

Journal of the Society of Comparative  
Legislation, Vol. 10, No. 1 (1909),  
pp. 93-119

## FRENCH LAW WITHIN THE BRITISH EMPIRE.<sup>1</sup>

### I. HISTORICAL INTRODUCTION. THE FIELD OF ITS OPERATION.

[Contributed by MR. JUSTICE WOOD RENTON, of the Supreme Court of Ceylon.]

My aim in these lectures—which, I am sorry to say, have had to be prepared under pressure of other duties at the close of furlough—will be to indicate, as clearly and as accurately as I can, the extent to which French law has been introduced by direct incorporation into, or has exercised an indirect historical influence upon, the various systems of law that are to be found at this day within the limits of the British Empire. It is impossible, and, for a reason to be mentioned presently, it is unnecessary for me to say much as to the general course of the development that the law of France pursued down to the enactment of the Napoleonic Codes, with which its activities as a source of law within the British Empire came to an end. Time fails for such a retrospect; and the ground has already been covered by writers with whose work you are all familiar. It may suffice to refer for a detailed account of this important episode in legal history to M. Viollet's *Histoire du droit civil français*; to the chapter on "French Law in the Age of the Revolution" which the same learned jurist has contributed to vol. viii. of *The Cambridge Modern History*;<sup>2</sup> to the chapter on "Common Law and Statute Law" in Sir Courtenay Ilbert's *Legislative Methods and Forms*;<sup>3</sup> and to the paper on "The Centenary of the French Civil Code" read by him before the British Academy in December 1904, and reprinted in vol. vi. of the *Journal of Comparative Legislation*.<sup>4</sup>

We all know how France came to be divided for juridical purposes into two great tracts of territory: the *pays du droit coutumier* in the north, where various, and to some extent conflicting, bodies of customary law—the most important of which were the Customs of Normandy, of Paris, and of Orleans—prevailed; and the *pays du droit écrit* in the south, where the civil law, modified by so-called "barbarian" usages, was in force. I am not sure that the confusion and uncertainty which the existence of

<sup>1</sup> A series of lectures delivered before University College, London, on May 17, 24, and 31, 1909.

<sup>2</sup> Pp. 710-53.

<sup>3</sup> P. 8.

<sup>4</sup> Pp. 218-31.

these different systems of jurisprudence created, and which Voltaire has immortalised in the saying that the traveller in France changed laws as often as he changed post-horses, have not been exaggerated. In the *pays du droit coutumier* the civil law was resorted to where custom was silent. In the *pays du droit écrit* barbaric usage had, as I have said, modified the law of Rome; and as time went on, the influence of custom made itself increasingly felt even in the region of the written law. And the customs themselves did not contain complete and mutually exclusive bodies of law. A great part of the law, including that of obligations, was the same, I believe, for the entire kingdom. So there were elements that made for unity, if there were also manifold and serious divergences, and long before the era of the French Revolution the work of unification had begun. One law for the whole kingdom of France was a maxim in the policy of Louis XI. The principal customs of the country were gradually reduced into writing from the time of Charles VII. onwards. The royal power of legislation by Ordinance was used for the practical codification of large branches of law, as in the Ordinances of Colbert and D'Aguesseau, which are, in point both of time and of material, true precursors of the Napoleonic Codes. Every corner in the wide field of French jurisprudence was covered by the labours of commentators, culminating in the splendid work of Pothier. And then, when the harvest was ready, the authors of the Codes came down and reaped it.

Of the part that French law has played, and is playing, in the history of other lands unconnected with the British Empire, or, as is the case with Egypt, connected with it only by peculiar ties of an international character, I cannot speak now. Into the jurisprudence of the Empire it has entered by different avenues and in several different forms. When King John lost his continental possessions, the Custom of Normandy survived in the Channel Islands, the only fragments of the old duchy that he succeeded in retaining or recovering. When the hostile designs of the Angevin and Plantagenet kings at once against Scotland and against France drove those two nations into close political and social relationship, the law of France came to exert a moulding influence on that of Scotland. The last points of contact between French and British Imperial law form part of the story which Professor Seeley, Sir Charles Lucas, and the authors of the "Rulers of India" Series have told so well, of the long, dispersed, and world-wide struggle between France and England several centuries later, sometimes with equal foresight of the issues, sometimes with equal absent-mindedness, sometimes with gifts, sometimes with only death or disgrace, in store for their great proconsuls at the scene of action—for the Crown of Indian and Colonial Empire. It is a story of which both the brave nations who supplied the materials for it have, in the main, reason to be proud; and the honours were not undivided at the last. If the dreams of Lally and Duplex, of Montcalm and Labourdonnais, failed of

realisation, the close of the struggle left the law and, to a large extent, the language of France firmly established in Quebec, in St. Lucia, and in Mauritius and its dependencies.

In the present lecture I propose to say something of the circumstances and the forms under which this reception (if I may use that expression) of French law into the British Empire took place, leaving for the second and concluding lectures of the course the question of the extent to which that law has been maintained and departed from.

I begin with the Channel Islands, which, forming part originally of the duchy of Normandy, descended, with the duchy, to William the Conqueror, passed on his death to his eldest son Robert, while William Rufus succeeded to the Crown of England, and were re-united, with Normandy, to England by Henry I.<sup>1</sup> In the reign of John (about 1205), the continental part of the duchy revolted from English rule, and was taken from England by Philip Augustus. Whether the Channel Islanders joined in this revolt is a disputed point. But, in any case, John recovered or retained his hold upon them; and they have ever since, in the language of Hale,<sup>2</sup> been "enjoyed by the Crown of England, though they are still governed under their ancient Norman laws." The constitutional position of the Channel Islands was thus defined by Coke as far back as 1608:<sup>3</sup> "Those isles are no parcel of the realm of England, but several dominions enjoyed by several titles, governed by several laws"; but under the Interpretation Act, 1889,<sup>4</sup> the expression "British Islands" includes them, for the purposes of that Act and of every Act passed after its commencement, unless the contrary intention appears. In their relations with England, the States of Jersey<sup>5</sup>—for no similar claim has been put forward on behalf of Guernsey<sup>6</sup>—have made effective use by way of analogy of a weapon which itself indicates the French origin of their constitutional law, and which is suggestive of the historic claim of the French Parliaments to criticise the royal Ordinances, and, if they thought proper, to refuse to confer upon them the seal of registration, which, as these measures were based on the royal prerogative, was indispensable to their validity. But I cannot discuss that aspect of the constitutional law of Jersey here.

The common law of the Channel Islands is based on the ancient customary law of Normandy, theoretically as it existed at the time of the loss by King John of the continental part of that duchy. But, in fact, while the principal authority on that law—*Le Grand Coustumier du pays et Duché de Normandie*—is a statement in the main of law in force in

<sup>1</sup> Forsyth's *Cases and Opinions on Constitutional Law*, p. 391.

<sup>2</sup> *Hist. Com. Law of Eng.*, p. 147.

<sup>3</sup> *Calvin's Case*, (1608) 7 Co. Rep. 21 r.

<sup>4</sup> 52 & 53 Vict. c. 63, s. 18(1).

<sup>5</sup> See Anson, *Law of Const.*; Report of Jersey Comm., p. v.; *In re the States of Jersey*, (1853) 9 Moo. P.C. 185; 8 St. Tri. N.S. 285; *In re Daniel*, (1891) 8 St. Tri. N.S. at p. 314.

<sup>6</sup> See Burge, 2nd ed. vol. i. p. 140.

Normandy prior to the separation, one of the principal commentaries on the customary law of Normandy in use in Jersey (I refer to that of Terrien) was published long after the final separation of the duchy from England, and contains a considerable body of law which was grafted into the Norman institution posterior to it. The Privy Council, however,<sup>1</sup> have declared Terrien to be "the best evidence of the old Custom of Normandy, and also of the Channel Islands before the separation of Normandy from the English Crown"—a view based on the fact that it was published some years before that custom was "reformed" at the instance of Henry III. of France. This reformed custom and the Customs of Orleans and Paris<sup>2</sup> have not the force of law in Jersey, but may legitimately be referred to as *ratio scripta*.

In Guernsey, the *Grand Coustumier* has never been so fully received as law as in Jersey; and the principal authorities on the customary law are the *Approbation des Loix*, a commentary on Terrien, confirmed by an Order in Council of October 27, 1581, and the *Précepte d'Assise*, framed in all probability by the Royal Court, and embodying a statement of what the inhabitants considered at an early period to be their customs and privileges. No judicial precedents are extant in Jersey prior to 1503, in which year all the public records are said to have been consumed by fire; but a regular series commences about twenty years later. Since 1885, a current index to the decisions of the Royal Court of Jersey has been published; but in Guernsey the rulings of the Court exist only in manuscript.

The next, and certainly one of the most interesting and as yet imperfectly investigated, of the points of contact between French and British law is to be found in the law of Scotland. It was brought about, as I have already said, by the common antagonism of France and Scotland to England in the time of the Angevin and Plantagenet kings, and it has been dignified by the name of *La Ligue Ancienne*. There can be no doubt but that this Ancient League, which still happily survives, purified of any admixture of anti-English feeling, in the Franco-Scottish Society, has influenced Scottish life and character profoundly. Its political and social aspects are outlined in Dr. Hill Burton's *Scot Abroad*, in M. Francisque Michel's *Les Écossais en France : les Français en Écosse*, and in M. Teulet's invaluable *Relations politiques de la France et de l'Espagne avec l'Écosse au XVI<sup>me</sup> Siècle*.

The early chroniclers envelop its origin in a halo of romance.<sup>3</sup> They tell us that Charlemagne, whether from hostility to the Saxons or desirous of attracting Scotsmen to his Court, proposed an offensive and defensive alliance to King Achaius. The debate on this proposal before the Council

<sup>1</sup> See *La Cloche v. La Cloche*, (1870) L.R. 3 P.C. at p. 136.

