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ART. II.—A CONSTITUTIONAL HISTORY OF JERSEY.

By Charles Le Quesne, Esq., Jurat of the Royal Court, and Member of the States. London: Longman and Co., 1856.

THERE can be no doubt that to the isolated position of Jersey,—its distance from the shores of England, whereto the allegiance of its denizens is due,—and its contracted area, comprising some forty-five square miles, are directly referable the following singular facts. We there find the feudal system to be still in force; the mode of procedure in civil and criminal cases to be antiquated and peculiar, in the former without a jury, in the latter by the *enditement,* and *grande enquête,* which are of Norman origin; we there find still extant the *Clameur de Haro,* the *Transport de Justice,* and other relics of an age long past, indeed, but which had till recently left its impress strongly on our laws and institutions. Of these relics of the olden time, a clear and interesting account is given in the work of which the title is placed at the head of this article.

The *Clameur de Haro,* observes Mr. Le Quesne, is of very ancient origin, and "is attributed, with every appearance of reason, to Rollo, the first Duke of Normandy. The old forms connected with this institution are still followed in the Channel Islands; but with this difference, that in Normandy the *Clameur de Haro* was principally raised in matters of a personal or criminal nature; whereas in Jersey and Guernsey it is only used in cases relative to real property. The proceedings are very summary: an appeal to the Prince must be attended to and obeyed without hesitation or delay. The *Clameur* is usually raised in cases of encroachment of property. When the name of Rollo is invoked in legal form, all workmen employed on the spot must instantly cease,—no work can there be proceeded with until the Royal Court has investigated the case, and pronounced judgment upon it. The form of appeal to Rollo has not lost its ancient solemnity. The party complaining must, on his knees, in the presence of witnesses, call

on Rollo's name in these prescribed words, '*Haro, Haro, Haro, à l'aide, mon Prince, on me fait tort.*' The word *Haro* is an abbreviation of the words Ah Rollo, or rather, Ah Rou, which was the name by which that duke was really called. The Prince is the fountain of justice. None of his men or subjects must suffer wrong; an appeal to him must not be in vain. He will maintain right and equity. If the party, however, thus calling for the aid and protection of his Sovereign, is found on inquiry to have done so wrongfully, he is fined by the Court, for having, without just grounds, called on the name of Rollo; but if found to be in the right, the other party is fined for his transgression. The Sovereign is not to be invoked in vain; and the party in the wrong is subjected to a fine to the Crown, besides losing his case, and being cast in costs." Such is the *Clameur de Haro.*

The object proposed to be effected by the *Transport de Justice* is very much the same as is with us effected by a view. In Jersey, however, the Court itself is transported to the locality in question, whereas with us jurymen only go thither as viewers.

The *Transport de Justice* is thus explained by our author :—"In many cases of difficulty respecting houses and lands, when an official report is required to guide the Court in coming to a sound judgment on the matter *sub judice,* the Vicomte (who is the principal executive officer of the Royal Court, as well in civil as in criminal affairs) is directed to inspect the locality, and to make a report on the points in difficulty. This report may not be considered sufficient, and the parties may desire that the Court itself should proceed to the spot, and ascertain more accurately the position of affairs. This view by the Court is called a *Transport de Justice,* and it may take place with or without a preliminary inquiry by the Vicomte. The Court there hears the statements of the two parties, and the evidence produced by them, and pronounces judgment." A proceeding such as here described seems well adapted for doing justice in that class of cases in which complete justice cannot readily be done without ocular investigation of the locality which is the subject of litigation,—the jurisdiction of the Court being circumscribed by very narrow limits, as in Jersey.

"Another very ancient form preserved in Jersey, is that of taking an oath. It was followed in Normandy. It was employed in the early ages of the world. An oath is not [in Jersey] administered on the Testament, or on any book; but the witness, holding up his hand towards heaven, swears that he will declare the truth, as he will answer to Almighty God, at his peril. Hence men of all creeds can take an oath in Jersey, in accordance with the prescribed form. It is a solemn declaration, an appeal to the God in heaven, that they will speak the truth, which they swear and promise to do—'*sans aucune faveur, haine, ou partialité, comme ils voudront en repondre devant Dieu à l'acquit de leur conscience.*'"

Such are some of the more remarkable results of an insular position, and of its Norman derivation, which still linger in Jersey.

