istrerez bonne et briéve justice, selon les Loix et Coûtumes du Pays, et usage du "Fief, s'il y en a, sans acception de personne; que vous porterez respect à la Cour "Royale, et vous montrerez obeissant aux Ordres et Sentences d'icelle." From the decisions of the Manor Courts there is an appeal to the Royal Court—in the first instance to the Nombre Inférieur, and thence to the full Court. In some manors there is a customary obligation of attendance of all the *franc tenants;* but in the greater number they only attend when specially summoned. A fortnight must elapse between

Seignorial Courts.

each sitting. In point of fact, however, there is great diversity with respect to the frequency or regularity of sitting. In some manors Courts have not been held for many years; and there are but few in which the holding of them has been frequent. The object with which they are commonly held is in order that the tenants of the manors may make their *aveux*. The *aveu* is a written statement, made and signed by the tenant, and delivered in Court to the Seneschal, containing a detailed description of all the real estate possessed by the tenant in the manor, and of all rentes due upon that property. He is not bound to attend and make his *aveu*, unless he receives notice to do so; and he cannot be called upon to make an *aveu* more than once in his life, unless he acquires other property in the manor, in which case he may be called upon to make a new *aveu*. If the *aveu* be withheld or be insufficient, he is condemned in default to present a correct *aveu* at the next sitting of the Court; and after the fourth default, the Court orders possession of his real property in the manor to be delivered to the lord, until he shall have given a correct *aveu* at some future sitting of the Court. The practical use of the *aveu* is to ascertain correctly and keep in remembrance the lands composing the lord's fief, and the property of each tenant, with a view to the exercise of the lord's feudal rights, more especially of his claim to the "*Année de Succession.*"

Aveu.

Année de Succession.

This last-mentioned claim (answering, in its main features, to the ancient feudal privilege, in England and elsewhere, of Primer Seisin, of which indeed it is a variety) is a claim on the part of the lord to hold, for a year and a day, and for his own benefit, the lands in the manor of a tenant dying without lineal heirs. The claim is in specie, to the possession of the land itself, and not to its value. It prevails against the collateral heirs, but is subject to the dower of the widow, or the curtesy (*franc veuvage*) of the widower, of the deceased tenant; the lord's possession of such lands as come to the widow or widower in respect of dower or curtesy being postponed until the death of the widow or widower. It is in like manner subject to any other existing life-interest. If the land is out on lease, the lord is entitled to the rent reserved, but not to the possession of the land. His right prevails in priority to and against a devise by will of the tenant's estate. He also takes the property without being obliged to discharge any incumbrances affecting it; thus, if *rentes* are charged upon it, he holds it for his year of privilege without paying the *rente* due for that year, which nevertheless the collateral heir succeeding to the estate charged is bound to make good to the owner of the rente. The claim to the *Année de Succession* has been extended still further, namely, to *rentes* (which we have already stated are real estate) belonging to any person, whether an owner of lands in the manor or not, who may die without lineal heirs, where the rentes issue out of lands in the manor. It seems difficult to reconcile this latter claim with the lord's claim of exemption from the payment of *rentes* issuing out of lands taken by him for his year of privilege. It appears to us, indeed, that a very considerable doubt attaches to the legality of the double claim; the amount of proof of the usage, in fact, though large, not being equal to that in the case of lands, and the reasonableness of the usage, if established, being more liable to question. This must be so; as it will be obvious to argue that, if on the authority of a recent case, the lord is entitled to hold discharged of such rentes, it must be because he comes in by title paramount; that though there may, according to the Vieux Coutumier, be tenure of a *rente*, yet the owner of such a *rente* as is here in question is certainly not the lord's tenant; that the lord therefore has nothing to do with the tenant's private encumbrance; but that even if (being affected with notice of them by the *aveu*) he can elect to take the holder of the *rente* as his tenant to that extent, he cannot be entitled to more than the entire profits of the tenement holden of him, and must therefore by such election to that extent discharge the tenant of the land, who would have been primarily liable. It is, however, proper to add that the lord's claim to the *Année de Succession* at all, but more especially so far as respects *rentes*, is not altogether unquestioned, and is now, we understand, under judicial consideration; a circumstance which precludes us from pronouncing whether, in the main, it be or be not a well established and unquestionable right, whatever private opinion we may, collectively or individually, have formed upon the subject. Much evidence was adduced before us in support of the claim, from which it appears that in point of fact it has been generally exercised for at least the last 230 years, beyond which period the regular records of the Manor Courts do not in general extend; and evidence of its existence much earlier has been adduced. Formerly, on the termination of the *Année de Succession*, the heir sued out from the Manor Court a grant of *Main-levée*, plainly another name for *Ousterlemain*, giving the collateral heir possession of his inheritance. But this practice has wholly ceased since 1812, possession being now given to the heir without that formality. Closely connected with the *Année de Succession*

On *rente.*

is the right of the lord to hold the estate of a tenant on his manor, "*par voie de garde*," upon his death, and on the non-appearance of the heir, or upon a *décret* (which may here be described shortly as a foreclosure and redemption suit) being conducted on his estate, in which case the lord claims to hold for his own benefit until a *tenant après décret* be made to the estate. The first instance seldom occurs; the second case is rather more frequent, but, from the short time during which a *décret* now lasts, is somewhat rare.

The remaining rights of the feudal lords are neither numerous nor of much importance. The lords of some fiefs have a privilege of cutting and collecting the *Vraicq* or sea-weed (a manure much prized in Jersey), for a certain period before the generality of the people, the time for collecting it being regulated by law. This right, which is of some but no great value, is still exercised, and we did not hear it complained of. The *Droit de Moulin* or *Secquemotte*, by which the tenants of certain manors were bound to bring their corn to be ground at the lord's mill, and to keep the mill in repair, is said to be an existing and recognized right; but it has fallen into disuse, being now utterly valueless. The *Droit de Colombier*, or special right of keeping pigeons, is quite obsolete.

Vraicq.

Of the casual rights and profits of the seigneurs, one is the *Année de Succession* already mentioned. Of the other ancient feudal rights of this class, *Wardship*, so long as it existed, affected only the seigneurs of the *Fiefs Haubert*, as we have already stated. If *Aids* were ever due, they have fallen into complete desuetude. The right of *Marriage* (*Droit de Noces*) is now evidenced only by a customary composition, in the form of a payment to the Lord of 1½*d.* (rarely, if ever, exacted) on the marriage of a tenant under age. *Reliefs* (with which the *Année de Succession* has sometimes been confounded) are due in the following cases. With a few exceptions, the fiefs held of the Crown pay on all successions, lineal as well as collateral, certain fixed sums, specified in the Extente of 1668, which vary from 15 sous to 10 livres, except in one instance where the Relief is 100 shillings. These, we believe, are regularly collected by Your Majesty's Receiver. Reliefs on successions are not payable in any other instances. On all alienations, Reliefs (*saisine et désaisine*) are due to the lord, by a custom of uniform and universal application, the amount being 1½*d.* from the buyer and a like amount from the seller; but this trifling due is seldom demanded. When property is conveyed to a Corporation, sole or aggregate, whereby it falls into mortmain, the lord of the manor in which the property is situate is entitled to compensation (to be assessed by the *Vicomte*) for the loss which he thereby incurs of his casual profits. This right was established against the Crown purchasing property for a public object, in a case decided by the Privy Council in 1837 (Thornton *v.* Robin, 1 Moore's Privy Council Cases, 439), a decision which, we understand, has since been acted upon in one or more later instances of similar purchases. The lord is further entitled to the *Escheat* of the real estate of tenants dying without heirs, or convicted of crimes involving death or banishment, and in some instances—by special grant from the Crown—to the goods and chattels of convicts. Where his manor borders on the sea he is also entitled to *Wreck*, except certain things which belong to the Sovereign in right of the Crown.

Année de Succession confounded with Relief.

Escheat.

We believe we have now enumerated all the rights appertaining to the feudal lords. Any which may possibly have escaped our notice or been overlooked by the witnesses from whom we sought for information upon the subject, must be extremely trifling and unimportant.

The only seignorial claim much complained of, or, as we think, involving a serious practical grievance, is that of the *Année de Succession*. As we have shown, the collateral heir, succeeding to the inheritance, is for the first year not only deprived of the possession of the estate, but actually out of pocket, because he has to pay the *rentes* due upon the lands for the same year; and there are few properties in the Island which are not charged with *rentes*. But in many instances, the seigneurs have been extremely indulgent: they have frequently allowed the heir of the deceased tenant to enter at once, and have accepted a composition for their right much below its real value; this indulgence, however, has led to disappointment in those cases where the lords, as they were entitled to do, have chosen to exact their claim in full. Hence the assertion of the right is attended with a good deal of dissatisfaction and irritation, and we believe that most of the seigneurs themselves would be willing to commute it for a fair equivalent. We think that such a commutation would be expedient, and that, if practicable, it should be rendered compulsory. Were it to be altogether voluntary, we apprehend that it would either fail (which appears the more likely result), or be very slowly effected. There would often be a want of sufficient present inducement for the owner of a tenement voluntarily to incur expense in order to redeem his property from a claim which, if he had issue, would appear remote and contingent, or, if he had none, would

Commutation.

on his death, affect only more distant relatives. At the same time, a compulsory commutation is not free from difficulty: if, for such reasons as we have stated, the tenants of manors would be reluctant to commute voluntarily, for the very same reasons they would be dissatisfied with the imposition of a present and certain burthen for the redemption of one distant or problematical.

A *Projet de Loi*, to authorize voluntary commutations of seignorial rights, recently passed by the States, is now, we understand, under the consideration of Your Majesty in Council. Although, if it should be passed into law, doubts may be entertained respecting its success, yet we venture to suggest that it may be expedient to try its effect, as we are unable to devise any method, which would be free from objection, of overcoming the difficulty to which we have adverted.

Quantity of estates.

We now proceed to describe the several kinds of property in real estate, with reference to the degree or quantity of interest.

There are only two species of freehold estate known to the law of Jersey; an estate in fee simple (*à fin d'héritage*), and, in some few exceptional cases of privileged lands, an estate tail.

According to the general rule, the law of Jersey makes no division of the freehold. Ordinarily, an estate in fee simple is the mode in which real property is held. Most properties are, to a greater or less extent, charged with perpetual incumbrances, in the shape of *rentes;* but the *rente* owner has no actual estate in the land itself, corresponding with the *legal estate* of an English mortgagee. He cannot interfere with the possession of the owner of the fee, so long as the *rente* is regularly paid, nor can he ever demand to be paid off. He has merely, in case of the *rente* falling into arrear, a right of action, enabling him, by a judgment of the Royal Court, in a manner to be hereafter explained, to dispossess the freeholder, and enforce his security. The land in the hands of subsequent owners whether by descent or purchase continues liable to the exercise of this right.

Rentes, perpetual incumbrances.

Descent.

The law of descent differs from that of England. All the children are entitled to participate in the inheritance. If there are no children, the estate goes amongst the next in blood, but only to the 7th degree according to the computation of the Canon Law. If there are no kindred of or within that degree, the estate escheats to the lord. The descent, however, to the several persons entitled to participate is not immediate. Upon the death of the owner the entire estate (and this is true as well of personalty as of realty) devolves, in the first instance, upon the eldest son, who is styled "principal heir;" and he is entitled to hold it for his own benefit until a *partage* is demanded by some of the other children, or their representatives; if no such demand be made for 40 years, his title to the whole becomes absolute, and the other heirs, and all claiming through them, are barred. Sometimes the principal heir himself finds it necessary to require the *partage*, as, for example, where he proposes to dispose of his own share, which he cannot well do with any certainty without a *partage*; but it is more usually required by some of the other children.

Partage.

In the great majority of cases the *partage* is effected by private arrangement or by arbitration. Where disputes arise, and the parties will not agree to refer the matter to arbitration, a suit may be instituted. But whichever mode be adopted, the *partage*, when completed, must be formally passed before the Royal Court and registered: the several parceners then, and not before, acquire the freehold in their respective shares. In the meantime, the co-heirs have certain equitable rights against the principal heir, dating from the period of their demand for a partition. He must account to them for the income of their respective shares between the demand and the completion of the *partage*. If, pending the proceedings, he draws back or attempts to create delay, the Court compels him to deliver to his co-heirs what is termed a *portion de vivre, i.e.*, a portion of the income of the estate calculated on an estimate of the value of their presumed shares. The amount is determined by the *Greffier* under the order of the Court. The costs of the *partage* fall upon the party demanding it—a rule, in our opinion, inconsistent with reason and justice. We think that the costs ought to be defrayed out of the estate, and we recommend an alteration of the practice in this respect.

Partition.

The partition amongst the children is not equal. In the first place the eldest son has a certain privilege above all the other children; he is entitled to the dwelling-house and its curtilage, to a small portion of land, of his own selection, equal to a little more than two English acres, and, besides, to one-tenth in value of the remainder of the property. He takes, besides this, a small portion of land "*pour les mousquets*," that is, nominally to enable him to furnish his contribution to an ancient assessment for the militia. This contribution, however, at the present day, is never exacted, as the War Department supplies the militia with rifles; and a *Projet de Loi* is

Les mousquets.

at present before the States to abolish this claim of the principal heir, on the ground that the cause has ceased which originally entitled him to the privilege. All this he takes before the partition is made. The rest of the property is then divided amongst all the children, including the eldest son, in the proportion of two-thirds amongst the sons and one-third amongst the daughters, but with this qualification, that no daughter shall take a greater share than a younger son. Where the estate goes to collateral heirs, in default of children, there are some variations in the rules of partition, and some difference is observed with reference to the *propres*, or patrimonial property, and the *acquêts*, or purchases of the deceased; but we think it unnecessary, as respects the objects of our Commission, to go into the details of these rules, which are well understood in the Island, and give rise to no difficulties. Estates derived *ex parte paternâ* will not go to the collateral heirs *ex parte maternâ*, nor *vice versâ*.

Succession to real estate.

For the purpose of effecting the partage, there are in each parish, appointed by the Parochial Assembly, six official appraisers, a certain number of whom may, in the case of a partition, be called upon to value the property of the deceased in their parish. After the principal heir has exercised his prerogative, the remainder of the property is divided into lots (*têtes de partie*); of these the sons have the first choice in the order of their births, and then the daughters in a similar order. The several lots are made as nearly equal as circumstances will allow; but in the arrangement of them certain rules are observed: as concerns land, the lots are set out by metes and bounds, for it is not the practice to assign to two or more of the parceners undivided shares in common. A house with its appurtenances constitutes a single *tête de partie*, even though exceeding in value the average of the other lots. A fief also is indivisible, except in the case of a *fief haubert* descending to females only, as before observed; in other cases the fief does not necessarily descend to the eldest son; it merely forms, either alone or with some other property of the deceased, a single *tête de partie*; if the eldest son, who has the first choice, selects it, he becomes the lord of the manor; if not, one of the others gets it for his share. *Rentes*, which, as we have already explained, are real property, may be subdivided, and frequently are so with a view to the equalization of lots.

Method of partition.

It is not an uncommon practice, as we were informed, for the younger children, especially in early life, to sell their shares to the eldest son, and to take to some other occupation than the cultivation of land, a seafaring life, for example; but when they return to the Island in after life they almost invariably buy a house and land, if they have acquired the means. The Islanders, it was stated, are still remarkable for what has always been a characteristic of the Norman race, a great desire to possess landed property, and make great exertions for that object.

We do not consider that it would be desirable to alter the law of succession to real estate in Jersey. It is true that it tends to the subdivision of property, an evil to which some of the best educated and most intelligent of the witnesses whom we examined, were by no means inattentive; but this tendency is in some measure checked by the privileges of the eldest son, in which respect the Jersey system differs from and is preferable to that of France. The system, as it exists, suits the people, and meets with their approbation. One question, however, connected with it naturally occurs, namely, whether the right of the younger children to a *partage* should not accrue immediately on the death of their parent, without a formal demand for the purpose. On consideration, we think not. That the eldest son should have some advantages over the other members of the family is both reasonable and socially beneficial, and the privilege to hold the property for his own benefit, until the demand for a partition is made, may still, we think, continue to be one of such advantages. No complaints of this privilege were addressed to us, and it is further to be remarked, that an alteration to this effect would necessarily involve the introduction of a system of trusts, unknown to the law of Jersey. We shall have occasion to recur to this hereafter.

The law of succession.

We think that the period of 40 years, allowed to the co-heirs to claim partition, although the ordinary period of prescription in real actions, is too long. It seldom happens, as we were informed, that so long a period as ten years is allowed to elapse, before a claim is made. One instance, indeed, was brought to our notice, where a *partage* was not demanded until 28 years after the death of the parent of the claimant, owing, according to the statement of one party, to her inability to encounter the expense; but so long a delay is, we understand, extremely rare. We recommend that the period be shortened to 15 years, allowing, in cases of infancy or absence from the Island at the time of the death of the deceased owner, an alternative period of five years from the attainment of majority or return to the Island.

Recommendation as to *partage*.

In a subsequent part of our Report, we shall have occasion to remark upon the constitution of the Royal Court, and its arrangements for the despatch of business. At present

The Royal Court unsatisfactory.

we would observe, that for the disposal of disputed cases of *partage*, we do not consider the Royal Court, under its existing arrangements, to be a satisfactory tribunal. In the case above referred to, as involving a delay of 28 years before a *partage* was claimed, one of the heirs, at the end of that period, commenced an action for the purpose, which, at the time of our inquiry, had been pending for 17 years, and was still on foot. Yet we were told that the case was one of no peculiar difficulty; that, if the parties could have been brought to refer the matter to arbitration, it might have been settled in half an hour; and that the plaintiff had not lost a single day, but had proceeded as fast as the existing machinery of the Court permitted. One of the other parties, indeed, had, it was alleged, thrown every impediment in the plaintiff's way, with a view to delay; but that circumstance does not, in our opinion, remove from the Court the imputation of inefficiency. With reference to another case, where the *partage* of a considerable estate of a very complicated character, had been speedily and satisfactorily effected by arbitration (though subsequent disputes arose respecting the past income), the Procureur-Général made this observation, that, "if the *partage* had been made in the Royal Court, it would have "taken a great many years to have settled the question." It was stated to us by an *Écrivain* of considerable experience in the Royal Court, that there were several cases of lawsuits for *partage* lasting ten years. For delays of this nature, two causes were assigned; first, the very limited number of opportunities in the year of taking any fresh step in the *Cour d'Héritage*, where alone this species of business is disposed of; and, secondly, the want of legal knowledge on the part of the members of the Court.

Bénéfice d'inventaire.

Before accepting the succession, the heir, if he have reason to consider the inheritance "damnose," is entitled to apply to the Court for the *bénéfice d'inventaire*. On this being granted, which is as of course, the *Vicomte*, after public notice, proceeds to the last residence of the deceased, and takes an inventory of the moveable effects, bonds, and securities. He also gives notice of and holds three more meetings, when all creditors are bound to come in and insert their different claims in the *inventaire*. In default, the claim, as against the estate is barred for ever. Within a year and a day the principal heir brings the inventory into Court, and summons his co-heirs also to make their election whether they will accept the succession of the deceased or repudiate it. If they accept the succession, they become liable on a *partage* to all the debts registered.

The heir accepting the succession without *bénéfice d'inventaire* becomes personally liable to all debts of the deceased, even if exceeding the amount of assets come to his hands. Whether it is preferable that the heir should be bound to the extent only of assets descended, may be a question; we are not, however, prepared to solve it.

The present system (under which he makes his election whether he will accept the estate, and with it all the liabilities of the deceased, or will renounce all his claims upon it), is simple in principle and in harmony with the other institutions of the Island affecting the distribution of estates (the owner's possession of which has ceased), and it obviates the necessity of trying at a subsequent period, and perhaps at the suit of several successive creditors, the difficult issue, so open to fraudulent misrepresentations, of the full administration of the assets. On the other hand, it necessitates the speedy establishment of all claims; thus depriving the creditor, by an event to which he is no party, and of which he may have no notice, of the ordinary term of prescription within which his right ought not to be barred. It appears to us that there is no middle course. Either the heir must have, as at present, the option of accepting or renouncing the estate, with an inquiry, binding on creditors, into the burdens on it, and an obligation in case of acceptance to discharge them in full; or the creditor must retain his entire rights, but against the amount of the assets only, not against the person of the heir.

Some further objections were made before us to the existing state of the law as to the liability of the heir, and as to some details of the *bénéfice d'inventaire*. The subject, however, was not much pressed, and while many very manifest grievances equally demanded our attention, we did not think fit to enter deeply upon this. As to the practice of *bénéfice d'inventaire*, it is indeed probable, that, as in most other cases of administration in Jersey, sufficient notice to absent creditors is not afforded.

To this our observations on those other cases will be applicable. Other amendments of mere detail, *e.g.*, as to the peril of engaging himself, in which the heir may be placed by inadvertently meddling with the assets, &c., the remedies, if necessary, can be better suggested by those who have minute local experience.

Estates tail.

We have next to consider the other species of freehold estate already mentioned, namely, an estate in tail. Entails did not exist in Jersey until early in the 17th century. In 1617 the States petitioned the Royal Commissioners, Conway and Bird, then in Jersey, in these terms: "For so much as this Island is much weakened by means of "continual partition which is made of lands and tenements among coheirs; it may please

" the King's Majesty, by your good means, to grant liberty unto such of the inhabi-
" tants as shall sue unto His Majesty to entail so much of their lands, rents, and
" tenements upon their heirs, to remain impartible, for the better maintenance and con-
" tinuance of their houses, as the parties shall be willing, or shall be thought fit."
This petition was complied with by an ordinance of 1619, confirmed by an Order in Council in 1635. The Governor, Bailiff, and Jurats, calling unto them His Majesty's Procurator there, were authorized to give patents, under the seal of the Bailiwick of the Isle, to all such persons as should desire it, to entail so much of their lands and rents upon their heirs, to remain impartible for the better maintenance and continuation of their houses, as the parties think fit; provided that the greatest entail exceed not 100 quarters of wheat, Jersey measure (now about 76*l.* sterling per annum). By virtue of this regulation several estates were entailed, but for some time the practice has entirely ceased. At present there are not many estates remaining entailed. Notwithstanding the entail, they may be encumbered or alienated, with the exception of certain fiefs, in which, by the patent, no sale can take place without the permission of the Crown.

Estates for life.

Life-interests (in which are included estates in dower, and estates by the curtesy) exist in Jersey, where, however, they are not, as in England, treated as freehold estates. The tenant for life is considered to have only the *usufruct*, whilst the immediate freehold and *legal estate*, as it would be termed in England, are vested in the owner of the inheritance. The distinction, however, is merely technical.

Dower.

With respect to dower, under the old law of Normandy the widow was entitled to take her dower on all the real property that her husband possessed at the time of the marriage, and likewise on all property that falls or would fall to him by inheritance in a direct line. The law of Jersey has preserved dower in that mode to the present time; but the widow has another privilege in Jersey which she did not possess by the old Norman law, that of taking, if she chooses, her dower on all the estate that the husband dies possessed of. If she elects to take the former, she must declare her intention so to do within 40 days of her husband's death. In that case she is not entitled to any share in her husband's personal estate. The real property of the husband cannot be freed from this liability, even by sale, except with the consent of the wife expressed in the deed of sale, and acknowledged by her before the Royal Court. In default of a declaration by her within the forty days to take her dower under the old Norman law, she takes it out of the property of her husband at the time of his death. In this case she is entitled also to a third of his personal estate; but if the personal estate has been exhausted in the payment of his debts, and any debts remain unpaid, she is liable to keep down the interest of one third of those which remain undischarged. In either case, her dower is one-third of the estate out of which she is dowable. Her third is sometimes assigned to her by private arrangement; but the usual mode is, that the widow sends an action to the principal heir to deliver her dower, and the parties are sent before the Greffier for the purpose. The principal heir furnishes a list of the property upon which the dower is due; the widow divides it into three portions; the heir then selects two of them, leaving the remaining third for the widow, who thus is interested in making a fair division.

Franc veuvage.

The *Franc Veuvage* of the husband corresponds with the estate by the curtesy in the law of England. If there has been issue of the marriage, the widower is entitled to enjoy all the real property which his wife had in possession at the time of her death, but only so long as he remains unmarried. If he marries again, he forfeits the enjoyment of the property.

It is stated that an estate to husband and wife and the survivor in jointure, historically familiar to English lawyers as a provision for a widow, is unknown to the law of Jersey, and that it could not be introduced without some modification of the law of inheritance. We are told, however, that it is used and much approved in Guernsey, where, therefore, such a modification, if necessary, must have taken place; and that lands may there be purchased to be so settled, descendible to the issue of both, or of either, as may be agreed.

Independently of dower and *Franc Veuvage*, life-interests are not very common. They may be created by contracts *inter vivos*, or (since 1851) by will. The usufructuary for life is not entitled to commit waste except by special grant in the contract or will, or except for necessary repairs. Successive estates for life are not known in Jersey. The creation of them by will is expressly prohibited in the Law of June, 1851, which for the first time authorized devises of real estate; and the more general opinion amongst the Island lawyers appears to be against the legality of their creation by acts *inter vivos*, though upon this question the advocates are not unanimous; no instance, however, is

known of an attempt to create them. But the usufruct of an estate may be conveyed to one person for life, and, subject thereto, the fee to another.

Estates for years.

Usufructuary estates for years may be granted in the same manner as freehold estates or life-interests are conveyed; and, when passed by a regular contract in Court, are good against all subsequent dispositions of the property. The law imposes no limit on the number of years in a lease; but long terms are very unusual. If the term does not exceed nine years, it will pass by parol, or by a written agreement unregistered; and in such a case will be good against the lessor and his heirs, as also against a subsequent purchaser of the freehold, provided it be specially excepted in his purchase deed. Whether, without such special exception, it would be good against the purchaser, is a disputed point, which we were informed is at present under the consideration of the Royal Court. Such an unregistered lease, in case of the insolvency of the lessor, is treated merely as his personal contract, and ranks with his unregistered or simple contract debts; and the lessee would not be entitled to the priority which would belong to him, if the lease had been registered. An unregistered lease for more than nine years is good only against the lessor himself; as against all other persons it is void altogether, and not merely for the excess above nine years.

Consequences of the system.

It will thus be seen, that in Jersey estates in reversion and remainder are restrained within narrow limits. The effects of this restraint, on the practice of the law and the state of society, are very important.

For, in the first place, all the intricacies of family settlements with executory devises, successive remainders, vested and contingent, and the multitude of perplexities arising from combinations not in the contemplation of the settlor, are avoided; and in the second, most of the restraints upon the free use of property arising from the present beneficial ownership or usufruct being disconnected from the dominion over it, are escaped.

Hence two most intricate heads of law are avoided, and except in the cases where limited interests, such as dower or curtesy intervene, or where personal disabilities exist, the land can at all times be applied according to the wants of the owners or of society.

We believe this simplicity of estates to accord with the wishes of the people at large, at least of the great majority of those of Island blood, who are naturally those most generally interested in real estate, and whose manners are conformed to the system of which it forms a part.

We believe also that this simplicity is, as long as it is in accordance with the wants of society, peculiarly desirable in a community so situated as this is, where great division of legal labour and consequent refinement of forensic practice are not to be expected.

Joint-tenancy, and tenancy in common.

Property may be held by two or more persons either in joint-tenancy or in common; and there appears to be no difference, on this head, between the law of Jersey and that of England, except that in Jersey not only is the presumption in favour of a tenancy in common, but express words of limitation in the conveyance are requisite, as we were informed, in order that the whole estate may devolve upon the survivors or survivor, instead of the undivided share of each owner descending to his heirs.

III.—The Alienation of Property inter vivos and by Will.

We next proceed to consider the rules by which the alienation of property is regulated; and first with respect to the alienation by real property by acts *inter vivos*.

Alienation inter vivos.

The owner of real property may alien and encumber it in his lifetime, and thereby wholly or partially disappoint his heirs; but he cannot give it to one of them in preference to the rest: should he attempt to do so, the conveyance may, within a year and a day after his death, be set aside by the co-heirs as a fraud upon the law of succession. On a sale of property, the entire price is rarely paid down in money: a part of the consideration almost universally consists in *rentes*, either created for the purpose and charged upon the property sold, or else previously belonging to the purchaser (issuing out of the property of some third person) and assigned to the vendor. The system of *rentes* is so closely connected with the greatest practical grievance resulting from the present state of the law of real property in Jersey, that a clear comprehension of it is important.

The system of *rentes*.

Excluding *Rentes Seigneuriales*, which are not now in question, *rentes* in ordinary use are of two kinds, *foncières* and *assignables*; *rente assignable*, again, is either *constituée* or *créée*. *Rentes constituées* are those which, on a sale of land, are reserved as a charge upon it by the vendor; and they have been for many centuries and still are irredeemable.

They were originally redeemable,

Rentes créées are those which, for a valuable consideration, are charged upon land, unconnected with a sale of the latter. Originally they were redeemable at the price paid for them when they were created; but doubts having arisen whether the right of redemption did not expire at the end of 40 years, a law was passed to the same effect

as we find inserted in the code of 1771, p. 159: "Toutes rentes créées à prix d'argent, "seront racquitables *à jamais*, en remboursant les acquéreurs ou les ayant droit du prix "de la vente"—an enactment which was merely a repetition of a pre-existing law. Under it, *rentes créées* become redeemable at any period. This state of things continued until 1832, when, for reasons, into which it is unnecessary to enter, then entertained by a majority of the States, but since generally condemned, a law was passed enacting, amongst other things, "Nul ne pourra créer sur ses héritages des rentes avec condition "de rachat, sous peine de nullité de telle condition." It thereupon became impossible to create redeemable *rentes* in any way. The baneful effects of this false policy are now extensively felt: charges upon landed property have multiplied, and are daily increasing, without any possibility of clearing them off. It is true that a landowner may, and frequently does, buy up a *rente* charged on his own land, and thereby render it dormant; but he cannot absolutely extinguish it; under the law of guarantee he takes it necessarily subject to all the debts and engagements of those persons who held it, incurred and registered prior to the date of its repurchase. It is only where such persons have discharged their engagements that the rent by repurchase becomes practically merged. *Rentes*, however, are sometimes absolutely extinguished by the bankruptcy of the owner of the land charged, and the renunciation by the *rente*-owner of his *rente*, a point which will be more fully explained hereafter. Prior to 1848, any *rente assignable*, after 40 years from its creation, if it had never been assigned, became *foncière*, that is, fixed as a permanent and not compulsorily assignable charge on the estate (*fonds*) whence it issued.

now irredeemable.

False policy of this.

Rentes were originally reserved and rendered in kind, commonly in so many quarters and subdivisions of quarters (Jersey measure) of corn, principally wheat. By the combined operation of two laws—the one in 1797, establishing the relative values of wheat rents and of the old currency of France (then used in Jersey); the other in 1834, establishing the relative values of the old French and of the English currency—*rentes*, except those payable to the Crown, and certain ancient parochial charities and rents-service, have in effect been converted into money payments of fixed amounts, though the denomination of quarters of wheat rents is still retained. A distinction is made between *rentes assignables* and *rentes foncières:* a quarter of the former represents about 15*s.* 4½*d.*, and of the latter about 16*s.* 7½*d.* sterling per annum. This difference in value arose when *rentes* were payable in kind, and when *rentes assignables* were redeemable; *rentes foncières*, being irredeemable, and necessarily retaining their quality of real property, were, on both those accounts, more valuable, and were therefore commuted at a higher rate. The mode of reckoning by quarters of wheat rents, which now mean nothing else than so much in sterling money, is circuitous and useless; still, as it prevails universally, and is not attended with any practical evil, we do not consider that it would be expedient to interfere with it, at all events with regard to existing *rentes*. We must here observe that all *rentes* of recent creation (*i. e.*, since 1848) are perpetually *assignables*, in consequence of a law passed in that year.

The price of corn rents fixed.

The term *assignable* requires explanation. *Rente* of another kind may be assigned by the owner to a purchaser of it, if the one agrees to sell and the other to buy. But a *rente* technically called *assignable* is clogged with this condition, that the holder of it may be compelled, by the owner of the land out of which it issues, to accept in lieu of it other assignable *rentes* of the same amount charged on other lands possibly belonging to third parties. As respects security of title, the condition of the *rente*-holder, on such a compulsory exchange, is not affected for the worse, it is rather improved; for by the law of Jersey the *rente*-holder has the security, not only of the land, out of which the *rentes* received in exchange, issue, but also of all the real property of the person who has forced the exchange upon him, including the land out of which the original *rente* issued. There is, however, another incident to assignable *rentes* which has, to some extent, been made a subject of complaint: the *rente*-holder may be compelled to accept in exchange for a single *rente* payable in one sum, a like amount in fractional parts charged on separate properties belonging to several proprietors, and situated in different parts of the island. This, however, is an inconvenience to which he voluntarily subjects himself; for the contract, or deed, creating the *rente*, always specifies the minimum amount of separate substituted *rentes* which the holder shall be compellable to take in exchange; and a purchaser of *rente* can make his own terms. The law of 1848, to which we last referred, prohibits the creation or subdivision of *rentes* in sums of less than one quarter each. This amount, though small, is, we think, fairly proportioned to the moderate means and small estates of the Island proprietors in general.

Assignation of *rente*.

The only recommendation which we have to make on this head is as follows:—That no *rente* to be hereafter created shall be irredeemable, except by an express

Recommendation as to *rentes*.

stipulation mentioned in the contract creating it, but in no case for more than five years; and that any stipulation making a *rente* irredeemable for a longer period shall be void for the excess; that such stipulation may be waived by the mutual consent of the parties; and that, subject to such period, the grantor, his heirs, and assigns, shall be entitled, on giving six months' notice in writing to the *rentier*, to redeem the whole or any part of the *rentes*, not being less than a certain amount at any one time, at the same price at which they were granted. In order to distinguish these new *rentes* from those now existing, it may be found convenient to designate the former by a different name, and perhaps also to require that they be reserved in sums of sterling money, and not in quarters of corn.

Conveyances.

All conveyances of real property, whether lands or *rentes*, take place by matter of record. A short and very simple deed (or *contrat*, as it is called) is drawn up, containing the names of the parties, the consideration, a description of the property, and the nature of the interest conveyed, and a warranty of the title by the conveying party. This contract is passed before the Royal Court consisting of the Bailiff and two Jurats, who sign it and cause it to be sealed with the seal of the Bailiwick; it is then registered, being transcribed verbatim and at length in the Register of Contracts. It is so completely a record of the Court that the parties do not even sign it: they merely appear, and having been sworn, express their assent to it. It expresses on the face of it that the parties appear before the Court (*devant justice*), and at the end of the document they are condemned by the Court to fulfil its conditions. If the contract be for a sale of lands in consideration of *rentes* assigned by the purchaser, it is termed simply a *bail;* in this case the transaction bears the character of an exchange, and there is a mutual guarantee of title, to the lands by the vendor, and to the *rentes* by the purchaser. If the price be partly in *rentes* and partly in money, or altogether in money, it is called a *bail et vente*. If the contract be for a sale for money only, it is a *vente*. We can speak with commendation in general of the system of conveyancing in Jersey, which is short, simple, and effective. But there is one improvement which was suggested to us by some of the Island lawyers, and which we could recommend, namely, that the parties to the contract should be required to sign it before it is passed by the Court. It was stated to us that some few instances have occurred in which mistakes were made that might have been prevented by such a precaution, and which were held to be irremediable, as there could be no averment against the record. The remedy is simple, and in our opinion need not be productive of expense, though one of the advocates appeared to apprehend that it might be attended with that disadvantage.