<sup>2</sup> *La Cloche v. La Cloche*, ubi. sup. at p. 138; *Falle v. Godfray*, (1888) 14 A.C. at p. 76.

<sup>3</sup> See *Chambre, Histoire abrégée de tous les roys de France, Angleterre, et Écosse*, 1579.

of the Scottish King is recorded with Homeric minuteness. Against the alliance it was urged by Calmanus that England was the neighbour, and therefore the natural ally of Scotland, that her vengeance would be swift and sure if France proved faithless or weak, that her naval power was too strong to be defied, and her commercial favour too lucrative to be thrown lightly away. To these arguments Albanus replied that the past behaviour of England towards Scotland (*la coutume des Anglois*) had been far from neighbourly, and that the Scots were well able to protect themselves, nor would God leave them unbefriended. The opinion of Albanus prevailed, and an alliance of perpetual amity and mutual defence against English aggression was concluded. It is not, however, till the thirteenth century that the student of the history of the Ancient League feels that he is on firm ground. It was formally renewed between Alexander II. of Scotland and Philip Augustus at Boulogne in 1216, and, in the three and a half centuries that followed, it was revived as often as the ambitious designs of England on French and Scottish independence assumed a practical form.

How far the Ancient League moulded the form of Scots law is a question somewhat difficult to determine, because of the rival influence that Holland had come to exert on the life of Scotland at the time when the great Scottish institutional treatises were written. But this much is clear. In its earliest structure, Scots law approximated closely to that of England. "When one dives," says Lord Kames,<sup>1</sup> "into the antiquities of this island, it will appear that we borrowed all our laws and customs from the English. No sooner is a statute enacted in England, but upon the first opportunity it is introduced into Scotland: and accordingly our oldest statutes are mere copies of theirs. Let the Magna Charta be put into the hands of any Scotchman ignorant of its history, and he will have no doubt that he is reading a collection of Scots statutes and regulations." In the course, however, of the period during which the Ancient League subsisted, there was a change. The law of Scotland became assimilated to that of Rome. As a palmary instance of this process, I may refer to the transition between the fourteenth century and the time of Bankton, from the English prohibition of legitimation *per subsequens matrimonium* (a prohibition reproduced in the *Regiam Majestatem*, which, whatever, may be thought of its authenticity, may still, I suppose, be looked at as an exposition of Scottish customary law) to the recognition of that doctrine in conformity with the laws of Rome, France, and Holland.

To apportion the respective shares of France and Holland in the transmutation of the character of Scots law, of which the doctrine of legitimation *per subsequens matrimonium* is only one instance,<sup>2</sup> is a task that I do not feel competent to attempt. But that France did bear an important part in the reception of the Roman law into Scotland is, I think, incontestable. For the influence of France on the legal life of Scotland can

<sup>1</sup> *Essays*, i.

<sup>2</sup> See further, Pollock and Maitland, i. 123, 202.

be clearly traced. The terminology, past and present, of Scots law is infiltrated with it. A bankrupt is a *dyvour* (*devoir*); advocate (*avocat*) and procurator (*procurateur*) are the equivalents of barrister and solicitor; a successful defendant is *assoillied* (*absoillé*); to "compryse" (*comprendre*) is to attach for debt; the right to decline trial by a particular judge is "declinature" (*declinatoire*); a man's property or means is his "valiant" (*vaillant*); to bribe is to "creish" (*graisser la palme*). Moreover, when in 1532 King James V. determined to "establish a permanent order of Justice" in Scotland, it was the Parliament of Paris that he took as his principal model. The name "Court of Session" which the Supreme Civil Court of Scotland bore, and bears, was indeed derived from earlier tribunals—the Session of James I. and the Daily Council of James IV.; and the term "College" in the title "College of Justice"—assigned to it when used as a collective description of the tribunal itself and all those associated with it in the administration of justice—is probably of Papal origin.<sup>1</sup> But alike in its constitution, in its powers, in the privileges of its members, and in the procedure before it, the Court of Session was a reproduction of the famous French Parliament in miniature. The principal points of resemblance between them may be summarised thus: In both, the sessions of the Supreme Court of Judicature were definitely fixed in the capital of the kingdom—by an Ordinance of Philip le Bel in 1302 in the case of the Parliament of Paris; by the Act of Institution in that of the Court of Session. In both, the ordinary judges were divided between the laity and the clergy; the peerage had an independent representation, with this difference, however, that the "extraordinary lords" of the Court of Session were nominated by the Crown, whereas the French peers sat in the Parliament of Paris as of right. In both, the judges were exempt from tithes, exactions, and public burdens of every kind; ordinary judges were examined before their admission;<sup>2</sup> appeals were prohibited;<sup>3</sup> proof of facts—a practice that survived in Scotland till 1800—was taken not as in England before a jury, but before certain judges who thereafter transmitted their notes to the whole Court; minor analogies are presented by the exclusion of the public from the proceedings both of the Parliament and of the

<sup>1</sup> See Mackay, *Practice of the Court of Session*, i. 22.

<sup>2</sup> To this day an ordinary judge of the Court of Session has to undergo his "trials," *i.e.* to show his fitness for office by deciding a case set to him as a test—a stage at which he is styled a Lord Probationer—before he is admitted to the Bench; and under the Act of Union, 1706, c. 7, s. 19, no Writer to the Signet is eligible for the office of Lord of Session unless two years before his appointment he has passed an examination in civil law before the Faculty of Advocates. It has frequently been said that no Writer to the Signet has been promoted to the Scotch Bench since the Union. But this appears to be wrong. Hamilton of Pencaitland, nominated as a Lord of Session in 1712, was a Writer to the Signet.

<sup>3</sup> The right of appeal from the Court of Session to Parliament was not established till 1689. Mackay, *Practice*, i. 216. As to the Parliament of Paris, see Bernardi, *Hist. de leg. fran.* 343.

College of Justice, and by the Scotch Act of Sederunt, which has some resemblance to the French *arrêt par voie de règlement pour tous les cas à venir*. In both the College of Justice and the Parliament of Paris, a quorum of ten judges was originally necessary for all decrees. "Finally, what was of most permanent consequence"—I am quoting from Sheriff Mackay's *Practice of the Court of Session*—was, in the case of both, "the recognition of the civil and canon laws as being, where there were no established customs, a subsidiary common law for the realm."

The Ancient League between France and Scotland was never closer than in the early part of the reign of James V.; there were no fewer than five embassies from France to Scotland between 1515 and 1525. In 1523, the Regent Albany was admitted to a seat in the Parliament of Paris as a prince of the blood royal; and on December 31, 1536, James V. himself was received in State by the Parliament of Paris, on the occasion of his marriage with the Princess Magdalene.

I pass now to French law in Canada, in St. Lucia, and in Mauritius and its dependency Seychelles.

The Province of Quebec, says M. Mignault,<sup>1</sup> is the eldest daughter of old France, is above all the daughter of "La France coutumière." The first French settlement in Quebec was established in 1608 by Champlain, who formed a Company of merchants to secure the trade of the St. Lawrence. This body was, however, divided against itself, and against rival monopolists, to whom subsequent grants were made, by religious differences and trade jealousies; and accordingly, in 1627, "all former privileges were annulled, and the control of Canada passed into the hands of a new strong company, known as the One Hundred Associates,"<sup>2</sup> with Cardinal Richelieu at its head. In 1629, Quebec was wrested from France by the English freebooter Kirke; but at the date of its capture, the Convention of Susa had already been signed, and three years later (March 29, 1632) the Treaty of St. Germain-en-Laye definitely restored the prize to France. In 1663 the One Hundred Associates surrendered their charter to the French King, and, like other French Crown Colonies, Quebec was administered by a Governor, an Intendant, and a Superior or Sovereign Council, created by royal edict in April 1663. In February 1763, by the Treaty of Paris, it was ceded to England. The law then in force consisted of (1) the Custom of Paris and the Ordinances prevailing within the jurisdiction of Paris, except such as were clearly not intended to have effect outside France;<sup>3</sup> (2) the *arrêts* of the Conseil du Roi and the Ordinances published between 1663

<sup>1</sup> *Le Code Civil, 1804-1904: Livre du Centenaire*, p. 725.

<sup>2</sup> Lucas, *Hist. Geog.* v. p. 70.

<sup>3</sup> The edict of Louis XIV. in April 1663, creating the Sovereign Council of Quebec, conferred on it jurisdiction "pour juger souverainement et en dernier ressort selon les lois et ordonnances de notre royaume, et y procédés autant qu'il se pourra en la forme et manière qui se pratique et garde dans le ressort de notre cour du Parlement de Paris."

and 1763, but in both cases only if these had been registered by the Council of Quebec;<sup>1</sup> (3) the Ordinances of the administrative authorities in Canada, particularly those of the Intendants, who presided at the Council and were invested with legislative authority; (4) the judgments of the Court.