It would be absurd, remarks Mr. H. D. Inglis in his work on the Channel Islands,[1] to expect generally, in an isolated community such and so small as that of which we are now speaking, those enlarged views, and that absolute freedom from prejudice, which may be looked for in larger communities. "There is usually in every small district, and especially in one distinguished by exclusive privileges, an overweening attachment to place, and to all that belongs to it, which is too apt to interfere with the correct exercise of judgment in distinguishing between good and evil. This is the origin of whatever defects may be observable in Jersey character." One result of the attachment to place and its belongings, here spoken of, is a disposition unduly to magnify the importance of local events; to look with too jealous an eye to local interests; and to affect to ignore events which happen elsewhere, and have no direct bearing thereupon. Writing but a dozen years ago, the author whom we have above quoted thus expresses himself:—It is certain, he says, that the number of Jerseymen who take any interest in what passes save within the limits of the island, is extremely small. "The proceedings of the British Legislature are far less interesting than the proceedings of their own States. The procedure in a suit before the Jersey Court of Justice is a far more engrossing topic than would be the

[1] 4th ed. p. 66.

impeachment of a king's minister; the politics of Europe at large would have no chance, weighed in the scale against some local political contention; and if the same packet were expected to bring the decision of kings and nations upon peace or war, or the disposal of crowns, and also the decision upon an appeal to the Privy Council upon some insular dispute, the latter would be the subject of the first and most eager questions by the crowds assembled on the quay."

But besides the excessive, though to some extent pardonable, concentration in self thus indicated, it unfortunately happens that party feeling is very rife in Jersey, its effects being proportionately greater as the limits within which it acts are circumscribed. The great mass of the country people and of the tradespeople of the towns and villages are of one party, assuming to defend against the attacks of the better educated and higher classes their so-called island privileges. The inhabitants of the island, remark the Royal Commissioners, Messrs. Ellis and Bros (Report, p. 39), are divided into two parties, which contend with the utmost vehemence and even virulence for the possession of power in the States and in the parochial assemblies: with these parties the police are inevitably mixed up. One-third of the States, renewable by periodical (triennial) popular election, consists of the constables; the jurats, who constitute another third, are elected for life by the ratepayers; and the rate is fixed by the parochial assembly, of which the police constitute a necessary component part, and in which they form the nucleus of a party. The remaining third portion of the States, or governing body of the island, consists of the clergy, the rectors of the twelve parishes into which it is divided, who are appointed by the Crown. And thus we have before us the sufficiently discordant elements whereof the Legislative Assembly of the island of Jersey, presided over by the Bailiff, is composed.

One striking peculiarity in the constitution so dear to Jerseymen is this; the Royal Court, or supreme judicial tribunal of the island (whence an appeal lies only to her Majesty in Council), is constituted of a section of the States,—viz. the Bailiff and the Jurats,—in whom, accordingly, legislative and judicial functions

are combined. Bearing in mind the strong political excitement which prevails at the election of a jurat, upon which occasion "the whole island is in a ferment," and recollecting that the judge may be described as "borne into the seat of justice on the shoulders of a party," we can hardly wonder if the court of justice is sometimes an arena for party feuds, nor if the appeals to the Judicial Committee of the Privy Council have, in bygone years, been somewhat numerous. Another ground of objection to the constitution of the Royal Court is, that legal education or legal knowledge is not deemed a requisite qualification of a jurat. "A farmer, a shipowner, a merchant—anybody—may be seated on the bench by the electors. *No previous acquaintance with law or usage is required;* no preparatory education; no education of any kind requisite."—(Inglis, p. 93.) Upon the point here adverted to we have the concurrent testimony of the Commissioners. "The jurats," they tell us, "are chosen under a system of election in which the suffrage is very widely extended; and as members of the States, they are expected to take an active share in the struggles between contending parties. The persons thus selected have therefore seldom received any legal education: other requisites are more valued. It results almost inevitably, that they must often be prompted to act upon their own individual notions of justice, instead of ascertained rules of law. A strong instance of this occurred lately upon a conviction for murder, where two of the jurats, avowedly from a dislike to capital punishment, proposed to pass a sentence of transportation for life, *though no punishment of this crime other than capital has ever been recognised by the law of Jersey.*"

The Bailiff, indeed, who presides in the Royal Court, is, and of late years has generally been, a regularly-educated lawyer; but his legal knowledge is never available, unless there be a difference of opinion among the jurats, and an equality of votes for each opinion. Even then he can vote only for one of the opinions which the jurats support; and it has happened that he has been compelled to support an opinion at variance with his own, because of the two opinions held by the jurats neither accorded with his view of the law.—(Report, p. 42.)