Alienation by will.

Secondly, with respect to alienation by will, we may observe that until 1851 there was no power whatever of devising real estate by will. The law passed by the States on the 24th of June in that year, already referred to, is the first and only enactment on the subject; and the power which it confers is very limited. It enables every person who is capable of making a will of personalty, and who has no children or more remote descendants, to dispose by will of his real estate to the following extent:—1. Of his own purchases (*acquêts*); 2. Of his inherited estates (*propres*), provided there are no descendants of the first purchaser. Dower, *franc veuvage*, and the seignorial rights of the lord of the manor, cannot be affected by a devise. A will of realty, like a will of personalty, is ambulatory until the death of the devisor; but it is void if it has not been made 40 days before that event, unless the death be accidental.

Formalities required.

Special formalities, not necessary in a will of personalty, are required for a devise of real estate. The devisor's signature at the end of the will must be made or acknowledged in the presence of and attested by two witnesses present at the same time, of whom one, if the will is made in the Island, must be either a member of the States, or an officer, advocate, or *écrivain* of the Royal Court; or, if the will be made out of the Island, a notary public. Not only persons taking benefits under the will, but the relatives and connexions by marriage of such, or of the testator, within a certain degree, are disqualified from being witnesses. Unless the will be a holograph, it must, at the time of execution, be read over in the presence of the testator and both the witnesses.

A will, how proved.

A will of realty must be proved within a year and a day of the devisor's death, before the Royal Court. If the same will disposes of both real and personal estate, it is first proved in the Ecclesiastical Court with respect of the personalty; and an authentic copy is produced before the Royal Court in order to establish it with reference to the realty. It is then registered like a *contrat*, and takes effect accordingly.

Suggested enlargement of devising powers.

We think that the power of devising real estate might with advantage be to some extent enlarged. To enable a man to dispose by will of all his realty under every state of circumstances, would indeed, as we are led to think, be a change too extensive to be at present acceptable. But we are of opinion that where there are no children or lineal

descendants it would only be reasonable to allow the owner of real estate, whether purchased by himself or inherited, to dispose of the whole without reference to the claims of relatives who are not descended from himself, and whom he can now cut off from the inheritance by a disposition in his lifetime. This power should, of course, be subject to the right of the devisor's wife to dower. The law of 1851 has only in part supplied a want which was previously felt, and which led to indirect means of supplying it. Husbands, being unable to devise any part of their real property to their wives, procured a legal separation from them *quant aux biens*—a subject upon which we shall offer some observations hereafter. The wife thereupon became capable of taking and purchasing property to her separate use; and she receiving the means from her husband, purchased real estate, which became her own absolutely. We were informed that such devices were very common before the passing of the law of 1851; that the number of separations of the kind has since sensibly diminished; but that they are still frequently resorted to in order to effect family arrangements which are not directly feasible under the existing law. We consider *séparations quant aux biens* for such a purpose as this to be objectionable; and that, instead of obliging persons desirous of making provision for their wives, or of effecting other arrangements, to have recourse to such indirect means, it would be better to give them reasonable facilities for accomplishing their objects directly by a power of devise to the extent above mentioned.

We have a further suggestion to offer with reference to the formalities required for wills of real estate. But this will be best considered in connexion with what we have to suggest relative to wills of personalty.

Succession to Personalty.

From ancient times the law of Jersey has, subject to certain restrictions, permitted the disposal of personal property by will. In the case of intestacy, the eldest son, or principal heir (the title of *heir* being used with reference to personal as well as real property), succeeds in law to and becomes the administrator of the persoual estate of his deceased father or other relative, without any judicial process investing him with that office. By taking possession of the estate he renders himself and all his own property liable for all the obligations and debts of the deceased. He is entitled, as against his co-heirs and others entitled to distributive shares, to keep the estate in his own hands for twelve months from the death of the deceased, and to appropriate to his own use any interest which he may derive from it in the interim. This at least is considered to be the case where he invests the property himself; but if the property was invested in the lifetime of the deceased, it appears questionable whether he can claim the year's profits: the point, we were told, was under the consideration of the Royal Court, and still undetermined. It seems that he is also entitled to a per-centage on the value of property collected by him. The rate is usually five per cent., but with reference to the per-centage strictly demandable, as upon many other points of practice in Jersey founded in usage, some uncertainty seems to prevail. We could not exactly ascertain whether, but we feel ourselves at liberty to infer that, the Court may exercise a discretion as to the amount, according to circumstances. These several questions, we think, ought not to remain in doubt or be left to judicial discretion, but should be absolutely settled by law.

Distribution.

Within a year and a day after the death of the intestate, it is the duty of the principal heir to distribute the estate remaining after payment of debts and funeral expenses, amongst the widow and next of kin. To a certain point the rules of distribution are the same as those in England. When there are children, the widow takes a third; when there are none, she takes one half: the remainder of the estate in each case goes to the next of kin in equal shares. Deceased children, and brothers or sisters of the deceased, are represented by, and their respective shares are divided amongst their children *per stirpes;* but this right of representation does not extend to more remote kindred: hence children of a deceased cousin are excluded from taking a share with their uncles and aunts. Males and females are placed upon a par by a recent enactment altering in this respect the old law, which was greatly to the disadvantage of the females. Kindred does not count beyond the sixth degree, being one degree within the rule applicable to real estate.

Will of personalty.

A will of personalty may be made at 20 years of age. The testator may dispose of the whole of his personal estate, where he leaves neither widow nor children. Where he leaves a widow and children, he can dispose of one-third only: in this case a third goes to the widow, and the remaining third to the children. If he leaves a widow only, or children only, he can dispose of half; his widow or children taking the other half. If he exceeds his power of disposal, his will is reduced *ad legitimum modum.* There is no restriction on the individuals to whom he may bequeath his personalty; thus he may favour one child at the expense of all the rest. Of course the preceding

statements with reference to the widow must be understood as subject to the condition involved in her election to take her dower under the old Norman law, whereby, as already explained, she forfeits all claim to a share of the personal estate. The testator may appoint an executor, who, after proof of the will in the Ecclesiastical Court (which must be made within a year and a day of the testator's death), takes the place of the principal heir with reference to the personal estate.

Formalities. A will of personalty must be signed by the testator. Where it is a holograph, it requires no witnesses. Otherwise there must be two witnesses to attest its execution; but it is not necessary (as it is now in England), that they should, in his presence and in the presence of each other, attest his signature. The same rules which disqualify a person from being a witness in a cause pending in the Royal Court, disqualify him from attesting a will; thus he is disqualified, not only if he has any interest under it, but even if he is related to the deceased or to a legatee within a certain degree.

Revocation. The rules of law relating to the revocation of wills, whether of real or of personal estate, do not differ from those in England, except that the marriage of the testator does not in Jersey repeal a will.

Conflict of laws. From the preceding statement, it will be seen that the law of Jersey regulating the succession to and the disposition by will of personal property, differs from that of England in several respects. Now, the relations between the two countries are such that their respective laws must frequently come into conflict in determining questions of succession to personalty either under a will or under an intestacy. Compared with the entire population of Jersey, the proportion of Englishmen at any one time in that Island is very considerable; and the circumstances of their resort to it present every variety between a mere visit and a permanent settlement there. In such a state of things, there must inevitably be numerous instances constantly occurring both of changes of domicile, and of cases involving doubt whether the domicile for the time being of a particular individual, is in England or in Jersey—a fact upon which depends the question whether the law of England or the law of Jersey is to be applied, in determining the validity of his will and the succession to all his personal property, wherever situated. From the evidence of practitioners in the Island, we are compelled to conclude that this rule of International Law is habitually applied by the tribunals there in a very incorrect or lax manner, the consequence of which must be the wrongful diversion of personal property from its proper channel in several instances. The word "domicile" has acquired in Jersey a popular and local meaning, different from that which it bears according to International Law: it is commonly understood there to signify a residence in the Island of a year and a day; in which local sense, we were informed, it is frequently applied in determining questions of the class above mentioned.

The law of domicile.

Incompetency of the present Court. We feel bound to state our conviction that the Royal Court under its present constitution, is not likely in general to administer this branch of law correctly. But however competent the tribunal charged with such a duty might be, we consider it an evil that the relative state of the jurisprudence of two countries so connected as Jersey and England are, should minister frequent occasion for the application of the international rule as to domicile above referred to.

Advantages of uniformity as to testamentary power. Diversities (1) in the testamentary power over personalty, (2) in the rules of succession *ab intestato*, and (3) in the necessary testamentary formalities, must give rise to total or partial frustrations of the intentions and anticipations of individuals leaving personal estate, unless careful attention be paid to the legal effect of domicile, not only when they make their wills, but whenever they change their domicile; and it is in vain to expect that, generally speaking, such attention will be paid. We therefore consider it to be highly expedient to bring the laws of the two countries, as far as circumstances will admit, into harmony in the three respects above mentioned. It is further to be observed that, to some extent, similar consequences ensue from the formalities required for wills of real estate being different from those which are sufficient for wills of personalty, as is the case in Jersey. The inconvenience of such a state of the law was long known and felt in England; and as the beneficial effects of the remedy applied in the first year of Your Majesty's reign have been universally recognized, we would suggest the application of a similar remedy for a similar state of things in Jersey.

Having considered how far it may be practicable to bring the Jersey system into harmony with that of England, in reference to the present subject, we have arrived at the conclusion that the object cannot be more than partially attained, without too violent a revolution in the laws and usages of Jersey. Although we prefer the unlimited testamentary dominion over personalty, and the rules of succession *ab intestato*, established in this country, we are not prepared to recommend their introduction into Jersey. Such a change would almost necessarily involve corresponding changes in the

law of real property; and to this we think that the majority of the islanders would be opposed.

Recommendations.

The only changes which we suggest are the following:—

The age of competency to be rendered uniform.

1. That the age of competency to make a will, whether of realty or personalty, be no longer 20, but 21. We have no predilection for one age over the other, but we are influenced simply by the consideration that by a change so slight as this, one difference, and consequently one source of embarrassment, is got rid of.

Marriage to be a revocation.

2. That the marriage of a testator shall *ipso facto* operate as a revocation of his will made previously to marriage. In recommending this change, we are influenced by a similar consideration; and, in addition, we think that its reasonableness on independent grounds is self-evident.

Formalities to be the same as those in England.

3. That the formalities for making wills of real and of personal property be the same; and that they be assimilated to those required for wills in England. The English formalities hold a middle place between those required in Jersey for wills of personalty and wills of realty; they are more stringent than the former, and less so than the latter. Without being cumbersome, they have been found well adapted for securing the object they have in view. On the other hand, some of the requirements for wills of realty in Jersey, are, in our opinion, superfluous and burthensome; and these, we think, it would be expedient to abolish, even without reference to the important object of uniformity; the slight additional security which they may afford appears to us to be more than counterbalanced by the inconvenience which they must sometimes occasion. This inconvenience must be much felt, if a Jerseyman in a distant part of the British empire, and there are many such, should have occasion to make his will, without facilities for professional assistance from persons acquainted with the law of Jersey. In the present recommendation, we are disposed to include the repeal of that provision in the law of 1851, which renders null dispositions of real estate made within 40 days of the testator's death. Whatever might be said in favour of such a condition if made universally applicable to the testator's property, we consider that its restriction to one species of property, allowing the will to take effect as to the rest, is calculated to operate unfairly and in a manner opposed to the testator's intention, since his disposition of his personal is usually made with reference to his disposition of his real estate.

We do not propose any alteration of the law which requires a will of realty to be proved before the Royal Court and to be registered, which latter regulation we consider to be highly salutary.

IV.—The Law of Guarantee.

We next proceed to consider the subject of guarantee, one of the most important, as well as difficult, with which we have to deal; but on which there is a general consent that some amendment of the law is imperatively required. A guarantee is an obligation of record entered into in cases of sales and mortgages of real estate, and also on the acknowledgment and registration of debts, which thereupon become debts of record. By it the guarantor binds himself and his heirs to make good, upon all his real and personal property, to the purchaser, mortgagee, or creditor, and his heirs, the title to and enjoyment of the property conveyed and guaranteed. It binds all the real property which the guarantor has at the time of the guarantee, though he should afterwards sell or dispose of it, and also all which he may subsequently acquire. As there is no prescription against it, it is perpetual in point of time.

Guarantee defined.

Sales of real property.

Sales of real property are either of *rentes* or of land. Purchases of *rentes*, by way of investment, often in very small sums, are common in Jersey. Here the only guaranteeing party is the vendor of the *rentes*. Sales of land, free from *rente* itself, in consideration of a payment wholly in money, may also take place, though such sales are extremely rare: when they do occur, the vendor, in like manner, is the only guaranteeing party. Usually, however, sales of land involve transactions in *rentes*, in which cases there is a counter guarantee from the purchaser. Either (1) the land, the subject of the sale, may be already liable to *rente* payable out of it to some third person; in which case the purchaser's property guarantees the vendor against such *rente*, the vendor's other property being liable, under a previous guarantee on his part, to make it good. Or (2), a part only of the value of the land is paid by the purchaser; and, in respect of the remainder, the vendor reserves a *rente* on the land; this is guaranteed by the purchaser. Or (3), a part of the price consists of *rentes* belonging to the purchaser, and issuing out of lands belonging to a third person. These the purchaser assigns to the vendor, guaranteeing the payment of them to the latter, who thus has a double security, that of the owner of the lands whence the *rentes* issue, and that of the party now assigning them.

Mortgages. With respect to mortgages, or what are commonly termed such, the most usual mode of raising money on the security of landed property in Jersey is by charging a *rente* on a particular parcel of land in favour of the person who advances the money, but who, strictly speaking, is a purchaser of a perpetual annuity rather than a lender of money. Now, the parcel of land on which the *rente* is specially charged is the proper or primary fund for its payment, and each subsequent purchaser and holder of that parcel is for the time being the individual immediately and properly answerable for it. But the remedy by distress, familiar to English lawyers, is not in use for levying these *rentes* in Jersey. All the other property of the original grantor of the *rente* forms a collateral security, and is as much liable as if it had been specially mentioned in the *contrat* creating the *rente*. Such likewise is the case with respect to all the real property of every individual through whose hands the *rente* passes, a liability resulting from the guarantees given by them successively on parting with the *rente* to the next holder. It follows that in proportion to the number of hands through which it passes, and to the extent of the property of the successive holders, the security for the *rente* extends and accumulates.

We are not aware that there is anything in the law of Jersey which forbids the creation of a mortgage in the English mode, but that mode is never practised, except so far as the registration of debts may be regarded as, substantially, transactions of a similar character.

Hypothecation. When debts, either at their creation or subsequently, are acknowledged in Court and registered, they are guaranteed, in like manner with *rentes*, on all the property, present and future, of the debtor; so that, in effect, their registration is a general hypothecation of all his real estate for their repayment. In contrast with *rentes*, debts thus registered continue to be personal property; the creditor may enforce payment of them, or the debtor insist on discharging them; and when they are paid off, the property of the debtor is completely exonerated.

Law of priority. The several charges, arising out of guarantee, take precedence according to their dates, without reference to the nature of the transactions giving rise to them. An earlier guarantee is entitled to be satisfied in full, including three years' arrears of income, before satisfaction of a later guarantee can be claimed.

Evils of the system. It is difficult to conceive a system more vicious in principle, or more calculated to create confusion, than that which we have above described. The evils of it were comparatively little felt, before the introduction in recent times of a large immigrant population, and the growth and extension of commerce in the Island. Consequent upon these changes, transfers of land became more frequent, especially in the town of St. Heliers and its neighbourhood, where building speculations have, for several years past, been very rife; undertaken, in many instances, to an extent uncalled for, or without sufficient capital, and frequently ending in the bankruptcy of the undertakers. House property, often heavily encumbered, has of late years passed rapidly from hand to hand. During the same period, too, *rentes* were rendered irredeemable. Under these circumstances, the evils of the system have been fully developed.

Owing to the present law of guarantee, it is scarcely possible for any one—whatever his circumstances may be—to acquire an estate free from incumbrances; because the *rentes* which are usually found to be either charged directly or guaranteed upon the estate, are inextinguishable, and the guarantee is perpetual. In truth, all the estates in the Island, with scarcely an exception, are encumbered: a purchaser altogether free from debt himself, and buying, at its full gross market value, land not charged directly with *rente*, buys only what is nearly tantamount to an equity of redemption in England; he can obtain no more on any terms. But what the incumbrances likely to become positive claims may be, is more or less a matter of speculation; this will depend upon the solvency or insolvency of his immediate vendor or of prior owners; the land when in their hands became inextricably pledged for all their real obligations, in which are included all their judicial liabilities contracted down to the time of parting with it; and to that pledge he succeeds. Hence a purchaser is obliged to look not only to the title to the estate which he buys, but also to the general circumstances and credit of the vendor; and when his purchase is completed, he is exposed to the risks and uncertainties of suretyship. What we have here said of land applies equally to *rentes*.

The tendency—and in several instances, as we were informed, the actual effect—of the system is, to induce landowners to charge specific parcels of land with *rentes* beyond the actual value of such land. This happens where the original grantor of the *rentes* is a person in good circumstances and credit. The purchaser of the *rentes*, having the guarantee extending over all the real property of a person so circumstanced, has no occasion to inquire whether the particular lot directly charged is sufficient to bear

the incumbrance. The fact of such sufficiency becomes of still less importance if the *rentes* be afterwards assigned to and pass through the hands of persons possessing other property, for the security becomes enlarged on every such transmission. In this way, the position, it is true, of the holder for the time being of the *rentes*, is rendered more secure; but this is at the cost of exposing a number of other persons to risk; one or more of whom will suffer if the land out of which the *rentes* are expressed to issue should get into the hands of an insolvent individual.

It would be easy to point out other consequences naturally resulting from the system, but we think we have stated enough to show that it is essentially bad. Many complaints were addressed to us of its mischievous consequences. One circumstance was pointed out to us (which we think deserves attention), as indicative of the growing evil of the system, namely, the great increase of late years in the number of *décrets* or proceedings against the estates of insolvents, under which their property is distributed, and the rights and liabilities arising out of the guarantees on foot in relation to the insolvents' property are adjusted and enforced.

In suggesting the remedies which we consider desirable, we may be allowed to refer to a measure passed by the States of the Island on the 4th of November last, and now, we understand, under the consideration of Your Majesty in Council. It enables a purchaser of land, under certain conditions, to have the land officially valued; and it provides that the value, so ascertained, shall be the utmost amount for which he shall be liable in case he should be compelled to make good a previous guarantee on his purchase, thereby securing to him the benefit of any improved value which he may afterwards impart to it. We consider that this measure, though only a partial amendment, is good so far as it goes. Act of States, Nov. 1859.

We have anxiously considered the subject at large with a view to discover what further remedies might be practicable. In this investigation we have been greatly aided by the professional gentlemen of the Island, who have given us valuable information, and many of them useful suggestions. In particular, we are much indebted to Your Majesty's Advocate General, who has devoted much attention to the subject. We had also the advantage of the learning and experience of Mr. Jeremie on the same branch of the law in Guernsey, where he practises as an Advocate, and where a very similar system prevails. In that Island, some improvements in the law of guarantee have been recently introduced, and are now, as we were informed, highly appreciated by the inhabitants. Remedies.

The difficulties which we have felt in arriving at a practical conclusion upon this branch of our inquiry have not arisen from any doubts on our part respecting either the objectionable character of the present system, or the nature of the changes which appear to us desirable, but from the obligation which we feel under of respecting the rights and interests which have grown up under the existing law.

In describing the evils of the system, we adopt the statement of the Advocate General, who considers them to be chiefly threefold. Guarantee is perpetual in respect of time; it is unlimited in respect to amount; and it extends, not only to the property which the person giving the guarantee possessed at the time he gave it, but to all the property which he may acquire subsequently. Connected with these is the evil which we have already noticed, arising from *rentes* being irredeemable. Threefold evils.

The same learned gentleman, rightly considering that this intricate department of the law can only be consistently dealt with as a connected whole, has farther embodied his views in a Projêt de Loi proposed by him in 1856. The applicability of the proposed machinery in all its details must be considered by those who have that intimate experience of the working of the existing system which it is impossible for us to possess. But we are gratified to perceive his agreement with us on general principles:—

1. That the guarantee may be and ought to be limited as regards the property on which it shall attach;
2. In regard to the value to which it shall extend;
3. In regard to the time within which it may be enforced.
4. That *rentes* may be made redeemable instead of carrying uncertainty and confusion into the titles of all through whose hands they may pass by assignment.
5. That when they are thus made redeemable, it will not be necessary to compel the owner to accept an assignment against his will.
6. He proposes that in order that *rentes* may no longer be subject to the incidents of heritage they should for this purpose be personal estate. This has been recommended by some others, and might if it were desired be accompanied with a provision that the course of succession should not be altered.

Believing that legislation with a comprehensive view of the above principles will best tend to the gradual removal of the uncertainty of titles, so much complained of, with the least derangement of the existing system of law, we earnestly hope that if either the immaturity of public opinion or the difficulties of detail should prevent the present enactment of the whole, such partial legislation as may be effected may, like the measure recently passed by the States of Jersey, be in accordance with them as far as it goes, and calculated to facilitate rather than to obstruct their future more complete introduction. We could have wished to digest a scheme for the amendment of the law of Guarantee, in accordance with the principles above enunciated; but this would obviously require minute practical experience, and more time for mature consideration than we could command. The changes which we do propose here and elsewhere have for their object the restriction, ultimately, of Guarantee to the property of the guarantor in his own hands or in the hands of his heirs, but not in the hands of his or their assigns for valuable consideration. These changes should be introduced gradually, so as to avoid a violent collision with existing rights.

We think that such a restriction may, without injustice to vested rights, be at once applied to property to be acquired in future by a guarantor. Those who now have the guarantee of his existing property have no right to reckon upon that guarantee being hereafter extended by future additions to his real estate. Such additions, therefore, if they should happen to accrue, may reasonably be exempted, to some extent, from the liability to which they would become subject under the present law. We therefore recommend that all property which a guarantor may, after the passing of a law for the present purpose, acquire, shall be exempt from liability in respect of his guarantee, after it shall have been conveyed by him or by his representatives to a purchaser for valuable consideration. This will be a great step towards the eventual disentanglement of titles.

Recommendation.

The case of real estate already subject to the guarantee of the proprietor is one of considerable difficulty. It occurred to us here, that a period of prescription might possibly be fixed, on the expiration of which a purchaser for valuable consideration should be protected. Accordingly, we considered whether we might not properly, and in accordance with a change recently introduced in Guernsey, recommend that all real estate already purchased for valuable consideration should, after 20 years' undisturbed possession from the time of the passing of the proposed law, be exempt from the general guarantee of the vendor now affecting it; and that all real estate now subject to guarantee, and hereafter to be sold for valuable consideration, should be exempt from such guarantee on the expiration of 20 years' undisturbed possession by the purchaser from the time of the sale. Having regard, however, to the complicated interests which have grown up under the existing state of things, we are not at present prepared to recommend any change which would have a retrospective effect.

Prescription.

We recommend that in all future contracts the guarantee to be given therewith shall be construed to affect the property of the guarantor only whilst in his own hands or in the hands of his heirs, but not in the hands of his assigns for valuable consideration, except property specifically mentioned and described.

With respect to existing *rentes* the following scheme has suggested itself to us, namely, that after the expiration of 20 years from the passing of a law for the purpose, the *rentes* now on foot should be redeemable by the owners of the lands out of which they issue, on giving six months' previous notice in writing to the owners of the *rentes*, in sums of not less than one quarter each, at a defined price per quarter; that all *rentes* so redeemed should thereupon be considered as wholly extinguished to all intents and purposes; and that on all voluntary assignment in future of *rentes*, the assignee should succeed only to such guarantee of those *rentes* as the assignor had, but should not be entitled to any further guarantee on the property of the assignor, except in respect of the assignor's own acts and dealings with the *rentes* assigned. This proposition, however, for a similar reason to that above given, we are not prepared to recommend for present adoption. At the same time it might perhaps be found, that a certain amount of interference with rights already vested, however objectionable in theory and on general principles, might have the justification of practical advantage, in the removal of that general insecurity from which those whose strict legal rights would be invaded now suffer in common with others.

Suggestion as to *rentes*.

V.—Uses and Trusts.

With respect to trust estates in land, the law of 1851, already referred to, contains a clause which prohibits the creation by will of such estates: it is in these words—"Toute disposition, par laquelle le légataire sera chargé de conserver et a rendre à un

" tiers, sera nulle, même à l'égard du légataire." The same article of the law, however, permits the gift of the absolute property [in fee] to one person, and of the usufruct [for life] to another. But it is to be here observed that the law of Jersey does not technically regard the usufructuary interest of the tenant for life exactly in the same light as a trust estate in England.

Trusts of realty in favour of individuals unknown.

There is no law in Jersey expressly forbidding the creation of trusts by an act *inter vivos*; but trusts of realty, in favour of private individuals, and unconnected with public objects, are, to the present day, absolutely unknown. Within the last forty years, however, several instances have occurred of the purchase and conveyance to trustees of sites for proprietary chapels connected either with the Established Church or with dissenting bodies; and latterly some for other objects, more or less of a public nature, such as gas or water works, joint-stock companies having been formed for those purposes. The demands of modern society are likely to give rise to the establishment of other associations of a similar character, requiring land for the prosecution of their operations. Serious questions, as yet unsolved, arise as to the validity of the trusts declared in the deeds of conveyance of the land purchased on behalf of such bodies, and the position of the trustees. The legal title of the latter to the land conveyed to them is not questioned or doubted: the points requiring solution are, whether the trusts can be enforced against the trustees, and whether those trusts will prevail against and supersede the ordinary liabilities and incidents of property in Jersey, viz.: the claim of dower by the widow of a trustee dying, the claim of the lord of the manor to the *année de succession* where a trustee dies without lineal heirs, and the claims of a trustee's private creditors who have registered their debts, and thereby acquired, according to the law of Jersey, a lien upon all his real estate, present and future. The whole subject at present is involved in doubt: there is neither express law, custom, nor judicial decision to lead to a satisfactory conclusion. Several of the Island lawyers, including Your Majesty's Procureur-Général, incline to the opinion that trusts of the kind in question would be treated as covenants running with the land, and would be enforced as such; but they gave no authority for their opinion, and it is opposed to the general proposition enunciated at the outset absolutely that the law of Jersey does not recognize trusts. We consider that legislation is imperatively required to settle these important questions.

Mortmain.

In some few instances land for churches and churchyards has been conveyed to the rector, constable, and certain other public functionaries of the parish in which the land is situate, who appear to have a *quasi* corporate capacity to take and hold real estate for religious and charitable purposes; and in such cases the rights of the lord of the manor have been redeemed, agreeably to a legal custom before adverted to. In these instances the object in view has been satisfactorily attained; but this course might not always be convenient even with respect to chapels connected with the Established Church; and it is obvious that provision of a different kind is needed for dissenting bodies, and also for companies formed for carrying on undertakings of a purely secular nature, whose property, even if the law permitted it, could not so conveniently be vested in a parochial corporation constituted as we have stated.

Recommendations.

We recommend, therefore, that, under certain restrictions and conditions, power be given to convey, by means of a contract or act *inter vivos*, real estate upon trust for such objects of a public nature as the Court may approve; that the Court be expressly empowered to enforce the trusts declared in the conveyance; that the property so conveyed be exempt from the private debts and engagements of the trustees, and from the claims of their widows in respect of dower; and that the lord of the manor, or (if he be under age or other disability) his *tuteur*, with the approbation of the Court, be empowered to sell his seignorial rights, for such price as may be agreed upon, or, if the parties cannot agree, that a provision, similar to that now in force for extinguishing seignorial rights over lands taken in mortmain, be made for assessing the value of such rights, and that the lord be compelled to accept the value so assessed. We think that it would be advisable that, both as a check upon an indiscriminate, ill-judged, or excessive appropriation of real property to objects professing to be of public utility, and with a view to ensure the insertion in the deed of conveyance of all necessary provisions for carrying out the objects of the trust in a secure and satisfactory manner, Your Majesty's Procureur-Général should be a party to the proceedings, and should be allowed to urge objections to the proposed trust or to the form of the proposed contract, before the Court signifies its approbation. We would further suggest that in case of the total or partial failure of the objects of the trust, or a change of circumstances authorizing a modification of the trust, the Court should have power, on the application of proper parties, with due notice to the trustees and to the public, and after hearing the Crown officer, to authorize the application of the trust property and funds to such kindred

objects as the lapse of time and change of circumstances may require, due regard being had to the intentions of the founders. A measure of this kind might not only embrace objects of a strictly public nature, but also be applied to joint-stock companies consisting of not less than a certain number of shareholders, associated for useful purposes of profit.

In some instances it might be desirable, in lieu of appointing trustees with provisions for supplying vacancies in their number, to confer on such companies as might be formed in conformity with our preceding suggestions, a corporate capacity, with a limited power to take and hold real estate under a corporate name, and to be represented by a public officer belonging to their own body, but in all other respects to be regulated by the general conditions above suggested.

Whilst recommending the express recognition of trusts to the limited extent above indicated, with a view to meet a present exigency, we are desirous of disclaiming any intention to suggest the general introduction of trusts, as distinct from the legal estate. The inhabitants of Jersey are not, we think, prepared for such a change at present; and it could scarcely be introduced without a fundamental alteration of their whole system of property, which, with the exception of the complications arising from the law of guarantee, is remarkable for its simplicity.

We propose that the measure above suggested should embrace donations or purchases of real property by acts *inter vivos*, and not by will. The 6th article of the law of wills of 1851 prohibits devises of real estate for religious purposes merely. Possibly this wholesome prohibition might with advantage be extended to all devises in mortmain; but at all events we are not prepared to recommend any measure calculated to afford greater facilities than exist at present for any such devises. The English statutes of mortmain do not expressly extend to Jersey. It was urged indeed before us, by a gentleman who, though not a professional lawyer, has bestowed great attention on the laws of the Island, that those statutes are in force therein. Much of his argument was based upon the fact that in the reign of Henry VII. a licence from the Crown, in the English form, was given to a person connected with Jersey, but resident in England, to settle land in the Island in mortmain for the establishment of two grammar schools; but the argument appeared to us insufficient to establish the point. It was alleged before us by one of the Island lawyers that there is no restriction on mortmain, further than above mentioned. This proposition, however, must, we conceive, be understood as applicable only to corporations, sole or aggregate, with perpetual succession: there is, as we collect, no restriction in general as to the amount of property which they may hold in mortmain. But private individuals cannot, without licence from the Crown, assume the power of transmitting property in a mode not in accordance with the ordinary rules of inheritance. Even where, however, the privilege does exist, as in the case of corporations, a practical difficulty may sometimes arise from the refusal of the lord of the manor, in which the lands are situated, to part with his seignorial rights; and a still further difficulty occurs in those manors where the lord, though willing, is disabled by his tenure from dividing his fief, and therefore from accepting a commutation for his rights binding upon his heirs. In this latter case, a licence from the Crown to effect the commutation is requisite.

VI.—Registration.

With so intricate a system of charges on land and complexity of title consequent upon the law of guarantee, it is plain that the registration of such charges in the manner most simple and convenient for reference must be essential.

Register of Contracts.

The present system is, in the main, very good and highly useful. In 1840 a law was passed introducing several improvements. From the shortness of the contracts it has been found practicable to insert them *in extenso*, a matter of great utility where feasible. The Register extends back to a period of upwards of 250 years from the present time, and it consists of more than 100 volumes. It is well indexed, so that the various transactions of an individual and the several devolutions of any particular parcel of property, so far as the Register makes mention of them, can be readily traced. The public have access to it on the payment of moderate fees. We heard no complaints of the exposure of titles through it. The present Registry—a room in the same building as the Royal Court and the Chamber where the States meet—is neither suitable nor safe. A fire-proof building, for the reception of these important documents, was in the course of erection at our last visit, but some doubts were expressed whether it would be proceeded with. We strongly recommend that no time should be lost in providing a safe and proper receptacle. Since 1840, under the law last referred to, two

copies are made of every contract registered. The duplicates are kept in a separate building, which however is not fire-proof.

In the register may also be registered debts originating in transactions unconnected with real estate. These, as already stated, on being acknowledged before the Court, and registered, become debts of record, and thenceforth are a charge on all the real property of the debtor. In the same register are also registered wills of realty.

A few improvements suggested,—

As the register furnishes the means of tracing titles to property, its value in that respect depends greatly on the completeness of the information which it affords. A few improvements were suggested to us. In the first place it was proposed that every descent of an inheritance, at least where there is only a single heir, should be registered.

as to *partage*,

Where there is a plurality of heirs and a *partage* takes place, the *partage*, as we have stated, is registered. But there may be no *partage*, either because none is claimed, or because there is but one heir. In such a case there may be a difficulty in discovering how the heir acquired a property of which he is in possession; and it may be important to know this in order to trace out the former owners and ascertain to what extent they may have encumbered the property or made it liable by their transactions. Or there may be a necessity for tracing the heirs of a deceased person known to have been the owner of certain property. We would therefore recommend the adoption, with a slight modification, of a plan proposed by Your Majesty's Solicitor-General, that in every case of collateral succession, the principal or sole heir should be obliged to appear before the Court and declare that he assumes the succession; and that his declaration should be inserted in the register of contracts.

as to Registration of collateral successions;

as to debts of deceased persons;

The next suggestion has reference to the debts of deceased persons. These, although not registered, become charges on his real estate in the hands of his heirs or devisees or of persons deriving title from them. We think that all such debts should be registered within a year of the death of the debtor; and that, unless so registered, they should not affect the property in the hands of purchasers or alienees.

as to *décrets*.

Another alleged deficiency was pointed out to us and a good deal insisted upon. A person purchasing *rentes* sometimes finds it necessary or prudent afterwards to renounce them, when there is a *décret* (resembling, as we have already observed, the decree in a foreclosure suit in England) against the party liable to pay them. His purchase, but not his loss, of the *rentes* appears in the register. It is taken for granted that he still has them; and his guarantee being considered good to the value of them, people are induced to deal with him accordingly; eventually his guarantee proves bad, and they suffer loss. Instances of this kind were mentioned to us. It was proposed, as a remedy, that it should be made obligatory to insert in the register of contracts all cancellations of *rentes* or other obligations under *décrets*. The Solicitor-General, however, considered that the defect lies, not in the register of contracts, but in another public register, the *register of décrets*, which is not properly indexed, so as to facilitate inquiries under the head in question. We concur in the opinion of that gentleman, and recommend that a proper index be prepared and kept regularly.