As Quebec was a Colony acquired by conquest or cession, this body of existing jurisprudence, by a well-settled principle of constitutional law, would remain in force, *mutatis mutandis*, unless and until it was abrogated by the new governing power. For some time its fate was doubtful. In the case of Quebec, the Articles of Capitulation (September 18, 1759)<sup>2</sup> contain no reference to the subject by way either of acceptance or of demand. In the case of Montreal, a year later, Art. 42 of the Articles of Capitulation<sup>3</sup> demanded that "the French and Canadians shall continue to be governed by the Custom of Paris, and the laws and usages established" for the Colony under the French *régime*. But this demand elicited only the cautious response that they would become the subjects of the King. The Treaty of Paris<sup>4</sup> contained no provision for the preservation of the French law in Canada, and a Royal Proclamation<sup>5</sup> of October 7, 1763, disclosed an intention on the part of the Crown to introduce into the Colony the laws of England. The Commission<sup>6</sup> to Governor Murray directed him, with the advice and assent of the Council, and the Assembly created for the new Colony, to enact "laws, statutes, and ordinances . . . as near as may be agreeable to the laws and statutes" of the kingdom of Great Britain. In pursuance of these instructions an Ordinance<sup>7</sup> was passed on September 17, 1764, establishing Civil Courts—English in name—a Court of King's Bench with exclusive criminal and superior civil jurisdiction, with authority to hear and determine cases agreeably to the laws of England; and a Court of Common Pleas, an inferior Court of Judicature, intended for Canadian suitors until they had acquired some knowledge of English law. In this latter Court, all trials were to be by juries, to which Canadians were to be admitted, and the judges were to determine cases agreeably to equity, "having regard nevertheless to the laws of England as far as the circumstances and present situation of things will admit, until such time as proper Ordinances for the information of the people can be established by the Governor and Council, agreeable to the laws of England." A significant clause followed: "The French laws and customs to be allowed and admitted in all causes . . . (between natives) where the cause of action arose before October 1, 1764."

<sup>1</sup> See *Hutchinson v. Gillespie*, (1844) 4 Moo. P.C. 378; *Les Sœurs dames Hospitalières de St. Joseph de l'Hôtel-dieu de Montreal v. Middlemiss*, (1878) 3 A.C. 1102, 1119; *Symes v. Cuwillier*, (1880) 5 A.C. 138.

<sup>2</sup> See *Canadian Archives: Documents relating to the Const. Hist. of Canada, 1759-91*, (Shortt and Doughty, 1907).

<sup>3</sup> *Ibid.* p. 8.

<sup>4</sup> Art. 4: Shortt and Doughty, p. 73.

<sup>5</sup> *Ibid.* p. 119.

<sup>6</sup> Art. 50: Shortt and Doughty, p. 142.

<sup>7</sup> *Ibid.* pp. 149, 150.



Strangely enough, the attention of the new French Canadian subjects of the Crown seems not at first to have been directed to the effect of this legislation on their ancient law. The petitions and counter-petitions which poured into the hands of Governor Murray concern themselves chiefly with the details of the Ordinance of September 17, 1764, and with the inclusion of Canadian jurors in the juridical system that it established. There is some evidence, indeed, that the French Canadians may not have been unwilling to leave matters in a state of uncertainty for a time in order to avail themselves of either French or English jurisprudence, as best suited their purpose at the moment. In a *Plan of a Code of Laws for the Province of Quebec*, reported by the Advocate-General Marriott in 1774, I find a curious case that illustrates this tendency. A British settler named Grant purchased the estate of a Mr. St. Ange, who was a French Canadian, and, after an inspection of the property, paid part of the price. A further acquaintance with his purchase convinced Mr. Grant, however, that it was worth less than half what he had paid for it. He declined to fulfil his share of the bargain, and when he was sued for the purchase money, claimed a *restitutio in integrum* under the French civil law. But Mr. St. Ange was equal to the occasion. He promptly invoked the assistance of the law of England, and, in view of the buyer's inspection of the estate before the purchase, insisted on the applicability of the maxim of English equity, *vigilantibus non dormientibus succurrit lex*.

But in time the question of the maintenance of the old French law in Quebec seems to have aroused uneasiness in the Colony, and towards the end of 1764 an additional instruction<sup>1</sup> was sent to Murray, explaining that the Proclamation of October 7, 1763, was not intended to take away from the native inhabitants the benefit of their own laws and customs in cases where titles to land and the modes of descent, alienation, and settlement are in question. In pursuance of this policy and notwithstanding the alteration of the law by the Ordinance of 1764, lands appear to have been left to be divided as formerly, and the estates of intestates were still distributed according to French law. In 1765 all the memorials and petitions on the subject were referred to the law officers of the day—the Attorney-General Yorke and the Solicitor-General de Grey—who in a luminous report, now published in full in Messrs. Shortt and Doughty's edition of the *Canadian Archives*,<sup>2</sup> advised that in all personal actions founded upon contract or tort the substantial maxims of law, which are everywhere the same, should be followed, while in suits or actions relating to title to land, and generally where questions of real property were concerned, the local customs and usages should prevail. "It is the more material," say the law officers, "that this policy should be pursued in Canada; because it is a great and ancient Colony, long settled and much cultivated by French subjects." In 1767 legislative effect was given to the latter part of these

<sup>1</sup> Shortt and Doughty, p. 163, n. 1.

<sup>2</sup> Pp. 174-8,

recommendations; and in 1774, after a period of controversy on the subject between Massères, the Attorney-General of Quebec, and Governor Carleton, who had succeeded Murray first as Lieutenant-Governor in 1766, and then as Governor in 1768, the Act of Quebec<sup>1</sup> provided that in all matters of controversy relative to property and civil rights resort should be had to the laws of Canada as the rule of decision. This provision was not to apply, however, to lands already or thereafter granted by the Crown in "free and common socage"; liberty was given to leave property by will in either the French or the English form; the English criminal law, which had since 1763<sup>2</sup> been, uniformly and with general acceptance, administered throughout the Province, was to remain in force; and in 1785 a statute of the Province<sup>3</sup> provided that in commercial matters the English rules of evidence should be followed.

There is a considerable body of authority as to what the French laws in force in Quebec at this period were. At the desire of Governor Carleton, "a Select Committee of Canadian gentlemen"—I am quoting from the title-pages of their works—"well skilled in the laws of France," prepared in 1772 successive abstracts "of those parts of the Viscounty and Provostry of Paris," and also of the criminal laws and French laws of police, "which were received and practised in the Province of Quebec at the time of the French government"; and a similar abstract was in the same year made by Cugnet of the royal edicts and declarations that had been introduced into Quebec by registration. But it appears<sup>4</sup> that even then French lawyers were not agreed as to how far the Custom of Paris was in force, and we know that the question as to what edicts and declarations had been registered has given rise to frequent controversy in the Privy Council since that date.

In 1791, by the Constitutional Act of that year,<sup>5</sup> the old Province of Quebec was divided into the Province of Upper Canada and the Province of Lower Canada. The first Act of the Provincial Parliament of Upper Canada—passed on October 15, 1792<sup>6</sup>—adopted the laws of England relative to property and civil rights in force on that date. In 1840, by the Union Act,<sup>7</sup> the Provinces of Upper and Lower Canada were again united as the Province of Canada. But the French law in Quebec remained undisturbed.<sup>8</sup> The Federation Act of 1867<sup>9</sup> severed the two Provinces once more. The Province of Upper Canada became that of Ontario. The Province of Lower Canada became that of Quebec. In that Province it is that, by virtue of s. 129 of the Act of 1867, which provided that all laws in force in Canada at the date of the Union should, subject to repeal or alteration by proper legislative authority, continue as if the Union

<sup>1</sup> 14 Geo. III. c. 83.

<sup>2</sup> *Reg. v. Coote*, (1873) L.R. 4 P.C. 599.

<sup>3</sup> 25 Geo. III. c. 2, s. 10.

<sup>4</sup> See Marriott's *Plan of a Code of Laws for the Province of Quebec*, 1774.

<sup>5</sup> 31 Geo. III. c. 31.

<sup>6</sup> 32 Geo. III. c. 1.

<sup>7</sup> 3 & 4 Vict. c. 35.

<sup>8</sup> The law of property from 1774 to 1867 in Quebec is the Coutume of Paris, unless a case can be shown to fall under some contrary law: *Exchange Bank of Canada v. Reg.*, (1886) 11 A.C. 157.

<sup>9</sup> 30 & 31 Vict. c. 3.

had not been made, French law still exists—no longer, however, as the Custom of Paris, or the arrêts and Ordinances of the French kings and their intendants, but in the Civil Code of Quebec, which came into force on August 1, 1866, and abrogated as from that date<sup>1</sup> all the old law wherever it was inconsistent with the provisions of the Code or dealt with matters for which the Code provided. In my second and third lectures I will endeavour to indicate some of the main points in regard to which the Civil Code of Quebec has respectively adhered to and departed from the old law of France, making free use, for this purpose, of the admirable Reports of the Canadian Commissioners. In the meantime I conclude, so far as Canada is concerned, this historical survey by mentioning the enactment of the companion Code of Civil Procedure for Quebec, the first edition of which came into operation on June 28, 1867, and of which a revised edition was brought into force on September 1, 1897.<sup>2</sup>

Although it is said<sup>3</sup> that in St. Vincent some old French arrêts still exist, it is mainly in St. Lucia among the West Indian Islands that a law based on the law of France is now in force; for in Grenada—which, by the way, was under French influence as strongly as St. Vincent—English law was definitely introduced by Royal Proclamations on December 19, 1764, and January 10, 1784. St. Lucia was one of the most fiercely contested prizes in the struggle between France and England for Colonial Empire. The French claimed it by virtue of length of occupation, under the edict of March 1642, which gave it, with the other possessions of the kings of France in America, to the West India Company. The English title to it was based on a settlement of 1639.<sup>4</sup> On the dissolution of the West India Company, it was re-annexed to the Crown and became a dependency of Martinique; and in the middle of the eighteenth century justice was administered in St. Lucia by the Court of Sénéchaussée, presided over by the Sénéchal, and exercising criminal jurisdiction subject to an appeal to the head of the local executive, and civil jurisdiction with an appeal to the Conseil Supérieur at Martinique. After earlier vicissitudes, St. Lucia capitulated to England in 1762. The Treaty of Paris restored it to France in 1763. In 1778 England again wrested it from French hands. The Treaty of Versailles again surrendered it to France. In 1794 the island was once more captured by the English. It was partially retaken by the French under Victor Hugues in 1795, but was recovered by England in 1796, and was held by them till the Peace of Amiens, then restored to the French, again taken by the English in 1803, and finally ceded to England by the Treaty of Paris in 1814. From the legal point of view, the important dates, so far, in the history

<sup>1</sup> See Art. 2613.

