Journal of the Society of Comparative Legislation, Vol. 10, No. 2 (1910), pp. 250-260

FRENCH LAW WITHIN THE BRITISH EMPIRE.

III. POINTS OF DEPARTURE.

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IN the two preceding lectures I have dealt (1) with the circumstances, and forms, under which French law came to enter, at different points, into the jurisprudence of the British Empire; and (2) with the extent to which that law has maintained its position. It only remains for us now to consider the ground that has been lost. In the absence of any modern commentaries on the law of the Channel Islands, I must content myself with noting a few points of departure for which authority is to be found either in decided cases or in the Reports of the various Channel Islands Commissions, or the legislation of the States.

Provision has been made for the voluntary sale or commutation of seigneurial rights.[1] The *garde noble* was abolished in Jersey by Order in Council as far back as the time of Charles II.[2] Estates tail were sanctioned by an Ordinance of 1615, confirmed by an Order in Council of 1635,[3] but have not, it seems, been extensively introduced.[4] Power to devise realty was given, and representation among collaterals was introduced [5] in 1851;[6] and the law as to wills of immovables has been extended by a law of February 5, 1891, confirmed by an Order in Council of March 20, 1891;[7] and also by a law of 1902 which removed the incapacity, under the law of 1851, of a testator who had children or other descendants, to devise his realty. The immemorial law of descent in Jersey by which, on the death of the owner, the entire estate real and personal goes to the eldest

[1] See *e.g.* Law of October 18, 1859; O. in C. June 30, 1860; Recueil des Lois, ii. 101.

[2] Report of Commissioners for Jersey, 1860-1, p. ix.

[3] Jersey Ordres du Conseil, i. pp. 456, 457.

[4] Report of Commissioners for Jersey, 1860-1, pp. xiv, xv.

[5] *De Quetteville* v. *Hamon* (*Perrée*), (1893) A.C. 532; Law of February 13, 1851; confirmed by O. in C. of April 14, 1851; Recueil, ii. p. 2; and Law of March 26, 1873, confirmed by O. in C. of May 5, 1873; *ibid.* iii. p. 78, extending the privileges of the law of 1851 to great-nephews and great-nieces.

[6] Report of Commissioners for Jersey, 1860-1, p. xviii; Law of June 24, 1851; Recueil des Lois, ii. p. 7.

[7] Recueil des Lois, iv. 181.

son as "principal heir," and can be held by him till partition is claimed by the other children, who also are entitled to participate in the inheritance,[1] has been modified by a law of March 19, 1850.[2] The law as to partition (*partage d'héritage*)[3] and charges on real property[4] has itself been amended. The law as to the accounting of tutors[5] and curators[6] has been greatly strengthened, in accordance with the recommendations of the Jersey Commissioners.

In regard to criminal law there has been, both in Jersey and in Guernsey, a closer approach than in any other department to the law of England.[7] So, in Jersey, confiscation of the property of felons and *felo de se* was abolished in 1870.[8] Certain of the provision of the English Criminal Law Amendment Act, 1885, were applied in 1895;[9] and criminal procedure has been regulated to some extent on English lines.[10]

In Guernsey, a law of 1901 brings the law of evidence into accordance with that of England.[11] Another law of 1907 provides for the protection of women and children on the lines of English legislation. It is said that the influence of English commercial law and procedure has also made itself felt in Jersey.[12]

The Act of Union checked the incorporation of Roman law into the law of Scotland, and whatever tendency to argue on principle instead of on precedent may still be inherent in the Scotch forensic mind, it firmly established the authority of the rule *stare decisis* in the practice of the Courts. Even in the region of family law there had been differences between the laws of France and Scotland. So, French law regarded a man's property as a *universitas rerum*, equally divisible among the heirs of

[1] Report of Commissioners for Jersey, 1860-1, p. xii.

[2] Confirmed by O. in C. of July 15, 1850; Rec. des Lois, i. 507.

[3] Law of April 30, 1891; confirmed by O. in C. of September 26th, 1891. Rec. des Lois, iv. 214.

[4] Law of July 18, 1879; confirmed by O. in C. of February 26, 1880.

[5] Rec. des Lois, ii. 165. [6] *Ibid.* ii. 169.

[7] See for full details as to the criminal law and the law of criminal procedure in Jersey and Guernsey, the Reports of the Channel Islands Criminal Law Commission 1847 (Jersey); 1848 (Guernsey).