VII.—The Law relating to Husband and Wife.

Husband and Wife.

We have next to notice the state of the law relating to husband and wife, especially with reference to their rights and liabilities, both as between themselves and as affecting third parties.

We have already noticed the rights of dower and *viduité*, which arise upon the death of one of the married couple in favour of the survivor. So far as these rights are concerned, nothing more appears necessary to be said.

During the coverture, the law of Jersey, like that of England, presuming that the husband has all the funds, charges him with all the liabilities. But in both countries the progress of society has provided means for giving the wife separate property.

So far as property situated in the Island is concerned, this is not effected in Jersey by way of marriage settlement, but after the marriage, by a proceeding in Court, which may be thus briefly described.

Séparation quant aux biens.

The husband and wife appear in court, and on the motion of counsel a decree for a "*séparation quant aux biens*" is granted provisionally. This decree is then posted in the Court-house for ten days, by way of notice to creditors and others interested in opposing the separation. If such persons appear they are heard in opposition; if not, at the end of the ten days, the decree is confirmed as of course. The effect of the decree is to place the whole of the real property of which the wife is at the time seised, and all her subsequently acquired property, entirely under her own control (with power to sue

and be sued as a *femme sole*), and beyond the reach of the debts and engagements, present or future, and of the interference of her husband.

The wife can also claim in the Royal Court a *séparation quant aux biens* on account of cruelty or adultery. This is, of course, a distinct proceeding from the separation *à mensâ et thoro*, granted for adultery by the Ecclesiastical Court, and which affects the persons, not the property, of the married couple. If the husband admit the facts on which the wife's application is grounded, the separation is granted at once; if not, the case is sent to proof, and passes through all the stages of any other contested suit. After a *séparation quant aux biens* the husband retains his liability to maintain his wife, at all events, if she fall into such poverty as to become a charge on the poor rate.

Frauds consequent thereon.

Strong objections have been urged against this head of law, on the ground of the ease with which the *séparation quant aux biens* can be obtained, and of the insufficiency of the present system to afford due notice to creditors, in fraud of whom it is alleged that such separations frequently take place.

Liabilities of married women.

It was stated before us, though hesitatingly, that the law of Jersey recognizes the validity of obligatory instruments executed by a wife under coverture. In practice it is certain that actions on such instruments have of late years been brought against married women. During our first visit to the Island, a married woman under such circumstances was actually an inmate of the prison, together with her husband, on mesne process. In this case as in others the action seems to have been brought against her on the ground that she was possessed of a separate income, arising from a source out of the jurisdiction of the Jersey Court, on the supposed security of which, and of her written engagement, credit had been given to her or to her husband. The judgment of the *corps de cour* as to this legality of her arrest, has since been given in her favour. This judgment, however, is still subject to appeal before Your Majesty in Council, and whether confirmed or reversed, does not appear to settle the question of the liability, which we consider to be still an open one.

The difficulties of the subject.

The difficulties of the subject are very great, and it would indeed be easy to give hasty and arbitrary recommendations on the rights and liabilities of husband and wife; but even in an extensive empire with uniform and consistent law, this is one of the largest questions of social science. In a narrow and insulated jurisdiction, having to adapt its machinery not only to its own system of rights, but to those originating under the laws of other countries, whose inhabitants resort there in great numbers, the difficulty is much increased. This is enhanced if the situation particularly exposes the country to the danger of becoming an asylum for fraudulent debtors, or of being plundered by those who obtain credit from the command of funds which the local Court cannot reach.

The principle established in Jersey whereby the wife is allowed directly, and in her own name, to enjoy separate property, will probably, by most of those who at the present day take an active interest in legal reform, be considered to be in advance of that of the English law, under which this is impossible, and by which she is driven to the intervention of trustees. But it must be remembered, that the possession of property involves its responsibilities, and that a married woman so circumstanced cannot reasonably expect the absolute immunity from the ordinary process of law which she enjoys in England. Again, it is not to be forgotten that a husband on whose wife property out of the Island is settled in trust, may resort with his family to Jersey, spending a large income there, with her privity and concurrence. If she is not liable, by reason of coverture; if the fund cannot be touched in specie; and if he can divest himself, as at present he generally can, of all liability by a cession not extending to the fund, a great wrong is without remedy.

On the other hand, we are not aware of any peculiarity affecting the case of a man contracting debts in Jersey on the credit of the expenditure supplied by his wife's income, except the greater facility of escaping from so narrow a jurisdiction, and the lax administration of the law of cession.

Feebleness of the Court.

Again, we believe that the decisions of the Court *when attained* are not deficient either in equity or humanity. The abuses fall under the heads of fact and of practice, not of law. The feeble and dilatory practice of the Court must invite the speculator to extort payment by indefinite imprisonment of a person who may not ultimately be found liable. By this a defendant who has obtained the judgment of the *nombre inférieur* may be detained in gaol while the case is dragged through the course of appeal. In this there may be, and frequently are, repeated postponements from the failure to make a full Court. The mutual relations of a husband and wife living together are necessarily intricate, and must be very obscure to those not living in the family. This obscurity must be enhanced by the studious exclusion, which under the head of evidence we shall show to exist, of the testimony of those who have the best means of knowledge. To this

it must be added that under the present system, the creditor may have as his habitual and confidential man of business the very officer whom he chooses to employ in the execution of process. It would be idle in the face of all these predisposing causes to expect that the law, however just, should never be abused; but, as far as has come under our notice, the abuse has not at all exceeded what they must be expected to produce. We therefore think that the defect is not in the law, nor in the spirit of the ultimate decisions upon it, but in the real difficulty of the subject, and in the temptation to abuse from the defective machinery for bringing the cause to a final decision. We have elsewhere suggested alterations in the present system of arrest on mesne process, and in the duties and position of executive officers, which, if adopted, appear to us likely to diminish in a high degree, if not entirely to obviate, the possible injustice which may now sometimes be done to married women in such cases as those which we have noticed.

Recommendation.

With regard, however, to *séparation quant aux biens*, abuses no doubt exist, which ought to be strictly guarded against, and with this object we recommend that,—

Séparation should not prevail against certain creditors, nor protect certain property of the husband.

1. It should not prevail against existing creditors, or those to whom there is an accruing liability under any existing obligation, unless by the express consent of the creditor, or by order of the Court, against which the creditor has had the opportunity of being heard, and of examining the parties.

2. It ought not to cover property over which the husband has any control in a trade not carried on in the name of the wife exclusively of him.

Publicity should be afforded.

3. Before it is allowed by the Court, adequate time and publicity should be afforded to allow any persons who may be affected to show cause against it. What publicity is adequate must be in the discretion of the Court. For affecting persons resident in the United Kingdom, either express notice or publication in the London Gazette might be required.

Exceptions.

4. Perhaps some exceptions might be allowed, grounded on the origin of the property, or the date of acquisition; but this, if extending to rights existing before separation, may be dangerous, at least in regard to moveable goods where the title and identity are not authentically recorded. It appears to us sufficient, if goods acquired by the wife from strangers subsequent to the separation, or a consideration in no way arising from the husband, are protected from his antecedent debts. What has once been liable to them ought not to be withdrawn on the allegation that it formerly belonged to the wife.

VIII.—The Law relating to Persons under Disability.

After the consideration of coverture we are led to notice the disabilities arising from infancy, prodigality, or mental incapacity, and the mode of appointing guardians or curators in the cases where such disabilities exist, and first as to infancy.

Infancy.

Appointment of *Tuteur*.

The mode of appointing a *Tuteur*, who is to be guardian of both person and estate to an infant is, that a member of the family, or even a creditor or other person having an interest in the administration of his estate, causes seven of the infant's next friends to be called before the Court. When the infant has kindred, the four nearest on the father's side and three on the mother's side are usually appointed; those are, however, excluded who have any adverse interest. Among those in equal degree the elder are preferred to the younger. Where he has not kindred strangers may be taken; and we do not see any satisfactory provision for taking those who would be best fitted to protect the infant's rights. The duty of these seven is to elect a *tuteur*, who in his management of both person and estate, consults the electors, while they or the majority of them who may have concurred in his acts, are liable as his sureties. It is probably this liability which constitutes the main protection to an infant in whose case the electors have been strangers. This body is called *la tutelle*. The guardian has large powers, subject to this responsibility, in regard to the alienation of the estates, or conversion of one kind of property into another. The minor is entitled, however, within the year and day after attaining his majority, to revoke alienations of real estate: and conversions of land into money, or *vice versâ*, are not allowed to vary the rights of any parties interested in distribution either at the time, or in the event of the death of the minor. A minor, if declared competent, may, with the assent of the Court, be released from wardship at the age of 20; at that age he is generally held to be competent; but if actually in ward, he is not released from it under 21, without such declaration.

La tutelle.

Restitutio in integrum.

The mother is not entitled, as of right, to the possession of infants within the age of nurture; she is (as is natural) the person with whom they are usually left until their education requires their removal.

Account. No official audit. Dilatory procedure.

It is the duty of the *tuteur* to account from time to time to his electors, and, on the full age of the minor, to him. There is no provision for an official audit, but the minor may sue if the accounts are not rendered, or are unsatisfactory. In the present state, however, of the Jersey Court, such a power is almost nugatory; for there is no summary or speedy method of compelling an account either in this or in any other similar case. All the ordinary forms of action must be gone through; and the accountable party has it in his power—by dilatory pleas, by summoning a number of useless witnesses, by including among these one whose evidence he declares to be material, but who certainly must be absent, and indeed by numerous other contrivances, unfortunately too well known to the practitioners, and though possibly regretted, not effectually repressed, by the Court—to delay for years the desired investigation.

If funds exceeding the annual income are required for the advancement of the ward, an elector is allowed to lend at five per cent.; and the *tuteur* is entitled, besides his expenses, to an allowance for his trouble, which, however, is not usually received, if he be a near relative.

Liabilities of minors.

There seems to be little express law as to the power of minors to pledge their own or their father's credit for necessaries, or to enter into engagements, by way of apprenticeship and the like, for their own benefit. In the latter case the practice is similar to that in England, and would be defensible on the same principles; in the former it seems that the supply of what was really necessary would bind the person whose duty it was to have provided it; but the necessity would be much more strictly construed.

The power of assigning a guardian by will does not exist in Jersey. This is to be regretted, but we see considerable obstacles to its general introduction. The *tuteur*, it must be remembered, is the guardian, not only of the person, but of the estate, and the law of Jersey, with which public opinion among the native inhabitants is entirely accordant, is exceedingly jealous of the interference by a parent, with the distribution of his property amongst his children. Hence it is objected that this would give the father an influence inconsistent with the spirit of the law, which denies him the power to distribute the estate. A further objection is, that there would be no *tutelle*, and therefore no sureties for the conduct of the guardian. Nor is it an answer to this, that a testamentary guardian, like an executor, is appointed by one who has a right to dispense with security, as the parent in Jersey has not the same control over the estate which the English parent has. One conclusion, therefore, is, that in cases where, by reason of the domicile of the deceased, his estate must be distributed according to Jersey law, there are obstacles to the introduction of so great an improvement. We think, however, that where by reason of the domicile of the deceased in any part of Your Majesty's Dominions, in which the power to appoint a testamentary guardian exists, the distribution of the personal estate is different from that fixed by Jersey law, the appointment of such a guardian should be allowed to take effect.

Recommendations. An inventory. An official audit.

With regard to the *tuteur* under the Jersey law, we would suggest that he should be bound on his appointment to prepare and file in the Royal Court, a schedule or inventory of all the property of the minor. Provision should, we think, be made for an official audit of the *tuteur's* accounts half-yearly during the minority, and for the passing of his final account within six months after the majority. To this scheme it has been objected that a disclosure of private affairs would be involved; but we think that an Auditor might be appointed by the Court, where the parties could agree upon the person, and where they could not, that the *Greffier* might be employed, sitting in the presence of none but the parties interested. This audit ought to be so required in all cases, for the discharge of the guardian and his electors, that the demand of it may not, from its invidious character, be disused. To our minds, the practice above mentioned, of permitting advances to the estate to be made by interested persons, which clearly requires to be jealously watched, is sufficient of itself to call for an official audit; it can hardly be prohibited, as raising the money by sales might be impracticable or highly inexpedient, and strangers might not be satisfied with the security. Another motive for this our recommendation, springs from the fact that the law allows the *tuteur* in Jersey a commission on the property he manages. Without pronouncing this to be unreasonable, we think that as to the amount of commission claimed, as well as to many other matters affecting the debit and credit of the account, the release given by an inexperienced youth, or his admission of the correctness of the accounts, ought not to be binding without the sanction of an official audit.

Unaudited accounts to be liable to question.

On the whole, we would propose, that unless there had been such audit, the guardian's accounts, though closed, should be liable to be reopened at any time within five years, either by the ward himself, or by his heirs, or those entitled on his insolvency. This,

without applying any oppressively stringent process to enforce the audit, would make it the obvious interest of those concerned not to omit it.

We think also that the nature and extent of the responsibility of the *tutelle* should be defined. It may be a question whether it might not entirely cease in cases where it was preferred that the *tuteur* should give express security to the satisfaction of the Court. The *tutelle* would then, of course, cease to have control over the *tuteur*. It has been questioned whether the right of infants to annual contracts passed during their minority is not contrary to their real interests, by preventing advantageous sales. Mr. d'Allain, an advocate and member of the States, has lately proposed a *projêt de loi*, for abolishing this right, which is well worthy of serious consideration.

Lunacy, &c.

The estates and persons of those incapable from other causes than nonage of managing their own affairs are similarly dealt with, the terms *Curateur* and *Curatelle* being substituted for *Tuteur* and *Tutelle;* but the power just mentioned of revoking transactions as to real estate fairly entered into does not in this case exist.

The fact, however, of such incapacity has to be established; and this is done in the same manner and with the same consequences, whether the incapacity be mental, or whether it be evidenced by mismanagement of property resulting from habitual intemperance, for in the Jersey law, as in other European systems, "*prodigality*," particularly this form of it, entails the interdiction of the prodigal from the administration of his own property.

Prodigality.

The Constable of the parish, on receiving notice of any such case, reports to the Attorney-General, who summons six of the principal inhabitants whom he considers most likely to know the truth of the matter. A summons is also served on the person alleged to be incapable; if capable, he can obey the summons, and defend himself. The Court, consisting of the Bailiff and two Jurats, on the appearance of the recognitors does not proceed simply on their presentment, but strictly examines them, and, after hearing the Attorney-General, forms its own judgment; but no witnesses, not being members of the inquest, can be examined on either side; unless, therefore, some medical man cognizant of the facts is competent to serve on it, medical evidence is unattainable. The decision is not traversable, nor can be adjourned for further inquiry. If the Court judges the proof insufficient, the case is dismissed; if sufficient, the party is declared incapable; in neither case can there be a new inquest in less than a year and a day; and no appeal lies.

We cannot doubt that the system is temperately and considerately worked, for public opinion among the native inhabitants of the Island seems decidedly to go with it; even in the case of alleged incapacity from intemperance and prodigality, no unfavourable opinion was expressed on an inquiry of the members of the legal profession, (some of the most eminent of whom, who freely expressed differences of opinion on other subjects, were present,) whether they thought it gave sufficient protection to personal liberty. The Constable must see cause to report, the Recognitors must furnish information, the Crown Officer must find that information sufficient to induce him to call for the judgment of the Court, and the Court must find it sufficient to act upon. Still, it is not to be wondered at that the part of the population which is accustomed to English law should view it differently; and we are sure that the magistracy would be able to do this very painful duty with much more satisfaction to themselves if they could have all the best evidence, including medical testimony, adduced before them, (and in cases requiring it, the actual production of an alleged lunatic,) and could allow the defendant to contradict it by evidence. It would be a matter to be decided on grounds of convenience, whether this should all be done in the first instance, or whether the inquisition should be good unless traversed; the defendant, however, should be allowed to traverse it; and in all cases of alleged mental disease there should be positive medical evidence in the first instance.

Where the incapacity is not mental, it is extremely difficult to reconcile to English ideas of liberty the interdiction of a person not convicted of crime. We can only treat with consideration provisions which, though alien from our own law, belong to other civilized systems of jurisprudence, are intended to conduce to a beneficial social object, and are on that ground approved by the community in which they exist.

Where there is no property, no inquisition is usually held on the soundness of mind. A tendency to injure others is controlled by the police. A tendency to injure the patient himself is held to justify the restraint which it necessitates. This doctrine is sound, but it does not provide sufficiently for the wants of the present state of society. A person supposed to be dangerous to himself or others should be submitted by the police to medical examination, and a magistrate should be authorized on seeing the patient and the medical man, and on having in writing his report on the existence and nature of the

mental disease requiring restraint, to direct that the patient should be placed in some proper custody; and restraint on private authority, beyond what is necessary before these proceedings can be taken, should be disallowed.

Lunatic asylum much required.

It is to be hoped that a proper lunatic asylum will soon be provided for the Island, for while we regret that persons afflicted with mental disease should not, so long as there is no such institution, have the advantage of the valuable establishments for their relief which exist elsewhere, we fully agree with the Procureur-Général as to the illegality of transporting a subject of Your Majesty beyond the protection of Your laws; which must be the case if the French asylums, for several reasons, the most convenient for the Island, are to be made available.

We would extend to all cases of *Curatelle* such of the recommendations offered in regard to *Tutelle* as are applicable.

A criminal lunatic in the prison.

We cannot quit this part of the subject, without stating (though we do not thereby impute any inhumanity to the functionaries), that we found a criminal lunatic confined in a cell of the prison. We ascertained that this man, having, on the ground of insanity, been acquitted on a charge of murder, was discharged from the prison, was then lodged in the hospital, and subsequently returned to the prison, where he now lies without any legal warrant that we could discover, and without the appliances suited to his disease. The alleged neglect of his *curateur*, and non-application of his estate to his maintenance and proper custody, though highly illustrative of what the working of the existing law might be, we can only treat as hypothetical, as far as imputations on individuals are involved.

Procuration.

To these remarks, we should add that there is still another method of providing for the due care, or rendering harmless the vicious propensities, of a person weak in mind, or abandoned to drink. This is done by causing the individual to sign a *procuration* appointing a person to be his *procureur*. This may be general, or special. If the former, it is made an Act of Court, and cannot be revoked except by the Court, on cause shown; if the latter, it may be revoked without cause at pleasure. While in force, the consent of the *procureur* becomes necessary, to give validity to any contract entered into by his constituent, as to his real or personal property. The motive for making such an appointment was said to be not unfrequently a desire to escape the threatened imposition of a *curateur*, which is viewed by the lower classes, among whom the case would generally occur, as a great disgrace. In cases of this kind it is not unusual for the *curateur*, or *procureur* to place his constituent in the general hospital or poor-house as a boarder. But little evidence was tendered to us as to this practice. So far as the individual is concerned, it appears to us (if the principle of interdiction for anything short of absolute insanity or idiocy is to be admitted) to matter little, whether he be restrained by law, being found prodigal by inquisition, or whether he spontaneously resign the administration of his affairs. An attempt was indeed made to show that the personal liberty of such an intemperate boarder in the hospital was unduly and unnecessarily restrained, but on investigation the case was proved to be highly exaggerated.

But in another point of view, the practice of placing the persons in the General Hospital appears to us to be open to objection, on the ground (amongst others) that the Hospital was designed for the exclusive accommodation of the poor, and that the introduction of other persons encroaches upon the very limited available space.

A summary method should be provided of compelling a *procureur*, whether of a person under mental or other disability, or of one absent from the Island, to resign his trust, and to produce and pass his accounts of property of his constituents come to his hands.

IX.—The Constitution of Tribunals.

We have now arrived at, perhaps, the most important division of the subjects of inquiry entrusted to us; namely, the constitution of the different tribunals by which the laws and customs, which we have commented on at some length, are administered. Besides the Ecclesiastical Court, which we think it better to notice later, the Civil Tribunals of Jersey consist of, 1, the Royal Court, (*La Cour Royale de l'Ile de Jersey*); 2, of the Petty Debts Court; and, 3, of the several Manorial Courts, (*Cours Seigneuriales*). We might add to these the *Cour de Namps* of the Viscount, (where he appears to have held pleas of replevin), but as this is practically obsolete, we shall omit it.

The Royal Court.

1. The principal tribunal, then, is the Royal Court, which now consists of a Bailiff and twelve Jurats, an institution evidently in its origin not peculiar, but the common municipal tribunal of the age, before functions of a higher nature were cast upon it.

The Bailiff.

The Bailiff is appointed by Your Majesty's Letters Patent, and now holds office during pleasure. He receives from the Crown revenues the annual sum of 300*l.*, and is entitled

to certain Court fees, amounting on the average to 350*l.* A properly qualified lawyer is always selected to fill the post of Bailiff. He is empowered to nominate a Lieutenant-bailiff to act in his absence. A Jurat is at the present day always selected for this office. The Bailiff presides in the Royal Court, but has no decisive voice there, except between opinions supported each by an equal number of Jurats, to one of which he must ultimately give the preponderance, even though he dissent from both. Whether he is even entitled to state, for the information of the Jurats, his opinion as to what the law is, has been disputed, and may be questioned. He is, however, empowered to adjourn the question for further consideration, or a fuller Court.

The twelve Jurats are elected by the whole of the ratepayers throughout the Island, and hold their office for life; they are also life members of the States, and are invested with other important duties. The sole qualification for the office is the possession of landed property in the Island to the amount of forty quarters of wheat rent (30*l.* 15*s.* 3*d.* per annum). They are forbidden to carry on the trade of a brewer, a butcher, a baker, or a tavern-keeper. No special legal training or course of study is necessarily demanded of a candidate for the office, though it may of course occasionally happen, as in one or two instances among the members of the present Bench, that individuals may be elected, who have either actually practised, or prepared themselves for practice, at the Island bar, or who have been engaged in business as solicitors. It is, however, to be noticed, that in many cases the candidate has served in parochial offices of greater or less distinction, where he is supposed to have opportunities of acquiring some knowledge of the local law and usage. Of such offices, the chief is that of Constable; which, not having been, as in England, subordinated to that of Justice of the Peace, is one of considerable importance. Besides his seat in the States, the Constable, as will be seen in a later part of our Report, presides at the parish assembly during the discussion of all matters not relating to the church, and is the chief officer of police, and head of the administration of the laws relating to the relief of the poor and to the repair of the roads in his parish. The Jurats receive no salary, and the Court fees to which they are entitled are so small that their services are in fact virtually gratuitous. A Jurat cannot resign his office without the express licence of Your Majesty in Council. **The Jurats.**

The presence of one of the Crown law officers, or a member of the bar to act for them, is regarded as essential to the constitution of the Court, which never exercises those powers of censure which are essential to the maintenance of order, except on the motion (*conclusions*) of the Crown officer. **The Crown Officers.**

Of these officers, the *Procureur Général* (Attorney General) ranks next to the Bailiff. *Procureur Général.*

The *Vicomte*, or Queen's executive officer, holding by patent from the Crown, and discharging the general duties of Sheriff and Coroner, ranks next to him. *Vicomte.*

After the *Vicomte* ranks the *Avocat de la Reine* (Solicitor General). The two law officers do not act together, but the latter acts only in the absence of the Attorney General. They have small salaries paid out of Your Majesty's Island revenues, and, as in England, practise at the bar. *Avocat de la Reine.*

The *Greffier* (or Registrar and Master) of the Royal Court, appointed by the Bailiff for life, is an officer of great importance. He is assisted in some of his functions by the *Billetier*. An usher (*Huissier*) is also attached to the Court. *Greffier.*

We may here mention the Registrar of Hereditary Contracts, though not technically an officer of the Royal Court. To him is committed the duty of enrolling, and preserving the enrolments of all *contrats* (deeds relating to land) and other instruments placed on the public register. Registrar.

Since 1645, there have been two officers termed *Dénonciateurs*, *Sergens de Justice*, appointed by the Bailiff, with the assent of the Jurats. Prior to that year, there was but one such officer. Besides summoning the members of the States, and attending the meetings of that body, where one of them acts on occasion as mace-bearer, they summon the Jurats to the meetings of the '*Corps de Cour*.' It was also their duty to publish all newly-passed laws, by reading them publicly at a spot in St. Heliers where the ancient market-cross formerly stood. They execute, in common with the Vicomte, most of the process against person and property for which the Sheriff is in England responsible. Though not necessarily admitted as *Ecrivains*, they practise as the agents of private parties. The legality of this is questioned, but the fact is not denied. *Dénonciateurs.*

The Bar, besides the Crown officers, until lately was confined to six Advocates, nominated by the Bailiff at his own discretion. Recently an Act of the States has received Your Majesty's sanction, allowing the admission of an unlimited number, and requiring certain qualifications. They practise also as solicitors. The Bar.

But there are also *Ecrivains* appointed by the Bailiff, without limit of number, in whose hands most of the business of solicitors in fact is. The admission as *Ecrivain* *Ecrivains.*

is not an essential preliminary to practice as a Solicitor. Such admission appears to have no other effect than that of qualifying the person admitted to "pass contracts," (that is, superintend the public acknowledgment of deeds), and to take down evidence given in suits before the Court.

Quorum.

The quorum of the Court, properly so called, consists of the Bailiff and seven Jurats at least, being a majority of the whole number; but business is brought in the first instance before what is called the *nombre inférieur*, consisting of the Bailiff and either two or three Jurats, sitting in one of the four branches of the Court, and only carried by way of appeal to the Bailiff and seven (*nombre supérieur, Corps de Cour*).

Branches of the Court.

The Royal Court is commonly spoken of as divided into four Courts, sometimes, more correctly, termed branches, viz., the ordinary Courts, called the *Cour d'Héritage* and the *Cour de Catel*, in which the Bailiff and three are required, and the extraordinary, called the *Cour de Billet* and the *Cour de Samedi*, in which much miscellaneous business is brought before the Bailiff and two Jurats. As its name implies, all matters involving the direct adjudication upon questions of real property, are of the cognizance of the *Cour d'Héritage;* the business of the *Cour de Catel* has, for reasons unnecessary to dilate upon, for many years almost entirely deserted it in favour of the *Cour de Billet* and *Cour de Samedi*.

Terms and Vacations.

The terms for holding the several Courts, ordinary and extraordinary, are two in the year. One opens on the 12th of April, and ends on the 5th of July; the other begins on the 12th of September, and ends on the 5th of December. The *Assize d'Héritage*, or *Chefs Plaids d'Héritage*, the proceedings at which we have alluded to already, takes place at the opening of each of these Terms. The distinction, however, between term and non-term, is, so far as regards the members of the Court and the practitioners, scarcely more than a nominal one. The Court, besides its criminal business, which is not interrupted by the cessation of term, holds frequent sittings during the so-called vacation for the hearing of appeals from the inferior number; and certain original causes, particularly those relating to trade and navigation, called *Causes d'Amirauté*, can be brought on and decided out of term.

The result is, that the Court and practitioners can reckon on no certain or continuous vacation throughout the year. As an illustration of this, we would call attention to a Table compiled from returns which we procured, and printed in the Appendix, by which is shown the attendance of the Bailiff and Jurats for the last three years in the Royal Court, for civil and criminal business. As to the Bailiff, it should be remembered that this attendance was given to the public in addition to that required of him in his capacity of President of the States at the meetings or committees of that Assembly, or at those of the various public Boards of which he is necessarily a member.

Faults and defects.

Having thus sketched the present constitution of the Royal Court of Jersey, we proceed to notice the faults and defects which we have observed in it.

The Bailiff, in the first place, as President both of the States and of the Royal Court, combines legislative with judicial functions.

Whatever may, in the abstract, be the objections to this combination, it will be sufficient for our present purpose to state that in Jersey there neither exists, nor can be provided, any other functionary at once learned in the law and of sufficient dignity to preside in the legislative body, and we therefore, do not recommend any change in this respect.

The combination of judicial and legislative functions.

As regards the Jurats, however, all the objections to the union of judicial and legislative functions exist in the greatest force, though we are happy to believe that at the present day the Jersey bench is not subject to that corruption from party spirit which must inevitably result from the popular election of a judicature if party runs high; and it is to be borne in mind that the Jurats being irremovable, are, when once elected, in a position of perfect independence. But even supposing the election always to be pure and enlightened, the continuance of this union tends to exclude from the dignified position of life-members of the States all those, however well qualified for legislation, who are not qualified or have not time for the regular performance of judicial duties, or should such persons be elected, leads to a result which at present prevails to a lamentable extent, namely, that they do not give that regular attendance in the Royal Court which is indispensable to the public well-being. The Jurats besides are Administrators of the Impôt (the fund derived from the duties on wines and spirits), a duty of great dignity and usefulness, but, as we humbly submit to Your Majesty, totally incompatible with the authority to adjudicate in the Court between themselves and those with whom they are brought into relation in the course of such administration.

Anomalies of the constitution.

Independently however of any question as to the mode of appointment of the Judges, the constitution of the Court is anomalous and incompatible with its competency to decide questions of law. We have heard it seriously doubted whether the Bailiff, the

President of the Court, in whom alone any qualification of professional knowledge is required, has the right to express his opinion unasked on points of law, unless there is an equal division of opinion on the part of the non-professional members. It is at least certain that his opinion has no force in the decision unless it happens to coincide with one of those so supported by equal numbers; and even though it may coincide with neither, he is bound to give the preponderance to one of them. We do not see that the relative powers of the Bailiff and Jurats can at the present day be questioned: Whether, however, some encroachments on the power of the Bailiff may not have taken place, may admit of a doubt; and it is certainly remarkable that the Bailiff, by his oath of office—which, as settled by the code of 1771, runs thus: " . . . *finalement vous vous* " *conformerez selon le bon avis et conseil de Messieurs de Justice* (the Jurats) *de tems en* " *tems, selon que la cause le requierra*"—promises a conformity, which, by the existing practice, he has no power to withhold. The Jurats, by their oath, which ends with the words, "*finalement en vos conclusions, vous vous rangerez et conformerez au* " *meilleur et plus sain avis de Monsieur le Bailly, et de Messieurs de la Justice,*" in common with the Crown officers, but not with the Bailiff, speak of their *conclusions*, which, in the case of the Crown officers, certainly mean a *consultative*, but *not decisive* expression of opinion. The position of the Bailiff is indeed essentially vicious. It may be that a man of strong will, dexterous in the acquisition of influence, and in improving the opportunities afforded by his high official rank and constant presence, will sometimes, when he has it to allege that without deference to him there will be perfect anarchy, become too much master of the Court, while he throws upon others the responsibility of all its decisions; but it is no less likely that a man not inferior in judicial qualities, but scrupulous of arrogating a power that the law does not give him, will fail to exercise the necessary influence, particularly if a considerable portion of the other members of the Court have been elected under circumstances of political excitement. This tendency to oscillate between anarchy, arising from the want of legal power, and excessive influence, arising from the consequent reaction, is an evil inherent in the system.

The Bailiff is deficient in authority.

Oaths of the Bailiff and Jurats.

But not only will the general constitution of the Court, and the anomalous relation of the Bailiff and Jurats, produce ignorant and fluctuating decision on points which the welfare of society requires to have consistently settled, but it will necessarily produce partial decisions also. Those who have not been trained to professional habits of impartiality, and who have not the knowledge of the subject, which makes correct decision almost a moral necessity, will more frequently be in that state of indecision which will leave them especially open to the influence of personal bias. Hence we have complaints from those who allege that they have been deceived in acting on what they reasonably considered to be the best legal advice, for the adviser obviously has to consider not only what the legal rights of his client are, but what are the chances that in the event of a question they will be properly apprehended. Hence instances have occurred, which we take at random from those which have been brought under our notice with other objects, of gross error in the proceedings, even where the error has not produced substantial injustice. Thus a consignee of goods who had refused to accept a bill for the price, was (before the time of the present Bailiff) sued and compelled to pay, not for the goods, but on the bill. Hence, in a case recently pending against one of two trustees of a marriage settlement made in England, where his co-trustee resides, it has been seriously contended that he can be sued in Jersey to pay over to the husband and wife the *corpus* of a fund in which by the deed they have only a life interest. This monstrous proposition, when overruled on argument by the *nombre inférieur*, was even carried by appeal before the *Corps de Cour*, the defendant being all the time in prison on mesne process in respect of this very alleged debt. Hence also persons have been held to bail on negotiable securities not yet due.

Partial decisions unavoidable.

Necessary evils.

Further, even if the members of the Court were competent, their numbers, and consequently irregular attendance must be, and are, productive of endless delay and inconvenience from the difficulty of securing the attendance of the same persons for the continuation of partly heard causes. The existence of this evil is not seriously disputed, even by those least prepared for the only possible remedy, that of constituting the Court of persons whose time is the property of the public. From this inherent defect it follows that the Royal Court is liable to the imputation (frequently, though, as appeared to us, groundlessly made) of being packed with a view to individual cases; and hence arises a certainty of chicane and of delay, often of a prolonged character, from the resort to frivolous pretences for the purpose of adjourning a case for the hearing of which the Bench of the day is considered unfavourable.

Packing the Court.

Much antiquarian argument has been addressed to us as to the legality of the numbers by which business is done; and it may be doubted whether, except by the acquiescence of

Legality of the branches of the Court

has been questioned.

parties, the Bailiff sitting with less than a majority of the whole number of Jurats, had originally any contentious jurisdiction; as, however, the present practice is not only of very long standing, but has been definitively sanctioned by the Code of 1771, we are not called upon to pronounce upon it. We may observe, however, that it certainly appears that the presence of a majority of the Jurats was in accordance with the common rule regarding bodies definite in number, originally requisite in order to constitute a legal meeting; that from very early periods the difficulty of assembling a competent number was so much felt, that it became usual to do business, *by consent*, with a less number; that this number in the ordinary Courts of *Héritage* and *Catel* became fixed at three; and that the extraordinary Courts were only a further expedient to reduce the number still lower. It would also appear that what has subsequently become an appeal, and has been definitively settled as such by the Code of 1771, was in its origin merely a refusal to submit to the judgment of an inadequately constituted tribunal.

The Island has outgrown its judicature.

To conclude. Whatever may have been, in earlier times the merits of the very ancient tribunal, the constitution of which we have thus discussed, it is our deliberate conviction that the Island, with its great wealth and population, its large foreign commerce, and all the important and complicated interests which have arisen in it, has at the present day so completely outgrown its judicature, that any reforms which shall leave the duties of the Superior Court in the hands of a numerous body without professional education, whose attendance is precarious, and for whose nomination no one is responsible to public opinion, will be absolutely nugatory.