<sup>2</sup> By a Proclamation following on the Quebec Act, 60 Vict. c. 48.

<sup>3</sup> See Ilbert, *Legislative Methods and Forms*, p. 169.

<sup>4</sup> See Breen's *St. Lucia*, 1844; and *Mémoires des Commissaires Anglois et François sur l'Isle de St. Lucie*, 1755.

of St. Lucia are 1681, 1803, and 1814. In 1681, a date at which the island was in the hands of France, an arrêt<sup>1</sup> of the Conseil Supérieur of Martinique, of which it was then a dependency, extended to it the custom of Paris, as embodied in the *procès-verbal* of February 22, 1580, and the Royal Ordinances of April 1667, August 1669, August 1670, and March 1673. To these must be added the laws of Martinique applicable to the dependencies, and particularly the *Code noir*, which regulated the status, the labour, and the punishment of slaves. In 1803 a Proclamation of June 23,<sup>2</sup> issued by General Grenfield and Rear-Admiral Hood a few days after the final capture of the island by the English, secured to the inhabitants provisionally the enjoyment of their property under the protection of the laws existing immediately anterior to the last cession.

In 1814 St. Lucia was ceded in full right and sovereignty by the Treaty of Paris to the British Crown. If these words, "the last cession," are to be—as I suppose they must be—interpreted as referring to the cession of St. Lucia to England in 1796, we shall reach, at first sight, a conclusion which modifies to some extent the familiar view that the continuance of the old French law in St. Lucia was guaranteed by General Grenfield's Proclamation. For in the Capitulation of May 25, 1796, the demand of the capitulating garrison that "property and persons of every description shall be placed under the protection of the laws" was met by the reply that they would be subject to and under the protection of the English laws. If we construe these provisions literally, it would follow that the law which General Grenfield provisionally undertook to maintain was the law of England and not the law of France! As we find, however, that no attempt was made under the Capitulation of 1796 to introduce English law into the Colony, it seems more reasonable to conclude either that the reference to English law only meant the law as administered by England, or, in any event, that any intention to substitute English for French law that may have existed was abandoned.<sup>3</sup> So far, however, as I have been able to discover, there was not, in the case of St. Lucia, any subsequent confirmation of the provisional undertaking of General Grenfield and Rear-Admiral Hood, even assuming that that undertaking related to the old law. If I am right on this point, the maintenance of the French law in St. Lucia would depend on the arrêt of 1681 and the doctrine that the law of a conquered or ceded Colony remains in force till it is duly altered by the new governing authority. As in the other French Colonies, only those of the Royal Ordinances that had been applied there by registration are in force.<sup>4</sup>

The Courts of St. Lucia were reorganised by Order in Council in 1831 (June 20, 1831), and some time afterwards a scheme for the consolidation and amendment of the laws of the Colony was proposed by Mr. Musson,

<sup>1</sup> See Rev. Laws of St. Lucia, 1889, p. 1.

<sup>2</sup> *Ibid.* p. 4.

<sup>3</sup> MS. Report of Armstrong C.J. to the Administrator Des Vœux, January 14, 1876. See *Du Boulay v. Du Boulay*, (1869) L.R. 2 P.C. 430.

then Chief Justice, and accepted by the Governor and Council. It was, however, rejected by the Secretary of State; and Mr. Breen, in his interesting book on St. Lucia, which was published in 1844, speaks of the proposal as if it had been inspired by lunacy. The task was, however, accomplished later on. By 1876, Mr. (afterwards Sir) George William Des Vœux, Administrator of the Government of St. Lucia, and Mr. James Armstrong, Chief Justice, had prepared a Civil Code<sup>1</sup> for the island "upon the principles of the ancient law," with such modifications as circumstances appeared to require. In 1877 an Ordinance was passed directing this Code to be printed, appointing commissioners to report upon it, and providing for its adoption as the law of the Colony. It was in fact brought into operation by a proclamation of August 18, 1879,<sup>2</sup> as on and from October 20 following. A Code of Civil Procedure prepared by Chief Justice Armstrong was enacted in 1882.<sup>3</sup> These Codes<sup>4</sup> abrogate the old law, so far as it was inconsistent with them or covered ground with which they dealt expressly. Later legislation has provided St. Lucia with a Criminal Code<sup>5</sup> in which the general principles of English criminal law are followed—*e.g.* premeditation is not made, as under the French law, a necessary element of murder;<sup>6</sup> and a Criminal Procedure Code<sup>7</sup> also based on English practice.

Successively used as a port of call by the Portuguese, occupied by the Dutch, and definitely incorporated by France into her colonial system, the island of Mauritius was ceded to England by France by a Capitulation dated December 3, 1810. So far as I am aware, neither the Portuguese nor the Dutch have left any trace of their occupation on the laws of Mauritius, although physical remains of the Dutch settlement, consisting principally of an old pulpit and the floor of a *salle d'armes*, are to be found on the south-east coast of the island, and the name Mauritius is of course of Dutch origin. Possession of the island was taken on behalf of the King of France in 1715. From 1721 to 1767 it was governed by the French East India Company, whose period of administration included the governorship (1735-46) of the famous Mahé de Labourdonnais. In 1767 it was transferred to the French Crown. From 1790 to 1803 it was administered by the Governor and Colonial Assembly. From 1803 to 1810 it was governed by General Decaen, Captain-General of the French possessions east of the Cape. The eighth article of the Capitulation to England expressly preserved to the inhabitants their religion, laws, and customs. The Capitulation was confirmed by a Proclamation of December 5, 1810,<sup>8</sup> but the Treaty of Paris (May 30, 1814) ceded the island to England in "full right and sovereignty" and contained no allusion to the preservation

<sup>1</sup> Ordinance 42, Laws of St. Lucia, p. 125.

<sup>2</sup> *Ibid.* p. 126.

<sup>3</sup> *Ibid.* pp. 151, 152; Ordinance 52, and Proclamation of February 15, 1882.

<sup>4</sup> Civ. Code, Art. 2485; Code Civ. Proc., Art. 1087.

<sup>5</sup> Laws of St. L., No. 101.

<sup>6</sup> See s. 261.

<sup>7</sup> *Ibid.* p. 474, No. 102.

<sup>8</sup> Code Farquhar, No. 2, Rev. Laws, p. 5,

by the Capitulation and the Proclamation of 1810 of the laws in force in the Colony under the old French *régime*. The conclusion of the Treaty of Paris was notified by a Proclamation of December 15, 1814.<sup>1</sup> But the treaty was never confirmed by any Imperial statute, and the maintenance of French law in Mauritius depends solely on the Capitulation, the Proclamation of December 5, 1810, and the rule to which I have already referred, that the law of a conquered or ceded Colony at the time of conquest or cession remains in force till it has been altered by competent legislative authority. The French laws thus preserved in Mauritius fall into several classes: (1) Those enacted down to June 1787. They are collected in the Code Delaleu, so called from the name of its compiler, who was a member of the Conseil Supérieur. (2) Those passed between June 1787 and September 1803. (3) The Code Decaen, so called from General Decaen, coming down to 1810, and containing the arrêts which successively introduced into the island, with modifications, the French Code Civil of 1805, Code of Civil Procedure and Code of Commerce. Neither the Code Pénal nor the Code d'Instruction Criminelle was ever promulgated in Mauritius. Criminal procedure was regulated mainly by the French Criminal Ordinance of 1670 till 1831; and for the substantive criminal law recourse was had to the old French penal law of October 6, 1791, till 1838.

The Seychelles Islands—explored by the direction of Labourdonnais, and called at first the “Îles de Labourdonnais,” passed to the French Crown between 1754 and 1756—acquired their present name from the Vicomte Hérault de Séchelles, then Controller of Finance in France, although the capital continued to bear—as it does to this day—the Christian name of Labourdonnais. On May 17, 1794, the Seychelles were captured for the British by Captain Newcome of H.M.S. *Orpheus*; and the Capitulation of that date was renewed in 1806 by Captain Ferrier of H.M.S. *Albion*. Neither of these Capitulations seems, however, to have been definitive, for we find that the acts of civil status in Seychelles continued to bear the dates of the Revolutionary calendar up to An XIV.; and that the legislation of Mauritius, then styled the “Île de France,” was, as occasion arose, applied specially to Seychelles. As an instance of this I may refer to the arrêt of Decaen, which regulated the functions of notaries, and is still the organic law in Mauritius and Seychelles on that subject. By Art. 6<sup>2</sup> of the Capitulation of December 3, 1810, Mauritius “and its dependencies,” including Seychelles, were ceded unconditionally to the British Crown. Art. 8<sup>3</sup> provided that “the inhabitants shall preserve their religion, laws, and customs.” This Capitulation was confirmed by the Proclamation of December 5, 1810;<sup>4</sup> and in 1815 by Art. 8<sup>5</sup> of the

<sup>1</sup> Rev. Laws, iv. p. 8.

<sup>2</sup> Code Farquhar, No. 1, Rev. Laws (Mauritius), 1905, iv. 1, at p. 3.

<sup>3</sup> *Ibid.* p. 3.

<sup>4</sup> Code Farquhar, No. 2, *ibid.* p. 5.

<sup>5</sup> Rev. Laws (Mauritius), iv. 8; Rev. Laws (Seychelles), i. p. vi.