[8] Law of February 2, 1870, confirmed by O. in C. of March 31, 1870; Rec. des Lois, ii. 478.

[9] Law of April 11, 1895, confirmed by O. in C. of June 29, 1895; Rec. des Lois, iv. 300.

[10] Law of March 23, 1863, confirmed by O. in C. of March 1, 1864. Rec. iv. p. 201. This law regulates trial by *enquête*, corresponding to trial by jury. There is no trial by jury, I believe, in Guernsey. As to appeal by special leave to the Privy Council in criminal cases, see *Esnouf* v. *A.-G. for Jersey*, (1883) 8 A.C. 304.

[11] I have not had access to this law. The statement in the text is based on a note supplied by the Greffier of Guernsey to the forthcoming *Review of the Legislation of the Empire*, 1898-1908, published under the auspices of the Society of Comparative Legislation, vol. i. p. 167, kindly shown me in proof by the Editor, Mr. Bedwell.

[12] See Mr. Bedwell's paper on "The Office of Jurat in the Royal Courts of Jersey and Guernsey," in 34 *Law Mag. and Rev.* at p. 166.

the same degree, male or female, whereas Scots law distinguished heritage from movables, and gave, as Norman law did also, a preference to males, subjecting the right of primogeniture to the duty of collation. In the last century, fresh and important departures were made. In 1855,[1] one rule deduced from the old doctrine of *communio bonorum* between the spouses, as to whose place in Scottish legal history there has been so much controversy,[2] was abolished. By the previous law, the movable property contributed by each of the spouses to the common stock reverted to the survivor and the predecessor's representatives, on the dissolution of the marriage within a year and a day, without the birth of a living child. This rule, which it had been the invariable practice to exclude whenever there was a marriage contract, was abrogated by the Movable Succession (Scotland) Act, 1855. The same statute [3] also withdrew the right of the representatives of a predeceasing wife to one-third or one-half, according as there were children or not, of the husband's movable estate, which used to be styled "the goods in communion." In regard to the property of married women, Scots law has, since 1855, closely assimilated itself to that of England. A wife's movable estate no longer falls at marriage under the *jus mariti* of her husband.[4] As the result of these changes, the *communio bonorum* now survives in Scotland, if at all,[5] only in the *jus relictæ*.

A still more remarkable assimilation of the law of Scotland to that of England is to be found in the region of the *lex mercatoria*.[6] Between the middle and the end of the seventeenth century there had been enacted in France, on the suggestion of Colbert, a series of great consolidating ordinances. Two of these, the Ordonnance de Commerce of 1673 and the Ordonnance (or, as it is often styled, the Code) de la Marine of 1681, subsequently formed the basis of the Napoleonic Code de Commerce. Scots lawyers appear—equally with their French *confrères*—to have had their attention drawn by these enactments to commercial law. But "this dawning of mercantile jurisprudence was soon overcast" [7] by the failure of the Darien expedition; and the forfeitures that followed the suppression of two Jacobite rebellions of 1715 and 1745, giving rise, as they did, to difficult questions as to "the connection of superior and vassal, the nature and efficacy of destinations in deeds of entail, and the force of real securities over land," [7] concentrated the thoughts of the legal profession in Scotland on the feudal

[1] By the Movable Succession (Scotland) Act, 1855 (18 & 19 Vict. c. 23), s. 7.

[2] See Fraser, *Husband and Wife*, i. 648; Walton, *Husband and Wife*, 149; *Encyclo. Scots Law*, tit. "Communio bonorum."

[3] S. 6.

[4] Married Women's Property (Scotland) Act, 1881 (44 & 45 Vict. c. 21), s. 1.

[5] See the judgment of Lord President Inglis in *Fraser* v. *Walker* (1872), 10 Macph. at p. 843.

[6] See the Preface to the author's editions of Bell's *Commentaries*, and two valuable articles on "The History of Scots Law" by Mr. Sheriff MacKay in the *Journal of Jurisprudence*, vol. xxvi. pp. 113, 225.