No imputation on the existing Bench.

We do not in this make the slightest imputation of corruption or conscious partiality on the present Jurats. Indeed, considering the great licence of complaint which we have felt ourselves compelled to allow to dissatisfied parties, and of which they have largely availed themselves in speaking as well of the Royal Court as a body, as of private individuals; the absence of any tangible charges of judicial malversation against any of its members, goes far to show that their personal integrity, as members of the Court, could not be plausibly assailed.

Remedies.

In considering what remedies are applicable to the various defects which the present constitution of the Royal Court appears to us to exhibit, it must be borne in mind, that it is an inherent inconvenience in a small jurisdiction that room is scarcely afforded for that division of official labour under which public acts may be subject to effective review, and public functionaries to responsibility, by means of a distinct and independent authority.

When therefore superior and inferior functions are unavoidably in the same hands, we can only recommend that nothing should be neglected which may tend to mitigate the necessary evil of such a state of things, and that the utmost use should be made of whatever materials may exist, in order that functions may be kept separate and in due subordination.

Suggestion of giving jurisdiction to English Courts;

With this object some have recommended the simple remedy of giving jurisdiction to the Courts at Westminster; but this, whatever might be its advantages when seen from an English point of view, would be to abrogate the most cherished privileges of this Island, possessed from the earliest time; further secured under Edward I. by the grant of a seal, in order that their writs might not have to issue out of Chancery; and solemnly recognized on attempts to enforce writs of *certiorari* under Edward II. Another and more appropriate plan has been suggested, namely, that the present Court should be retained, but that a Justice in Eyre should periodically visit the Island for the purpose of reviewing its decisions. This course would be perfectly constitutional, and would have the further great advantage of raising the standard of forensic practice on the spot, and obviating many costly and dilatory appeals to Your Majesty in Council; but we fear that the expense necessary, if a Judge of sufficient weight is to undertake the duty, would be found an obstacle.

of appointing a Justice in Eyre.

A change imperatively demanded.

On the whole, as we are not prepared to urge the adoption of either of the two courses last referred to, while (as we most humbly submit to Your Majesty), a fundamental change of some kind is imperatively demanded, we recommend the following scheme for the re-construction of the Royal Court.

It appears to us then essential that the Royal Court should in future consist of a small number of Judges, of competent legal attainments and experience, with salaries sufficient to give the public a right to demand their punctual attendance, and nominated (during good behaviour) by some authority responsible for the propriety of the selection.

A single Judge would be insufficient.

From the fact of the limited extent of the jurisdiction, and from the consideration that at present time is lost by the necessity of assembling and convincing a plurality of Judges when one would suffice, it might be inferred that a single person would be adequate to all the judicial demands of the Island. On the other hand, it is to be considered that a

Police Court and a Small Debts Court are also to be provided for; that it is essential that a Judge should be constantly accessible to determine questions of personal liberty, and others requiring immediate decision; and also, that occasional absence from the drudgery of daily duty is important to maintain both the mental and bodily vigour of one who is to be an enlightened Judge. We propose, therefore, that the number should be three, viz., a Bailiff, and two Puisne Judges to be nominated by the Crown, and to hold office during good behaviour. They should, we think, receive salaries of 1,200*l.*, 1,000*l.*, and 1,000*l.* respectively, all court fees of every description being paid, as soon as the necessary arrangements can be made, into a common fee fund. It will be observed in our account of the actual system of procedure in the Royal Court, that at present all questions come originally before the *nombre inférieur*, from whose decision an appeal lies to the body of the Court, in cases where the subject matter in dispute is of a certain fixed value. We do not feel called upon to enter more minutely into the details of the arrangements by which business might be conducted by the new tribunal proposed by us, than to suggest that one Judge should sit alone for duties which would be in the main similar to those to which the *nombre inférieur* is now competent, so far as such duties might be retained, whilst there would be less frequent, but stated and calculable, sittings of the full Court.

Recommendation.

A Bailiff and two Judges paid for their labour.

Before this single Judge, unless the next sitting happened to be of the full Court, all prisoners on civil process should be brought up for confirmation of their arrest, and the pleadings, as long as the present method is maintained, should be carried on. He should in all cases be at liberty to reserve questions for the consideration of the full Court, thereby sometimes obviating the necessity of an appeal, sometimes obtaining a more solemn decision when the difficulty or importance of the question might render it desirable, though the amount immediately at stake might not be appealable. Indeed, though there can be no doubt of the legality of decisions by the number authorized by the existing code, we cannot but consider it originally an abuse which deprived suitors for small amounts, and in the first instance, of any chance of having their causes decided by a quorum of the whole Royal Court. And we doubt if it may not be found practicable, especially since the establishment of a tribunal for the recovery of small debts, to do away entirely with the reiteration of proceedings involved in the present system of appeal, reserving, however, to the Court the power of granting a new trial or re-hearing in any case which might appear to require it.

Details.

The two remaining Judges would thus be at liberty to sit in a Police or in a Petty Debts Court. The necessary attendance at the former would average (to judge by present experience), three days, at the latter one day in the week, and it would, in our opinion, be unobjectionable, and might occasionally be convenient for one of the Jurats to replace the Judge in the Police and Small Debts Court.

Much of the labour which now falls on the Greffier of the Court would devolve upon one of the Judges, who would sit separately to discharge similar duties to those discharged in England by a Judge at Chambers; but new duties, particularly that of taxing officer, would probably be thrown upon the Greffier.

We see no advantage in continuing the Crown officers as essential members of the Court. Each Judge sitting alone, or the full Court, should have full powers of maintaining order and decorum, so necessary to judicial proceedings, by committal, and if necessary by fine, without the intervention of the *partie publique*.

It would also be highly desirable, that the sittings of the re-modelled Court should be so arranged as to admit of certain and definite vacations. Possibly it might be practicable to provide for two months' vacation in the summer, and for a fortnight at Christmas and Easter. As the change we propose will also affect the administration of criminal justice, the consideration of which has not been referred to us, we may observe that the appointment of three paid Judges, in lieu of the present Royal Court, formed a prominent feature in the recommendations of the Criminal Law Commissioners of 1846.

Vacations.

Commissioners of 1846.

It is true that one consequence of these alterations will be that the Jurats, being thus relieved from their attendance in the Royal Court, will cease to be members of the superior judicature of the Island. This, however, is a position for which, besides the heavy demand on their time, many of the best men of the Island must, from the want of professional qualification, be often under a painful sense of unfitness. Their position, as life members of the Legislature by the election of the Island community, as Administrators of the Impôt, and as persons entrusted with various other functions of social importance, will still be one of real dignity.

The number of advocates, considering especially the occasional absence of those whose names still remained on the list, and excluded others, has not hitherto been in our opinion equal to the wants of the community. It is satisfactory to us that the

Advocates.

passing of the recent measure for throwing open the Bar, renders unnecessary any recommendations of ours upon this point. It has been alleged that an unpopular litigant is sometimes unable to obtain the assistance of counsel. Without venturing to say that there never may have been cases of this kind, we believe them to be of very unfrequent occurrence; and the Bar, as regards their constant readiness to undertake the cases of pauper clients, are entitled to high praise. But the absence of counsel is very frequently the cause, or at least the pretext, for vexatious adjournments, which constitute one of the greatest defects in the Procedure of the Royal Court. Such adjournments, besides delay in the despatch of business, and endless vexation to parties and others whose attendance is required, render almost impossible that sound publicity which is the best check on a bad Court, and the best support to a good one; for this can hardly be attained without facilities for observing the continuous progress of a cause. We shall hereafter have to observe under the head of Procedure, upon other aspects and other causes of this evil; but the small number of counsel, combined indeed with the practice which we found to prevail of not furnishing them with written instructions, has hitherto been a great obstacle to the power of insisting that when one advocate is prevented from attending, he should rather find another to supply his place than allow business to be suspended.

Private practice of Crown Officers.

Objections have been urged against the existing liberty of practising for private clients enjoyed by the Crown Officers. We think that all the reasons on which this liberty is defended in England apply with much greater force in Jersey. Neither the finances of the Island could command, nor the business of the Crown exclusively employ, two of the most eminent advocates; and the loss of the continued experience and excitement of general forensic practice must tend to impair their efficiency. The only real objection which we have heard is, that they may be deficient in zeal if it becomes needful to move for the censure of the Court on their own client or his witnesses. But this is easily met by the extension to that case of the power already existing, in the case of their absence, allowing another advocate to supply their place (*stipuler*).

Ecrivains.

The *Ecrivains* (Scriveners, or Clerks in Court) are not, like attorneys in England, the recognized representatives of their clients, though in fact they act to a great extent as solicitors and general men of business (*hommes d'affaires*). These functions, however, are by no means confined to them. The advocates often do business in the face of the Court without the intervention of any solicitor; and the executive officers habitually thus do business connected with the suing out, as well as with the execution, of process. The proper office of the *Ecrivain* is to pass the contracts, the recording of which is the universal mode of giving validity to transactions affecting real estate. They are also employed to take down evidence, a duty both laborious and important, and which in criminal cases they perform without any remuneration. In practice they are admitted by the Bailiff, but without having served under articles, and without other specific qualification or formality.

Their admission.

Whilst we should by no means be adverse to such farther regulation on the subject of the qualification and admission of practitioners, as might be proposed by those more intimately experienced than we can be in the social economy of the Island, we do not ourselves, in the absence of any charge of abuse, make any such proposal. If we required special qualifications, we could not in so limited a field succeed in establishing a high standard; and the literal performance of the requirements might be considered to confer an inchoate right to admission on persons whose admission would be very undesirable. Perhaps the undivided responsibility of the Chief Magistrate for the admission of none but proper persons, whilst it tends to maintain the dignity of his office, is on the whole, under present circumstances, a better security for the propriety of the appointments. We think, however, that they and all other officers of trust about the Court, including any officer making seizures or sales, or executing process, should be amenable to the summary jurisdiction of the Court, both for business actually done in Court, and for conduct, whether towards clients or other parties, in matters connected with the confidence reposed in them by reason of their professional or official character. They should for this purpose be liable to be called on by the Court to answer matters alleged on oath, to deliver up documents, money, or other articles in their custody, or under their control, to render accounts, or to do such other act connected with the above subjects as the Court may direct. The objection that a man is not to be heard as a witness in his own cause, even if it should be generally adhered to in the law of Jersey, or that he is not liable to interrogatory against himself, should not be applied to this branch of administration. On such evidence, and the evidence of such other persons, or such documents as may be brought before it, the Court should decide summarily on the conduct and duties of its own officers. A party having supposed cause to complain of malversation

They should be liable to summary inquiry as to their official conduct.

on their part should thus be enabled on application, supported by affidavit, to obtain either a peremptory order for the inculpated officer to appear personally and be examined as to his answer to the affidavit, or an order to show cause why he should not be summarily ordered to perform some act, which, being his duty, he has omitted. No default should be allowed. The first charge should be by affidavit, in order that the allegation sworn to by the applicant may be written and definite; but it might on the appearance be tested and qualified by cross-examination. The Court should have the power to call for farther evidence on either side, or to dismiss the case for insufficiency of evidence, as it may see just; but should not send the case to formal proof if sufficient materials for a summary decision can be adduced. It should have the power of suspension or of dismissal where the admission or appointment was by the Court itself, or by any of its members, and of suspension during Your Majesty's pleasure where the appointment was by Your Majesty. We believe this stringent authority to be essential to the purity and efficiency of the subordinate machinery of the Court; and it cannot be doubted that whatever tends to repress mal-practice will thereby maintain the general social estimation of the profession, without in any degree interfering with the independence of its worthy members.

Solicitors' bills.

Bills for professional business are recovered on a *quantùm meruit* like those on any other employment. We are told, and no doubt truly, that the rate of charge is well understood. Questions must however be of continual occurrence as to the propriety of certain charges, to understand which, few unprofessional men can be competent. We, therefore, think,—1. That there should be a taxing officer, who would probably be the *Greffier*. This officer should have the power to reserve questions for the consideration of the Court, in which case the costs of the point reserved should be in the discretion of the Court. 2. That no solicitor or other person should be entitled to recover a bill wholly or in part for business done in the face of the Court, or in the suing out or execution of any process of the Court, or in the preparation of, or consultation upon, legal documents, unless such bill shall have been signed by him and delivered to the party to be charged before the commencement of the suit for its recovery. 3. The client should be entitled, as of course, to refer any such bill to taxation. Any agreement that a bill should not be subject to taxation should be void.

We believe that a reference to a more authoritative scrutiny than that exercised at present by the *Greffier Arbitre*, before whom, according to existing practice, the items in a professional as well as any other account are merely stated and discussed (but without any power of adjudication on his part), will protect fair practitioners, will tend to the exclusion of irregular practitioners, and by affording a ready method of disputing unfair charges will tend to relieve the profession generally from vague imputations. The Court will, of course, regulate the details of these proceedings.

Fees.

In connexion with the appointment and definition of the duties of a taxing officer, the newly constituted Court will have, under the power of framing rules and orders, subject to the approval of Your Majesty, to review the whole system of professional fees. The rate of professional remuneration is by no means excessive in Jersey, and it would be a great public calamity if the aggregate emoluments of the legal profession were reduced; for it is essential that they should be sufficient to maintain a body of men of character, intelligence, good social position, and in number sufficient to afford clients a choice of advisers, and to have a public opinion amongst themselves. Litigation in Jersey is costly, not because the business done is highly paid, but because there are so many payments for steps by which no advance is made. If these were peremptorily disallowed, we think it probable that an increased scale of fees might be required under some heads of substantial business. The increase need not be equal to the disallowance, for it is certain that with the prospect of prompt decision, many actions would be brought which now are not brought. Some proceedings indeed of a purely vexatious character would probably be prevented; but these could not be equal to the number of cases fairly calling for adjudication, which would be added to those now brought into Court, and decided there. Moreover, the costs of witnesses causelessly included, under the existing system, in the lists, and fruitlessly produced and re-produced before the Court, are a profit to no one. They are a heavy burden on the litigant, much beyond what would be required to give a better remuneration to his legal advisers, and a better contribution to the public fee fund; whilst to the witnesses themselves, they are not an adequate compensation for the loss of time to those whose time is of any value.

Jurisdiction of the Royal Court.

Charter.

Having discussed the composition of the Court, we next proceed to the subject of its jurisdiction. This depends, of course, upon the charters and letters patent from time to time granted to the Island by Your Majesty's progenitors, Kings and Queens of England. The Charter 4th Eliz. (A.D. 1562) comprises the privileges of the Court, and

thus sums them up:—"Præterea confirmamus ..... leges et consuetudines; dantes et "tribuentes præfatis Ballivo et Juratis, ac omnibus aliis magistratibus, ministris, et "cæteris quibuscunque, ibidem in officio aut functione aliquâ constitutis, plenam, integram, "et absolutam auctoritatem, potestatem, et facultatem cognoscendi, jurisdicendi, et "judicandi, de et super omnibus et omnimodis placitis, processibus, litibus, actionibus, "querelis, et causis quibuscunque, infrà Insulam et loca prædicta emergentibus, tam "realibus, personalibus, et mixtis, quàm criminalibus et capitalibus, eaque omnia et singula "ibidem et non alibi placitandi et peragendi, prosequendi, et defendendi atque in "eisdem vel procedendi vel supersedendi, examinandi, audiendi, terminandi, absolvendi, "condemnandi, decidendi, atque executioni mandandi, secundùm leges et consuetudines "Insulæ et locorum maritimorum prædictorum, per anteà usitatas et approbatas, absque "provocatione, seu appellatione quâcunque, præterquam in casibus qui cognitioni nostræ "regali, ex vetustâ consuetudine Insulæ et loci prædicti reservantur, vel de jure aut "privilegio nostro regali reservari debent."

Misapprehensions.

There has been much complaint and much misapprehension as to the cases in which the Court ought or ought not to claim, and those in which it ought or ought not to exercise, jurisdiction. But without saying that erroneous decisions might not be found, we believe that the proceedings of the Court in respect of this point have, on the whole, been reasonable and consistent. The islanders are entitled by their charters to the cognizance of matters in which the cause of action arises in the Island, and common sense and justice imperatively demand that the Jersey Court should deal with personal actions which no other can reach. With the view of proving the alleged inconsistency of the Court on this head, our attention was directed to the fact, that in one case, the Court had declined to entertain against a single director who happened to be in Jersey an action arising out of the dealings of a trading company having its place of business in England; yet in another had entertained one against a person resident in Jersey for rent and mismanagement of a farm in England. The distinction is sound and obvious, however great the difficulty might be in the latter case, in obtaining in Jersey the evidence necessary for the trial. If the Court had not clearly the jurisdiction in such personal actions, we should recommend that it should be conferred on it.

Jealousy of English process.

There is an unfortunate jealousy as to the service in the Island of writs of summons, and other analogous process from the English Courts; and difficulty in obtaining affidavits has at times been experienced. This difficulty has led to the appointment of Commissioners in the Island for taking affidavits in suits before the Courts of Westminster, and has been occasioned by the refusal or reluctance of some of the Jurats to administer the necessary oath, and by the casual absence or distant abode of others of them. This applies particularly to affidavits accompanying English process; and, without imputing improper motives for such refusal or reluctance, we regret the existence and the results of such a state of things. The reluctance of the Island magistracy to give fair facilities for the litigation elsewhere of questions over which other Courts reasonably have jurisdiction is to be deplored; and so is the consequent tendency to aggravate the abuse of such process, which has of late been very frequent, and which may in some degree account for the reluctance alluded to. Where affidavits must be made before men unconnected with the business of the Island (such as English Commissioners for taking affidavits), the natural tendency is to encourage rash, untenable statements on oath of what the law of the Island is.

In one instance which was brought to our notice, the Court went so far as to entertain an action against a clerk for merely serving an English writ of summons: having been arrested on mesne process, however, he was discharged, on suing out a writ of *habeas corpus*. In another case, where a complaint was made before us to the effect that the Court had inflicted a fine on a party for serving an English writ, it is right to state that we found on inquiry that they had, in fact, only given very temperate damages for the expense and inconvenience of having to attend at Westminster to set aside process sued out without probable cause, in a case cognizable only in the Island.

Petty Debts Court.

2. Under the head of Tribunals must also be noticed a Court established in the year 1852 by an Act of the States, confirmed by Your Majesty in Council, for the recovery of debts not exceeding ten pounds sterling. The Judge is one of the Jurats, nominated by the Bailiff. He receives no salary, but is allowed certain small fees, amounting on the average to 48*l.* per annum, and is excused from attending sittings of the inferior number of the Royal Court. A Commis-greffier or Clerk is attached to this Court; he is nominated by the Judge. His remuneration from salary and fees does not exceed 55*l.* per annum, a sum which appears very insufficient, as he is obliged, by virtue of his office, to attend not merely on the weekly sittings of this Court, but also, without further salary, on those of the Police Court, established also in 1852.

This Court is not empowered to grant arrest on mesne process, but on default of payment of a judgment obtained in it, may commit the judgment debtor for a period not exceeding four days for every pound sterling recovered, and of a corresponding time for every fraction of a pound.

A summons to this Court must, in general, be served with four days' notice.

The only objections to this Court that were brought before us are the following:— Objections. The facilities given to a fraudulent debtor to escape from the Island, if not owing any one debt of upwards of ten pounds. In such a case he is not liable to the process of the Royal Court, and the summons from the Petty Debts Court does not restrain him from leaving the Island. We think that in the event of such modifications in the practice of arrest on mesne process as we have already ventured to recommend, being introduced into Jersey, it would remedy what may be a real grievance if the liability to such arrest were extended to debtors who owed to two or more separate creditors sums amounting in the aggregate to ten pounds and upwards.

Objections are also raised to the extinction of the debt by the imprisonment of the debtor for a regulated and short period.

We do not offer an opinion on the principle of imprisonment in execution, whereby a certain amount of debt is satisfied by a certain period of confinement; but if such imprisonment is to be allowed, we think, that in the interest of the creditor, if such imprisonment is of any value, certainly in that of the debtor, and in that of society, a day's imprisonment ought not to have to the debtor and his family a greater pecuniary value than a day's skilled labour; yet such is certainly the case if debts are gradually extinguished at the rate of 5*s.* a day, seven days in the week.

To the creditor it is obvious that such imprisonment is no security at all for the debts of that class which is most amenable to the process of a Small Debts Court, unless he has also that which, in fact, makes it unnecessary to him, the much better security of honesty in his debtor, for its only use to him is, that the fear of it may possibly extort payment from a dishonest debtor; but even of the moral effect it tends to deprive him; for many men whose consciences would revolt at directly defrauding one with whom they deal, would be relieved by feeling that they had paid in person as much as the law prescribed. It is mischievous to the debtor, because, when once embarrassed, he must be strongly tempted to this reasoning, and because in the fluctuations of employment, to which his class is particularly exposed, and the pressure of which is the more severe when pawnbroking is unregulated, he can have no hope of obtaining credit where the process of law against him is ineffectual, except what is accorded to his character, which, even if unimpeachable, may be unknown. That these corrupting influences and this increased pressure, falling, not on individuals only, but, by the fluctuations of trade, on classes, must be injurious to society, requires no proof.

If the principle of detention in proportion to amount is retained, either the amount to be cleared off by a day's confinement should be much reduced, or the confinement should only protect the person and a limited amount of necessaries from future liability.

The present Court appears to work very well, and beyond the two points which we have just noticed, no improvements occur to us as being requisite. On a re-construction of the Royal Court, one of its Judges would, as above mentioned, assume the duties of Judge of the Petty Debts Courts, at present fulfilled by a Jurat.

3. Having already in our notice of the manors and seignorial rights alluded to the Court of the Seigneur, and knowing of no serious grievances or objections which do not apply rather to those rights themselves which we have discussed than to the Court by which they are enforced, we need merely add in this place, that the Seignorial Court is composed of the Steward (*Sénéchal*), who is Judge, of the Bailiff or *Prevôt*, and of the *Greffier*, each appointed by the Lord of the Manor. In contested cases the tenants who owe suit of court are bound to attend. The *Prevôt*, besides being the executive officer of the Court, presents all encroachments on the rights of the fief, the death, attainder, or marriage of tenants, and the transfer of lands held of the manor which, since the last Court, have entitled the Lord to any of the casual profits of his seignory, under the respective heads of escheat, *année de succession*, *droit de noces*, *saisine et désaisine*. An appeal lies from this to the Royal Court. Seignorial Courts.

X.—The Mode and Forms of Procedure.

The limited time allotted to us does not permit, nor do the circumstances of the case appear to demand, that we should give a full account of the whole of the machinery by which the Court is in every case put in motion, and by which a suit is conducted from Procedure in the Royal Court.

beginning to end. We have, therefore, in the following notice of the Procedure and Practice of the Royal Court, entered into no more detail than was absolutely necessary in order to render our recommendations intelligible. We are bound in the outset to state that whatever difficulties may stand in the way of a reform, the practice of the Royal Court is, in fact, intolerably dilatory and vexatious. Yet, at the same time, though there are some antiquated forms which require to be swept away, the modes of Procedure most in use are very simple in their nature, and the greatest part of the evil arises, not from the state of the law, but from the want of punctuality and order naturally resulting from the Chief-Magistrate being powerless, the actual Judges numerous, their attendance precarious, and their appointment without reference to judicial qualifications in themselves, and without any individual responsibility on the part of those who appoint them. The evil under these circumstances is more difficult to be remedied, as among so small a body of practitioners passing their lives together, any great strictness in enforcing regularity would be felt as a want of personal courtesy.

The intolerable dilatoriness of the procedure.

The want of punctuality and order.

Among the forms above adverted to that might with advantage be swept away, we should include the fourfold division of the Court, except that the solemnity of the *Chefs Plaids d'Héritage* might, if desired, be retained; and certain solemn branches of business, as for instance, the promulgation of new rules and orders of Court, which would be largely required, might then take effect. The jurisdiction of the several Courts is now so much confounded that we think the remaining distinctions must tend more to obstruct than to methodize business. For the latter purpose the Court ought to have the power of distribution from time to time of the subjects brought under their notice, with a view to the actual requirements of society, and the current demands of business.

Useless forms.

Among the causes of delay which may require legislative removal is the suspension of all civil remedies pending criminal proceedings. This has been carried so far that the claim of a deserted wife to alimony was suspended for two years during the prosecution of her husband for bigamy, a proceeding in which she could take no part.

It is not analogous to the obstacle to civil suits in England resulting from the cause of action arising out of a felony, and if it were the inconvenience is much greater for two reasons; the first arising from its universality as extending to all prosecutions for misdemeanor, and to such cases as the above; the second, from the consideration that criminal proceedings in Jersey are much more dilatory than in England, and no private prosecutor can expedite them.

General heads of procedure up to judgment.

Speaking generally, the regulation of judicial proceedings up to judgment may be said to have four main branches:—

1. Process, which originally brings the parties before the Court, and which to the last enforces its decrees. (For our purposes the head of Execution is postponed.)
2. Pleading, that is, the allegations of the parties, and the deduction therefrom of the issues, whether of law or fact.
3. Evidence and authorities to decide these issues.
4. The fixing the time, place, and attendance for giving such decisions, whether interlocutory or final.

The rules and practice relative to judgment and appeal follow naturally afterwards.

No power of framing general rules of practice.

We propose to notice each of these divisions in order, but before entering into these particulars it may be well to premise that at present the Royal Court of Jersey does not exercise the power usually held to belong to every Court, of framing, of its own mere motion, general rules of practice or procedure. It is true that under each of the four heads of procedure just specified there may be matter of law which, from its importance, the Legislature will keep to itself; there are, however, minor details, the regulation of which can with safety and advantage be entrusted to the Court. We therefore recommend that the reconstituted Royal Court should have express powers conferred on it to frame rules of Court to regulate the course and order of its proceedings; such rules to be transmitted to Your Majesty in Council, and to take effect within three calendar months from such transmission, unless in the interval Your Majesty should be pleased to disallow or suspend them.

Recommendations.

PARTIES.

1. In every action at law the first consideration is, as to the persons proper to be parties to it. As to this, there have been only three important classes of cases brought under our notice as involving evils which require remedy,—suits for damage to a common; suits to impeach a will; and suits involving the consideration of the responsibility of married women. With regard to the first class, we were informed that in suits brought by the lord to remedy encroachments on the waste of a manor, or by commoners for disturbance of common, it is necessary to make, not merely the alleged wrong-doers, but

Evils requiring remedy.

Needless joinder of parties.

also all the commoners, parties to the suit. This is said to amount often to a denial of justice, owing to the impossibility of identifying them all. It, however, admits of an easy and complete remedy. The rule should be, that for any invasion of the soil, the lord ought to be permitted to sue the wrong-doer alone; and that for any act by which any commoner was subjected to an unlawful damage to an appreciable amount (as, for instance, for an enclosure, whereby what remained of the common was either absolutely insufficient in extent for the claims on it, or he was excluded from the parts most convenient to him,) the individual commoner so damaged be in like manner permitted to sue the wrong-doer without joining the other commoners. In suits brought to impeach a will, it is held to be necessary to make every legatee a party, which, with the allowance of defaults to each, may render the proceedings so intricate and costly, as to cause a defeat of justice. We would recommend that the suit be brought against the executor or other person propounding the will, or, if it has not been propounded, against some small number of the principal legatees, with notice, actual or constructive, to the rest to intervene, if so advised. The third class involves questions as to the rights and liabilities of married women, which have been treated of in their place.

PROCESS. With regard to process, there are three methods of commencing a suit in Jersey; viz., by bill, writ, or petition; in French, *bille*, *ordre provisoire* or *ordre de justice*, and *remontrance*. The most usual method is by *bille*, which is, in fact, a simple summons, with short particulars of the plaintiff's claim embodied in it, served upon the defendant by a summoning officer, called the *Prévôt de la Reine*. The *remontrance* is much in the nature of a Bill in Chancery, and is adopted where the grievance alleged is of a complicated nature. With regard to the *bille* and the *remontrance* nothing more need be said. One of these two, or the *ordre de justice*, (of which presently,) is the form usually employed when suing a landed proprietor (*fondé en héritage*).

But if the defendant be a stranger, or, although resident (it may be permanently) within the Island, be not possessed of sufficient real estate to be an adequate security (under which circumstances, the term *expatriable* is at the present day applied to him), the first process that issues against him is, in general, the *ordre provisoire*, or the *ordre de justice*, usually the former. The object in resorting to this writ is the arrest of the alleged debtor on mesne process, in default of seizure of property belonging to him, or of his finding security, to the requisite amount.

Very serious, and, as we think, well-grounded, complaints have been made to us with regard to the reckless and needless violation of the sanctity of personal liberty, perpetrated under the system now in existence: and much evidence has been adduced before us to show that this peculiar process has not unfrequently been the means of inflicting a long imprisonment, without reasonable or probable cause.

Arrest on mesnee process. At present the practice is shortly this,—any person, upon the mere production to any executive officer of a written statement, true or false, of a debt alleged to be due to him of ten pounds or upwards, can require the officer to arrest and lodge in prison the person of the alleged debtor, unless, as above explained, such alleged debtor gives bail, or is possessed of landed property in the Island sufficient to secure the claim. No affidavit or even allegation that the debt is justly due is required from the person causing the arrest. The *ordre provisoire*, which is used on the occasion, no doubt purports to authorize the arrest; but we can only characterise this instrument as a mere empty form. In the most general terms it authorizes the holder of it to attach the goods, ships, merchandise, effects, and person of all who are indebted to him, and who are not privileged from arrest. It indeed bears the signature of the Bailiff, but this signature is affixed from time to time to a number of such writs in blank, which are supplied to the arresting officers to be used by them as occasion may require. When it is intended to make use of one, it is only necessary to insert the name of the *creditor* and to receive from him a written particular of his demand against the debtor. This particular ought to be delivered by the arresting officer to the debtor, but we have reason to fear that in practice this rule is not always adhered to.

For unliquidated damages. Arrests on mesne process for unliquidated damages are made in a form somewhat different, that is, by the *ordre de justice*, which sets forth special damage, and sometimes claims specific redress, and besides damages, concludes for a nominal fine. But in substance both the right to sue and the amount of damages are in like manner without verification. According to the present practice, when the gaoler receives prisoners into his custody, the warrant, if any, authorizing the arrest is not necessarily either left with, or even shown to him.

Confirmation of the arrest. In any case, the arrest requires in theory of law a "confirmation" by the Court; for which purpose the prisoner ought to be—and, if he pleases, can insist upon being—brought up at the next court-day, when his case is treated as a "privileged" one, and,

in theory at all events, is immediately gone into in preference to the regular business on the cause-list. It was admitted in evidence before us that it was possible, assuming the most unfavourable conjuncture of time and circumstance, for a person arrested on mesne process to lie certainly ten days in gaol, without having an opportunity of arguing the question of the legality or illegality of his detention. But even then, the legality of the detention is in fact rarely, if ever, disallowed before the final adjudication of the cause in the defendant's favour.

Attempts were made before us to bring home to arresting officers the charge of refusing or wilfully neglecting to bring up their prisoners for confirmation of arrests. In fact, however, it appeared that not unfrequently, where an omission to bring up the prisoner had occurred, it had been owing to the fact that he acquiesced in the legality of his detention, and wished to avoid the publicity and expense attending his appearance at the Court. This may be the fact, but, if so, it argues great weakness in the Court, that protracted imprisonment should precede the decision of an undefended cause.

In other respects we are not aware of serious objection existing to the present forms and rules of process in themselves; we therefore think it unnecessary to enter further into a description of them. They are characterized by great simplicity and absence of undue formality and rigidity.

Before leaving this branch of the subject, we must record our opinion that in the present practice of arrest on mesne process in Jersey, the personal liberty of the subject is not sufficiently respected; and that no apologies for that system, drawn from considerations of the peculiarity of the jurisdiction, its limited extent, and the great facilities (which no doubt exist) for fraudulent debtors to escape from the Island, should be permitted to prevail to such an extent as to lead to the retention of the present practice without modification.

Proposed modifications.

The modifications which we would humbly propose are as follows:—

That arrest on mesne process should be unlawful (except as below) without the order of a Judge under his hand, made on an affidavit sworn before him of debt or other demand, and of belief and reasons for believing that the defendant is about to leave the jurisdiction, and that the debt or other demand will be endangered unless such order be granted.

That the Judge should put such further questions on oath to the party making the affidavit, or to any other person, as may appear to him necessary to satisfy him of the propriety of granting the application.

That he should grant it, if it appear to him that there is reasonable ground for believing,—

1. That the applicant has cause of action to the amount of 10*l.* and upwards,
2. That the defendant is about to leave the jurisdiction,
3. That such debt or demand will be thereby endangered;

Otherwise he should refuse it.

It is right that we should state here, that opinions were expressed before us, the weight of which we do not deny, that the entire abolition of the power to arrest on mesne process without the order of a Judge, will, from the facilities for escape afforded by the position of the Island, lead sometimes to the loss of debts justly due. In deference to these views, though we are not without hopes that a time may come when the system of credit may be on a footing more favourable to personal liberty, we think that in the case of a debtor who had not resided two years in the Island, and was on the point of leaving it, it might perhaps be permitted to a creditor who had not time to apply in the first instance to a Judge, to require, on his own responsibility, an executive officer to arrest the debtor, on delivery to such officer of the particulars of his demand in writing. Such officer should, in default of sufficient bail, immediately conduct the debtor to the prison, and deliver him to the gaoler, who should receive him into his custody, and forthwith deliver to the officer a certificate of the exact time of his receiving the debtor, and then make an entry thereof in the prison books. This power would of course be equally applicable to a case where the intention to abscond was shown after, and in consequence of the service of ordinary process, as to other cases.

The creditor should then, with all reasonable despatch, make affidavit before a Judge to the like effect, and in the same manner, and under the same conditions as in the case of an application for the arrest of a debtor on previous affidavit; and the Judge should satisfy himself not only that there is probable ground for the detention of the debtor, as in the other case, but also that the debtor had not resided the stated number of years, there was not time to make the affidavit before the arrest, and that the creditor had used due diligence in applying to the Judge after the arrest. If not so satisfied, the Judge should forthwith order the discharge of the alleged debtor, and the creditor

should be liable in damages, by action at the suit of the debtor, for false imprisonment, if the Court shall be of opinion that the arrest was without probable cause.

Unless the gaoler should within the shortest practicable period (which should be rigidly fixed by law, be subject to no judicial discretion, and which should certainly not exceed 24 hours, Sunday being excluded) from the time of the arrest receive from the Judge a warrant for the detention of the alleged debtor, he should on the expiration of the above period discharge him (under a penalty in case of default), taking his address, and if necessary verifying such address.

The gaoler, if he did not so release the prisoner, should be liable to damages for the wrongful detention, and to fine at the suit of the Crown (both summarily), without regard to the questions in the cause as to the merits of the original claim.