Treaty of Paris. A Proclamation of 1815<sup>1</sup> confirmed the maintenance in the dependencies of the Isle of France of the laws of that Colony in relation to such dependencies and the general powers of its Government to pass laws applicable thereto. The result of the first part of these provisions was to constitute the Code Civil, the Code of Civil Procedure, and the Code of Commerce, all of which were then in force in Mauritius, as the law of Seychelles. The government of Seychelles was at first (from 1815 to 1852) administered by local Civil Agents and Civil Commissioners, under the direct orders of the Governor of Mauritius, and under Mauritius laws applicable by implication (a category of which there are said to be now few survivals)<sup>2</sup> or extended by express enactment or by Proclamation. In 1852 the Governor was empowered to extend the laws of Mauritius to Seychelles and the other dependencies with such modifications as were necessary.<sup>3</sup> In the following year,<sup>4</sup> this power was withdrawn from the Governor and conferred on the Governor in Executive Council. Twenty years later<sup>5</sup> a cautious relaxation of the ties between Mauritius and Seychelles was made by the separation of their finances, and the constitution in Seychelles of a Local Board of Civil Commissioners with power to make regulations for the peace, order, and good government of the Colony. But the supervision of the Governor of Mauritius and the supreme legislative authority of the Council of Government there were explicitly maintained, both in the Order in Council creating the Board and in an extension of its powers in 1874<sup>6</sup> and 1882.<sup>7</sup> In 1888 an Order in Council of December 17 and letters patent of December 27 created a legislative council in Seychelles *vice* the Local Board, and a Supreme Court subordinate to that of Mauritius; but again reserved<sup>8</sup> the legislative power of Mauritius. There was a similar reservation in letters patent of July 21, 1897, and June 7, 1901. In 1903, however, Seychelles was erected into a separate Colony,<sup>9</sup> and the Order in Council<sup>10</sup> which created its new legislature, while continuing the operation in Seychelles of the Mauritius laws applicable in 1903, confers on the legislature of Seychelles express power to repeal any such law either in terms or by implication from the fact that it has passed an enactment dealing with the same subject-matter. The French laws now in force in Seychelles are those applicable to Seychelles as a dependency in force in Mauritius in 1903, except in so far as they have been affected by Seychelles legislation.

It appears, therefore, as the result of the foregoing survey, (1) that one of the historic French customs—the *Coutume* of Normandy—was firmly

<sup>1</sup> Mauritius *Government Gazette*, April 29, 1815.

<sup>2</sup> Rev. Laws (Seychelles), i. Introduction.

<sup>3</sup> No. 20 of 1852, s. 1.

<sup>4</sup> O. in C. of April 22, 1872.

<sup>7</sup> Ordinance 4 of 1882.

<sup>8</sup> Letters patent of August 31, 1903.

<sup>10</sup> Seychelles Legislature Order in Council, 1903.

<sup>6</sup> No. 14 of 1853, s. 1.

<sup>6</sup> O. in C. of January 26, 1874.

<sup>8</sup> Clause 8.

established, and is still in its main principles law, in the Channel Islands ; (2) that, although from the very nature of the case it is impossible to localise either the precise dates at which, or the forms under which, the influence was exerted, the law of France has in fact deeply influenced both the substantive and the adjective law of Scotland ; (3) that the other great French custom—the Coutume of Paris—became the basis of the civil law of Quebec and St. Lucia ; and (4) that in Mauritius and Seychelles three of the Napoleonic Codes were introduced. It only remains to add that wherever, and in so far as, Great Britain has sanctioned the maintenance of French law in her Colonies, she has made the gift complete. For the Privy Council in applying it interprets it as French law<sup>1</sup> and French authorities are freely cited as illustrations of the decision at which a French tribunal might be expected to arrive in regard to the problems that it presents.<sup>2</sup>

## II. POINTS ON WHICH FRENCH LAW, OR THE INFLUENCE OF FRENCH LAW, HAS BEEN MAINTAINED.

[Contributed by MR. JUSTICE WOOD RENTON, of the Supreme Court of Ceylon.]

IN the first lecture of the course, I endeavoured to trace the circumstances under which, and the forms in which, French law came, at different points, to enter, either by way of direct incorporation or merely as an historical influence, into the composition of British Imperial jurisprudence. The result was to show (1) that the Custom of Normandy was the foundation of the common law of the Channel Islands, (2) that, through the avenue supplied by the Ancient League, French law, in forms which it is impossible to localise precisely, had divided with Holland the task of imparting to the law of Scotland something at least of its affinity to the law of Rome and to the Germanic customs which co-existed with that law in the old French monarchy ; (3) that the Custom of Paris and bodies of pre-Revolutionary legislation, and, to some extent, of the early legislation of the Revolution in France, had furnished the basis of the common law of Quebec and St. Lucia, and (4) that similar bodies of legislation had been applied to, while three of the Napoleonic Codes had been adopted as the law of, Mauritius and Seychelles. I proceed now to attempt a cursory survey of the extent to which these different bodies of law, and, in the case of Scotland, the historical influence of French law, have been maintained.

<sup>1</sup> See *Procureur-Général v. Bruneau*, (1866) L.R. 1 P.C. 169, 191.

<sup>2</sup> *Symes v. Cuwillier*, (1880) 5 A.C. 143, 144. In this case it was held also by the Privy Council that the Reports of the Commissioners on the Quebec Code may be looked at, although not entitled to the weight due to a judicial opinion.



Both in Jersey and in Guernsey the islanders have clung with remarkable pertinacity to their ancient laws. The preservation of the Custom of Normandy was secured in Jersey not only by the *Grand Coustumier* and the Commentaries of Terrien, Poingdestre (1669-76), and Le Geyt (1676-1711), but by a series of Charters<sup>1</sup> confirming the privileges of the inhabitants by the Code of 1771,<sup>2</sup> by the power of the States to enact local Ordinances in force for three years, without the express allowance of the Crown, if not expressly disallowed,<sup>3</sup> and also by the successful use—to which I referred in my first lecture—made by the States of their claim to refuse, if they think fit, registration to Orders in Council.<sup>4</sup>

The law of real property in Jersey is still the general feudal law introduced into the island as part of the Custom of Normandy,<sup>5</sup> though there are differences between the laws of Jersey and Normandy in details.<sup>6</sup> The Norman law, with modifications to be noticed in my last lecture, survives as to seigniorial rights,<sup>5, 6</sup> as to succession to real property,<sup>7</sup> as to the relation between wills and codicils,<sup>8</sup> as to dower<sup>9</sup> and the rejection of community between the spouses,<sup>10</sup> as to curatelle,<sup>11</sup> and as to the right of expectant heirs to impeach improvident bargains<sup>12</sup>—I am merely selecting a few instances of points that have come before the Privy Council, or form the subject of express notice in the Report of the Jersey Commissioners. Jersey and Guernsey, also, are free from the operation of the divorce law;<sup>13</sup> and the application of the English law restricting the time for accumulations.<sup>14</sup> Five of the ancient manors in Jersey are still, it seems,<sup>15</sup>

<sup>1</sup> First Report, Commissioners of 1846, App. p. 260.

<sup>2</sup> Report of Commissioners, 1860-61, p. vi. A commission to prepare a code of laws for both Jersey and Guernsey had been issued in 1608 to the respective bailiffs of those islands, but the matter dropped and was not revived: *Le Quesne*, pp. 229, 230.

<sup>3</sup> *Ibid.* p. vii.

<sup>4</sup> Anson, *Law and Custom of Const.*, ii. pp. 54, 55.

<sup>5</sup> Report of Jersey Commrs., 1860-61, p. ix.; *De Carteret v. Baudains*, (1886) 11 A.C. 214, per Lord Blackburn at p. 219; *A.G. for Jersey v. Turner*, (1893) A.C. 352. See also *Godfray v. Constables of I. of Sark*, (1902) A.C. 534.

<sup>6</sup> *E.g.* as to Crown fiefs, *A.G. for Jersey v. Le Moignans*, (1892) A.C. 402.

<sup>7</sup> Report, 1860-61, pp. x., xii.

<sup>8</sup> See *Falle v. Godfray*, (1888) 14 A.C. 70.

<sup>9</sup> Report, 1860-61, p. xiv.

<sup>10</sup> Burge, 2nd ed. vol. iii.

<sup>11</sup> *Ex parte Nicolle*, 5 A.C. 346.

<sup>12</sup> *Godfray v. Godfray*, (1866) 14 W.R. 522. But there the Privy Council found that local usage had modified the old Norman law as to void and voidable transactions. Fourteen cases were found ranging from 1588-1842, in which transactions forbidden by the *Coutumier* had been upheld by the Jersey Court as voidable only. The category included sales by expectant heirs, which could only be set aside within one year and one day from the opening of the succession on proof of fraud or undervalue. See also *Dyson v. Godfray*, (1884) 9 A.C. 731. As to bankruptcy, see *Williams v. Stevens*, (1866) 4 Moo. P.C. N.S. 235.

<sup>13</sup> *Le Sueur v. Le Sueur*, 1 P.D. 139.

<sup>14</sup> *Haldane v. Eckford*, (1871) 24 L.T. 934.

<sup>15</sup> See an interesting article on "Jersey, Guernsey, Alderney, and Sark," in *The Church Quarterly Review* for April 1909, vol. lxxviii. at p. 120.

held of the Crown—St. Ouen, Rozal, Melesche, Trinite, and Samarés—although the rights of the feudal lords, or *hauts justiciers*, are now somewhat shadowy.