[7] Bell's *Comm.* i. pp. viii. *et seq.*

law. "The jurisprudence of mercantile dealings, fitted for times of a different complexion, was almost entirely abandoned."[1] The justice of these comments is, I think, illustrated by the great Institutional Treatises of Stair, Bankton, and Erskine. Stair, the first edition of whose book appeared in 1681, does indeed touch upon bills of exchange and other mercantile contracts,[2] but only as part of his general treatment of the forms of contract known to the Roman law. In Bankton, whose Institutes were published in 1751, the bill of exchange has risen to the dignity of a separate title. In Erskine, some years later,[3] it has again been submerged by a torrent of feudal law. But with the pacification of Scotland there came a revival of industry, and with the revival of industry a demand on the part of the mercantile community for release from the rigours of the old law of *cessio bonorum*, which, while it enabled an honest bankrupt to escape imprisonment, had no effect in freeing him from the living load of his debts without payment in full.

In spite of determined opposition from the legal profession, the Bankrupt Law of 1772[4] was passed, providing, *inter alia*, for the debtors' discharge. This relaxation of the fetters that the old law had imposed upon commerce itself gave impetus to "the outburst of commercial enterprise"[5] which had secured it. There was a fresh advance of the mercantile law in Scotland, and whence should such a development derive its inspiration save from the work of the great Scotchman[6] who, as Chief Justice of the King's Bench, had been devoting his splendid powers to the task of founding the mercantile law of England? And so the gradual assimilation of the mercantile law of Scotland to that of England began. I cannot trace its progress here. It must suffice to say that the early unity between the laws of Scotland and England, which the Ancient League disturbed, has, in the new region of the law merchant, been restored.

In Quebec there have been approximations of the law of the Province to that of England both in commercial and in maritime law. The commercial law of Quebec, at the time when the Civil Code was prepared, was of a somewhat eclectic character.[7] Its condition cannot be better described than in the language of the Commissioners themselves:[8] "In a few instances, the rules of commercial law may be found in the statute book, or in the text of the Ordinances of France, but much of it is to be sought in usage and jurisprudence. Our system, if system

[1] Bell's *Comm.* i. pp. viii. *et seq.*

[2] See Stair, Inst. Bk. I. tit. xi.

[3] Erskine's *Principles* were published in 1754; and his *Institutes*, after his death, in 1768.

[4] 12 Geo. III. c. 72. [5] Ersk. *Prin.* 20th ed. p. 557.

[6] Lord Mansfield. See Campbell's *Lives of the Chief Justices*, ii. 402; *Lickbarrow* v. *Mason*, (1787) 2 T.R. 63, per Buller J. at p. 78.

[7] See Walton's *Scope and Interpretation of the Civil Code of Lower Canada*, p. 21.

[8] Seventh Report, p. 214.

it may be called, has been borrowed without much discrimination partly from France and partly from England; it has grown up by a sort of tacit usage and recognition, without any orderly design or arrangement, and has not yet received any well-defined or symmetrical form from the decisions of our Courts."

The Commissioners accordingly came to the conclusion that any attempt to codify the commercial law in detail would be out of place. "Much," they say,[1] "of what has been established by usage may more safely and conveniently be left to be interpreted in like manner, and to be modified as new combinations and the experience of new wants may suggest. This course is consistent with the history and character of commercial law in all countries. It has always begun in usage, and positive legislation has done little more than to follow, and to declare the general and fundamental rules which such usage has originated."

The influence of these ideas may be traced right through the original treatment of bills of exchange in the Quebec Code.[2] The provisions were drawn to some extent from the Code de Commerce, but were mainly inspired by English, Scotch, and American law.[3] The law as to bills and promisory notes is now, however, governed by the Bills of Exchange Act, 1890,[4] modelled on the Imperial Bills of Exchange Act, 1882.[5] The Civil Code[6] provides that in all matters relating to bills of exchange not provided for in the Code or by the Federal Acts, "recourse must be had to the laws of England in force on May 30, 1849," which is also to govern the law of evidence in the investigation of facts founded on bills, irrespective of whether they were granted by traders or non-traders. Negotiable instruments other than bills or promissory notes, *e.g.* bank notes and bearer bonds, are governed by the general commercial law; and the tendency in regard to these[7] is to follow English authorities.[8] Although the Dominion Parliament has power to legislate "respecting every transaction within the legitimate business of a banker,"[9] the Federal Bank Act, 1890,[10] deals mainly with questions incidental to the incorporation of banks and the issue of notes; and the relations between bankers and their customers are still governed by the general commercial law.[11] The maritime law of Quebec is largely based on the Code de la Marine of 1681 above mentioned, one of the great consolidating Ordinances of the reign of Louis XIV., which "furnished the principles of maritime law to a

[1] Seventh Report, p. 216.