Every prisoner committed to gaol on mesne process should be brought up at the next sitting of the Court, when no excuse for delay on the part of the plaintiff should be allowed; and if the whole day were occupied by other privileged business, the Court should sit *de die in diem* until the questions of the legality of the arrest and of the propriety of continued detention were disposed of.

Bail might then justify, and it should be the duty of the Court to accept the security of persons not possessed of immoveable property in the Island, if satisfied of their sufficiency on other grounds; and in lieu of bail, a deposit of goods or money should be allowed.

Discharge of the prisoner, whether absolute or on security, should be without prejudice to the right of the plaintiff to proceed in the action; but there should be no second arrest on mesne process for the same cause (after discharge, whether by the gaoler or by the Court,) unless a subsequent intention to abscond were proved by such evidence as is required for an original arrest.

Warrant of Commitment.

In every case of arrest and imprisonment on civil process, we think it should be obligatory on the arresting officer to leave with the gaoler the warrant or other instrument by virtue of which the prisoner is to be detained. This instrument, translated, if necessary, into English, should in all cases be read aloud to the debtor by the gaoler. The gaoler should, under heavy penalties, be forbidden by law (except in the special case just mentioned) to receive any person into his custody without the production of a written warrant under the hand of a Judge, or of a copy, duly authenticated by the *Greffier*, of an act of the Court. The gaoler should indorse on this instrument a memorandum of the exact time of receiving the prisoner into his custody. This should be filed by him, and should not be delivered out of his hands without the order of the *Vicomte*, or of the Court.

Habeas Corpus.

In connexion with considerations affecting personal liberty, we think it convenient to notice here the operation of the writ of *habeas corpus*, which runs in Jersey, and of the Acts of Parliament which regulate it. Writs of *habeas corpus* have been sued out of late years in numerous instances. In the years 1858–9 there were seven cases, in six of which the prisoner was remanded, a result which established the legality of his imprisonment, and the absence of adequate ground for applying for the writ. Serious expense to the States, and very great inconvenience in the limited prison establishment of so small a jurisdiction, have been thereby occasioned. It is plain, too, that as the law, not being the law of England, must be set out on the preliminary affidavits, mis-statements of it, whether wilful or ignorant, may easily be introduced. It appears accordingly to us very reasonable that the Judge should be able to hear the law as represented on both sides before a prisoner is ordered to be brought up from beyond sea, and all the above-mentioned expense and inconvenience, and an increased danger of escape are incurred, and we would therefore recommend that the practice of vexatiously suing out writs of *habeas corpus*, addressed to the Viscount or to the gaoler of Jersey, should be discouraged by granting, in the first instance, rules to show cause only why the writ should not issue, and the body of the person alleged to be wrongfully detained be brought up, unless the Court or Judge before whom the motion was made should see special grounds for making the order absolute in the first instance. This course, we may observe, was adopted by the Court of Queen's Bench on an application for a writ from Jersey, which occurred during the printing of this part of our Report.

It might be competent to the Judge, on granting the rule, to propose to the Chief Magistrate, questions as to the law of Jersey, and his certificate, whether in reply to such questions, or furnished spontaneously, should on showing cause against the rule, be received by the Court as evidence of the Jersey law.

Pleading.

2. Pleading.—In nothing is it more obvious than in the matter of *pleading* that the course of procedure must depend in great measure on the character of the Court which will have to regulate it; for those refinements of pleading, which may be of great value

in empowering a highly cultivated judicature to do more complete and exact justice, will, under other circumstances, be merely perverted to harass an adversary by delay, or to obscure the substantial merits by chicanery.

In Jersey the first pleading on the part of the plaintiff usually discloses the real cause of action, and is very little incumbered with technicalities. The defendant is then called upon for his *prétentions* or averments in answer to it. In the report of Hemery and Dumaresq, p. 10, it is stated that he puts in no plea. That practice seems to have been altered for the better, since at present these averments, though probably not sufficiently specific, are reduced to writing during the sitting of the Court, unless, in cases of sufficient importance, time is allowed for the purpose.

When a cause is thus far opened on both sides, the mode of proceeding further upon it varies according to the nature of the suit. If the matter contested be a point of law or equity, unconnected with facts, or, if the facts are self-evident or admitted, the cause is then immediately argued on the merits, and judgment follows. But where the questions are not of pure law, or where the facts are not admitted, a different course must be pursued; and accordingly, where matters of account are in dispute, the parties are sent before the clerk of the Court to state the account; he is supposed in these cases to sit as arbitrator between the parties, and is then designated as *le Greffier Arbitre;* his duty is to record their allegations on the several items, and to send back for trial by the Court the disputed items on which they have thus pleaded to issue. By a process analogous to the above, where facts depending on local circumstances are in dispute, the parties may be sent before the *Vicomte*, who accompanies them to the spot and records their allegations. This is termed the *Vue de Vicomte*, who may be directed either to view the premises alone, and to make his return upon it; or, to call to his assistance six men, whose opinion he is to take upon oath, and return the whole to the Court. The former proceeding is, according to Hemery and Dumaresq, adopted as the preliminary to a *Transport de Justice*, the latter to a *Vue de Justice*, both of which terms denote adjournments of the Court to the *locus in quo*. As to the *Transport de Justice* the Bailiff and seven Jurats at least must attend, but without an inquest: at a *Vue de Justice* the Bailiff and three Jurats are competent to proceed with an inquest of twelve Jurors; an appeal lies from this view to a *Grande Vue de Justice*. The Court is then composed of the Bailiff and seven Jurats at least, and twenty-four Jurors form the inquest. The *Vue de Vicomte* is not a necessary preliminary to the *Vue* or *Transport de Justice*, and if thought proper, the *Grande Vue* may also at once be resorted to, without going through the previous steps. In all the cases, the opinion delivered on the spot by the Bailiff and Jurats is not final, but requires a motion to register it, in order to make it a binding judgment; which motion may be opposed, and an appeal from the decision at the *Vue* or *Transport* allowed.

Greffier Arbitre.

Vue de Vicomte.

Transport de Justice.

Vue de Justice.

Grande Vue de Justice.

Trial by Jury.

Juries in civil cases were anciently in use, but have become obsolete, except in the *Vicomte's Vue*, which is preliminary and not binding, and in the *Vue de Justice*. In this, in which the witnesses are not examined before the Jurors, but associated with them, there is the same confusion between the offices of giving testimony and tracing the conclusions from it, which prevailed in England in the days of Fortescue. No reform of that confusion having taken place in Jersey, it is not surprising that the institution should there be disused. But there is no country in which the materials for its reconstruction, in the improved form into which the same primitive institution has been developed in the modern law of England (from which it has been borrowed by the most enlightened nations), are more abundant. The elasticity of their system of procedure would present no serious difficulties in sending a case to proof before a Jury assembled under the presidency of a Judge either in the Royal Court house, or, when it was desired, on the spot in question. The motion to register the opinion delivered on the spot, to make it a binding judgment, would exactly correspond to the practice regarding judgment after verdict. We should strongly recommend that parties should be allowed by consent to resort to Trial by Jury. We say *by consent*, not only because the assembling of a Jury for cases where there is no real defence is a needless addition to the expenses of the parties, and to the social burdens on the community, but because in a community too limited to allow of a change of *venue*, there is no refuge from a popular prepossession, however transient. This we consider to be the real justification for not gratifying the strong desire which some years ago (particularly in 1786) was manifested for re-establishing Trial by Jury. We believe that in such cases a magistracy which, though elected by the popular voice, is for life wholly independent of it, and in whom the liability to popular impulses is checked by a sense of permanent responsibility, may fairly have been preferred. Again, it may be doubted whether the compulsory adoption of the jury system might not, in a population so composed as that of Jersey

at present is, give rise to occasional conflicts of race and language, nowhere more to be deprecated than in the jury-box. At the same time it must be admitted that a Jury, though not perhaps the most sagacious tribunal for deciding on complicated evidence (in which, however, when under intelligent presidency, it has the advantage of bringing to the consideration of the probabilities of ordinary transactions, minds accustomed to the ordinary habits of thought and action), harmonises admirably with the general spirit of popular government in a country which, like Jersey, contains a numerous, intelligent, and independent middle class; it trains them in the habit of temperate and impartial judgment; it tends to keep the administration of the law in harmony with the moral sense of the people, (without which laws are powerless for good); while the occasional aberrations, which are unavoidable, do not become precedents. There are also great collateral advantages. Nothing more tends to necessitate and enforce the punctual attendance of all who are required for the prompt despatch of a trial than the assemblage of a body drawn from the disinterested public, who have a right to insist, and who will insist, that their time shall not be trifled with, and whose speedy dispersion is inevitable. That great inconvenience, public and private, and to none more than to the witnesses themselves, results at present in Jersey, from the difficulty of collecting and concentrating the evidence, is notorious; that the difficulty is not insuperable is proved by the experience of all countries in which Trial by Jury is prevalent.

It would be matter for further consideration whether (as a general rule) judgment should immediately follow upon the verdict, or whether a few days ought not ordinarily to intervene for consideration whether it was open to impeachment, and what were its legitimate consequences; but the Court ought always to have the power (subject to reconsideration) to issue such immediate process as might be required to prevent the fruits of the judgment from being lost.

Simplicity of the present system, if competently controlled.

It will be seen from the short sketch given above that the mode of pleading in Jersey is simple and natural, but that it requires the control of a competent Court. For however natural the system may be of calling the parties before the Court, and inquiring what is the charge?—what the answer to it?—and so on, alternately, until what is undisputed or irrelevant is eliminated, and they come to a simple contradiction on the questions of law or fact on which the cause depends, far more judicial discrimination is required under this, than under the self-acting English system, when each party in the seclusion of his chambers is required, within a fixed time, to prepare the plea or pleas on which he will stake his cause. The occasional injustice to which the latter system may give rise, has caused its modification in England by the previous discussion of pleadings, in many instances, before a Judge in chambers, and by the power of Courts subsequently to allow amendments when it appears that the real question has not been effectually raised. This power we strongly recommend to be extended to the Jersey Court, when so constituted that it can exercise it with consistency.

Reference to *Greffier Arbitre* theoretically good.

Doubts as to the *Vue de Vicomte.*

The system of pleading in matters of account, where it is first ascertained what items are disputed, and which are then referred back to the Court, instead of issue being joined on the whole account, is theoretically very perfect; but, although speaking with some diffidence, because strangers to the habitual practice, and as such, judging perhaps from theoretical principle, or from instances which may be exceptional, we doubt whether, though occasionally useful, the *Vue de Vicomte* must not often tend to delay, confusion, and consequently increased cost, while the object may be better attained by other existing methods; for while an account admits of precise statement in words, local facts which address themselves to the eye in general do not, and the *Vue* or *Transport de Justice*, which the small extent of the jurisdiction renders easy, are much more effectual, as the local circumstances are brought under the eyes of those who are to decide. A case which illustrates this has recently occurred, namely, that of *Le Sueur* v. *Falle*, which after being hung up for years by the dilatory and unsatisfactory proceedings at the *Vicomte's Vue*, was ultimately despatched by a *Transport de Justice.*

The practice of oral pleading in Court as at present in force is complained of as wasting time, and it may be presumed that the same inconvenience was felt when oral pleading was used and recorded in the English Courts. But, on the other hand, the advantages of an arrangement under which an error may be pointed out and corrected immediately are very great.

The weakness of the Court causes the present system to work badly.

The present working of the system being one which requires much judicial discrimination is unsatisfactory chiefly on account of the weakness inherent in a Court so constituted as the Royal Court now is. If the Court be made sufficiently strong and consistent in its action to exercise a sound judgment as to the order in which different defences may be received, and the grounds of defence which may, under the circumstances of each particular case, be combined; we do not believe any legislative alteration,

except the above-mentioned power of amendment, to be either necessary or desirable.

Under a strong Court it might succeed.

Such a Court would see at once whether an objection be to the jurisdiction or otherwise in its nature preliminary; whether a defence on the merits be in denial of the whole or any essential part of the plaintiff's case, or in confession and avoidance; whether (as will often be the case when the evidence is obscure, or the facts not in the party's personal knowledge) two such pleas forming a defence in the alternative, or any other inconsistent pleas, may fairly be allowed; whether the suggested defence require time for inquiry and preparation, and, if it be doubtful, on what terms such time should be allowed; and would be able to decide upon many similar points on which the rigor of a positive law, or the laxity of a defence left absolutely at large, would be alike mischievous.

From the evidence before us, however, we are forced to conclude that the present Court is not competent to exercise the judicial discretion necessary for the satisfactory determination of such points of pleading as those above mentioned, which must necessarily be of frequent occurrence. And we are told, that the duty of distinguishing between facts admitted and those requiring proof, is not in practice sufficiently performed.

Language.

The present appears a convenient place for stating that in Jersey, with scarcely any exception, all legal proceedings are conducted in the French language. Much complaint on this head generally, and in particular with regard to the speeches of counsel, was made to us, by or on behalf of the exclusively English-speaking part of the population.

As to this it may be well to state briefly the result of our observations and inquiries as to the relative prevalence of the two languages.

The English is gaining ground.

It is admitted on all hands that of late years the English language has been gaining ground over the French; so much so that in St. Helier's, particularly among the rising generation, it clearly predominates. With the exception of old inhabitants of the remoter parishes, it is probably true that at the present day most Jersey-born persons understand English enough for the purposes of mere ordinary conversation. Very many understand much more, and, with more or less accuracy, speak the two languages indifferently, and often the Jersey dialect besides.

In St. Helier's, as we were informed, merchants' books are kept, and banking business is transacted in English. From an unofficial, though, as we believe, a fairly compiled, document, presented to us, it appears that in 11 schools in St. Helier's parish supported by voluntary contributions (including the National School, Schools in connexion with the Church, the British and Foreign, the Infant, and the Ragged Schools), the average daily attendance was 1,282, and that of these the number of children whose only language was French was but 175. The instruction in these schools is almost entirely carried on in English.

The country parishes.

The clergy of the country parishes, where the number of children whose mother-tongue is French is much larger, informed us that, chiefly on account of the superiority of the English rudimentary books, it was usual to begin by teaching the French-speaking children English, and to convey all instruction in the latter tongue. It was, however, also suggested, that the important object of obtaining facility in the acquired language might be the cause of this. The poorer inhabitants of the country districts seldom, as we were told, speak English among themselves.

Out of upwards of 70 witnesses in different stations of life examined orally by us, four only (one a Jurat of the Royal Court) demanded permission to address us in French.

Still, notwithstanding the general knowledge of English, there exists among those of Jersey blood, a strong national feeling in favour of their ancient language.

That some English residents may be occasionally incommoded by the conduct of business in the French language is obvious, and that they may sometimes be galled by the apprehension of being held up to ridicule by personalities which they cannot readily understand, we can easily suppose; but we believe that the amount of actual injustice resulting from it is small, and it is certainly reasonable that a people having separate institutions should conduct their business in the mother-tongue of their country, so far as is consistent with justice to such as use another language. In fact, the use of the language which is most generally convenient is one of those things which public opinion, in a country whose institutions are popular, may be most surely trusted to bring about; whilst efforts to force a change of language before the people at large were ripe for it, would in the present instance have the strongest tendency to provoke a reaction, under which it would be a point of honour to adhere to the ancient tongue.

No decided change advocated.

On the whole we are not prepared to recommend any very decided change. Had we found the existing practice to be, that the advocates should address the Court in English, we should not have sought to abolish it; but it seems inexpedient to press such a

change at present; though the Court ought to have and exercise the power both in this and all other parts of the proceedings before it, of allowing such relaxation in this respect as it may deem conducive to justice in the particular case. A party, however, who does not understand French, should, in every Court in the Island, have a right to demand that legal instruments and evidence, if given in that language, may be interpreted to him; a party ignorant of English having a similar right in cases where, as very frequently happens, English testimony or documents are brought forward. Each should be entitled, if he demanded it, to have the interpretation on oath.

Evidence.

3. The *prétentions* of the parties having been heard, it is the duty of the Court, as directed by the 4th Article of the Law of January 30, 1833, to narrow the field of evidence, by distinguishing between facts admitted and those requiring proof. This having been done, the cause with regard to the latter is sent to proof—"*mise en "preuve.*" The formal order of the Court is usually to the effect, that "those who "have knowledge of the facts be summoned." The cause then stands adjourned until a day can be appointed for proceeding with the taking of evidence.

This is done before the Bailiff and two or three Jurats, according to the nature of the cause, and that either orally or (at the request of either party, with a view to appeal) in writing. If the latter case, the questions and answers are taken down *de verbo in verbum* by *écrivains* nominated on each side, in presence of the Court. The following points with regard to this part of the proceedings appear to us to require especial remark.

Law as to witnesses.

(1). Those witnesses who have not been summoned with the interval of a clear day before that fixed for their assembling, are not merely allowed to excuse their non-attendance, but are inadmissible if they attend.

(2). All the witnesses must be assembled and be sworn in a body on the day fixed, whether originally or by adjournment, for the hearing of evidence, and even though after swearing the witnesses the evidence be not, in fact, taken on that day, those who were not present at the outset cannot be admitted afterwards, but must be for ever struck off from the cause (*retranchés*).

(3). Kindred to the first cousin inclusive are inadmissible.

(4). Interested witnesses are inadmissible, not only where the interest is in the actual subject-matter of the suit, but in the general question of which that suit is an instance. As in the civil law, the suppletory oath (*serment décisoire*) is allowed to be taken by a party in support of doubtful, or to give the preponderance to his own side in a case of conflicting, evidence; generally, however, neither of the parties are competent witnesses.

(5). It was formerly an objection to the testimony that the witness had communicated his evidence to the party; and there is now a popular feeling, though to what extent it may prevail it is difficult to say, that such communications are dishonourable.

Errors noticed.

Now, we believe that every one of the above objections tends more to exclude truth than to guard against falsehood.

(1). The exclusion of the evidence of those who appear without summons, or on short notice, can scarcely claim to be in the interest of truth. A witness coming without any summons might indeed fairly be asked, on cross-examination, whether any zeal in the cause has occasioned his presence, and a competent judge would see what deduction from the weight of his testimony resulted from this. The only good reason for not requiring witnesses to attend on short notice, must be their own protection, and it would be much more satisfactory, that if they attend they should be entitled to apply to the Court to award the compensation for any damage resulting from the shortness of the notice, and to deprive the party calling them of the right to examine them until this compensation had been furnished. This is the utmost extent to which the refusal to hear a witness actually present and personally unobjectionable can be reconciled with reason. In Guernsey the rule is so far relaxed, that if the witness be summoned at any time before the swearing of the witnesses, it is sufficient. This obviously is a concession to truth, reason, and justice; but if it be so, it shows that the requiring a summons at all, except for the protection of the witness, is a mere empty form, which may embarrass but cannot aid justice. We therefore recommend that any witness who when called shall present himself to be sworn, be admitted without any inquiry whether he has been summoned.

(2). The assembling of all the witnesses to be sworn together, on pain of those not present being for ever *retranchés* from the cause, though it has more show of reason, is an equally gratuitous, and, (when in the preparation of the case practitioners neglect to ask, or witnesses refuse to tell, what they know,) a more practically effectual obstacle to justice. The unexpected absence of a necessary witness indeed would be a good ground for applying to the Court to defer the swearing of the witnesses, and consequently the taking of evidence; on proof, 1st, of the absence; 2ndly, that it is not imputable to the party; 3rdly, that the expected evidence is material; 4thly, that it has been communicated to the other party, and that he refuses to admit it; but if the party will

take the risk of commencing without the witness, there is no reason whatever why he should not be heard, if he presents himself when his testimony is to be taken. The show of reason for requiring the presence of all the witnesses at the time of swearing is to guard against surprise, by enabling each party to judge from the witnesses summoned, to what matters they are to speak. If testimony were always the narration of real occurrences, though liable to misconstruction, and these occurrences and the persons present at them always in the knowledge of the adverse party, the rule might have this effect; but its result must at any rate be to secure from contradiction the more certain and effectual surprise resulting from the production of any evidence, such as an *alibi*, or an assertion of payment, which being false in fact, must be unknown to the opposite party, and the witnesses to which may be equally unknown. But, in the absence of these gross cases, its tendency must be to necessitate the sweeping together in the first instance of a crowd of witnesses, to meet every possible turn which the case may take, as it will be impossible afterwards to supply a deficiency. This crowd of witnesses and impossibility of supplying defects must lead to many *accidental* miscarriages, and must tend to facilitate *contrivances* for causing many more. For instance, it has been alleged by several witnesses, and it is evidently practicable, that a party who wishes to protract a cause can do so for several years, by summoning a large number of witnesses, including many who are quite unnecessary, and some who when their attendance is required are certain to be absent from the island. We also were informed that the Court in such a case blindly accepts as conclusive the loose affidavit of the party, that the evidence of the absent witness is material and necessary. Experience elsewhere shows that the reception of evidence, if tendered when it is actually to be taken, with the power of awarding a new trial on the ground of surprise, attains every object better and with less inconvenience. Such accidental miscarriages and contrivances do in fact much obstruct the course of business in Jersey, and are among the many instances of delays of justice in the procedure of the Court. It may tend to throw light on the working of this system, if we state, that according to the evidence of several of the professional men, it is often impossible to obtain, from the press of business, and the bad arrangements for the despatch of it, more than two or three days in the course of the year for taking the evidence in a cause. In one case brought to our notice, a suit (where personal character was at stake) had been depending for 12 years, during most of which time the matter had been "*en preuve;*" and this was a case where, as the plaintiff was himself, at least during part of the time, a Jurat, it is not to be supposed that he could have had less than the ordinary facilities for bringing it on. In fact the causes of the magistrates are "privileged" to be preferentially treated.

(3). The inadmissibility of kindred as witnesses will probably not be vindicated by any one, to the extent of excluding first cousins. This was, probably, a misapplication of the rule that they could not be allowed to swear *as jurors*, when trials were by jury, as primitively constituted, and not by witnesses. Some may indeed contend for the inadmissibility of brothers and sisters; most intelligent persons will probably allow that such a rule, while it necessarily admits friends, lovers, persons of similar prejudices, and all others, whose grounds of sympathy with one party are undefinable, obstructs more than it can protect justice, by introducing a principle which cannot be consistently carried out. It is the office of a competent judge to weigh the evidence, having regard to the bias resulting from any of these relations. The exclusion of the testimony of husband and wife is vindicated with more force, on the ground of the peculiar influence existing in this case, and on much higher ground, namely, that the violation of the sanctity of the closest domestic relation would cause an evil more important than the benefit of such information as might be derived from it. The rule has in criminal cases been in some degree relaxed by a law of December 14, 1842, which admits the evidence of kindred in cases of necessity. The fearless pursuit of truth which has characterized recent English legislation on this subject, disposes us to favour an entire abolition of the restriction in civil cases, and we accordingly recommend it, with the single exception of the case of husband and wife; an exception which we admit solely from the fear of shocking the moral sense of the community, and not because we doubt whether the removal of this exception might not be safely effected in Jersey, as it has been in England.

(4). This fearless pursuit of truth has induced the abandonment in England of the formerly universal maxim that no one could be a witness in his own cause. This was tried first only where, though interested, he had not actually committed himself to the assertion or defence of that cause by becoming a party litigant, and ultimately, on experience of the effects of this change, was followed up, where he had so committed himself also. We recommend the admission of such witnesses in this island also. The test of experience renders it a less hazardous change than when introduced in England. The circumstances of the Court, in which so much difficulty and inconvenience are involved in the proof

of facts, render a short cut to this proof peculiarly important. It must indeed be admitted that the cases in which there is a temptation to direct perjury will be more numerous: we believe, however, that an unconscientious litigant much oftener relies on his power of excluding the evidence of facts than on his audacity in falsifying it. We are convinced that the necessity of giving upon oath in full detail, and subject to cross-examination and contradiction, his own representation (which he must make consistent and credible) of the occurrences on which the adverse party relies, is in general far more terrible to him, as it is certainly more conducive to the elucidation of truth, than the simple plan of withholding from his adversary all power of assertion and screening himself from any demand for explanation. It has been urged upon us that by the system of exclusion, though less evidence is admitted, it is of a better description. To this we cannot assent. The evidence now excluded may be better, from better means of knowledge, and that now actually admitted would be far better than it is, if it were subject to the test of comparison with other conflicting or confirmatory testimony. There is no security, which is to be desired, that testimony shall not be ignorant or partial—there is only the certainty, which is to be deprecated, that, if it be so, it cannot be contradicted by the testimony—and that, if it be not so, it cannot be confirmed by the silence—of others cognizant of the facts, but excluded by the present law. The use of the suppletory oath is not confined to the law of Jersey, but it is a proof how impossible it has been felt to be, to carry out the principle of excluding interested testimony; in fact, its use to supply the deficiencies of a case, or to strike the balance between conflicting testimony, will probably render it applicable in just those very cases where the strongest temptation to falsehood exists.

(5.) A popular feeling against making those preliminary communications to parties or to their agents, without which suitors must be embarrassed, and all possible witnesses liable to be annoyed by the necessity of summoning them for the chance of what they may be able to prove on failure of proof by others, cannot be corrected by law; still, some benefit may result by calling attention to the probability that communications really corrupt, being secret, will not be effectually prevented by any jealousy, and that in regard to those in which the witness may be supposed to have received, without corruption, a suggestion or bias, this may be shown on cross-examination, and will affect the weight only, not the admissibility, of the evidence. The utmost that the law can do seems to be, that in the awarding and taxation of costs, regard should be had to the consideration whether the solicitor had taken proper steps for learning what evidence might be expected.

Unsworn testimony.

Evidence is not admissible without oath except in the case of Quakers and Moravians, or persons of the persuasion of Quakers or Moravians. A witness refusing to be sworn is punished for contempt. We think that it is desirable, and is likely to be generally approved, that the admissibility of unsworn testimony should be extended as far as it has been extended in England by the Common Law Procedure Act, 1854, (17 & 18 Vict. c. 125.)

The practice as to the requirement of primary, or admission of secondary, evidence, appears to rest on the same principles as in England.

Evidence taken by commission.

Great delay and inconvenience, as might be expected in an insular jurisdiction, have resulted from the impossibility of enforcing the attendance of absent witnesses. Evidence taken by commission is not admitted. We recommend, (and we apprehend no serious objection to the recommendation from any quarter,) that such a law be passed as will enable the Royal Court to avail itself of the facilities afforded by the Act, 22 Vict. c. 20. It would be preferable if the witnesses could personally attend, so that their demeanor might be seen by the Court, and all such questions be asked as at the hearing appear desirable; but where that is unattainable, or a voluntary attendance is to be attained only at a disproportionate expense, the taking of evidence by commission is the best expedient. The Court is already familiar with the practice of reading (as before the jury in criminal cases, and before the full Court in cases appealed from the inferior number,) evidence not taken in the presence of those who are to judge of it. The admisssion of such evidence taken by commission will therefore not be the introduction of a new defect, but only the partial removal of another and much more serious evil.

Evidence of Parties.

The rule that no one ought to be a witness in his own cause is consistently carried out to interlocutory and other summary applications to the Court. Scarcely anything is done on affidavit of the parties. This reconciles what appeared to be a great conflict of statements. Some have said that nothing can be done but by an "*action*," others that applications to the Court are easy and simple. A *simple action* is nearly equivalent to a motion, but as controverted facts involved in it may have to be sent to proof in the regular way, it is as if the party to an interlocutory or other summary application in the Courts in England were put to his *scire facias*, *auditâ querelâ*, or other similar

proceeding. We recommend therefore that such applications be allowed to be supported and opposed on the affidavit, or (what local circumstances render easy) the oral statement on oath of the parties. The Court should retain the power of sending the question to proof in a formal way if required by the interests of justice. The experience of the Courts in England will show, that the cases in which this will be necessary will be comparatively rare; a great number of matters will therefore be disposed of summarily where relief is represented to us as being, under the present system, scarcely attainable.

Costs of witnesses.

On a revision of the system, the allowance of costs to witnesses would have to be reviewed. At present they are entitled to claim a small payment for each attendance. This is often very insufficient to recompense them for their loss of time, &c., but from the vast number of witnesses often summoned, and the frequency of adjournments, must fall heavily on the parties.

The mode of reducing the evidence to writing is fair and patient, but very tedious—unfavourable to continued attention to the facts of the case, and constituting a serious obstruction to the despatch of business. It must also tend to give an uncandid witness too much time to guard against being led to state what he would desire to suppress.

Stenography.

Some witnesses have told us that there would be no difficulty in procuring the services of sworn short-hand writers both for French and English evidence, which are much intermixed. We incline to think that this would be beneficial, both as saving time and as not interrupting the natural flow of the evidence. But, however important, it is a matter of detail which can only be fully judged of by those more intimately acquainted with the working of the system than we can pretend to be, and will be most satisfactorily dealt with by the Judges of the re-constructed Royal Court. We may state that a *projet de loi* has lately been brought before the States, which proposes the introduction of a short-hand writer.

Authorities in questions of law;

There is another branch of evidence, namely, that of authorities in questions of law, of which we have treated under the head of Sources of Law. When the law in question is not that of the Island, but foreign law, the course is, not as in England, to prove it by witnesses, but by the judgment of the Court on the original authorities. We

Especially foreign law.

think this is in general the best course. Cases turning on foreign, particularly English and French Law, must, from the situation and commercial character of the Island, be of very frequent occurrence. The command of competent witnesses must, in so small a district, be limited, and their introduction as witnesses must be burdensome. In cases where the law, though a necessary preliminary, is not doubtful, the production of a law book must be much easier; when it is doubtful, the Court must either abrogate its own function of decision in favour of persons, perhaps of no very eminent skill, though technically qualified to give evidence, or must ultimately assume the sole duty of deciding on the authorities on which the witnesses ground their opinions. We do not see, however, why on proper occasions the Court should not avail itself of the assistance of a competent Jurist of the country in question, as witness, or rather, perhaps, as *amicus curiæ*.

Arguments of counsel.

After the evidence on both sides is gone through, and not before, the arguments of counsel on the case are heard. As might be expected in a Court so weakly constituted as that of Jersey is, considerable latitude is given to counsel throughout the proceedings, and we believe that in this respect, great irregularities are of constant occurrence.

We cannot, however, abstain from stating that besides irregularities in the form and order of legitimate discussion, the Court is much lowered in public estimation by a very prevalent opinion that it does not feel itself strong enough to restrain very indecent conflicts of language, and sometimes even personal violence committed in the face of the Court.

4. With regard to the fourth of the branches into which the regulation of judicial proceedings may be said to divide itself, namely, the fixing the time, place, and attendance for giving decisions, whether interlocutory or final, we think it quite superfluous to go into any minute particulars; for our purpose, it is sufficient to say, that the system known to our old law, under the name of essoins, is in full force here. On most proceedings by summons, one default is allowed as of right; in some cases it is not. The distinction between these cases, though we presume well understood amongst practitioners, is in itself a needless complication; but the making appointments which are not to be kept is an unmixed evil, and in every instance should be abolished. If the first notice is not long enough, further time should be allowed, without the form of a default; whilst in those cases (as reference to the officer in case of partition,) when immediate action, even if *ex parte*, is safe and expedient, it should, as now, be allowed. The Court should have a discretion to excuse defaults on reasonable grounds, which from the absence of persons from so narrow a jurisdiction would be frequent, putting those seeking indulgence on such terms as will prevent frivolous delays, without allowing

the rigid enforcement of rules to work injustice. These, however, are matters of detail which can only be fully regulated by those habitually conversant with the system, and in which improvements must generally be tentative.

JUDGMENT AND APPEAL.

Judgment of inferior number where final.

The argument of counsel having been heard, the judgment of the *nombre inférieur* is given, which is final in cases involving a mere personal matter under fifteen pounds in value. It has been stated to us that an appeal is not always allowed where an action has been brought nominally for a small sum under the appealable amount, but in reality to try a right, not a real right, or a real right not expressly in issue.

Appeal to the full Court.

If, however, the subject matter of the suit directly concern the realty, or, if personal, exceed fifteen pounds in value, either party is permitted to appeal "*devant un plus grand* "*nombre*," by which, as before noticed, is understood at the present day, the Bailiff and seven Jurats at the least. At the re-hearing before this tribunal, no fresh evidence can be admitted. If the evidence has been taken orally before the *nombre inférieur*, all the original witnesses and no others must be reproduced; and this rule is so strict, that by the death or absence of a single witness, however unimportant, the appeal is lost.

Applications for an appeal to the *corps de cour* can be made not only in respect of the main issue in the suit, but in respect of any collateral or interlocutory point which may have been decided in the course of the proceedings before the *nombre inférieur*. In these cases (as, for instance, a plea to the jurisdiction overruled by the *nombre inférieur*), the appeal is some times granted directly, more frequently "*en fin de cause*," that is, upon the judgment on the main issue being rendered.

Appel en fin de cause.

Judgment of full Court.

The judgment of the full Court is thus ultimately obtained. Both here and in the *nombre inférieur* the Court is obliged to enter on the record the reasons of their judgment; but in cases where the Court is not unanimous, it is not the practice to record the names of the Jurats who, either alone or with the Bailiff, form the majority. With regard to this, we conceive it to be of primary importance that when the decision, whether on evidence or on any other question, is arrived at, the record should state what magistrates concur in it, and that in cases admitting of doubt they should individually express their reasons. It has been argued that, as the act of the Court, the judgment has more weight. It is true that its validity between the parties depends on its being the act of the Court; but its value, as a precedent, depends on the judicial qualities of those who concur in it, and on the reasons by which they sustain it.

Names of Judges who give judgment not recorded,

As should be done.

It will, we believe, be desirable, where the Court has specifically distinguished the facts in dispute, that at the close of the proof, it should specify separately its conclusion on each of those facts. But the regulation for this purpose must rest with the tribunal itself.

Appeal to Council.

When the matter in dispute concerns the realty or exceeds 80*l.* in value, an appeal lies *en dernier ressort*, to Your Majesty in Council. In a recent case, the Judicial Committee of Council (before whom all appeals from the Channel Islands are argued) contrary to the ordinary practice, sent a Commissioner into the Island to obtain further evidence. This proceeding, though novel, appears to have been attended with great advantage.

Recommendations.

With regard to appeals, whether to the full Court, or to Your Majesty in Council, we would recommend that the party should be allowed, as at present, and be required, to claim his *appel en fin de cause*, at the time when any point to which he objects is ruled adversely to him; but that at the expiration of four days after the decision of the case, it should be the duty of the advocate (unless the Court should itself certify that there are questions worthy of farther consideration,) to certify under his hand the points on which he considers the decision to be questionable; that the respondent then have four days to decide, whether he will seek to support the judgment on all, or any, and which of those points. The appellate Court should have the power to check, by costs, the encumbering appeals with frivolous or needless questions, but should not be precluded, should it deem it necessary to the justice of the case, from deciding on questions not raised by the certificate of the advocate.