In matters of procedure, and generally in everything pertaining to the atmosphere of the Courts, both Jersey and Guernsey are Norman still.<sup>1</sup> The curious “Clameur de Haro,” a form of appeal to justice by which encroachments on property are promptly brought before the Courts, itself bewrays in its last word, said<sup>2</sup> to be a corruption of “Ha Rollo,” its Norman origin; although in Jersey, and I think Guernsey also, it is not, as under the Norman law, principally raised in matters of a personal and criminal character, but relates to cases affecting real property, and, uniting with itself *causes en ajonction*, is a civil remedy as well as a criminal and prerogative prosecution.<sup>3</sup> I believe that while the leading members of the Bar of Jersey—formerly limited by immemorial custom to six advocates,<sup>4</sup> but thrown open by Order in Council in 1859<sup>5</sup>—and of the Bar of Guernsey are also members of the English Bar, it is not unusual to add to, or substitute for, the English qualification a legal education in France. In both Jersey and Guernsey the proceedings, and oral pleading, in the Courts are in French, although witnesses may give evidence in English; and, as one can see by reference to the official reports of appeals from the Channel Islands to the Privy Council, the formal structure of the judgments of the Royal Courts is that with which French law reports have made us familiar—a brief connected statement of the facts, a decision of the particular point in issue, and a resolute avoidance of *obiter dicta*.

The existing Constitutions of Jersey and Guernsey are suggestive also of French analogies. In both, the Royal Court was probably at first the seat at once of legislation and of justice. In Guernsey, it still shares the legislative powers of the States; and in both islands its members in different capacities continue to exercise legislative, as well as judicial, functions. I abstain, however, from any attempt to work out historically the relation between the Royal Courts and the States, in Jersey and Guernsey on the one hand, and French or Norman institutions on the other; or to plunge more deeply into the fascinating inquiry as to the present state of the old Norman law in the islands. Expert and local opinion is divided on these matters, and I have no kind of qualification for dealing with them. I have tried merely to fix on a few points, on what seemed comparatively firm ground, for the purpose of showing that, in the Channel Islands, the old law, both in its letter and in its spirit, is still strongly maintained.

<sup>1</sup> See an interesting paper on “The Office of Jurat in the Royal Courts of Jersey and Guernsey,” by Mr. Bedwell, Librarian of the Middle Temple, in 34 *Law Mag. and Rev.* 166.

<sup>2</sup> Le Quesne, pp. 38, 39.

<sup>3</sup> *Ahier v. Westaway*, (1855) 9 Moo. P.C. 395, 399, n. (a).

<sup>4</sup> *D'Allain v. Le Breton*, (1857) 11 Moo. P.C. 64.

<sup>5</sup> O. in C. of July 7, 1859. *In re the Jersey Bar*, (1859) 13 Moo. P.C. 263.

In my last lecture I noted incidentally some of the points in regard to which traces of the Ancient League, which amounted at one time to actual internationalisation (Scots Act, 1558, c. 6), between France and Scotland are still visible in the legal life of the latter country. Such traces exist abundantly in the terminology of Scots law, and are to be found even in the present constitution and procedure of the Court of Session. It is, however, in the substantive law of Scotland that their presence is most unmistakable. The *jus relictae* of the widow—one-third of the husband's movables if there are, and half if there are not, children of the marriage—is equally of French origin, so far as Scotland is concerned, whether, according to Professor Walton,<sup>1</sup> it is a true right of succession—as would be the case if Lord Fraser's<sup>2</sup> view is correct that the *communio bonorum* was not introduced into Scotland from France till the seventeenth century—or merely a survival of the widow's share of the property of the community between herself and her husband. So the widow's *terce*—a life-rent of one-third of her husband's immovables—is the French *douaire*; the children's legitim, or *bairns' part*, half if there is not, one-third if there is, a widow, is in substance the French *réserve*, though in Scotland it attaches to movables alone; and the *dead's part*, over which testamentary power exists, is the *quotité disponible*; the husband's "curtesy" is of ultimate Norman origin in Scotland as in France, and, I suppose, in England itself. From France, Scotland took not only these family rights, but practically her whole law of obligations, contracts, possession, prescription, and servitudes. There are other points that might be noted. Down to the middle of last century, there survived in certain districts of Scotland a curious form of lease, known as "steelbow,"<sup>3</sup> under which the lessee received his farm stocked with cattle and implements, which he was free to use during the subsistence of the lease, but bound to replace in quantity and value at its close. This "steelbow" resembles the French *cheptel à fer*, although it would be hazardous to assert positively that it was imported into Scotland from France. It has also been suggested, if I may pass to quite a different subject, that the legal influence of France on Scotland survives in the alleged readiness of the Scotch advocate, as compared with his English brethren, to discuss cases on principle instead of on precedents. But to pursue analogies of this description would lead us too far. It would bring us, by a *facilis descensus*, to the discussion of the survival of French social influences north of the Tweed, in the national preference for claret, and even, I believe, in the mode in which a Scotsman eats his oyster.

In the settlement of the civil law of Quebec in 1866, the claims of two distinct and, in great measure, rival bodies of law had to be considered and adjusted—those of the Custom of Paris and the old French

<sup>1</sup> "Relationship of the Law of France to the Law of Scotland," in the Report of the twentieth Conference of the International Law Association, held at Glasgow in 1901.

<sup>2</sup> *Husband and Wife*, i. 648.

<sup>3</sup> See *Encyclo. of Scots Law*, tit. "Steelbow."

legislation, in so far as it had been introduced into Canada on the one hand, those of the Napoleonic codification on the other. The Act<sup>1</sup> appointing the Commissioners for the codification of the laws of Lower Canada, whose Reports<sup>2</sup> form such an invaluable commentary on the Quebec Code, itself prescribed the attitude that they were to adopt towards the old and the new law. They were required<sup>3</sup> to insert in the Code the civil laws of a general and permanent character actually in force, to exclude those that had become obsolete, and to give their suggested amendments, apart and distinct from the text of the existing law so declared, with the reasons and authorities for every change proposed. This strict definition of the powers of the Commissioners, however cramping and irksome it may have seemed at the time, has added greatly to the historical value of their work. It has secured to us a clear statement both of the ancient and of the modern French law on each topic covered by the Code, and of the extent to which, and the grounds on which, the provisions of one or other of them where they differed, and of both where they agreed, have been adopted. On a variety of important points, the old French Law has been retained in preference to the *régime* of the Code Civil. In regard to "absence" in the legal sense of the term, the Commissioners had at first intended to adopt the provisions of the Code Civil; but, compelled by their instructions to go through the old French laws, they ultimately evolved and submitted a scheme borrowed from these and from the provincial statutes and the jurisprudence and usages of the tribunals.<sup>4</sup> Again, as under the old law, there is no divorce *a vinculo*<sup>5</sup> in Quebec. The wife is more firmly subjected by the Code—as by the old law—than in the Code Civil to her husband's control, the absence of marital authorisation in the cases in which it is required by law being fatal to the validity of the unauthorised act,<sup>6</sup> and the incapacity of a wife to bind herself for her husband being maintained.<sup>7</sup> On the other hand, in some respects the Quebec Code, still following the old law, gave greater latitude in regard to marriage than the Code Civil. It preserved the former limits of age—fourteen for males and twelve for females—at which capacity to marry arose.<sup>8</sup> It did not impose upon a widow the prohibition under the Code Civil<sup>9</sup> of

<sup>1</sup> 20 Vict. c. 43, ss. 4-7.

<sup>2</sup> Reports of the Commissioners for the codification of the laws of Lower Canada (Quebec). <sup>3</sup> Second Report, p. 140.

<sup>4</sup> See First Report, p. 167; C.C. (Q.) Arts. 86 *et seq.*; C.C. Arts. 112 *et seq.*

<sup>5</sup> See Second Report, p. 189; C.C. (Q.) Art. 185, and cf. C.C. Art. 227.

<sup>6</sup> *Le Code Civil, 1804-1904: Livre du Centenaire*, pp. 725-31 (M. Mignault's paper on "Le Code Civil au Canada"); C.C. (Q.) Art. 183, and cf. C.C. Art. 225.

<sup>7</sup> C.C. (Q.) Art. 1301. Ignorance on the part of the lender that the money was borrowed for the husband's purposes is of no avail, and the burden is on him to prove that it was not so borrowed: *Trust and Loan Co. of Canada v. Gauthier*, (1904) A.C. 94; cf. C.C. Art. 1431.

<sup>8</sup> Second Report, p. 177; C.C. (Q.) Art. 115; C.C. Art. 144.

<sup>9</sup> Art. 228

remarriage within ten months of her husband's death. It dispensed with the consent of grandparents to the marriage of minors, where the Code Civil provided for it ;<sup>1</sup> and—more important still—it suppressed<sup>2</sup> the system of “respectful requisitions” which had been introduced into the French Code, as we know from the preliminary discussions,<sup>3</sup> to inspire greater respect for the parental authority, weakened by the Revolution, but which had come in time to be not the least intricate part of what Balzac has characterised in his immortal *Contrat de Mariage* as that *grande comédie qui précède toute vie conjugale*, and which has recently been modified in France itself. “Il importe,” says the author of the law of June 21, 1907, by which that modification was effected, “que la famille ne soit pas une somptueuse demeure, d'accès difficile, ouverte seulement à ceux qui ne reculent pas ni devant les formalités, ni devant les dépenses.”<sup>4</sup>

The Quebec Code has also followed the ancient jurisprudence of France in rejecting adoption and the curious system, preparatory to adoption, which exists under the Code Civil as *la tutelle officieuse*,<sup>5</sup> and legitimation *per subsequens matrimonium* is not in Quebec, as under s. 331 of the Code Civil, dependent on acknowledgment.<sup>6</sup> In conformity with the jurisprudence of the Parliament of Paris, and also with the Code of Louisiana, it has expressly conferred on parents the right of overcoming the disobedience of their children by moderate correction, and of delegating their powers in this respect to others,<sup>7</sup> in lieu of the elaborate scheme of correction under magisterial supervision created by the French Code, and excluding, according to one distinguished jurist,<sup>8</sup> whose view of the law is, I hope, *not* honoured in the observance in France, any right of domestic chastisement.