[2] Arts. 2279 *et seq.*, repealed by the Bills of Exchange Act, 1890.

[3] *Ibid.* pp. 218, 220.

[4] 53 Vict. c. 33; Rev. Stats. Can. c. 119.

[5] 45 & 46 Vict. c. 6.

[6] Art. 2340.

[7] Walton, *ubi sup.* p. 53.

[8] See *Young* v. *Macinder*, (1895) 25 Can. S.C.R. 272; *Bank of Montreal* v. *Sweeny*, (1887) 12 A.C. 617.

[9] *Tennant* v. *Union Bank of Canada*, (1894) A.C. 31.

[10] 53 Vict. c. 31; Rev. Stats. c. 29.

[11] *Imperial Bank of Canada* v. *Bank of Hamilton*, (1903) A.C. 49; *Bank of Montreal* v. *Sweeny*, (1887) 12 A.C. 617.

large portion of the Continent, and is the chief basis upon which the Courts in England, by a series of decisions confirmed and aided by careful legislation, have built up her present system."[1]

The Ordinance of 1681 seems never to have been formally registered by the Superior Council; but an *arrêt* of 1717, establishing Admiralty Courts,[2] is said to have introduced many of its provisions, and for the rest it no doubt established its position as *ratio scripta*. The law of merchant shipping is now governed in Quebec partly by the Imperial Merchant Shipping Act, 1894,[3] partly by a series of federal enactments[4] framed more or less on the lines of corresponding English legislation, and passed in virtue of the exclusive power of the Dominion Parliament to legislate on matters affecting "navigation and shipping."[5] But affreightment,[6] marine insurance,[7] bottomry and respondentia,[8] and the rules as to the transfer and mortgage of registered ships,[9] are governed[10] by the Civil Code. The rules as to all these subjects are based on the Code de la Marine and in some instances on the Code de Commerce.[11] But the Commissioners, in regard to each of them, have drawn largely also on English, Scotch, and American authorities.

I will give a few illustrations of the statement. In case of wreck, or other inevitable obstruction to the voyage, in his own ship, is it the duty or is it merely the right of the master to engage another ship?[12] On this point the French authorities were keenly divided. The Code de la Marine[13] and the Code de Commerce,[14] supported by one body of commentators, concurred in declaring that if the ship cannot be repaired, the master is bound to procure another, and that if he cannot do so he is entitled to freight only for the part of the voyage actually accomplished. What these authorities pronounced to be a duty, other commentators, such as Valin and Pothier, regarded as only a right.[15] For England and America the controversy was settled in the former sense; and the Quebec Commissioners, with these conflicting views before them, adopted the English and American solution.[16] Again,[17] in defining barratry, the Commissioners, following the English[18] and American[19] rule and differing from the law of

[1] Seventh Report, p. 224.

[2] Cases within the jurisdiction (now exercised by the Court of Exchequer; see 54 & 55 Vict. [Can.] c. 29; 53 & 54 Vict. c. 27) of the Vice-admiralty Court are to be "determined according to the civil and maritime laws of England." C.C. (Q.) Art. 2388.

[3] 57 & 58 Vict. c. 60.

[4] See Walton, *ubi sup.* p. 52.

[5] B.N.A. Act, 1867, s. 91(10).

[6] C.C. (Q.) Arts. 2407 *et seq.*

[7] *Ibid.* Arts. 2492 *et seq.*

[8] *Ibid.* Arts. 2594 *et seq.*

[9] *Ibid.* Arts. 2359, 2374.

[10] *Ibid.* Arts. 2359-82.

[11] Seventh Report, pp. 234 (affreightment), 240 (insurance), 258 (bottomry and respondentia). See (1904) A.C. 77.

[12] Seventh Report, p. 236.

[13] Art. 11.

[14] Art. 296.

[15] 1 Kent, iii. 207, 210-12; Carver, s. 547.

[16] C.C. (Q.) Art. 2448.

[17] Seventh Report, p. 248. C.C. (Q.) Art. 2511.

[18] Carver, s. 99.

[19] Kent, iii. s. 304.

France under the Code de la Marine[1] and the Code de Commerce,[2] insist on the element of fraud. "It is evident," they say, "that the benefit of insurance would be materially diminished if any act of unskilfulness, which would include innocent errors of judgment, should have the effect of freeing the insurer from liability." The definition of bottomry and respondentia is avowedly borrowed from Smith's *Mercantile Law*.[3] As a final illustration,[4] I may mention that the Commissioners, differing from the original French law[5] but following the rule of English, Scotch, and American law, have not prohibited loaning upon freight to be earned.