It does not appear that this objectionable state of things,

although pointed out and animadverted on by royal commissioners, has in any way been mended. Mr. Le Quesne, indeed, expressly tells us (p. 451) that "the right of election of jurats has always been considered by the people of Jersey as one of their most valuable privileges. Like their ancestors, they have always been jealous of the judicial power. The presence of twelve jurats of their choice on the Bench" (albeit in so small an island twelve men cannot always be found possessing all the legal knowledge and acquirements desirable for jurats.—Ibid. p. 22) "acts as a check to encroachments, and to the exercise of arbitrary power by the bailiffs, in whom, in the absence of written law, and without the presence of assessors, too much power would otherwise be vested." This state of things, however, as above depicted, is manifestly anomalous and bad, and ought to be put an end to, albeit we can well understand the repugnance which may be entertained in the island itself to innovation, and the disinclination which our Government may feel to the forcing of reforms upon a loyal and well-affectioned people.

Mr. Le Quesne, who is himself a jurat of the Royal Court, writes *con amore* on his subject; he writes, moreover, with good sense and discretion, and does not take a wholly one-sided view indiscriminatingly favourable to the institutions of his own country. Into the purely historical portions of his work we cannot appropriately inquire, although we have perused them with much interest, and can commend them to the attention of our readers. The feuds of the ancient Jersey families would furnish ample matter to "point a moral" or "adorn a tale." We will rather quote from our author some remarks explanatory of the functions, sessions, and mode of procedure of the Royal Court.

"From very early times," says Mr. Le Quesne, "this Court has formed itself into two tribunals, according to the nature of the causes to be tried. These are the Cour d'Héritage and the Cour de Catel. The former takes cognizance of matters relative to real property; the latter of possessory questions of goods and chattels, and of criminal matters. The Cour de Catel, however, at present has, as such, very little civil business; there being now two subsidiary courts, called la Cour du Billet and la

Cour du Samedi. At la Cour du Billet, which sits on Fridays during term, actions for debt are brought, but particularly for arrears of rents or mortgages. Actions for debt are also brought before the Cour du Samedi. This Court derives its name from the day on which it is usually held; but it sits on other days besides the Saturday. The cases which are brought before the Cour du Samedi are of various kinds. Criminal prosecutions are commenced before this Court, and they occupy much time. Matters that affect personal property, contested elections, repeals of wills, commercial and shipping affairs, police business, the poor, the militia service, the King's revenue, are of the cognizance of the Cour du Samedi.

"The Court of the greatest dignity," however, "and which opens the business on the first day of its sitting in term with much ceremony, is the Cour d'Héritage. It was formerly a Court of great importance, and had the power of making ordinances or provisional laws. At the Assize d'Héritage, or first day of sitting, 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 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 this island, till they were taken possession of by the Crown." No cases in litigation are heard by the Court at the Assize d'Héritage; but agreements between parties relative to real property may be produced there and made binding by registration. At this Court also matters touching the revenue of the Crown are inquired into. The proceedings of the day appropriately terminate with a dinner given by the Crown to the Governor of the island, the Bailiff, and members of the Court, and to the seigneurs of fiefs, who owe *comparence* at the Assize d'Héritage.

Thus much as to the civil jurisdiction of the Royal Court: it has also jurisdiction in all cases of crime committed in the island, except high treason. The Court in cases of murder

sentences the criminal to death, and has not only *la haute justice*, but *la "haute justice royale,"* to use the words of the old Norman Coutumier. This of course it has, being a Royal Court; but it is remarkable how an old Norman custom, which indicated the existence of a Court having *la haute justice royale*, has been preserved in Jersey to the present times. According to the Coutume de Normandie, "Les haults justiciers ont gibet à quatre poteaux, et les bas justiciers à deux, donc que les moyens justiciers doivent avoir gibet à trois poteaux. Il est une haulte justice royale, qui est et appartient au prince, et une autre justice haulte qui appartient aux seigneurs submis et qu'ils ont du don du haulte et la plus souveraine, et est celle qui a à corriger les autres justices et peut congnoistre de moult de cas dont les autres ne peuvent congnoistre. Et pour l'excellence et dignité d'elle, est raison que le gibet d'icelle ait aucune prevention au devant des aultres haultes justices. Pourquoi l'en peut dire que les aultres haultes justices qui ne sont pas royaux ne doivent avoir leur gibet que à trois poteaux. Et la haulte justice royale ent doit avoir quatre, et est le nombre commun." It may appear singular that the number of *poteaux* should be a distinguishing mark of the rank, dignity, and authority of a Court. That the Royal Court of Jersey was and is a Court of the highest dignity, is therefore evident from the fact of the continued existence of four *poteaux* or stone pillars on Gallows Hill, where executions take place. These pillars were a few years ago demolished, but without the knowledge, sanction, or permission of competent authority. The last criminal executed in Jersey was Philip Jolin, in the year 1829, for parricide, and the execution took place on Gallows Hill, where the pillars were in existence. The keeping of the pillars in proper repair was part of the duties of the Vicomte. There is an act of the Court of 14th October, 1630, directing the Vicomte "de faire bâtir deux pilliers de la Potence, n'y en restant plus que deux, et d'y faire mettre quatre poutres, aux frais et charges du Roi; lequel Vicomte délivrera sa bille au receveur pour être payé accordamment."