The Code of Quebec further makes an interesting departure from the Code Civil, and to some extent also from the customary law in regard to tutors.<sup>9</sup> The Roman law, and the law of certain provinces in France prior to the Code, recognised three forms of tutorship—testamentary, legitimate, and dative. The two first of these were not generally admitted under the customs, but within the jurisdiction of the Parliament of Paris a testamentary nomination gave a preference to the dative appointment, unless the judge, with the advice of the Family Council, decided otherwise. The Code Civil recognises four classes of guardianship—the natural guardianship of the father and mother, guardianship given by the father and mother, the legitimate guardianship of ascendants, and dative guardianship, properly

<sup>1</sup> C.C. Art. 150, and cf. C.C. (Q.) Art. 122.

<sup>2</sup> C.C. (Q.) Art. 123; cf. C.C. 152.

<sup>3</sup> Maleville, *Analyse du Code Civil*, i. p. 152.

<sup>4</sup> *Ann. de Lég. fran.* 1908, p. 156.

<sup>5</sup> Second Report, pp. 197, 203; C.C. Arts. 361-70.

<sup>6</sup> *Ibid.* p. 201; C.C. (Q.) Art. 237; C.C. Art. 331.

<sup>7</sup> *Ibid.* p. 203; C.C. (Q.) Art. 245; cf. C.C. Arts. 375 *et seq.*

<sup>8</sup> Laurent, iv. s. 275; *contra*, Demolombe, vi. s. 309; Aubry et Rau, vi. s. 550.

<sup>9</sup> Second Report, p. 207; C.C. (Q.) Art. 249; C.C. Art. 389 *et seq.*

so called. The Quebec Code, reverting to the prevalent customary type, provides for dative guardianship alone. Such guardianship is conferred by the Court or judge, on the advice of the Family Council. Again, emancipation under the Code of Quebec is that of the Coutumes, and not the emancipation of the Roman law, the *pays du droit écrit*, or the Code Civil.<sup>1</sup> Under the Roman law, the *droit écrit*, and the Code Civil, emancipation was a termination of the *patria potestas* or *puissance paternelle*. Under the customary and Quebec law, it consisted in constituting the minor administrator of his property, and in freeing him from tutorship, but at the same time in placing him under a curator to assist him in acts that he could not legally do alone. Neither in the old French law nor in the Quebec Code is there any provision for such a revocation of emancipation as the Civil Code renders possible.

In regard to marriage settlements, too, the Quebec Code has followed the Custom of Paris and not the Code Civil,<sup>2</sup> including<sup>3</sup> dower (*douaire*) which the French Code omits, excluding the *régime dotal*, which it recognises,<sup>4</sup> retaining the continuation of community,<sup>5</sup> which it has abolished, and conceding almost unlimited liberty of stipulation.<sup>6</sup> The provisions of the Quebec Code as to acts of civil status, too, are mainly taken from the provincial laws, which were based on the Ordinance of 1667 and the explanatory Declaration of 1736.<sup>7</sup> The Quebec Code retains emphyteusis, which the Code Civil omitted, either because it had ceased to exist in France at the time when the Code was promulgated, or on the theory that it was included under usufruct.<sup>8</sup> In the last place the Quebec Code admits substitutions, limited to two degrees, such as existed in the last stage of the customary law,<sup>9</sup> whereas under the Code Civil they are only tolerated in an indirect and very restricted form.<sup>10</sup>

I have said enough, I think, now to justify M. Mignault's description of Quebec as *la fille de la France coutumière*. I turn to the points on which preference has been given in the Quebec Code to the Code Civil. Equally with the Code Civil,<sup>11</sup> it departed from the old law requiring *traditio* for the passing of rights *in re*. Under both Codes the contract alone had the effect of *traditio*.<sup>12</sup> Both took away from the Courts the right which was exerted with great freedom in the old law of France and, though not to the same extent, of Canada<sup>13</sup> to diminish stipulated damages for the inexecution of obligations. Both imposed a limit of time, unknown

<sup>1</sup> Second Report, p. 219; C.C. (Q.) Arts. 314-23; C.C. Arts. 477 *et seq.*

<sup>2</sup> Arts. 485, 486.

<sup>3</sup> C.C. (Q.) Art. 1426.

<sup>4</sup> C.C. Art. 1540.

<sup>5</sup> C.C. (Q.) Arts. 1323 *et seq.*

<sup>6</sup> C.C. (Q.) Art. 1257.

<sup>7</sup> First Report, p. 157.

<sup>8</sup> Third Report, p. 363.

<sup>9</sup> Mignault, *ad loc. cit.*; Fifth Report, p. 191.

<sup>10</sup> Mignault, *ad loc. cit.*; C.C. (Q.) Arts. 925 *et seq.*; cf. C.C. Arts. 896 *et seq.*

<sup>11</sup> Arts. 1582, 1583, and cf. Dalloz, *Jur. Gén.* tit. "Vente," n. 40.

<sup>12</sup> First Report, p. 14; C.C. (Q.) Art. 1472.

<sup>13</sup> *Ibid.* p. 18; C.C. (Q.), Art. 1076; C.C. Arts. 1152, 1231.

to the old law, within which actions of nullity of marriage had to be brought.<sup>1</sup> It is, however, in regard to succession<sup>2</sup> that the Quebec Code associated itself most definitely with the Code Civil. Under the Roman law, as it was ultimately declared by the 118th and 127th Novels of Justinian, and the *droit écrit* based on that law, there was no distinction for purposes of succession between the different kinds of property. Each individual was regarded as possessed of one inheritance, which went, whatever its constituents might be, according to certain definite rules, to his nearest relatives.

The customary law, on the other hand, was extremely complicated. In the Custom of Paris, *e.g.* the following classification of property entered into the law of succession: (1) movables, (2) immovables, (3) propres, (4) acquêts, (5) real propres, (6) fictitious propres, (7) propres nascent, (8) propres ancient, (9) propres paternal, (10) propres maternal, (11) propres lineal, (12) propres without line of descent. The Code Civil derived its system of succession from the Roman law, and the Quebec Code followed the Code Civil. On all these points, however, the law adopted by the Quebec Code, whether from the old or the new jurisprudence, secured the maintenance, in one form or the other, of French law. This observation applies not only to the matters of which I have already spoken, but generally to the law of obligations<sup>3</sup> and to sale,<sup>4</sup> exchange,<sup>5</sup> lease and hire,<sup>6</sup> mandate,<sup>7</sup> deposit,<sup>8</sup> and suretyship.<sup>9</sup>

On a few points, the Quebec Code has struck out on lines of its own. Thus its provisions as to the enjoyment of civil rights are more liberal than those either of the old French law or of the Code Civil, which gave to a foreigner in France only the rights enjoyed by Frenchmen in the alien's country.<sup>10</sup> Again, the Quebec Code does not follow the Code Civil<sup>11</sup> in giving to parents the enjoyment of their children's property up to the age of eighteen or emancipation. This was practically the *garde bourgeoise* of the Custom of Paris<sup>12</sup> and it was never introduced into Quebec.<sup>13</sup> Further,

<sup>1</sup> Second Report, p. 183, and see C.C. (Q.) Art. 153; C.C. Art. 185.

<sup>2</sup> Fifth Report, p. 110; C.C. (Q.) Arts. 596 *et seq.*; C.C. Arts. 731 *et seq.*

<sup>3</sup> First Report, pp. 7, 8; C.C. (Q.) Arts. 982 *et seq.*

<sup>4</sup> Fourth Report, p. 6; C.C. (Q.) Arts. 1472 *et seq.*

<sup>5</sup> *Ibid.* p. 20; C.C. (Q.) Art. 1596-9.

<sup>6</sup> *Ibid.* p. 22; C.C. (Q.) Arts. 1600 *et seq.* *Bail à cheptel*, taken by the French Code from the customs of Bourbonnais, Berry, Brittany, and Nivernois, where it was of daily occurrence, and not from that of Paris, was rare in Quebec, and is dealt with briefly in the Code. See Arts. 1698-700.

<sup>7</sup> Sixth Report, p. 6; C.C. (Q.) Arts. 1701 *et seq.*

<sup>8</sup> *Ibid.* p. 20; C.C. (Q.) Arts. 1794 *et seq.*

<sup>9</sup> *Ibid.* p. 38; C.C. (Q.) Arts. 1929 *et seq.* The Roman doctrine of antichresis was not admitted under the customary law. The antichrese of the Code Civil (Arts. 2085-91) was a different thing. Under the Quebec Code, a pledge of immovable property is subject in most respects to the rules as to the pledge of movables. Sixth Report, p. 50; C.C. (Q.) Art. 1974.

<sup>10</sup> First Report, p. 149; C.C. (Q.) Art. 18; and *cf.* C.C. Art. 8.

<sup>11</sup> Arts. 384-7.

<sup>12</sup> Art. 266.

<sup>13</sup> Second Report, p. 205.

the scheme of prescription under the Quebec Code is a composite one—a fact due to the mixture of English law in commercial matters with the old French law ; but it follows the Code Civil in the main.<sup>1</sup>

Although the maritime law of Quebec is to a great extent based on the famous French Code de la Maritime of 1681, the whole subject is so closely interwoven with the question of the part that English commercial law has played in the composition of the Code that I shall reserve what I have to say about it for my concluding lecture.