Appeal should not be barred by loss of witnesses.

We think that where the appeal is on fact, it should never be barred by the loss of witnesses, but that each party should be allowed to support his case by the best evidence attainable. The Court will exercise its own judgment on the credit due to evidence materially different from that produced in the Court below. The adverse party might be allowed to give evidence of the case made by his opponent below, if it tended to discredit the case set up on appeal. In regard to cases where the evidence has not been reduced to writing, we do not believe that the allowing the appeal to proceed, notwithstanding the loss of a witness, would produce so much evil as the loss of the appeal altogether. We think this, whether secondary evidence of that witness's testimony were or were not received. As to the probable results of such a change there is a large field of experience in new trials and appeals from Courts of Quarter Sessions in England. Thus also another

evil would be obviated, as there would no longer be a motive to multiply witnesses in order to multiply the chances of defeating an appeal. On the same ground, as well as on the ground of the inconsistency that the Supreme Court of Appeal should admit additional evidence, and the subordinate Court of Appeal should be closed against it, we recommend that the reception of additional evidence should in the latter case be allowed. One benefit of this would be the removal of the invidiousness of an appeal. It would then be better seen that this question was not one personal to the Judge, as to whether he had drawn a right conclusion from the facts before him, but on the whole which party had right. If a new case was set up, it would be a matter of observation whether it was the fair result of further investigation, or showed ill faith. If the former case was fortified, it would similarly be a question whether the new evidence was discredited by not having been adduced before. The Judge would have additional matter before him, but it would only be because his eyes were not closed to additional light. If it did not, in his view, vary the justice of the case, he might disregard it; if it did, he ought to be guided by it.

Additional evidence should be allowed.

When a party desires to reserve his right to appeal to Your Majesty in Council, it is necessary that the evidence should be in writing. We humbly suggest the consideration whether the transcript of a sworn short-hand writer's notes could be allowed. It might, perhaps, be more verbose than the evidence as taken at present, but it must be full and correct; and the recollection that every word must be transmitted exactly might tend to check irrelevancies.

Steno-graphy.

Appeals ought to be regulated, not by the amount actually sued for, but by the value of the question to be determined in the suit, (*e.g.* when the title to an office, or to certain alleged emoluments, was brought in issue by suing for a small fee,) and we think that (with an improved Court) the amount appealable as of right might with advantage be considerably augmented.

Where appeal is to establish a right.

We are also of opinion that in many cases the real object of an appeal might be greatly facilitated, and expense to the suitor saved, if a motion for an appeal for the revision of a judgment, on specific *error* alleged, could be entertained by the Judicial Committee.

Motion for appeal suggested.

In addition to the above recommendations, we would beg permision to notice a proceeding in the nature of an appeal, known as a *doléance*. This is a petition for a review of proceedings, not brought up in the ordinary course of appeal. We believe that, for many years, the *doléance* has been almost out of use, but its legality and adaptability to general purposes are undisputed. Such petitions are, in the Code of 1771, thus noticed: "Les Doléances étant en elles-mêmes odieuses parce qu'elles sont particulièrement "dirigées contre le Juge, dont l'honneur doit être maintenu à cause de la Justice, Sa "Majesté, avec l'avis de son Conseil, doit imposer telle amende sur la partie qui se "plaignant de cette manière, faudra de justifier ses plaintes que les circonstances peuvent "requérir." This discouragement to bringing forward individual grievances and complaints against judicial functionaries may possibly have been politic at a period of strong party feeling and excitement; at the present day, however, we would humbly submit that the cause for the restriction has ceased; and we therefore strongly recommend that this unquestionably constitutional remedy should be greatly facilitated; at all events, until a strong and able Court shall have been established in the Island. First, it should be freed from its invidious character; and it will then no longer be difficult, with the present organization of the Judicial Committee of Privy Council, to make (except as the matter is affected by the less frequent sitting of that tribunal) a petition to review the propriety of an affirmative act of any kind nearly as easy as a motion for a *certiorari*, and one to review that of a refusal to act, as a motion for mandamus. This would settle in the outset many cases without the tedious and costly course of an appeal. The result would be beneficial both where the burden of an appeal would otherwise have been incurred, and where the fear of incurring it, or any technical objections, would have prevented the revision of the judgment of the Courts below.

Doléance.

Suggested extension of it.

We believe the chief obstacle to the introduction of the practice to be the present high scale of fees in Council, both official and professional. As this would be practically prohibitory, and as, in the event of an alteration, this method (as we are led to suppose) might not unfrequently be resorted to, a reduction might be effected, so far as the official fees were concerned, without loss to the officers. But even if provision had to be made against such loss, we should recommend that in this case (as has been done in so many others) an obstacle to the course of public justice should be removed.

In all cases, whether brought on by way of *doléance*, or by any other application to any authority in England, a certificate of the Chief Magistrate, stating (either spontaneously or in answer to questions proposed to him) what is the law or practice of the Court of Jersey, should be admissible; for it will give the simplest and most authentic mode of proving them in those points where they are not open to question, and will check frivolous

Certificate of Bailiff.

applications supported by the rash affidavits of persons having neither professional experience nor professional character to support. In no case should it be conclusive, because the correctness of the doctrine stated in it may be the very point in question.

EXECUTION. When final judgment has been obtained, the creditor at his choice employs either the *Vicomte* or one of the *Dénonciateurs* to execute it. In Jersey there is no direct execution against the land; the person of the judgment debtor, however, may be taken. When in prison he may (as mentioned in another part of this report) apply to make *cession*, or, if he refuse to do so, his real property, in default of goods sufficient to satisfy the judgment, may at the instance of the creditor be thrown *en décret*. This process is described later, under the head of insolvency. In the case of moveable property, the officer takes possession (sometimes by affixing a seal), advertises, and publicly sells it. He is entitled to a commission of five per cent. on the amount of the sale, but is responsible to the creditors for such amount. If there are executions by more than one officer at the suit of several creditors, each officer is entitled to the commission in proportion to the amount of credits which he represents, and the officer who represents the greatest amount is entitled to the conduct of the sale. The right to this, as well as to the custody of the goods, is often fiercely contested, and, indeed, the general execution of process which in England belongs to the Sheriff, is in many cases a subject of competition between the *Vicomte*, who is appointed by the Crown, and the *Dénonciateurs*, *Sergens de Justice*, who are appointed by the Bailiff. It is not, perhaps, easy to account for the earnestness with which this contest is sometimes carried on, since the commissions of the officer are not dependent on it, and the attendant emolument is represented to be confined to the employment and consequent pay of his establishment, but the conduct of the sale is evidently felt to be of great value.

Contests between officers.

The following prohibition is contained in the Ordinances of the Commissioners of 1562, of which we have spoken in an early part of this Report: "Item, que les Jurets ni aulcun "d'iceux, ne le Vicomte, ne le Dénonciateur, ne le Greffier de la Cour doresnavant ne seront "receus à estre Meneurs, Procureurs, ou Attournés d'aucun, ne de plaider en Cour pour "aucun, quel qu'il soit, fors pour leurs propres causes." It was strongly urged upon us on one side that these ordinances are law, and that the clause just quoted prohibits the persons named in it from practising as écrivains or solicitors. On the other side, the ordinances were denied in the first place to be law; and it was contended that even if they were law, the prohibitions could not apply to the business of an écrivain or solicitor, a profession not named in the ordinances, and scarcely known at the time of their compilation. We think it needless to give an opinion either on the validity of the ordinances or on the extent of the prohibition. It is sufficient for us to say, that we think that for the future no such officer should be engaged in private practice as an écrivain or solicitor.

However strange it may seem that an officer not appointed by the Crown should have been allowed to share the functions and consequent emoluments of one whose appointment was strictly claimed as that of the *Vicomte* of Jersey has always been claimed as a prerogative of the Crown, this state of things is not of recent introduction. It has, however, been attended with great and manifold evils. Some officers have connected themselves with practitioners, or allowed themselves to become the agents of litigants, and have concerted with them frauds to be carried into effect through the process which they were entrusted to execute. The Court itself has been exposed to misconstruction, as if it would not do justice against the officers named by itself. The number of officers to be employed has been a subject of dispute, not being regulated by the wants of the community, but by the jealousy of one party of any encroachment of the other. The possession of goods taken in execution has been contested by actual force between the officers of justice, and we have heard repeated complaints of the removal of seals and other violences committed in the assertion of these claims. Whether more temper and discretion on one or both sides might not have prevented the grossness of such conflicts is a personal question upon which we cannot adjudicate. But such a state of things is the natural tendency of the system of allowing the creditor to choose between three officers, having conflicting interests, and whose separate titles to their offices prevent them from being under one common control. These tendencies have now been so fully developed in action, that we believe no real remedy to be possible, short of putting an end to separate interests in one common public duty.

Other evils. Besides the outrage and scandal arising from contests between several executive officers for the possession of goods seized by legal process, and for employment by those whom they do not scruple to designate as their respective clients, there must be a waste of power, and consequently an increase of expense falling ultimately on the suitors, in the maintenance of several establishments for the performance of the same duties. We think that the public interest, and the respect due to the administration of justice, urgently require

that this evil should be put a stop to without delay. If we assign an undivided duty to the *Vicomte*, his responsibility will be real, because he, employing, and being bound to employ, as many officers as are required, will be solely responsible for whatever they do, and whatever they leave undone, and as he is not the nominee of the Court (to which, however, he is responsible), the Court will both be, and be publicly known to be, perfectly free from interest in enforcing this responsibility. There will no longer be a competition between persons interested to obtain employment by sinking the public officer in the agent of the party, and no longer brawls and fighting between distinct parties claiming to be acting on behalf of public justice; and if there are still some abuses among the subordinate officers of justice, they will at all events be as far as possible kept under by their superior, who will himself be alike responsible for them by whomsoever committed. We therefore recommend that henceforward all process, involving the seizure, custody, or sale of goods, and all process against the person, in executing which the officer has any duty beyond the mere service of summons or other notice, be directed to Your Majesty's executive officer, the *Vicomte*, alone. He would be not empowered only, but bound, to employ as many subordinate officers, acting as his servants, and under his responsibility, as the exigencies of the public might from time to time require. Neither he nor any person employed by him in the execution of process should be allowed to engage in private practice.

Recommendation.

In effecting this object, however, due regard must of course be had to the vested rights of the two denunciators. We accordingly recommend that as they can have no right to keep secret any emoluments derived from public duties, they should be required to return to the Court a detailed account of all such emoluments as they respectively have derived during a limited number of years from such duties as are to be taken from them, and that the *Vicomte*, whose appointment was, on the last occasion, made subject to such changes as might be made in his office, should pay to them respectively, during their respective tenures of office, either such annual sum or such proportion of the net emoluments of his office as the Court shall, with the approbation of Your Majesty in Council, direct. In estimating the amount to be so paid, allowance should be made for the labour, cost, and responsibility from which those officers would be relieved. One denunciator will then, as before 1645, be sufficient to discharge such duties as will remain attached to the office. The denunciator, like the coroner in England, might act if the *Vicomte* were personally interested.

When there is thus no longer any competition for employment, there will be no colour for even imputing to public officers that in order to obtain such employment they hold out the expectation of their unscrupulously performing public functions in the interest of private parties. Partiality will be more effectually checked when the order in which parties applied for execution of process appears in a single table at a single office; and, even supposing it to exist, will be steadily resisted and exposed by the common interest of all other practitioners.

X. Proceedings in Insolvency.

Having thus gone through the general course of practice and procedure before the Royal Court, in ordinary cases, we proceed to consider the principal modes of proceeding where Insolvency is apprehended. They are,—

1. Décret or Foreclosure, applicable where real estate has to be administered, on which all debts of record, *i. e.*, judgments and contracts passed in Court, give a lien.

2. Désastre.—This is in the nature of a commission of bankruptcy, though not requiring trading or any *quasi* criminal act, being a mere caveat by a creditor (retrospective for 10 days in its effect) against the creation of any more priorities to the prejudice of unsecured creditors.

3. Cession.—The giving up of the estate by an imprisoned debtor in order to avoid fruitless detention.

4. Remise de Biens.—This is an application for indulgence, usually for a year and a day, by a debtor, on depositing his estate in the hands of the Court, in the hope that it may ultimately be solvent.

Décret.

It will have been seen that under the general guarantee which the law of Jersey attaches to every conveyance, all the property which the vendor has at the time of the transfer of the property, and all which he ever afterwards may have, is hypothecated to the purchaser as a security against eviction, and for the fulfilment of the contract. It is also to be borne in mind, that, in Jersey, sales of land are seldom made for a sum of money paid down, but are in part consideration of a sum of *rente*. Mutual obligations of warranty reciprocally binding on the present and future estate of each party thus arise. Through whatever number of hands any part of the property of either may after-

wards pass, into whatever number of parcels it may be divided, every holder of every lot takes subject to the liens created by every former proprietor; and on an insolvency, when *rentes* fall into arrear, or judgment debts are put in suit, every holder of every lot is liable to be disturbed, and every vendor in the whole intermediate succession is liable to be called upon to fulfil engagements to which, on the one side, he himself may be a stranger, on the other side, the original contracting parties are total strangers. In such an insolvency, then, the whole of the parties who have ever transacted with the insolvent, become implicated, and, as in the case of a complicated English foreclosure suit, the priorities of their liens have to be ascertained, the "equities," to use the English expression, to be "worked out," and the estate administered accordingly. Now, in Jersey, it is a general principle of law, resulting indeed from the theory of guarantee, and applicable (as we may by the way notice) alike to the estates of deceased persons and to those of living persons, which, in consequence of their real or supposed insolvency, have to be administered by others, that the claimant last in order of time, whose transaction is consequently subject to the largest amount of liens, created on transactions anterior in date to his, is entitled either to take possession of the whole estate of the deceased or insolvent, as it exists at the time of the death or insolvency, thereby becoming bound to discharge in full all prior claims, or to renounce—thereby absolutely waiving, even if the estate should turn out to be solvent—his own claim. If he find upon consideration of the debts and *rentes*, which he is bound to discharge (as well as the costs of the *décret*, not unfrequently very considerable), that it is not his interest to become tenant, he renounces his debt or contract altogether, whereupon the estate is similarly offered to the next in ascending order, who may take it discharged of the posterior claim or claims (for the same option of accepting the estate or renouncing, is repeated *toties quoties*), but in like manner is bound to discharge all prior liabilities, and is entitled to the surplus, if any.

In the case of insolvency the method of carrying out the principle is by means of a *décret*.

The practice of *décret*.

This may be obtained either compulsorily against a debtor who refuses to discharge his judgment debts and other liabilities, binding his real estate, or else, and more ordinarily, it is a consequence of *cession;* in either case the proceedings commence by an Act of the Court authorizing the prosecuting creditors "*de faire décréter les héritages*" of the debtor, and appointing an individual, usually an *écrivain* of the Court, to conduct the *décret* as attorney (*attourné*) of the creditors.

With the view of ascertaining the number, extent, and priority of the various liens or incumbrances on the property, the *attourné* by advertisement, thrice repeated in the weekly newspapers in the French language, requires all creditors and persons who have transacted with the *décrété*, to send in to the *Greffier* of the Royal Court all their accounts, deeds, and contracts, "et généralement toutes évidences et hypothèques qui concernent lesdits héritages, afin que régistre en soit fait pour voir lesquels sont les premièrs et derniers en date, et qu'il se fasse un Tenant aux dits héritages," on pain of non-insertion and consequent loss in the *décret*. Further notice is published for the representatives of parties not found, and summons issues to each *transigeant* to insert his claim before the *Greffier*. A list of all the transactions of the *décrété* is made up from the public register by the *attourné*, and a register of all those who have inserted their claims before the *Greffier* is made by the latter, in retrograde order, commencing with the last claimant in point of time. After the expiration of the time specified in the various notices and summons, all the creditors and *transigeans* appear before the *Greffier*, who calls upon the *puisné* incumbrancer to exercise his option of renouncing the benefit of his contract, or of becoming *tenant après décret* to the whole of the real property of the *décrété*. If he renounces, his contract is considered as cancelled, and the estate thus augmented by the destruction of one claim upon it, is offered to the next incumbrancer in ascending order. On his renunciation, the same process is repeated until a *tenant* is ultimately found. The *Greffier* reports the result of the proceeding to the Court. The *tenant* is confirmed in his tenure, and by an act of the Court is put in possession of the whole of the real property which the *décrété* possessed at the time of his transaction with the *tenant*, or which he subsequently acquired, the whole of which, as will be remembered, was hypothecated to him as a security for the fulfilment of the contract entered into between himself and the *décrété*. Should the *tenant* discover that a contract subsequent in date to his own transaction, and consequently renounced in the *décret*, is an advantageous one to the estate, he is empowered to revive it, "*faire revivre le contrat*," that is, to compel the contracting party who had renounced to hold to his bargain.

The difficulties of administration in insolvency are always necessarily great, for the

problem is not to do full justice, which is impossible, when an estate is inadequate to its just debts, but to distribute the loss as equitably as circumstances allow.

Comparison of this with another system.

Now to allow one creditor in consideration of all the risk to take the chance of appropriating a net surplus, while the subsequent creditors are wholly unpaid, is certainly in theory less just than an equitable distribution of the whole of the net assets.. It is to be considered, however,—1st. That if the property is to be pledged at all to any creditor, there must always be some who will be paid in full before anything remains for others, and neither under official management nor any other system can we escape the danger of such preferences being collusively created, even though there can be no sufficient proof of the fraud.—2ndly. That the creditors who lose their debts have all had the option, either conjointly or individually, of taking the estate with its burdens, and have not thought it worth the risk.—3rdly. That where the *tenant* becomes the absolute owner of an encumbered estate, he is able to do at his own risk whatever a prudent man would do, subject to no costs of official management, and to none of those legal restraints which necessarily attach to an accountable officer. We are therefore not prepared to deny (in theory at least) the economy and simplicity of the existing system, and we hesitate to pronounce that the balance of injustice on the side of the principle prevalent in Jersey, of leaving the estate in the hands of the holder of the residuary interest, is such that we can recommend an entire change, so long as the working of the Law of Bankruptcy and Insolvency on the principle of official administration is as little satisfactory as it confessedly is at present in England.

One difficulty inherent in the system seems to be this,—that if, as is the fact, a person proposing to become *tenant* is not required to give security, a creditor without tangible assets may gain the whole chance of a surplus, without affording to prior creditors that security which is the sole consideration for such a chance being allowed him. But yet, if the *tenant* were required to give security, a poor creditor would unjustly be compelled to renounce his right. In practice he often finds a responsible person who will purchase it. Some complaints (which we consider unfounded) of the hardship of successive priorities were addressed to us; but it should be borne in mind that such supposed grievance is much lessened by the fact that the prior rights may always be ascertained by reference to the register before giving the subsequent credit.

In thus explaining the reasons why we do not feel ourselves called upon to denounce the system of *teneure*, as some persons in the Island do, we do not express any disapprobation of the substitution of assignees, whose duty should be to sell the estate and distribute the proceeds, as now practised in the case, to be presently noticed, of *Remise de Biens*, which has also been advocated. The question is for those whose experience enables them to judge to what extent suitable officers could be obtained, by what mode of election or appointment, at what probable cost, and subject to what supervision and audit.

Objections made to the principle.

With regard to the principle of *décrets*, to which objection is often made, that objection, in fact, involves an objection to the power of hypothecation—that is, to the power of giving the right to property in pledge without parting with the possession. The necessary result of this is, that if the pledge is valid, the property which the debtor has, and can convey to subsequent creditors, is only the excess of value beyond the amount of all encumbrances. Yet this power of hypothecation in some form, and to some extent, is generally allowed by civilized nations. In Jersey, the facility of reference to the register, in which all such transactions must appear under their successive dates, renders it as little liable to abuse as anywhere.

The real vice of the system.

The real vice of the system of *décrets* is not that the first mortgagee must be satisfied before there is anything for a second, but that the Law of Guarantee makes the value of the assets dependent upon such an endless concatenation of responsibilities that the acceptance of a tenancy is a gambling speculation. It certainly is not unjust that he who enters into a contract should pledge his whole means, present and future, to its fulfilment. But neither is it a breach of justice that the other party, who is a free agent in dealing with him, should have to be contented with something less than this, namely, with a special instead of a general guarantee. And it has to be considered whether the interests of society may not require such a limitation of the right. Into this subject we have already entered, when speaking of guarantee, and have made such recommendations as appeared to us advisable. There may, of course, be defects and abuses in the details of the working of a *décret*; with these, however, we decline to deal, as they will be better dealt with by persons familiar with the local administration.

Désastre.

2. The subject of *désastre* may be very shortly disposed of. Where there is no real estate to become the subject of a *décret*, nor debts entitled to preference sufficient to sweep away the whole estate, the property of the bankrupt is seized by the vicomte

and denunciators, nearly as in the case of an ordinary execution, and the business is conducted by that officer who has been employed by the greatest amount of creditors who have either brought actions, or who, being on the spot, can come in under the *désastre*. When he has a sufficient amount in his hands, it is his duty to declare and promptly pay over to each creditor a dividend, on which he is entitled to a commission. There appears to be no special provision regulating the discharge of this duty, but only the ordinary rules of law, applicable generally to persons liable to account. This point is included in the recommendations already made as to the introduction of a summary process for calling for accounts from the officers of the Court. We have only to add, that the practice which, as we were informed, frequently prevails, of entering a separate arrest of the goods at the suit of each creditor, seems to be productive of much needless expense, and should, in our opinion, be superseded in all cases, by entering one arrest only on behalf of all the creditors. Full notice by advertisement in the British newspapers should be given to English creditors.

Cession.

3. Cession, or the surrender by a debtor of his property in order to obtain his release from prison, is granted at the discretion of the Court, and may take place whether there is or is not a *désastre* or a *décret*, or all these proceedings may be applied to the same case.

It is allowed upon proof (1,) that the *Cessionnaire* has lain in prison a certain number of days, and has been reduced by his creditors to short allowance (*aux petits dépens*), and (2,) that he has given a fortnight's notice on the doors of the court-house and in the weekly papers in the French language, of his intention to apply for his discharge. When brought up, he merely swears that the application is made for want of means to satisfy his creditors, and that he will place in the hands of the *Greffier* of the Court all his title-deeds and papers. Upon taking this oath and giving up the whole of his property, real and personal, he is entirely freed from his liabilities, and can plead his cession in bar of future actions thereon. No steps are taken to test by interrogatory the credit of his oath, nor to ascertain the proportion which his means bear to his obligations. It is said that it is unknown to the law of Jersey to submit a party to interrogatories. This may be so; but where his assertion on oath is received on his own behalf, common justice requires that the value and extent of such assertion should similarly be proved on behalf of others; and where he is not a litigant insisting on his rights, but a petitioner to be allowed to withhold from others their rights, common justice requires that the strictest scrutiny into the ground of his petition should be a condition of granting it.

The abstraction or concealment of property to the value of 10*l.* may be punished, either in the *Cessionnaire* himself, or in any one aiding him, with a long term of imprisonment, and the liability to pay the whole or part of the debts due before the cession; but it would appear that these penalties are seldom, if ever, inflicted.

The 8th article of the law on *décret* of 1832, which provides for the deposit on oath by the *Cessionnaire* of all his title-deeds, papers, and evidences, is incomplete, and not sufficiently stringent. And not only is he free, as we have said, from all inquiries concerning them, but there is no provision for a balance sheet showing his assets and liabilities. This is the more important, as the notice (the only notice given) in the French weekly papers must appear to be obviously insufficient in many cases, where, if the creditors were specified, it would appear that other and sufficient notice would be easy.

Evidence was adduced before us, sufficient to show that the practice of cession is at present conducted in a loose and unsatisfactory manner. A friendly arrest is often made, in which case the imprisonment is sometimes merely nominal, the name of the debtor being entered in the prison books, and bail being immediately offered and accepted for him without any further actual detention. He is after the prescribed period of supposed imprisonment reduced, (*pro formâ,*) *aux petits dépens*. Application to make cession is thereupon made, at a time when there is least likelihood of the presence of persons interested in opposing the cession. There is so little inquiry by the Court, that a fraudulent arrest by a party, who himself professed to have contrived it, was spoken of as a matter of course.

Recommendations.

On this subject our recommendations are:—(1.) That proof should be required that the *Cessionnaire* has actually lain in prison during the prescribed time, before the Court grants his discharge. (2.) That provision be made for more complete notice to the creditors, including those who may be resident elsewhere than in Jersey. (3.) That the *Cessionnaire* be required to furnish on oath a full and complete schedule or balance-sheet,

showing in detail and with full particulars all his debts and liabilities; and that no debt be barred which is not inserted in such schedule, unless omitted by collusion with the creditor. (4.) That he be subjected to examination by the Court. (5.) That rules be established for conducting the proceedings with due publicity.

Remise de Biens.

4. *Remise de Biens entre les Mains de Justice* is the indulgence of a temporary protection granted usually for a year to a debtor on a detailed statement on oath of all his property. It is applied for in the hope of preventing a *décret* by present forbearance. Two Jurats are appointed by the Court to inquire into the condition of the estate, and on their report that it may be sufficient to discharge the liabilities, the *remise* is granted. The Jurats, under whose counsel and advice alone the debtor can act, are authorized to sell the estate, if sufficient to pay the privileged debts, which are first satisfied out of the proceeds of the sale. The balance, if any, is paid to the other creditors, any surplus being returned to the debtor. It is well to give an encouragement to debtors to give up their estates before they are entirely dissipated. For this purpose we believe that this law is beneficial. But it is to be feared that the hope of perfect solvency is rarely realized, for as the capacity to deal with any part of the estate depends upon its sufficiency to pay all the mortgages and leave a balance, nothing can be done unless enough for the purpose can be disposed of simultaneously. The mode of effecting this is by passing all the contracts in the same day. The sale of a large and complicated estate, where the disposal of every lot is contingent upon the sale of every other lot, can, unless the surplus is very large, seldom be practicable. The system of guarantee also, which precludes the making of a satisfactory title to one separate part of an estate, must greatly enhance this difficulty, and increase the depreciation which is unavoidable from a forced sale. We have no suggestion to offer on this head.

The practice.

XI.—Municipal Institutions.

Having thus dwelt upon the sources of the Laws at present in force in the Island, upon their character and mode of operation, the tribunals which administer them, and the procedure in those tribunals, we proceed to another part of our inquiry, that, viz., which is designated in Your Majesty's Commission by the term "Municipal Laws and Customs." It is true that in Jersey there does not exist any institution precisely or in name corresponding with the municipal institutions of England, but we think that we shall, probably, best comply with the spirit of our instructions in this respect, if we consider that the term applies to the system of parochial organization and administration which prevails in the Island, and which practically occupies the place of "Municipal" Government.

Parishes.

Adverting, then, in the first instance, to the parochial organization, we think that we cannot describe it more clearly or concisely than by quoting the following extracts from the Report of the Commissioners appointed to inquire into the State of the Criminal Law of the Channel Islands in 1846:—"There are twelve parishes in Jersey. Each of "these has its own parochial assembly resembling in many points an English vestry." Each of these, we may add here, has also its own separate system of police, consisting of the Constable (whose functions are in many respects analogous to those of a mayor of a French commune), a certain number of subordinate officers (six in St. Helier's and two in each of the other parishes) called "Centeniers," and certain inferior officers called respectively "Vingteniers" and "Officiers du Connétable," whose numbers respectively vary in different parishes.

Parish Assembly.

The assembly is composed "of the constable of the parish, the centeniers, the rector "of the parish (or, in his illness, the vicar), and the principaux, which name designates "those who are rated at a certain amount. The amount varies in the different parishes; "the highest qualifying rate is 20 quarters of wheat, the lowest is 8. The quarter of "wheat is here used merely as a name for a particular sum of money, and does not vary "with the price of wheat; its value is fixed by an express law of 1833, which declares "that an annual income of a quarter of wheat shall be taken to represent a capital (in "argent d'ordre) of 333 livres 6 sous 8 deniers, or rather more than 20*l.* English."

"The police officers of a lower rank, viz., the vingteniers and the officiers du "connétable, are also members of the Parochial Assembly, but do not, as the constables "and Centeniers do, continue so when out of office." We should however observe, upon this point, that by a law recently sanctioned by Your Majesty in Council, it is provided that Centeniers should be members of the parochial assembly during their year of office

only. "Besides these, the following are ex-officio members of the assembly of the parish "in which they reside; the Jurats; the two law officers of the Crown, viz., the Pro- "cureur-Général and the Avocat de la Reine; two functionaries of the Royal Court, "viz., the Vicomte and the Greffier; and certain parochial functionaries, viz., the "Procureur du Bien Public, the two Churchwardens (surveillans), the two Col- "lectors of alms (collecteurs d'aumônes), and all who have in that parish served the "office of constable or centenier, so long as they reside in the parish." The mode of appointment of the several members of the parochial assembly is as follows: Mode of appointment.

The mode of appointment of the Jurats, of the Crown Officers, the Vicomte, and Greffier, we have already described. The Vicomte and Greffier.

The Constables and Centeniers are appointed for three years by the votes of all the ratepayers of the particular parish. The Vingteniers and the Officiers du Connétable are elected for the particular parish by the parochial assembly, and hold office for seven years in every parish except St. Helier's, where they are elected for four years only. Constables and Centeniers. Vingteniers and Officiers du Connétable.

The Procureur du Bien Public is appointed by the parochial assembly for three years. Procureur du Bien Public.

The two Churchwardens and the two collectors of alms are chosen annually, one by the minister and one by the parishioners. Churchwardens, collectors of alms.

The Rectors of the parishes are appointed by the Crown, We think it right to state here, that considerable dissatisfaction exists with regard to the fact that so many of the police in each parish are *ex-officio* members of the parochial assembly, on the ground that the opinions and wishes of the unofficial members may thus be overborne. Whether instances of this have actually occurred or not, it is obviously not impossible, and perhaps not unlikely, and we think, therefore, that it would be a considerable improvement if it were enacted that the Vingteniers and Officiers du Connétable shall no longer be, as such, *ex-officio* members. Greffier.

With the assembly thus constituted rest, among other things,—

1. The general superintendence of the parochial police.
2. The care of the roads, subject, however, to a periodical inspection by the States, as hereafter explained.
3. The promotion of local improvements, as respects, *e.g.*, the construction of new roads or drains, the removal of nuisances, &c.
4. The administration, speaking generally, of such local charities as may exist.
5. The making of rates.
6. The administration, concurrently with the Constable, of relief to the poor.

1. We did not think ourselves directed or authorized by the terms of our Commission to inquire into the efficiency of the existing system of police, and we are, therefore, not in a position to express an opinion upon it. We ought, however, to state (as we have referred to the system of parochial police existing in the island), that in St. Helier's,—a parish which, from its large population (37,000), and the various origins, habits, and occupations of its inhabitants, is obviously of a peculiar character,—a paid police was introduced in 1853, in accordance with the recommendations of the Commissioners of 1846. Police.

2. The care of the roads is exercised by the parish assembly through the medium of a committee especially appointed in each parish, and consisting of the Constable and three members of the assembly chosen for three years, and of Jurats, Crown Officers, and the Greffier, if resident. The parish assembly also appoints, for three years, two inspectors of roads to each vingtaine within the parish. From this committee, acting in conjunction with the inspectors, an annual report is presented to the parish assembly. In addition, however, to this superintendence of the roads on the part of the parish assembly, the States also exercise a jurisdiction on the subject, so far, at least, as certain of the principal roads in each parish are concerned, by appointing "a committee from their body, "called le Comité de Surveillance, to whom the parochial committees may apply in "cases where an extraordinary expense is required." In such instances the States, on the recommendation of their committee, often supply the required assistance. They also, not unfrequently, vote money for the making of *new* roads. Again, the Royal Court have the power and duty of surveying the public roads from time to time, a visitation which ordinarily takes place twice a year, and out of term. This proceeding is well described by the following extract from the work of Mr. Le Quesne, to which we have been also indebted in our preceding remarks upon roads. "The Court, on the day "appointed, meet usually near the parish church. They examine the parish books "produced by the Constable, concerning the amount received for the roads, the persons "who owe cartage or labour for the roads, and the manner in which the money is "expended. The Constable is then called upon to produce a jury of twelve good and Roads. Visite des chemins.

" impartial men chosen from among his parishioners; the Jury take an oath to lead the " Court through the worst roads in the parish. These men are called les Voyeurs, " because on the march they see or discover the nuisances which may exist, the " encroachments which may have been made, and the trees, which interfering with the " free use of the road, should be removed.

" Formerly the procession was on horseback; now it is otherwise. The Voyeurs, with " the Constable, take the lead; then follows the Vicomte, with a staff, the Bailiff and " the Jurats, accompanied by the Attorney-General and the Greffier. Whenever the " Voyeurs discover any nuisance or impediment in the road, or an unfortunate tree " which has been guilty of an encroachment, they make a verbal report of the same " to the Court, who immediately order the removal of the nuisance or the downfall of " the tree. As all proprietors of land bordering on the public roads are bound to keep " their hedges properly trimmed, and also to have the trees pruned in such a manner as " not to overhang the road below a certain height, it is a rule that if the official " staff of the Vicomte, as he passes along the road, is arrested by an overhanging " branch, a report is made to the Court, who, ascertaining that the report is correct, " impose a fine on the owner of the land.

" After the peregrination of the day is over, a dinner is provided by the Crown " for the Court, and another for the Voyeurs."

As regards the expenses of maintaining the roads (with the exception of one, viz., that from St. Helier's to St. Aubin's, which is maintained entirely at the cost of the States, and of certain others of the principal roads, as above stated, to which partial aid from the island fund is given), they are provided for by the several parishes, partly by means of rate, and partly by personal service. The rate called " le rât des chemins " is raised by the appropriation to this purpose of 6*d.* per quarter out of the total amount of parochial rates levied. The personal service implies the contribution of the use of a cart and a certain number of horses with necessary drivers or labourers for a certain number of days in proportion to the quantity of land farmed,—a contribution, however, which may be compounded for by a fixed money payment. No evidence was given before us tending to show that this system of road management works, on the whole, otherwise than well, as respects the condition of the roads, which, as is apparent to all who use them, is such as reflects credit on those who have the care of them, and must materially aid in promoting facility of intercourse and general prosperity. It is true that it was stated to us that a practice prevails in some instances, as regards either the inspectors of the roads, or other parish authorities, of paying the labourers employed partly by liquor instead of money. Where, and so far as this abuse exists, if it imply a misapplication of public money, it would be effectually checked by a rigid system of audit of parochial accounts, as recommended by us hereafter; and we see, therefore, no reason for offering any suggestions upon this head.

Local improvements.