But although the Royal Court of Jersey is privileged to have and maintain, for the infliction of extreme penalties, a gallows

à quatre poteaux, its decrees do not seem to be characterized by that certainty and uniformity which are elsewhere deemed essential to the due administering of criminal justice. The reason of this has been already partly indicated by the allusions which we have made to the constitution of the Supreme Court. Another cause of the unfixed state of the law in Jersey is to be found in the *rarity of recorded precedents*. "The law now rests almost exclusively on the modern practice of the Royal Court; but the number of decisions is small, and these are not reported so as to furnish adequate means of instruction in the principles recognised by the Court. The annual number of offenders tried by the Royal Court on an average of ten years is only 137, of whom fifty submitted in the first instance. There is a record of every cause, and occasionally this contains the ruling on some disputed point. But the grounds of the decision never appear, otherwise than by a very brief and technical recital of the view which the Court takes; no detailed judgment showing the reasoning which has led to this view appears, nor are the arguments of counsel set forth. It is almost impossible that decisions so few in number, so slightly reported, and not published at all, can afford a foundation for a fixed system of law." —(Report, p. 28.)

Precisely to the same effect Mons. Le Cras testifies, in his volume on the Laws, Customs, and Privileges, and their Administration, in the Island of Jersey (Introd. p. iv.), that "the laws have hitherto been unknown to the public, because they have been confined to the breasts of the jurats, who exercise an almost absolute despotism," &c. And to quote again from the Report of the Commissioners (which is well worthy of careful examination by those who feel interested in the past and present condition of the Channel Islands), we there meet with this *résumé* of the subject:—"The result of this examination into the present state of the criminal law of Jersey appears to us," remark the Commissioners, "to be that, except in the case of those lighter offences, and the few more serious ones which have been the subject of specific enactments, neither the definition of crimes nor their punishment rests upon any authority which can be deemed permanent for the future, or even certain

for the present. The offences now punished are scarcely in a single instance classified according to the ancient law, nor have there been substituted for this either direct legislative provisions, or new practical principles capable of being distinctly ascertained, or possessing any assured stability. In other countries, where the penal system has not been reduced to a code, the definitions of offences, and the punishments by which they are visited, have become perfectly known from a long course of precedents, carefully recorded, constantly referred to, and furnishing a system as well understood, if not as scientifically arranged, as can be constructed by a formal code. Law so laid down is fixed till a change is made by the legislative power, openly announced, and asserting an equally positive rule. But in the law of Jersey the practice which innovates on the custom, introduces in its stead nothing which is not equally liable to change. The evil is not mitigated, but aggravated, by a nominal reference to the works which are the supposed depositaries of the ancient law. For wherever the law as there exhibited differs from the law as practised, a reference to it amounts in effect only to the recognition of an additional disturbing force. The practice which is now constantly prevalent of referring to English legal works and precedents as authorities, seems indeed to have become almost the only practical mode of introducing fixed principles into the criminal law of the island."

Not only in the Royal Court, but amongst some of the inferior ministerial officers of the island of Jersey, viz. the *connétables* and *centeniers,* does a lack of legal knowledge seem to be prevalent.

The word *connétable,* or "constable," conveys to English lawyers the idea of an authority much inferior to that which the constable, and as acting for him the *centenier,* constitutionally possesses. These officers have functions partly resembling those of our police magistrates. They may, in certain cases, take bail from a party arrested, where the offence does not amount to felony; they can also bind parties to keep the peace. In numerous cases they assume the exercise of a discretion which in England would not be thought compatible with the duties of a police officer. In the case of an assault, the consta-

ble considers it part of his duty to inquire whether the assault has not been provoked by libel or slander, if that is alleged, in some cases they consider themselves authorized to decide as to whether a report shall be presented; that is, in effect, whether a prosecution shall go on.