To a certain extent, the development of the law of gifts and wills has also been shaped by the law of England. But as regards both gifts and wills, there remains in the present law of Quebec a sufficient substratum of French influence to justify their inclusion here. The Quebec Act of 1774,<sup>2</sup> as we have already seen, and a provincial statute of 1801<sup>3</sup> introduced into the Colony the free power of testamentary disposition existing under English law. "It shall and may be lawful," runs the Act of 1801, "for all and every person or persons of sound intellect and of age, having the legal exercise of their rights, to devise or bequeath by last will and testament, whether the same be made by a husband or wife, in favour of each other or in favour of one or more of their children, as they shall see meet, or in favour of any other person or persons whatsoever, all and every his or her lands, goods, or credits, whatever be the tenure of such lands, and whether they be *propres*, *acquêts*, or *conquêts*, without reserve, restriction, or limitation whatsoever, any law, usage, or custom to the contrary . . . notwithstanding." Provisos were added maintaining the existing incapacity of husbands and wives to devise more than their respective shares of the community, and the law against alienation in mortmain. It is obvious that the adoption of the principle of freedom of willing was bound to necessitate great changes in the old law ; and, long before the preparation of the Civil Code, one of the most important of these changes—viz. the assimilation of the position of the universal legatee, and the legatee by general title, to that of the heir—had begun. The Commissioners carried out the policy of the Quebec Act and the provincial Act of 1801 to its logical conclusion. Departing at once both from the old French and from the old Canadian law, and differing considerably from the scheme of the Code Civil, which retains, as regards gifts and wills, reservations in favour of family relationship, they evolved a scheme in which (1) the freedom of testation existing in the law of wills was imported into the law of gifts *inter vivos* ;<sup>4</sup> (2) the assimilation of the position of the legatee to that of the heir was extended by investing<sup>5</sup> the particular legatee with the immediate seizin of his legacy (without delivery), which the universal legatee already enjoyed ;

<sup>1</sup> Third Report, p. 411 ; C.C. (Q.) Arts. 2183 *et seq.*

<sup>2</sup> 14 Geo. III. c. 83. <sup>3</sup> 41 Geo. III. (Q.) c. 4.

<sup>4</sup> Fourth Report, p. 151 ; cf. C.C. (Q.) Arts. 759-61.

<sup>5</sup> Fourth Report, pp. 169, 183 ; C.C. (Q.) Art. 142 ; C.C. (Q.) Art. 891.



and (3) by maintaining, side by side, the English principle of free testamentary disposition, the restriction of that principle necessitated by the French law of community, and the French and English forms of wills.<sup>1</sup> The subject of the form of wills presented considerable complexity because of the co-existence in Quebec of the French and English forms in regard to it. In those parts of France where the *droit écrit* prevailed, say the Commissioners, "and within the latitude given by the Roman law, wills could be made under different forms, not recognised in the customary parts of France, and particularly under the Custom of Paris. Allusion is here principally made to mystic and nuncupative wills." Neither of these forms was ever transmitted to Quebec. The authentic, or notarial will, and the holograph will alone were anciently used. To these the Quebec Act added the forms recognised by the laws of England. It is these three classes of wills that now co-exist under the Civil Code. In regard to probate, the Quebec Code has drawn both upon French and upon English law. Under the old French *régime* in Canada the authentic will required no probate; the holograph will and the will in English form were proved in what we should now, in England, call "common form." Probate in "solemn form" in the English sense was unknown. The Provincial Act of 1801<sup>2</sup> above mentioned confirmed the form of probate then in use as regards wills executed in accordance with English law. On all these points the Civil Code has consecrated the existing practice.<sup>3</sup> It is worthy of notice that where questions turning on the freedom of testamentary power are involved, preference is given by the Courts of Quebec to English textbooks and decisions,<sup>4</sup> while in cases unconnected with that principle the tendency is to rely on French authorities.<sup>5</sup>

In my first lecture I traced to some extent the circumstances that led up to the preparation of the Civil Code of St. Lucia, and referred in particular to Mr. Musson's scheme, disapproved of by the Secretary of State and regarded by Mr. Breen as a chimera, for the amendment and consolidation of the laws of the Colony. The Chief Justice of the day—Dr. Reddie—seems to have shared the views of Mr. Breen, for in a report published in the Bluebook of 1845 he contented himself with recommending the translation of extracts from the Code of Martinique,<sup>6</sup> the Custom of Paris,<sup>7</sup> and the

<sup>1</sup> Fourth Report, pp. 171, 179; C.C. (Q.) Arts. 831, 832, 842.

<sup>2</sup> 41 Geo. III. (Q.) c. 4, s. 2.

<sup>3</sup> C.C. (Q.) Arts. 842 *et seq.*, 856 *et seq.*

<sup>4</sup> See *Renaud v. Lamothe*, (1902) 32 Can. S.C.R. 357.

<sup>5</sup> Mignault, *Droit civil canadien*, iv. p. 439, n. (b); and *Allan v. Evans*, (1900) 30 Can. S.C.R. 416, per Taschereau J. at p. 426.

<sup>6</sup> This Code contains the local laws applicable to St. Lucia down to 1803. Many of these, however, as well as of the French Ordinances, had by 1845 fallen into desuetude.

<sup>7</sup> The works on the substantive French law in use in the Courts of St. Lucia by 1845 were Pothier and Ferrière on the Coutume of Paris. From 1849 to 1872 the 1st edition (1838) of Burge's *Foreign and Colonial Laws* is said (MS. letter of Armstrong C.J. to Administrator Des Vœux) to have been the only book printed in English that was cited in Court.

local Ordinances, as a Code would be the labour of a lifetime. On December 11, 1845, however,<sup>1</sup> a Committee, including the Attorney, and Solicitor-General, was appointed to revise the laws, and a translation of the custom of Paris was procured from Canada. The matter, however, dropped and nothing further was done in regard to it till the time of Administrator Des Vœux, and Chief Justice Armstrong. The hesitation with which the problem had been approached by Chief Justice Reddie and the abandonment of its attempted solution in 1845 become sufficiently intelligible when we learn the actual difficulties in ascertaining the law that the authors of the Code had to face.<sup>2</sup> For the purpose of meeting possible objections on the part of the Roman Catholic clergy to the establishment of optional civil marriage, it became important to ascertain what the marriage law of the Colony was. The Chief Justice could find no proof of the fact that it was contained in the Custom of Paris or in the Ordinances and Edicts that had been introduced into the Colony by registration; and he thought that it must be sought for either in the Revolutionary Code of 1789,<sup>3</sup> which required Civil marriage, in an Edict of Louis XVI., registered in Martinique in 1787, or in an Order in Council of September 7, 1838, both of which recognised it. The authors of the St. Lucia Code had before them two alternatives:<sup>4</sup> either to codify the law on the lines of the Quebec Code or to assimilate it to that of the other West Indian Islands. They selected the former alternative, although<sup>5</sup> they also kept the latter in view as a subsidiary aim. The Civil Code of St. Lucia is, therefore, founded on the Civil Code of Quebec, and it maintains French law in the Colony substantially in the same form. In the Code of Civil Procedure, too, the Quebec Code of Civil Procedure is followed. As an illustration of the state of things that existed under the old régime,<sup>6</sup> it may be interesting to mention that every writ had to be signed by the Chief Justice, and that, if he was absent holding the Court of Appeal elsewhere in the island, no action in the capital could proceed.

As the French Code Civil, Code of Civil Procedure, and Code of Commerce were made the law of Mauritius and Seychelles practically by way of direct incorporation, it will be easier for me to indicate the extent of their maintenance

<sup>1</sup> MS. letter of Armstrong C.J. to the Administrator (Des Vœux), September 14, 1876. I am indebted for access to this and to the other MS. documents referred to in these lectures to the kindness of the Colonial Office.

<sup>2</sup> MS. letter of Armstrong C.J. to Administrator Des Vœux, January 14, 1876; MS. dispatch of Administrator Des Vœux, August 25, 1876.

<sup>3</sup> While Martinique had been governed for only a short time by French Revolutionary ideals, "St. Lucia adopted every Revolutionary device" and was called by the French Assembly "the ever-faithful St. Lucia": MS. letter of Armstrong C.J. to Administrator Des Vœux, September 14, 1876.

<sup>4</sup> MS. reports (October 7, 1876) by Mr. Semper, A.G. of Barbados, on the St. Lucia Civil Code Ordinance.

<sup>5</sup> MS. letter of Armstrong C.J. to the Administrator (Des Vœux), September 14, 1876.

<sup>6</sup> Jousse's *Traité de l'administration de justice* was the textbook, it seems, in use in the Courts under the old law.

as the law of those Colonies when I come in my last lecture to deal with the points on which they have been departed from. For the present, it may suffice to say that either in the letter, in its French form, or in the spirit, in local legislation, the Code Civil still gives the law, or supplies a basis for the law, in regard to marriage, divorce and judicial separation, obligations, and succession. The Code of Civil Procedure and the Code of Commerce have been largely repealed, either expressly or by implication. In spite of the sweeping changes both in the text of the law and in the practice of the Courts that have been reflected since the English occupation, the juridical atmosphere—I am now speaking specially of Mauritius, of which alone I have personal knowledge, but I fancy that the observation would, *mutatis mutandis*, be equally true of Seychelles—is still, in great measure, French. In Mauritius, the Supreme Court, on its civil side, except as regards bankruptcy proceedings, requires a quorum of two judges. The English idea of a single judge of first instance has not taken root. French authorities are naturally in constant use. Evidence both in civil and in criminal cases is, where necessary, taken in French, if that language is understood by the judges or judge, as the case may be—only the French patois known as “créole”<sup>1</sup> being translated into English. Almost alone, I think, among the Crown Colonies, Mauritius has not adopted the English Bills of Exchange Act; and it is only within very recent years that the law has been amended so as to permit shareholders and the public to inspect the register of anonymous companies.<sup>2</sup>

<sup>1</sup> See Ordinance 29 of 1891.

<sup>2</sup> No. 23 of 1904.