3. As to the operation or efficiency of the parochial assembly in respect to local improvements, but little evidence was tendered to us. The general aspect of the country (as well as respects its roads, above adverted to, as otherwise), and the absence of any prominent or remarkable evils or nuisances crying out for removal or amendment, would seem to show that on the whole there is not much room for complaint. It is true that in more than one instance statements were made before us to the effect that public improvements had been arrested or delayed by party or personal feeling or self-interest on the part of those in public authority, whose duty it was to promote them. Without denying or doubting the facts as stated, we still, however, think that the possibility of their occasional occurrence is but the necessary price to be paid for a system of self-government and local independence and self-reliance, and we should be very reluctant to recommend (even if such a course were certain to obviate the evils complained of, which we much question,) the substitution of any more centralized system for that which at present prevails.

Local Charities.

4. The charitable funds in each parish are, in the majority of instances, administered immediately by the parochial assembly, and even in the few cases in which this is not so, the power exercised by the Constable or Churchwardens, or other officers (as the case may be) in the distribution appears to be subject to the ultimate control of that body, except in the case of Le Don Gruchy, as will be seen presently. Independently of certain smaller charities existing in a few only of the parishes (of which an account will be given in the Appendix), there are in each parish three funds called respectively,—

(1.) Le Trésor de l'Eglise,
(2.) La Charité,
(3.) Le Don Gruchy,

which are respectively applicable to the same purposes in each parish. We annex in

the Appendix, in a tabular form, such information as to each as we were able to procure by the circulation of queries on the subject. It may, however, at the same time be convenient that we should give, in this place, a few particulars as to each.

(1.) The Trésor is a fund of very ancient date, and arises chiefly from corn rents, payable in kind, and from land. The proceeds are applicable to the maintenance of the parish church and of the rectory, but appear occasionally to be also applied to providing necessaries for divine service, under the 33rd Jersey Canon.

(2.) La Charité.—This fund also arises mainly from corn rents (payable in most cases in kind), and from lands, and is devoted to the support of the poor in each parish. It is, however, wholly insufficient for this purpose, and, therefore, the main burden of their support now rests, as above stated, on the poor rate.

(3.) Le Don Gruchy.—This fund arises under the will of Dlle. Jeanne Gruchy (proved in 1848), who left to each parish in the Island a sum of about 700*l.* to be invested in land, and directed that the proceeds should be applied year by year towards the relief of poor natives of the Island not receiving parochial relief. The investment has been made in every case, and the annual rents now received vary (as will be seen in the Table appended) from 39*l.* to 19*l.*

The management of the charity is confided by the will to what is termed the "parochial "committee," a body distinct from the "parochial assembly," though comprising some of the same individuals as *ex-officio* members. Its composition appears to be not absolutely similar in all the parishes, but in general it consists of the Rector, the Constable, the Churchwardens, and the Procureurs du Bien Public, with, in some instances, the Centeniers. The Constable is usually treasurer of this fund, and accounts annually to the committee. No further audit takes place. It is right, at the same time, to state, that it was urged strongly before us that any audit which would involve the publication of the names of the individuals receiving relief from this fund would be inconsistent with the intention of the testatrix, which, as above stated, was to relieve persons not reeeiving parish relief, *i.e.*, who shrunk from application to a public fund ("pauvres "honteux").

We are bound, however, to point out that it is not only with regard to this fund that no public audit exists, for neither in the case of the other two charitable funds (Le Trésor and La Charité), nor in that of the general parochial rate, is there any adequate provision for that purpose. The only examination in the nature of audit which the law provides, is the periodical examination by the parochial assembly, a proceeding which (as the responsibility is divided among many individuals) is, obviously, likely to become a mere form, and which at any rate, is open to the weighty objection that the examination of the accounts is made by the very body by which, or by some members of which, the expenditure under review has been directed or authorized. It appears, therefore, to us, on grounds of general applicability, and from the experience of the benefits which result from the existence of such a practice in England, that it is of the very highest importance that provision should be made for the periodical and effective audit of all parochial accounts by an officer permanently appointed by some disinterested authority, and unconnected, as far as may be, with the parish, whose duty it shall be not merely to test the arithmetical accuracy of the several accounts, but also to ascertain the legality of each item of expenditure, and to disallow such items as might be found to be unsupported by legal authority. An appeal to the Court from his decision might, under certain regulations as to time, and perhaps upon other points, be given to the party deeming himself aggrieved by the disallowance. Whether it would be practicable to include within the range of this officer's jurisdiction, the accounts of the prison board, we are not at present prepared to say, but of the expediency of doing so we entertain no doubt.

5. With the parochial assembly also rests the power and duty of assessing and levying the parish rate, a function obviously of very great importance, and one which should be exercised with strict impartiality, inasmuch as the right of voting, as well for the members of the States as for all parochial offices, depends upon it. The law at present in force upon this subject was passed by the States in 1833, and subsequently confirmed by Order of Council. By this enactment (without dwelling on minor details) every inhabitant of a parish, if resident in it for a year and a day, possessing property valued at or above two quarters, is assessed at one half of the annual value of such property, whether real or personal, real property being rated at so much per quarter of wheat rent, while the value of personal property is stated in so many *livres* of the old French currency as are considered to be equivalent to a certain number of such quarters. By the Act referred to, one quarter of wheat rent is to be treated as equivalent to 333 livres, 6 sous, and 8 deniers, or 20*l.* From this statement it will be seen that the system of assess- Rating.

ment in Jersey agrees in some points with that existing in England, while in others it differs from it. The two systems agree in this, that the assessment is in both cases made by parochial authorities, viz., in England by the overseers, in Jersey by the parochial assembly. They differ in the following respects, viz. :—

1st. That in Jersey (but not in England) *personal* property is the subject of assessment as well as *real*.

2ndly. That while in England the law requires (whatever may be in fact the case) that real property should be assessed upon its full net annual value, deductions being allowed only upon certain specified points, in Jersey half only of the annual value is taken as the basis of assessment, while a further deduction of 10 per cent. is in practice made from this half for repairs.

As regards the right of voting, every male British subject in the island, who is 20 years of age and not under any mental incapacity, if he be rated upon a property valued at two quarters of wheat rent or upwards, is qualified to vote in the parish in which he resides.

The practical operation of this law, as a whole, is represented to us as far from satisfactory, a representation which is supported by the fact that frequent endeavours have been made to procure an alteration, and from time to time various Projets de Loi having this object in view have been introduced into the States. As reasons for the dissatisfaction existing with the present system, it is alleged (among other things),—

1st. That the power of the parochial assemblies to place persons on the list of ratepayers or to remove them from it (and thereby to confer or withhold the right of voting,) may be, and often is, exercised upon no uniform system, and with reference to personal or party objects rather than to the justice of the case.

2nd. That under the present system a large amount of property, real and personal, escapes from taxation, and, especially with respect to personal property, that no adequate means exist for ascertaining correctly its assessable value.

3dly. That though a person deeming himself aggrieved by the assessment on his property, has a right of appeal to the Royal Court on the ground that he himself is assessed at too high a sum, he cannot appeal (as in England) on the ground that another person is rated too low, and that injustice is thus done. It is further stated that the right of appeal above referred to is very seldom exercised, for, as a large portion of property in different parishes is rated at considerably less than half its value, while the appellant would necessarily be rated at half (he being obliged to declare the amount of such half upon oath, and such declared amount being in his case the basis of the future assessment), his position would often be but little improved by the appeal.

With a view to remedy these evils, it has been proposed (among other things) in more than one measure which has passed the States, (and such we understand to be one of the leading provisions of a law on the subject now under the consideration of Your Majesty in Council) that the duty of assessing the rate (so far as respects *personal* property) should be discharged not by the parochial assembly, but by a committee of 12 persons chosen by, but not entirely out of, that assembly every three years, and that the basis of the assessment on all real property, if not let, shall be a valuation of all such property to be made annually by three valuers specially appointed for the purpose by the parochial assembly every three years. If such property be let, then (as we believe) the amount of rent paid is to be the standard, according to the bill referred to, of the rateable value.

The subjecting personal property, as well as real, to assessment, is, it should be observed, in accordance with ancient usage in the island, and, as we apprehend, with the general tenor of public opinion, though the difficulties in the way of rating it justly at and up to its full value are, of course, identical with, or analogous to, those which have attended similar endeavours elsewhere.

It does not appear to us consistent with our position, or in itself expedient, that we should submit here any detailed observations upon the Act to which we have just referred as being now under the consideration of Your Majesty in Council, but we may perhaps be permitted to observe generally, that it appears to us, due regard being had to the state of public opinion and to the circumstances of the island, that no law of rating and assessment can be just or permanently satisfactory which does not,—

Firstly, include all property real and personal.

Secondly, provide for the assessment of all such property at its full annual value, subject only to deductions which may be fairly made for the expenses necessary to maintain that value.

Thirdly, place the power of assessment in the hands of such persons as may be not liable to the imputation or suspicion of party or personal feeling.

And, fourthly, provide a mode of prompt, inexpensive, and conclusive appeal against the assessment to some competent tribunal.

We think it right, however, to state, without discussing any of the provisions of the Bill adverted to, that we entertain grave doubts whether a valuation of the whole Island, to be conducted by an independent officer or officers, appointed by some central authority (as in the case of the tenement valuation now in progress in Ireland), and to be subject to periodical revision, would not be the course most likely to secure an equitable assessment and to obviate future complaints.

Relief of the Poor.

6. Relief to the poor is administered partly in their respective parishes as out-door relief at the discretion of the constables and churchwardens, partly in the general hospital or poor house of the island, and (for the parish of St. Brelade's only) in a small poor house situated there. As regards the former we were unable to ascertain that there are any definite rules or principles by which its administration is regulated, or any careful periodical examination of the accounts of the money expended, though the accounts are annually submitted to the parochial assembly. We append Tables showing the amount annually expended in out-door relief in the several parishes for the year. This expenditure (as well as that for in-door relief) is provided for partly by a permanent fund belonging to the church of each parish for the poor, as above mentioned, called La Charité, and consisting of wheat rents given for the purpose, and partly by a compulsory rate which was first established (in aid of collections at the church doors) by the code of laws confirmed in 1771.

Out-door.

It will be seen from these returns that the amount of pauperism, in the country parishes at least, is very small, a result which the aspect of comfort, as regards dwelling and dress generally observable in the rural districts, had prepared us to expect. In St. Helier's the proportion of those who are wholly or partially dependent upon aid from public funds is, not unnaturally, larger; but it is to be borne in mind that a large portion of the labouring classes in the towns are of English or Irish origin, whose only means of support is their labour.

Power of removal.

We feel bound, also, here to mention that strong representations were made to us of the hardship to which poor persons, not natives of the Island, are subject from the operation of the law under which, in case of their seeking relief from the poor rates, they become liable to be at once removed to the country of their birth. It was stated to us that poor persons are not unfrequently deterred by the fear of removal from making application to the public authorities for the relief to which their necessities give them a just claim, and, further, that when, on the receipt of relief, individuals are removed from the Island, this sometimes takes place after a long industrial residence there, to the severance perhaps of associations and connexions of long standing. It was added, too, first, that families may thus be liable to separation, inasmuch as there is obviously no power to remove those members of the family who have by birth a settlement in the Island, and, that, secondly, it not unfrequently happens that some of the children even though not born in the Island, may be, from their labour or otherwise, in possession of such means of livelihood as to render them unwilling or unable to quit their present residence. These allegations, it is true, were not supported by the production of any particular cases, nor did we see reason from the evidence adduced before us or from any other information which reached us, to conclude that such hardships as those which are above adverted to are of very frequent occurrence. Still as long as the unrestricted power remains of removing all persons not of Jersey birth, on their receiving relief, it is obvious that they are not unlikely to result. It is also to be borne in mind that complaints are not unfrequent at some of the English ports, more especially at Southampton, that poor persons not belonging to them, are landed there from the Channel Islands, for whose maintenance or transmission to their own parishes they have thus to make provision.

On both of these grounds, then, we feel justified in recommending a modification of the law of removal at present in force in Jersey, by a provision that no person shall be liable to be removed in consequence of his receiving relief, who has resided in Jersey more than a certain number of years without making application for assistance from the public funds.

Paper money.

Before quitting the subject of the parish assembly, we think it proper to advert to one power, which in some parishes in the Island it exercises, viz., the authorizing the issue of notes by the Constable in its name and under its guarantee. It appears from the evidence that this practice prevails in the parishes of St. Helier, in that of St. Brelade, in that of St. Ouen, and as we believe in some others. In St. Helier's, Mr. Ph. Aubin, the constable, stated that he is "authorized by a decision of the parish assembly to issue notes

" to the amount of 10,000*l.*," but that he had not had need for issuing so many. Though the reasons for issuing this paper money seem obviously to be the existence of a parochial debt, and the desire to pay it in *this*, as the most economical, way (the course taken being thus analogous to the issue of Exchequer bills), it does not appear that the amount issued under the guarantee of each parish assembly is necessarily limited to the amount of the parochial debt. No question appears to have ever been raised as to the legality of this practice, or as to the power of the parish assembly to pledge the security of the ratepayers for the payment of the notes. Without expressing any opinion upon these points, we have thought it right to advert to the fact that such notes are issued and in circulation, because it is obvious that the unrestrained exercise of the power to issue paper money must have an important bearing on the social and economical state of the Island.

IN-DOOR RELIEF. The general hospital or poor house owes its origin to the liberality of Mrs. Mary Bartlett, a native of the Island, who by her will, dated the 23rd February 1740, left a sum of 50,000 livres, French money, to be applied partly in building an hospital, and partly in creating a fund for the maintenance of the poor inmates, who were to be poor widows, fatherless children, and old people of the Island. Various disputes and doubts subsequently arose concerning the best mode of carrying out the intentions of the testatrix, but ultimately a building for the purpose of receiving poor inmates was erected in the town of St. Helier's, about the year 1750, partly from the funds so bequeathed as above, and partly also (in consequence of their insufficiency) from funds arising from grants by the States. To this building a very important addition was made by the liberality of Mr. Charles Robin, one of the leading merchants of the Island, who, in April 1824, shortly before his death, placed a sum of consols in the hands of trustees to accumulate to the amount of 3,000*l.*, of which sum 1,000*l.* was to be applied to the maintenance of a Chaplain to the General Hospital, and 2,000*l.* to the building " of an " additional wing to the said hospital with a room therein suitable for a chapel ; " the building to be conducted under the direction of the States. The north wing of the hospital owes its origin to this donation ; still later, two good school-rooms with lodgings for the schoolmaster and schoolmistress, and a chapel in substitution to the room appropriated to the purpose in the north wing, have been erected, partly by private donations, partly at the expense of the States. As they now stand, therefore, the buildings comprise accommodation for poor widows, fatherless children, and old people, together with a certain provision for the reception of cases of accident, and some cells for lunatics. The number of inmates at the date of our last visit was 353, about 90 of these being children, and 20 pensionnaires, *i.e.*, persons who are on the footing of boarders, and are obliged to pay 1*s.* a week, or some smaller sum (according to the means of each) towards the expenses of their maintenance.

Admission. Persons of the aged, sick, and orphan classes, are admitted on the order of the Con stables of the different parishes ; cases of accident by the order of the president of the hospital committee, or of the Constable of the parish ; or in case of urgency, we apprehend, without any order.

Pensionnaires. It should be added here that there are also certain inmates who, strictly speaking, may be considered able-bodied, but who by the immoderate use of intoxicating liquors, or by other misconduct, have impaired their constitution or disqualified themselves for the management of their own affairs. Persons of this description are, we were informed, employed in picking oakum, and in such other labour as the nature of the premises renders practicable. There are also, we believe, certain old people who live out of the hospital, but receive their weekly allowance from its funds, and not directly from their respective parishes.

Discharge. The discharges take place, in the case of the sick, upon the report of the doctor that the individuals are able to leave the hospital ; in the case of other inmates, except those not chargeable to any parish, upon the order of the Constable of the parish. As regards what may be termed the Island poor, *i.e.*, those who have not any claim upon a particular parish by birth (the only settlement acknowledged in the Island,) and are, therefore, maintained out of the general fund, the discharges ordinarily take place by order of the committee. The expense of the parish poor is charged to each parish, according to the number of days which each individual inmate has spent in the hospital, while the cost of maintaining the Island poor forms part of the establishment charges, which are chargeable to the several parishes of the island in proportions fixed by the Code of 1771, p. 275, that is to say, St. Heliers alone pays twelve-sixtieths, three parishes (St. Peter, St. Ouen, St. Saviour), together sixteen-sixtieths : five parishes (St. Laurence, St. Brelade, Gronville, St. Martin, Trinity,) together twenty-three-sixtieths, while the remaining three (St. John, St. Clement, and St. Mary, contribute nine-sixtieths of the whole rate required. We may add that the average cost of maintenance of each

individual inmate per day, including food and medicine, and proportion of salaries (but not clothing), has been for the last year 5½*d.*

The government of the hospital is vested in a board, composed of three jurats, three rectors, three deputies, and all the constables of the several parishes of the Island. The officers of the institution are a governor and his wife, a female assistant to the governess, a schoolmaster and schoolmistress, a porter, a chaplain, a surgeon, and a clerk to the Board. Government.

As regards the general management of this institution, we see no reason to make any detailed comments. Several months before our last visit a fire had taken place which destroyed more than half of the building. The result (as was obvious at our visit) was that many of the rooms were unavoidably very much crowded, a state of things which, though necessary as a temporary arrangement, obviously ought not to be allowed to continue. We are bound further to say that, having regard to the largely increased and increasing population of the Island, the building, as it stood, even before the fire, appeared to us inadequate in point of size, if all the present classes of inmates are to continue in it, and defective in the means of securing proper classification. On both these grounds, therefore, we think that it is incumbent upon the Hospital Board to take effective steps, without any further delay, for the rebuilding of the hospital on an enlarged scale and improved plan. It is fair to add, that, allowance being made for the general inadequacy of size, and the special difficulties at present existing, the inmates appear comfortable, and that the management, so far as we could judge, is efficient. There is, however, one point upon which we must touch before we quit this part of our subject, we allude to the practice of maintaining lunatics in the hospital, whether violent or harmless. The accommodation which can be afforded therein is, we are bound to say, necessarily most inadequate. The means of adopting a curative system which the ample space, good ventilation, and cheerful aspect of improved lunatic asylums afford, do not here exist; the presence of such inmates must be often most distressing to the others, and we feel bound, therefore, to record in the strongest terms our decided concurrence with the opinions expressed by all the witnesses whom we examined upon the point, that a lunatic asylum of adequate size and with sufficient land attached to it is imperatively required in the Island. We rejoice to learn that this subject has already been repeatedly under the consideration of the States, and we trust that ere long it will be dealt with in such a way as will effectually remedy the evils which at present exist. We may say here that the recent fire, by rendering necessary the reconstruction of many of the buildings of the hospital, appears to suggest the present as the fitting time for re-considering the arrangements as regards lunatics, and that there is a large garden belonging to the institution, which would afford ample space for the extension of the building. Inadequate size.

We must add, also, that the inquiries which we have made on the subject have led us to the conclusion, that as regards persons of unsound mind of a class above those who are dependent upon parochial relief, there is often great difficulty in making fitting arrangements for their proper care, and that, in the event of cruelty or abuse of any kind in such cases, there is no effectual or regularly authorized mode of detecting and remedying it. It appears to us, therefore, well worthy of consideration by the authorities of the Island, in the event of their deciding (as we trust will be the case at an early period) to erect an asylum on a moderate, but adequate, scale for pauper lunatics in some healthy spot in the neighbourhood of the town, but detached from the hospital, whether a wing or separate ward may not very usefully be added for the reception, at such rate of payment as may be agreed upon, of the patients of a higher class above referred to.

The poor house of St. Brelade's parish is a building erected in about the middle of the eighteenth century with very considerable additions, however, made at a recent period, and situated in the town of St. Aubin's. There is a small endowment of about 100*l.* per annum, given by a Mr. Dutton, the amount of which is applied in aid of the parish rate in the support of the establishment. It is stated to be capable of holding about 24 inmates: at the time of our visit there were 23, almost exclusively aged and infirm persons of both sexes, with the exception of a few children. There was one idiot girl there. She appeared to be well attended to, and to be very kindly treated, though we cannot speak in terms of approval of the place in which she is kept, which is merely one of several wooden inclosures (termed "cells"), without any provision for artificial warmth, erected within the area of one long room. Again, some of the sleeping rooms appeared to us rather crowded, and those especially on the attic floor to be so small and wanting in cheerfulness as to be not fit for the proper accommodation of the sick and aged inmates who are ordinarily placed there. We feel confident, however, from the kind and considerate way in which the establishment appears to be managed, that it is only

necessary to bring these defects (as we have done) under the notice of those who superintend it, in order to ensure their being remedied as far as practicable.

Pawnbroking.

While still upon the subject of the relief of the poor, we wish not to omit one point of considerable importance to them. We allude to the regulation of the trade of pawnbrokers by law, the necessity of which was brought prominently under our notice by one or two witnesses. It was stated that there is no law limiting the rate of interest to be charged on pledges, and that consequently great oppression is not unfrequently exercised upon the deserving poor, if placed in circumstances of temporary necessity; and we saw reason also to infer that, from the absence of any legal control whatever over the trade, it is often carried on by persons of doubtful character, and in a way which, by affording facilities for receiving stolen goods, tends to facilitate and promote crime. We think, therefore, that it is highly desirable that some measure should be adopted for the regulation of the trade of Pawnbrokers, based on similar principles to those which have been adopted in Acts of Parliament for that purpose.

Educational Charities.

We proceed to advert, in the next place, to that which is one of the most essential points in any social organization, viz., the provision for public education, so far as such provision is made in institutions which can, in any sense, be said to be comprised within the words "charities," the term used in the Commission under which we are acting. We have not thought the parochial unendowed schools within the scope of our inquiry, and are not, therefore, in a position to report upon them in detail. We were informed, however, that such schools exist in the parishes of St. Helier, Trinity, St. John, St. Brelade, St. Lawrence, Grouville, St. Martin, and St. Saviour, but that none have, as yet, been established in the other four parishes of the island. These schools are supported by the payment of the children, aided by annual subscriptions, and in some cases by donations or annual grants from the States or the Administrators of the Impôt. In a few instances the teachers are certificated, and the school is under Government inspection, and has pupil-teachers. In St. Helier's there is also a ragged school, recently established, and several infant schools, besides several other schools for the poor, not in connexion with the Established Church.

It was stated to us, that in former times in several of the parishes a parochial schoolmaster was maintained out of the rates, but this practice appears to have been long discontinued. It is clear that public parochial schools, on their present footing, are of modern establishment.

Endowed schools.

Though, however, this be so, yet attempts of another character were made in early times to provide for the educational wants of the Island. "In the reign of Henry the "7th," we quote again from Le Quesne's Constitutional History of Jersey, "were founded "in Jersey two free grammar schools, that of St. Magloire or St. Mannelier (as it is "now called) and of St. Anastase; the former situated in the parish of St. Saviour's, "the latter in that of St. Peter's. They were founded by John Neel, a native of Jersey, "who was Dean of Prince Arthur's Chapel, and by Vincent Tehy, a merchant in South-"ampton, but originally from Jersey. They obtained a patent for the establishment "and endowment of these schools from Henry the 7th, dated November 15th, in the "12th year of his reign, A.D. 1496. By this patent they were empowered to appoint "masters for the teaching of grammar, and other inferior branches of learning, and "to frame regulations, which were to be perpetual, for the government of the schools. "When a vacancy occurred, the masters were to be appointed by the dean and clergy of "the Island, to the exclusion of all other persons. The founders were authorized by "this patent to make a grant to these schools, when established, of sixty quarters of "wheat rent, which might be increased to the sum of two hundred quarters, if any person "felt thus disposed to favour and encourage education in the Island. This additional "grant ha not yet been made." "Of the two, St. Mannelier is the best endowed "having, besides the house, twelve vergées of land, whereas St. Anastase has only "three vergées. The endowment of the former is thirty quarters* of wheat rent, due "in kind (= say 30*l.*), and that of the latter twenty-five quarters (= say 25*l.*)." We were told, accordingly, that the total annual gross value of the endowment of St. Mannelier's school (allowing, say, 30*l.* for the house), may be taken at from 80*l.* to 90*l.*, per annum, while that of St. Anastase cannot be put at more than 50*l.*

We had opportunities of visiting both these schools, and we are bound to say, that in neither do the objects of the endowment appear to be fully attained. In that of St. Anastase we were informed that no free scholars have attended for the last year and a half, a fact which shows clearly that the benefits are not derived from the endowment which the founder intended. The master receives into his house several independent boarders, and has also

* The annual value of a quarter of wheat rent (due in kind) may be taken as = 1*l.* sterling; two vergées and a quarter are equal to one English acre.

several day boys of a higher class, and between these and the free scholars, if any, a broad line of demarcation exists in the use of separate school-rooms and playgrounds. We do not feel called upon to express any opinion as to whether the taking independent boarders is consistent with the intention of the founder; but having regard to the very scanty amount of the endowment in the case of both these schools, we think that, in the absence of any prohibition in the deed of endowment, the clergy (with whom hitherto has rested in great measure their management) and the States have exercised a wise discretion by recognizing and sanctioning it. The latter body, indeed, have on more than one occasion granted certain large sums to repair and enlarge the building with this view. We feel bound, however, to say, that if boarders or paying day scholars are admitted, they should use the same school-room with the free boys, and during school hours at least be associated with them in class, and be otherwise on an equal footing. Any preference shown to the paying boys must seriously prejudice that class for whose benefit the endowment was originally intended, and whose interests it is the duty of the master, primarily at least, to promote. In the school of St. Mannelier, indeed, there are some free scholars (the average of the last year at one time on the books being 12), and the school-room in which they are taught, and the access to it, are in better condition than at St. Anastase, but a distinction is still kept up between them and those who pay, the school-room being divided across by an open rail, and the two classes of pupils being rarely united for common instruction. On the whole, we cannot avoid the conclusion that neither of these schools, in its present condition, fulfils the purposes of its foundation, or effects the good which, under altered circumstances, might result from it. In this, however, as in many cases, the evil is far more obvious than the remedy. Several suggestions for change in respect of these schools have, indeed, been brought under our notice which we think it right to mention. By some it has been said that both schools should be sold, and the money arising from the sale invested, and the annual proceeds (due compensation being made for vested interests) applied to the purposes of parochial education, in the shape of annual grants made in certain proportions for the benefit of the parochial schools now existing or hereafter to be established, or, as has been suggested by one gentleman, in the shape of exhibitions, to enable the most deserving boy in each parochial school to go to Victoria College, hereafter referred to. Others have urged upon us strongly the desirableness of maintaining the school of St. Anastase (the situation of which renders it especially convenient for those parishes which lie in the western part of the Island, and are more remote from St. Heliers), while they think that the school house and land of St. Mannelier may, properly, be sold, and that establishment broken up. The proceeds of such sale they would apply in aid of the endowment of the school of St. Anastase, with the view of maintaining in those parts of the Island which derive no immediate or very general benefit from the college in St. Heliers, an institution which may provide an adequate means of education of a high character. The latter place, it is obvious, involves an entire departure from the intentions of the founder, by making no provision whatever for the poor, and on this ground those who advocated it enjoyed at the same time a decided opinion that some provision should be made by the States from other funds, concurrently with this alteration of the character of the school of St. Anastase, for the maintenance of parochial schools.

St. Mannelier.

Neither school satisfactory.

By the advocates of both of these schemes it has been strongly represented to us that the amount of these endowments is quite insufficient in itself to secure the services of a competent person to give to free boys such an education as was contemplated by the founder, that the taking boarders, however expedient it has been under the circumstances to permit it, is hardly in practice reconcilable with the reception and proper education of a large number of free boys; and that the character and disposition of the population of the rural districts is such as to render them unwilling to accept an entirely gratuitous education for their children. We admit that there is much force in these representations, and we cannot shut our eyes to the fact, that on the one hand the establishment in St. Heliers of a collegiate institution, and on the other the rise of parochial schools leave but little scope for the effective action of the two schools now under immediate consideration. On the whole, a majority of us have, accordingly, come to the conclusion that the mode of dealing with these two endowed schools which will be at once most beneficial to the Island, most akin to the expressed intentions of the founder, and most practicable, will be to sell them and (after making provision by due compensation for the interests of the present Regents) to apply the proceeds in aid of parochial education, either in the shape of annual grants to schools (in a certain proportion to the funds locally raised and to the number of children taught), or in that of exhibitions at the college, as above suggested, as may be hereafter determined upon. The tendency of either plan will be to promote the permanency of the parochial school, to secure an

efficient master, to raise the character of the education given in it, and thus to make it a place of sound training not only for the poor, but also for the children of those in a higher position.

Victoria College.

We proceed to consider the available means for affording public education of a high class in the Island, and with regard to this (whatever may be the deficiency in the existing opportunities of public education for the poorer classes,) we have pleasure in stating that no similar deficiency appears to exist. In 1847, the year after Your Majesty's first visit to the Island, it was decided by the Administrators of the Impôt to erect a college * for the Island from the funds under their administration as an appropriate, permanent, and useful mode of perpetuating the remembrance of this Royal visit. The building, containing in addition to certain class-rooms and others, two school-rooms of noble size and considerable architectural beauty, is situated on a hill overlooking the town of St. Heliers, and commanding a grand view, and was completed and opened in 1852. The educational staff consists of a principal, with two under-masters, and of professors of classics, mathematics, English, French, German, and drawing. The terms of admission to the college are very moderate. The under-masters are permitted to open their houses for boarders. With the exception of those who have availed themselves of this permission, all the students are day scholars (the college buildings themselves not affording any accommodation for boarders), and pay 6*l*., 8*l*., 10*l*. or 12*l*. per annum, according to their position in the college. The number of students was, on the 1st of March 1860, 207, of which 105 boys were in the classical, 102 in the commercial department. Having had the opportunity of visiting the college, we desire to bear our testimony not merely to the ample space which the rooms afford for the reception of the pupils, and to the excellence of the arrangements for ventilation, but also to the good order which we found prevailing, and to the proficiency of the pupils in such of the branches of instruction as could be in any degree judged of in the course of a brief visit. A far better proof of this, however, is afforded by the fact, that an unusually large proportion of those of the pupils who have entered into the competition within the last few years, have been successful in the competitive examinations, whether for cadetships, military and naval, or for clerkships in the Civil Service, while other pupils have mostly proceeded direct to some English University, and given good promise of future distinction.

On the whole we desire to state that we regard the establishment of this college as fraught with great and enduring advantages to the population of the Island, and we recognize in it a permanent proof of the sound judgment and well-directed liberality of those who have founded it.

Exhibitions.

In addition, however, to the provision for education which exists within the Island, liberal and public spirited individuals have from time to time provided assistance and encouragement for the natives of the Island who might be desirous of going to college in England, by providing the means of giving small annual sums in aid of their maintenance and education there, or by presenting scholarships and fellowships. In the ninth year of King James the First, a native of the Island named Laurens Baudains or Baudeyn, obtained Letters Patent incorporating 13 " of the most substantial and suffi- " cientest persons " of the Island of Jersey, by the name of " the Governors of " the possessions given by Laurence Baudains and others for the maintenance of poor " scholars of the Island of Jersey," with power, from time to time, for the survivors on the death of a Governor to elect a successor. To this body licence was given to receive and purchase from Baudains or others, a certain mill, and wheat rents to the amout of 60 quarters, English measure ; the revenue to be applied to the maintenance of poor scholars, for the service of the Island, in either of the Universities of Oxford or Cambridge. It was provided that the scholars elected in this foundation should not dispose of themselves from the service of the Isle of Jersey or of the Isle of Serk, without the permission of the Governors of the Donation, who were empowered to make ordinances and statutes, as well for this latter object, as for the general administration of the charity. From information supplied to us by Your Majesty's Advocate-General, who is also one of the existing body of Governors of the Donation, it appears that the original gift by Baudains, consisted in fact, of 18 quarters of wheat rent, and of the mill above mentioned This wheat rent is (with a trifling exception) still received, and has in consequence of a

Don de Baudains.

* This object had from time to time been contemplated and proposed as early as 1597, when Laurens Baudains endeavoured to commence its foundation, by a donation of thirty-six quarters of wheat rent. The Patent, moreover, of Chas. II. originally establishing the Impôt, enjoins the annual application of 2,000 livres tournois of the monies to be levied thereunder to the support of " Schoole, Colledge, or Academy," then intended to be built by Sir George de Carteret, at St. Helier's. This plan was never carried into execution ; so that the attempt to establish an Island seminary had always hitherto failed.

benefaction to the fund in 1762, been slightly increased in amount. The mill was sold (for 30 quarters of wheat rent), with the sanction of Your Majesty in Council, in 1842. The fund has been augmented by occasional investments in Government stock, of income unexpended in consequence of the absence of applicants, and of several sums of money refunded (in obedience to a rule laid down by the Governors) by those scholars who having received assistance from the "Don," have afterwards declined to reside and take employment in the Island.

The present income of the charity is nearly 80*l.* per annum. The affairs of the charity are managed, under the direction of the Governors, by a secretary, who receives a nominal salary of 240 livres per annum, equal to 9*l.* 4*s.* 7½*d.* sterling. His accounts are audited annually by the Governors, seven of whom at least must be present in order to transact business. Two students are at present receiving grants out of the revenue, amounting respectively to 40*l.* and 25*l.* Jersey currency (equal to 36*l.* 18*s.* 5*d.* and 23*l.* 1*s.* 6*d.* sterling.)

The assistance thus afforded from the donation of Laurens Baudains was, however, an insufficient inducement to study at the universities, and consequently from time to time endeavours were made to obtain, if possible, encouragement at the universities themselves, and a special request was made by the States to the Royal Commissioners, Conway and Bird, in 1617, to that effect. James the First assented to the request, but nothing further appears to have been done at that time. In 1636, however, Charles the First, upon the suggestion of Archbishop Laud, decided to endow, out of certain houses and lands which had then recently escheated to the Crown, three fellowships at Oxford, one in each of the three colleges of Exeter, Jesus, and Pembroke, for natives of Guernsey and Jersey, by turns, nominated by the Dean and Jurats of those Islands respectively. By recent legislation under the Oxford University Act of 1854, these fellowships have been suppressed, and in lieu thereof, at each of the three colleges above mentioned, there has been established a number of scholarships, varying with the revenues, but never to be less than two in each college, bearing the name of King Charles I. The scholars are to be elected by the respective colleges after examination, from persons born in Jersey or Guernsey or the adjacent islands, educated for two years previously either at Victoria College or at Elizabeth College, Guernsey. These scholarships are, as a rule, tenable for five years. They vary in value from 50*l.* to 60*l.*, and in each college one set of rooms is appropriated to the foundation. Again, in the reign of Charles the Second, Morley, Bishop of Winchester, founded five scholarships in Pembroke College, Oxford, for persons born in Jersey and Guernsey, the nomination being vested in the Dean, Bailiff, and Jurats of the respective Islands. These are now consolidated into one scholarship of 50*l.* a year (with rooms), subject to the same conditions as to election, qualification, and tenure as "King Charles the First's scholarships."