The *centeniers* are elected by the ratepayers of a parish for three years. The duties of these officers are subordinate to those of the *connétable.* If they seize any person for a misdemeanour, or a crime, they must make a written report of the attendant circumstances to the *connétable,* who presents it, together with the persons accused or arrested, to the Court. The office of *centenier* is, accordingly, one of trust and responsibility: in the absence of the constable, the *centenier* may act as his substitute. The *centenier* is, moreover, a conservator of the peace, and can act independently of the constable in police cases, excepting that his report is addressed to the *connétable,* whereas the *connétable* reports to the Court. It might, then, reasonably be expected that officers thus intrusted with important local duties should possess some modicum of legal knowledge,—some slight conception of the requirements and formalities of criminal procedure. It does not seem, however, that this is sufficiently cared for by our Jersey neighbours.

"In one instance a *centenier* of St. Helier's had in his hand a forged bank-note, which had been traced to a party who said that he had received it of a person whom he did not know. The *centenier* proposed to this party that he should pay the amount to the holder, and that the note should be destroyed; and this being acceded to, the *centenier* himself burnt the note in the presence of the two." "He did not," remark the Commissioners, "appear to have understood that there was other than a pecuniary question between two parties; and the importance of preserving evidence of the crime had, as far as we could judge, not suggested itself to him." This officer, nevertheless, had been *centenier* for three years, and a police officer of a lower rank for many years.—(Report, p. 38.)

It is, however, but fair to call to mind that since the date of the Report of the Commissioners, important changes have been effected by the States, with the sanction of her Majesty

in Council. A Court has been established for minor criminal offences, the judge of which is the Bailiff, the Lieutenant-Bailiff, or one of the jurats specially appointed by the Bailiff. The judge of this Court sits four days a week, or oftener if necessary. All persons arrested by the police must be presented at this Court; and the judge, after hearing witnesses, is empowered, for minor offences, to sentence the offender to an imprisonment not exceeding eight days, and in graver cases he can decide whether there are grounds for committing the accused parties to prison for trial before the Royal Court, or whether they may be liberated, or admitted to bail.

The judge of the Police Court is also the judge of a new Court for the recovery of debts not exceeding 5*l.*

Important changes have also been introduced in the constitution of the police. The *officiers du connétable* are now no longer elected by the parish assemblies, but by the inhabitants, or rather ratepayers of districts. The number of *centeniers* in the parishes of St. Helier's and St. Martin's has been increased, and the powers of the police officers have been enlarged. In addition to these changes, is also the appointment of a paid police, particularly for night duty, in the town of St. Helier's.

Let us now say one word specifically respecting the volume before us. It is evidently written *bonâ fide,* and by one who has a thorough acquaintance with the various topics of which it treats. Mr. Le Quesne speaks fully and clearly of the constitutional history, laws, and customs of the island of Jersey; we are, nevertheless, struck with one omission in his work:—he does not sufficiently indicate the legal relations which subsist betwixt the island and its fostering parent. He does, indeed, speak of the right of appeal from the Royal Court to the Queen in Council; he does enter at considerable length into the doings of the various Commissions emanating from the Crown, which have from time to time inquired into and made suggestions for improving the local institutions of Jersey; but he does not speak at all of the jurisdiction which our Courts may exercise therein by writ of *Habeas corpus,* nor of the various important cases in which the extent of that jurisdiction has been discussed and finally determined. It is impossible that

our author, a jurat of the Royal Court, and manifestly conversant with his duties, can be ignorant of Carus Wilson's case (7 Q. B. 984); of the somewhat elaborate judgment of Lord Langdale *in re* Belson (7 Moore P. C. C. 114), and other decisions touching the matter in question, which are to be found in the recent English law reports, but which we care not just now to enumerate. It would, we think, have been more becoming in the author of a book of six hundred pages on local constitutional law, not wholly to have ignored the existence of the writ of *Habeas corpus,* nor to have abstained from presenting to his readers some information—brief and succinct though it might be—touching the efficacy and applicability of that writ in the island, whose institutions he has proposed to himself to illustrate and describe.

Thus qualified, we must, however, accord sincere praise to the author of "A Constitutional History of Jersey," for the manner in which he has performed his by no means light or easy task; and we doubt not, from the internal evidence which his book affords, that by him the scales of Justice are held equally, and her decrees impartially awarded, when sitting as a jurat of the Royal Court.

Art III.—LIFE PEERAGES.

ONE of the most important questions of constitutional law which have been raised for many years, was forced upon Parliament by the very ill-advised, and, it may most confidently be said, ill-considered—apparently, indeed, never at all considered—measure of creating Sir James Parke, on his retiring from the Bench, a Baron of the United Kingdom for and during the term of his life, instead of the ordinary limitation to the heirs male of his body. An opinion had prevailed among lawyers, grounded entirely upon a very loose and inaccurate passage in Lord Coke's First Institute, that the prerogative of the Crown extended to legalize such a grant. When the matter was