Report of Oxford University Commission.

Fellowships at Oxford.

Bishop Morley's scholarships.

XII.—Prison and Classification of Prisoners.

The Island prison is a substantial building situated in the town of St. Helier, and capable of holding in separate cells, 48 persons. It was completed in 1815, and occupies rather more than an English acre, a space of ground however, which is, unfortunately, much too limited to admit of the necessary airing grounds. It is divided into two parts, one occupied by debtors and untried prisoners, which, for the sake of clearness, we describe by the name of the "prison," the other (and smaller) part, termed the house of correction, by those under sentence. There are in the main building or prison 28 cells on two floors; in the house of correction adjoining, 20 cells, together with a small boarded room denominated the infirmary, but rarely (if ever), as we were informed, used for that purpose. With the exception of this room, all the cells have stone floors. At the time of our last visit, on March the 17th, there were in the prison :—

7 debtors.
8 untried prisoners.
20 convicted prisoners.
1 criminal lunatic.

The officers of the prison are a gaoler, four male turnkeys, a chaplain, and a matron, whose superintendence, however, does not extend to the female debtors. The general government of it, and the appointment and dismissal of the officers, are in the hands of a Prison Board established by Order in Council in 1837, consisting of the Lieut.-Governor for the time being, the Vicomte, (or in his absence,) the Deputy Vicomte, the Queen's Receiver, a Jurat of the Royal Court, a Member of the States, a Constable of one of the parishes, and, as president, the Bailiff. Two members of this Board visit the prison monthly in rotation.

As regards funds to meet the expenses of the prison, one portion (300*l.* per annum) is granted from the Crown revenues, another sum of 300*l.* per annum is provided by the States, to whom any further expenditure also, beyond the 600*l.* per annum, is chargeable. The prison accounts are submitted by the Prison Board to the States annually, and a copy is sent to the Secretary of State, but we did not find that it is ever printed or circulated in the Island, a course which we, however, think would be very desirable.

There appears to be a want of accurate definition of the authority and responsibility of the Vicomte and the Prison Board respectively, over the gaoler and officers of the prison, and as to the safe custody of prisoners; measures should, we think, be promptly taken to define their respective functions and responsibility, and also to preclude all unwarranted interference with the custody of prisoners.

The building itself appeared to us to be clean and well kept, and we have no doubt that due order and discipline are maintained so far as its limited size admits. The rules are sanctioned by the Secretary of State. We are bound, however, to state (as indeed are the expressed opinions of more than one witness) that it is not sufficiently large for the present population of the Island, and that no sufficient means exist for due classification. It was stated to us that it is not always practicable to separate unconvicted from convicted male prisoners, at least during exercise; while as respects the females inmates (except the female debtors who are in the gaol, of which class, at the time of our last visit, there was only one), they are all, whether tried or untried, placed in the House of Correction, necesarily use the same yard and washing place, and are thus unavoidably brought into daily communication. As regards convicted prisoners, too, it is sometimes necessary to place two at night in one cell. Again, the want of any provision whatever in the Island for the reception of criminal lunatics is a very serious evil, and when in consequence, as is the case now in one instance, a person of that description is retained in the gaol, the hours of exercise of the other prisoners are, from its being requisite for him to take exercise alone, necessarily contracted, and a serious interference with the regular arrangements of the prison is the result. He is thus practically in solitary confinement, while his cell, it must be added, has a stone floor, which we believe to be considered especially undesirable in cases of insanity. We have further to state, that the provision for ventilation in the several cells, especially in that termed the refractory cell, appeared to us inadequate, that some of the walls were damp, and that we found that there is no female turnkey in the prison, though female debtors are necessarily placed there. There is, however, a female officer or matron in charge of the female side of the House of Correction. Upon these points, and upon several others of less importance, we thought it right to make a representation to the Prison Board and we are bound to express our confident expectation, from the courteous manner in which our observations were received, that the question of remedying the evils to which we have called attention will receive full consideration. We must also observe that in the cells occupied by debtors, no furniture is provided, according to the gaol regulations. The prison allowance of money per week is much too small to admit of the debtor's providing furniture himself, and it was represented to us that hardship was frequently occasioned from this cause. We think it proper, however, to add here a distinct recommendation upon the two following points, viz:—

1. That measures be taken for such an enlargement of the existing prison, and such an extension of its area, as may admit of due classification, and adequate airing grounds. We may add that there is a garden belonging to the establishment which would probably afford ample space for any necessary additional buildings, besides giving the means of of enlarging more of the yards.

2. That immediate steps be taken to make due provision for the care of criminal lunatics.

Before we quit this part of our subject, we cannot but advert to a plan for the establishment of an Industrial and Reformatory School (with special reference to juvenile offenders), which was under the consideration of the authorities of the Island a few years ago, and, though no practical step for its establishment has ever been taken, met at that time with their general approval. It appears to have originated in a suggestion of the then Lieutenant-Governor and the Assembly charged with the administration of the Impôt, and was by that Assembly reported to a Committee for consideration. That Committee went carefully into the subject, and presented a report to the Assembly, pointing out in detail the necessity for such an institution, the objects to be attained by it, the general principles on which it should be conducted, and the facilities then existing for its establishment. The Committee contemplated the reception in the school, not merely of those children who had at an early age actually committed offences

against the law, but also of orphans and deserted children, and they proposed to place the establishment in a healthy situation, close to the sea, and about four miles from St. Heliers, on a spot where Government property afforded facilities for acquiring land, and where there would be ample room and opportunity for training the inmates either in farm occupations, or as seamen. Upon the presentation of this report, Committees were appointed by the Administrators of the Impôt and the States respectively for its consideration, and the former body voted (and have, we believe, ever since set apart and secured) a sum of money which would go far to provide for the establishment of the school; but we much regretted to learn that nothing further has since been done. We have, therefore, felt called upon to direct attention to the subject, not merely on the general grounds which render an Industrial and Reformatory School an important and most useful element in the social organization of any large and mixed community, but also (as a special reason) because both in the Prison and in the General Hospital there is a great want of space for the due reception and classification of the inmates, and the removal of the children elsewhere would give great facilities for the remedy of these evils.

ISLAND REVENUES.

We have proposed that the Judges and certain officers should be paid by salary, the fees being carried to a common fund. The fund will ultimately provide a considerable part of what may be required; but we cannot agree with our witness, who expects that it will be sufficient to supply the whole. At all events, if that were eventually the case, it could not be until the expiration of the vested interests of those whose successors would not, on a re-distribution, have so large endowments as they are at present entitled to.

Various social improvements which we have recommended, particularly the provision for the care of the insane, will require funds; and we are not indisposed to think that there may be other objects of public utility for which the revenues raised in the Island may be properly applied. Though, therefore, the finance of the Island is not properly within our province, it becomes incidentally incumbent on us to recommend to Your Majesty's most gracious consideration any plan which the States and the Administrators of the Impôt may, in their respective public capacities, find it their duty to propose for raising, continuing, or applying a revenue (if necessary, of increased amount,) for the objects specified by us as well as for others of public utility, and of kindred nature. The elective element so largely preponderates in both these bodies, that provisions which they may, with Your Majesty's gracious permission, make for the public benefit, may be expected to meet with acceptance from the sound sense of the community.

With these views, we proceed to give a short statement of the nature and extent of the Island revenues. Of these, the principal source is the Impôt, or duties on spirits and wines imported into and consumed in the Island. These duties owe their origin to Letters Patent of King Charles the Second, bearing date April 14, 1669, granting authority to the Bailiff and Jurats of Jersey to levy certain duties on brandy, French or Rhenish, Canary or Spanish wines, on cider and apples; the proceeds to be applied by the Bailiff and Jurats, with the consent of the Governor, towards the establishment of, 1, a school or college; 2, a poor-house; 3, a pier at St. Aubin's; 4, towards other public uses. Certain "petty customs" were also thereby authorized to be levied towards the pier. From the provisions for the management of this revenue springs the present "Assembly " of the Governor, Bailiff, and Jurats, Administrators of the Impôt." In 1699 an Order in Council sanctioned the application of the Impôt towards the works at St. Helier's Harbour.

In 1779 and 1797, two other Orders in Council added to the subjects of this taxation by granting certain duties on rum and gin, and on Portuguese and Italian wines, the proceeds of which were to belong to, and be administered by, the States. In 1803, by Act of the States, confirmed by the King in Council, the different duties arising in the manner above mentioned on brandy, rum, gin, Spanish, Canary, and French wines, were consolidated, and were thereafter to be levied under one administration; the revenue arising from the same to be equally divided between "the Governor, Bailiff, and Jurats," and the States. Since this time, the levying of the Impôt has rested exclusively with the former body. The rates of duty have since been raised on several occasions. Finally, by an Order in Council of the 5th of February 1845, confirming an Act of the States, the duties were raised to $7\frac{1}{2}d.$ per pot (Jersey measure) on spirits, and to $3\frac{1}{2}d.$ per pot on wines; this is the present rate. £800 per annum, representing the duties on port and on Italian wines, is paid to the States, and the balance of the revenue is then divided equally between the Governor, Bailiff, and Jurats, and the States. The Royal sanction for levying the additional duties not granted by the Letters Patent of King

Charles, is not for an unlimited period. Usually, it is granted for three years, sometimes for a shorter time. At the expiration of the period, be it what it may, the States make application to Your Majesty in Council for a renewal of the duties.

From the funds thus arising, Victoria College (above referred to) and the present gaol have been built (not including, however, the House of Correction, which was erected at the cost of the States); and large contributions have been, from time to time, made in aid of new works for the improvement of the harbour and piers.

The present total receipts of the Impôt, divided in the manner above mentioned, average about 14,700*l.* Out of the share (about 7,000*l.*) coming to them, the Governor, Bailiff, and Jurats apply upwards of 6,000*l.* to the discharge of interest and reduction of principal of a debt (now reduced to 25,398*l.* from 39,520*l.*), incurred on account of the works at Albert Pier, St. Helier's harbour. They contribute 300*l.* a-year to the prison, and defray the balance (which has hitherto always existed) of the expenditure over the income of Victoria College.

Before we quit the subject of the Impôt, we may perhaps be permitted to direct attention to a suggestion thrown out by one of the witnesses whom we examined (and which is identical with that made to the Commissioners of Inquiry in 1846, who in the Appendix to their First Report, have entered into statistical details with reference to this subject), that the addition of a light duty on tobacco would provide for any increased expense consequent on the adoption in practice of any of the recommendations which we hereinafter submit.

Publicans' licences.

Besides the portion of the annual produce of the Impôt paid to the States as above mentioned, another source of revenue to them is the payment for licences granted to publicans, producing annually upwards of 1,000*l.* This sum, however, is, according to present practice, annually returned to the parishes according to the amount received in each for licences, for the purpose of its being applied, in the country parishes, towards keeping the public roads in repair, and in St. Helier's, towards lighting the town with gas.

The present average total receipts of the States are, 9,365*l.*, against a permanent expenditure of 9,191*l.* Out of the receipts has to be provided the yearly interest, 3,228*l.*, on the debt, 92,243*l.*, at their charge.

The balance annually disposable by the States is applicable to public improvements.

The revenue and debts of the harbour and markets are kept distinct.

XIII.—Ecclesiastical Law.

At the head of the Church in Jersey is the Dean, who is always one of the twelve rectors of parishes, and must be a Jersey man by birth. The collation to this dignity, as also to the twelve parish churches, belongs to Your Majesty's patronage. The deanery is endowed with the great tithes of St. Saviour's parish, which are annexed to it. These tithes, together with certain fees on marriage licences, the grant of which rests with him, and on the proving of wills, and together with the proceeds of his rectory, constitute the income of the Dean. Down to the reign of Queen Elizabeth (1568), the Channel Islands continued to be under the spiritual jurisdiction of the Bishop of Coutances, in Normandy; since that time they have formed parcel of the diocese of Winchester.

The ecclesiastical law of Jersey rests upon the canons which were sanctioned by James the First in 1623. They were framed originally by the "Dean and Ministers" of the Island, and presented to the Crown for confirmation. Objections, however, were entertained to them by the Bailiff and Jurats, who sent three of their body over to England to except against them before the Council. Certain amendments were then made by a Commission, consisting of Archbishop Abbot, Lord Keeper Williams, and Launcelet Andrews, Bishop of Winchester, to which amendments the Dean and the deputies of the Bailiff and Jurats assented. These amended canons were then confirmed under the signet, and have thus become the basis of the ecclesiastical law of Jersey, which has never since been altered. They provide, among other things, for the establishment of an Ecclesiastical Court, of which the Dean is judge, being bound, however, to ask (but not necessarily to follow), the advice and opinion of any other of the rectors who may be present. From this Court an appeal lies to the Bishop of Winchester; and in the vacancy of that see, to the Archbishop of Canterbury. Its jurisdiction comprises, amongst other things, the cognizance of all matters relating to divine service, the registration and grant of probate of wills, the grant of letters of administration, and the pronouncing divorces *à mensâ et thoro* in case of adultery or cruelty. The grant of marriage licences rests with the Dean. Two advocates are attached to the Court, as is also a greffier or clerk, who has the charge of all the records. The mode of proceeding is analogous to that of the Royal Court. Very few cases, however, are brought before

it. It does not appear that the Court has any other mode of enforcing obedience to its summons or process than by having recourse to the assistance of the Royal Court. Its own power is limited to that of pronouncing ecclesiastical censures, extending in certain cases to a sentence of excommunication, capable of being followed, as in England, by civil consequences. All wills containing bequests of personal property must be proved in this Court.

Whether in granting probate, however, the Dean has merely a non-contentious jurisdiction, all contentious cases being necessarily referred to the Royal Court (as stated to us by two witnesses), or whether he has in any case a contentious jurisdiction; as, for instance, where the validity of a will is disputed, or a contention arise as to who is the executor, does not appear on the face of the evidence to be very clear. Some doubt, indeed, seemed to exist, from the absence of precedents, in the minds even of legal authorities upon this point; but it is the less necessary to endeavour further to investigate it, as we are clearly of opinion that in future all disputed questions as to wills should be adjudicated upon by the Royal Court. We feel it right, also, distinctly to recommend further that all jurisdiction in matrimonial cases should be transferred to the Royal Court, when re-constituted as we suggest. We see no present reason to recommend any other changes, further than to express our decided opinion that provision should be made as soon as possible for placing the wills in a fire-proof depository.

Pews. The usages prevailing in the Island as regards pews were brought under our notice by several witnesses. It was stated that pews are often dealt with as matters of private property, and made, accordingly, the subjects of letting or sale by the parties to whom they belong; that in many cases an individual is possessed of more than one pew, and that persons often retain their pew in a church after they have ceased to be residents in the parish, to the prejudice of those who are living there, and who are thus prevented from obtaining the necessary accommodation. It was further pointed out to us that the 33rd canon provides that the churchwardens, with the advice of the minister, "verront que "les bancs et siéges soyent appropriés pour la commodité du ministre et de ses paroissiens," and it was contended that the interference of the parish assembly is not warranted by law, and in practice leads to inconvenience. At the same time, it appeared that the parish assemblies have, in some parishes, for a considerable period exercised authority and control over the allocation of pews, and have laid down rules, usually involving a payment to the Trésor, subject to which they authorize their transference by sale.

On the legal questions involved we do not feel called upon to pronounce any opinion; and we the more readily abstain from doing so, because we cannot but hope that, in the majority of instances, all the parties who are officially connected with the arrangement of the sittings in the church will be disposed to co-operate for the common object; viz., the making the best provision practicable for resident parishioners. It is obvious to us that the church accommodation is in several of the parishes very inadequate; that in some a new arrangement of the space at present available would give a greater number of sittings, while in others a portion of the church, the restoration of which would add largely to the available accommodation, has been withdrawn from ecclesiastical use, and devoted to purposes of a character more or less secular. It appears to us, however, that the fitting remedy for these evils is to be found rather in the good sense and public spirit of parochial bodies and officers themselves than in any legal provision which it would be within our province to recommend.

Tithes. The great tithes of the Island formerly belonged to religious corporations in Normandy and Brittany, and finally passed to the Crown on the extinction of the rights of the alien priors in the time of Henry the Fifth.

As just stated, the great tithes of St. Saviour's parish are annexed to the deanery; those of St. Helier's were granted to Sir Edward de Carteret by King Charles the Second. They have since passed into several hands, and in many instances have been sold to the respective landowners; so that at the present time the greater part of the town parish is free from the payment of great tithes.

On the death of Lord Beresford, the Governor of the Island, in 1853, and the suspension of that office which then took place, a certain portion of the Crown revenue arising from these tithes, to the amount in the whole of 300*l.* per annum, was given to the rectors of certain parishes, regard being had in the selection of such parishes, as we apprehend, to the amount of the income of such rectories from other sources. With the exception of the portion of great tithes thus given up by the Crown, and of the tithes on apples, (a crop which, from various causes, is of a very uncertain character) the principal tithes possessed by the rectors are those arising upon the lands which are termed "déserts et "novales," those, viz., which were not in cultivation at the time when the great tithes

were first appropriated to the religious houses, and which never paid any tithes to the impropriators.

The tithes arising upon such lands, at whatever time subsequent to the period above named they have been brought into cultivation, are due to the rectors. In the time of James the First, terriers were drawn up in each parish, in accordance with a provision to that effect in the canons, containing a list of the different lands in each parish which, having been déserts, paid tithes to the incumbent. Subsequently, as is stated, there have been in some parishes additions under that head, arising from bringing other lands into cultivation. It was strongly represented to us, however, and apparently with reason, that from changes of property, the removal of boundaries, the occasional enlargement of fields, or other causes, it is often at the present time impracticable for an incumbent to ascertain, by identifying each parcel, what lands under the head of déserts are liable to pay tithes to him, and that he, accordingly, fails to receive the amount to which he is legally entitled. It was further contended in one instance (that of the parish of Grouville) that the incumbent has a right to a certain portion of the great tithes possessed by the Crown, and a claim to that effect is now, we were informed, pending before the Royal Court. We are obviously not in a position, nor would it be right, to express any opinion upon this claim; but, in reference to the subject generally, we have no hesitation in stating that a commutation of all tithes, whether belonging to the Crown or to the incumbent, for a fair equivalent in money payment upon the principles of the English Acts, would be attended with permanent advantage to the Island.

The result of such a measure, if carried out after due inquiry and upon just principles, would be to negative unfounded claims, to recognize and establish those which are supported by legal proof, and, by ascertaining and defining the relative rights and obligations of all parties concerned, to obviate injustice and prevent dissensions and litigation. We beg, therefore, to recommend that measures be taken, as early as practicable, with this view.

Another complaint was made that offenders, who by neglect to set out their tithes, had rendered themselves legally liable to a penalty, which has become by the change in the value of money less than the value of the tithe, were enabled by tendering the amount of the penalty, to discharge their obligation. We notice this, as we are told that this opinion, absurd as it must be held to be if brought before a competent tribunal, has been in fact a considerable obstacle to the collection of tithes justly due, and that an appeal has been refused, as it was contended that the penalty only, and not the right, was in issue; though it is evident that the real question might be, whether the tender of the penalty barred the right.

With this, the last of the general heads of our inquiry, we desire to conclude our Report, conscious of the imperfect manner in which we have performed our task, and sensible that their remain several subjects untouched by us, which might be considered to fall within the scope of our Commission, and demand notice. We must, however, humbly plead the shortness of the time at our disposal as our apology for any defects of this kind which may be found to exist. In appending a recapitulation, under distinct heads, of the principal measures which our inquiries have led us to think important to be introduced, we would premise that, as we entered upon our inquiry, without any preconceived opinions upon the subjects which were to be brought under our notice, so during the progress of the investigation we have not failed to appreciate at their just value the spirit of self-reliance which characterizes the natives of this Island, their natural attachment to their ancient institutions, and the unwavering loyalty to their Sovereign by which now, as ever, they are distinguished. That many of these institutions, indeed, are well adapted to the peculiar circumstances of the Island we confidently believe. The law of property, for example, though requiring considerable amendment in some particulars, as we have already pointed out, has, no doubt (as from its nature was likely to be the case), had a material influence in fostering a spirit of industry and self-dependence, and in diffusing over the entire surface of this land a thriving population, whose strong local attachment is among the best guarantees for their devotion to their country. We have not shrunk, it is true, from recommending many important alterations in the machinery of their laws and institutions,—alterations required in our judgment in order to adapt them to altered circumstances and to a largely increased population, and the necessity for which will, we believe, be recognized by many thinking men among themselves. At the same time nothing has been further from our purpose than to introduce changes from the mere love of alteration, or, by any measures of a centralizing character, to derogate from that self-

government which the natives of the Island so much value, and the scrupulous respect for which has been for many ages at once the reward and the safeguard of their exemplary fidelity to the British throne. Our recommendations simply emanate from a sincere conviction that by their adoption the ends of justice in the Island may be more certainly attained, and the future welfare of an interesting and important portion of Your Majesty's dominions more effectually and permanently advanced.

With such views, then, we proceed humbly to submit the following as being a summary of the chief remedies which we would suggest for amending the defects and abuses which we have observed in reference to the laws and customs now in force in Jersey, the tribunals by which they are administered, and the practice and forms of procedure used by them.

SUMMARY OF RECOMMENDATIONS.

I. Seignorial Rights.

1. That the *Projet de Loi*, passed by the States of Jersey on the 18th of October 1859, for authorizing a commutation or redemption of Seignorial Rights, be sanctioned by Your Majesty in Council.

II. The Law of Real Property.

1. That the costs of a *partage* amongst heirs be defrayed out of the estate of the deceased.
2. That the period allowed to co-heirs for claiming from the principal heir a *partage* of the inheritance, be reduced from 40 to 15 years, with an alternative period, in cases of infancy or absence from Jersey, of five years from the attainment of majority or return to the Island.

III. Conveyances and Registration.

1. That the parties to a contract be required to sign it before it is passed by the Court.
2. That a safe registry for contracts, wills, and other public documents be at once provided.
3. That in every case of collateral succession, the principal or sole heir be obliged to appear before the Court and declare that he assumes the succession; and that his declaration be inserted in the Register of Contracts.
4. That the debts of a deceased person, in order to become charges on his real estate in the hands of his heirs or devisees, or of persons deriving title from them, be registered within a year of his death; and that, unless so registered, they shall not affect his property in the hands of purchasers or alienees.
5. That a proper Index to the Register of *Décrets*, calculated to facilitate the discovery of the cancellation of *rentes* and other obligations, be prepared and regularly kept.

IV. Wills and Successions.

1. That persons dying without issue be empowered to dispose by will of the whole of their real estate, subject to the rights of their widows to dower.
2. That the rights of the principal heir to any profit, during the first year, and before *partage*, arising out of the personal estate to which he succeeds in his representative character, be accurately defined by law.
3. That no person be competent to make a will of real or personal estate until he attains the age of 21.
4. That the marriage of a testator shall operate as a revocation of his will made before marriage.
5. That the formalities for making wills of real and of personal estate be the same, and that they be assimilated to those required for wills in England.
6. That the provision in the law of wills of 1851, rendering void in general wills of real estate made within 40 days before the devisor's death, be repealed.

V. Law of Guarantee, &c.

1. That all property which a guarantor may, after the passing of a law for the purpose, acquire, shall be exempt from liability in respect of his guarantee, after it shall have been conveyed by him or by his representatives to a purchaser for valuable consideration.
2. That, in all future contracts, the guarantee to be given therewith shall be construed to affect the property of the grantor, only whilst in his own hands or in the hands of his heirs, but not in the hands of his assigns for valuable consideration, except property specifically mentioned and described.
3. That no *rente* to be hereafter created shall be irredeemable, except by an express stipulation mentioned in the contract creating it, but in no case for more than five years; and that any stipulation making a *rente* irredeemable for a longer period shall be void for the excess; that such stipulation may be waived by the mutual consent of the parties; and that, subject to such period, the grantor, his heirs, and assigns, shall be entitled, on giving six months' notice in writing to the *rentier*, to redeem the whole or any part of the *rentes*, not being less than a certain amount at any one time, at the same price at which they were granted.

VI. Uses and Trusts.

1. That power be given to convey, by a contract *inter vivos*, real estate up trust for such objects of a public nature as the Royal Court may approve.
2. That the Court be expressly empowered to enforce the trusts declared in such a conveyance.
3. That the property so conveyed be exempt from the private debts and engagements of the trustees, and from the claims of their widows in respect of dower.
4. That the lord of the manor in which such property is situated, or his *tuteur*, with the approbation of the Court, be empowered to sell his seignorial rights; and that, in case of disagreement as to the price, a provision similar to that now in force for assessing, with a view to the extinguishing of, seignorial rights over lands taken in mortmain, be made for assessing such rights; and that the lord be compelled to accept such assessment.
5. That Your Majesty's Procureur-Général should be a party to the proceedings, and should be allowed to urge objections to the proposed trust, or to the form of the proposed contract, before the Court signifies its approbation.
6. That in case of the total or partial failure of the objects, or the occurrence of circumstances which would authorize a modification of the original trust, the Court should have power, on the application of proper parties, with due notice to the trustees and the public, and after hearing the Crown officer, to authorize the application of the trust property and funds to kindred objects, due regard being had to the intentions of the founder.
7. That a measure of this kind should also be applied to joint-stock companies, consisting of not less than a certain number of shareholders, associated for useful purposes of profit.
8. That in lieu of appointing trustees with provisions for supplying vacancies in their number, the Court be empowered to confer on companies formed in conformity with the last preceding recommendation, a corporate capacity, with a limited power to take and hold real estate under a corporate name, and to be represented by a public officer belonging to their own body; but in all other respects to be regulated by the general conditions above suggested.
9. That the measure suggested in the last eight recommendations should embrace donations or purchases of real property by acts *inter vivos* only, and not by will.

VII. The Law relating to Husband and Wife.

That the law permitting separation *quant aux biens* be modified in the following particulars, viz.:—

1. It should be inoperative as a protection, not only against existing creditors, but also against all those to whom there is an accruing liability under any existing obligation, unless by express consent, or by order of the Court, against which the party liable to be affected has had the opportunity of being heard, and of examining the other parties.

2. It ought not to cover property over which the husband has any control in a trade not carried on by the wife exclusively of him.
3. Before it is allowed by the Court, adequate time and publicity should be afforded to enable any persons who may be affected to show cause against it.

VIII. The Law relating to Persons under Disability.

1. That where, by reason of the domicile of the deceased in any part of Your Majesty's dominions, in which the power to appoint a testamentary guardian exists, the distribution of the personal estate is different from that fixed by the law of Jersey, the appointment of such a guardian should be allowed to take effect.
2. That every guardian should be bound, on his appointment, to prepare and file in the Royal Court a schedule or inventory of all the property of the minor.
3. That provision be made for an official audit of the guardian's accounts half-yearly during the minority, and for the passing of his final account within six months after the majority.
4. That the guardian's accounts, though closed, should be liable to be re-opened at any time within five years, either by the ward himself, by his heirs, or by those entitled on his insolvency.
5. That the nature and extent of the responsibility of the *tutelle* be defined.
6. That in inquisitions of lunacy before the Royal Court, there be no restriction as to the number and qualifications of the witnesses; that the actual presence of the lunatic (in all cases requiring it) be imperative; that medical evidence be always required in the first instance; that the alleged lunatic be allowed to contradict the case against him by evidence; and that he be allowed to traverse the inquisition.
7. That persons supposed, by reason of lunacy, to be dangerous to themselves and others, be submitted by the police to medical examination; that authority be given to magistrates, after seeing such lunatics and on the written report of the medical examiners that restraint is necessary, to direct them to be placed in proper custody; and that restraint by private authority, beyond what is necessary before such proceedings as are here recommended can be taken, be disallowed.
8. That the recommendations submitted with regard to *tutelle* be extended to curatelle, so far as they are practicable.
9. That a summary method be provided of compelling a *procureur* to resign his trust, produce and pass his accounts.

IX. The Constitution of the Court.

1. That in order to secure regularity of sittings, promote consistency of decision, and distinguish between the political and judicial character, the Royal Court be no longer dependent on the precarious and fluctuating attendance of Jurats, but should hereafter consist of three paid Judges, of whom the Bailiff shall be, *ex officio*, the president.
2. That such Court shall have large powers to frame rules for the regulation of its sitting and procedure. Such rules, however, to be sanctioned by Your Majesty in Council.
3. That the sittings of the Royal Court during the year be so arranged as that there may be regular vacations of a definite length; one of the three Judges, however, being in attendance during such vacations to discharge the duties of the Small Debts' and Police Courts, and to deal with such other business as it may be necessary to dispose of without delay.
4. That solicitors and officers of the Court be amenable to its summary jurisdiction for their conduct and accountability.
5. That every bill for professional business be subject to taxation, as a necessary preliminary to its recovery.
6. That the improved Court review the scale of professional fees, in order, among other things, to make it adequate to the fair claims of the legal profession, after needless proceedings have been largely abolished.
7. That it be empowered to punish for contempt without the conclusions of the Crown officer, whose presence should no longer be necessary to constitute a Court.

X. Procedure.

A.—*Arrest on Mesne Process and Habeas Corpus.*

1. That arrest on mesne process be unlawful, except on proof of cause of action for a demand which will be endangered by defendant's intended departure from the Island.
2. That such proof be given either before or (in case of necessity only) immediately after the arrest.
3. That rules for enforcing this, be not subject to modification by judicial discretion.
4. That excuses for not bringing up the prisoner at the next sitting of the Court be disallowed.
5. That the propriety of the detention be inquired into without prejudice to plaintiff's right of action.
6. That discharge on security be facilitated.
7. That the rule for the issue of a writ of *habeas corpus* should not be absolute in the first instance, unless the Court or Judge should specially so order.
8. That the certificate of the chief magistrate as to the law and practice of Jersey be admissible on showing cause or otherwise.

B.—*Trial.—The Law of Evidence, &c.*

1. That parties be allowed (by consent) to resort to trial by jury.
2. That the Court have full power to allow in any part of the particular case the use of such language as it may deem conducive to justice. That parties may claim of right the interpretation of legal instruments and of evidence.
3. That no objection to the evidence of a witness because he has not been summoned be allowed:
4. Nor because he was not present at an assembly of the witnesses to be sworn:
5. Nor on account of kindred or affinity to one of the parties; if any exception be allowed to this, it should not go beyond the relation of husband and wife:
6. Nor that he is interested in the suit or the question.
7. That in the taxation of costs, encouragement should be given to inquiry by the solicitor previously to trial, as to the materiality of a witness's evidence.
8. That the principle of the English Act, 17 & 18 Vict. c. 125, as regards exemptions from the necessity of taking oaths, be embodied in a legislative measure in the Island.
9. That a measure be adopted enabling the Jersey Courts to take advantage of the facilities for taking evidence afforded by the English Act, 22 Vict. c. 20.
10. That interlocutory applications be disposed of summarily, on affidavit, unless the Court find it necessary to send them to proof.
11. That no evidence otherwise admissible be excluded, because it was not before the Court below.
12. That no appeal be necessary where the Court shall think fit to reserve a point, in any cause of whatever amount for the consideration of the Appellate Tribunal.
13. That if any appeal to a fuller Court be allowed, it be not barred, in any instance, by the loss of evidence; but that the parties be at liberty to sustain their respective cases by the best evidence they can adduce, whether formerly adduced, or not.
14. That a copy of evidence taken in the Court below by a sworn short-hand writer, be admitted, both on any intermediate appeal, and before the Judicial Committee of Council.
15. That a motion for an appeal for the revision of a judgment of the Jersey Court, on specific error alleged, be entertained by the Judicial Committee of Council.
16. That interlocutory applications to the Judicial Committee of Council by *Doléance* (petition in the nature of an appeal), be facilitated.

XI. Execution.

1. That in order to prevent the recurrence of the scandals and abuses which have arisen from the conflict of executive officers, all compulsory executive process, whether preliminary to or consequent upon orders of Court, be in future performed by the Vicomte or his deputies.
2. That the *Dénunciateur* be merely a summoning officer, except in a case where the Vicomte is personally interested.
3. That neither the Vicomte nor his deputies be allowed to engage in private practice.

XII. Insolvency.

1. That one arrest only on behalf of all creditors be made on the property declared *en désastre.*
2. As to cession :—
   (1.) That proof should be required that the *cessionnaire* has lain in prison during the prescribed time, before the Court grants his discharge.
   (2.) That provision be made for more complete notice to the creditors, including those who may be resident elsewhere than in Jersey.
   (3.) That the *cessionnaire* be required to furnish on oath a full and complete schedule or balance-sheet, showing in detail and with full particulars all his assets and liabilities; and that no debt be barred, which is not inserted in such schedule, or omitted by collusion.
   (4.) That he be subjected to examination by the Court.
   (5.) That rules be established for conducting the proceedings with due publicity.

XIII. Relief of the Poor and Rating.

1. That an effective periodical audit, by some person unconnected with the parish, be established for all parochial accounts; such officer to be appointed by some independent authority.
2. That the report of such officer be published, and distributed in the parish at the expense of the rate.
3. That such officer also audit the accounts of the Prison Board.
4. That all property be hereafter rated at its full annual value, as ascertained by fresh valuation, subject only to those deductions which may be fairly made for the expenses necessary to maintain that value.
5. That, in order to provide as far as may be for a uniform basis for local taxation and other public objects a general valuation of all the property in the Island be made as early as possible by some disinterested person or persons, appointed by some competent authority, such valuation to be periodically revised.
6. That a prompt, inexpensive, and conclusive appeal from assessment be provided to some competent tribunal, on which the fairness and equality of the rate, and not merely the question whether the appellant has been rated on too high an estimate of his estate, may be put in issue.
7. That no poor person be liable to be removed from the Island on the ground of his not being a native, who has resided there without receiving relief for more than a certain number of years.
8. That some legal regulations be adopted for the trade of pawnbrokers, based upon principles similar to those of the English Acts.

XIV. Education.

A majority of us recommend that steps be taken for the sale of the two endowed schools, and the application of the proceeds (after making due compensation for existing interests) in the promotion of parochial education.

XV. Prison.—Lunatic Asylum.

1. That steps be taken for the enlargement and improved classification of the gaol.
2. That the respective functions and responsibility of the Vicomte and the Prison Board be defined, and no unwarranted interference with the custody of prisoners be allowed.
3. That measures be adopted with the least practicable delay, for the purpose of making due provision for lunatics, either criminal or others, and that due provision be made for the care of all persons under disability and of their property.
4. That the establishment of an industrial reformatory school be again taken into consideration.

XVI. Tithes.

That a commutation of all tithes be effected, with the aid of the general valuation proposed above.

All which we humbly submit to Your Majesty's most gracious consideration.

J. W. AWDRY. (L. S.)
DEVON. (L. S.)
R. JEBB. (L. S.)

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