In my first lecture, I adduced authorities showing that the criminal law of England had been applied in the Province of Quebec since 1763.[6] The Quebec Act, 1774,[7] provided that the criminal law of England should continue to be administered in Quebec. By the Federation Act, 1867,[8] criminal law became a matter to be regulated by Dominion legislation; and now the Criminal Code of Canada,[9] which came into force on July 1, 1893, has introduced into Canada the substantive and adjective criminal law of England *en bloc*. The English common law jurisdiction as to crime is still operative, notwithstanding the enactment of the Criminal Code, always subject, however, to the latter prevailing where there is a repugnancy between the common law and the Code.[10]

The Quebec Code of Civil Procedure "does not resemble the French Code of Civil Procedure in anything like the same degree in which the Quebec Civil Code resembles the Code Napoléon."[11] A good deal of it was taken from the Code of Civil Procedure of Louisiana, "and it includes remedies such as writs of injunction, mandamus, and prohibition, which are of purely English origin."[11] The law of proof in civil matters is still French as to its main rules.[12] The law of proof in commercial matters has, since 1785, been drawn from the English rules of evidence.[13] Even in general matters there appears to be a tendency now to assimilate the law of Quebec to that of England.[14]

In St. Lucia change came gradually[15] but surely. By 1844, besides the introduction of English commercial law, of the British currency, and of

[1] Art. 28. [2] Art. 353.

[3] Seventh Report, p. 260. C.C. (Q.) Arts. 2594. See Smith's *Merc. Law*, 11th ed. vol. i. p. 573. [4] *Ibid.* C.C. (Q.) Arts. 2596.

[5] Code of 1681, Art. 4; Code de Comm. Art. 318, abrogated, however, in France by Art. 2 of the law of August 12, 1885; *Ann. de Lég. fran.* 1885, p. 97.

[6] Since preparing the first lecture, I have found further authorities on the point in an interesting brochure by Professor Walton on *The Scope and Interpretation of the Civil Code of Lower Canada* (1907), see pp. 50, 51, generally, and specially as to whether a change of sovereignty *ipso facto* involves a change in the criminal law.

[7] See 14 Geo. III. c. 83, s. 11. [8] S. 91. [9] Rev. Stats. Can. c. 146.

[10] *R.* v. *Cole*, (1901-2) 5 Can. Crim. Cas. 330; *Union Colliery Co.* v. *Reg.* (1900) 31 Can. S.C.R. 87; *Moloche* v. *Deguire*, (1903) 34 Can. S.C.R. 24.

[11] Walton's *Scope*, etc. p. 24. [12] *Ibid.* p. 135.

[13] 25 Geo. III. c. 2, s. 10. See *McKay* v. *Rutherford*, (1848) 6 Moo. P.C. 413.

[14] Walton *ubi sup.* at p. 136. [15] See Breen's *St. Lucia*.

the officer of coroner and justice of the peace, the old Slave Code—the Code Noir of Martinique—had disappeared through the exertions of Mr. Jeremie, the first President of the Court of Appeal, created under the Order in Council of 1831. An Ordinance of 1834 abrogated the old French criminal procedure, with its clumsy system of *instruction criminelle*, its interrogation of prisoners, its examination of witnesses by leading questions, and its trials *par contumace*, equally inefficacious whether the accused did or did not return to the Colony, for in the former case, the proceedings had to begin over again; and, in the latter, the claims of justice were evaded. The old criminal law of France, however, still survived.[1] In 1819 a man was sentenced to twelve months' imprisonment in the chain-gang because he was "vehemently suspected of poisoning."[1] In 1826 it was enacted that in fourteen cases of commercial offences, English law should govern. The Ordinance of 1834, to which I have already referred, concerned itself with procedure only. In 1848 trial by jury was introduced in criminal cases. The need for a reform in the substantive law is strikingly illustrated by a case that happened shortly before that date. A prisoner was indicted for uttering "false money." French law prescribed one term of imprisonment, English law another. The difficulty as to which term was to be applied was solved by the accused being sentenced to both.[1] Another attempt to deal with the state of the criminal law was made in 1851. The preamble to the Ordinance of that year stated that the Royal Court had adopted "much of the criminal statute law of England without having any specific Ordinance introduced as regulating the same." But the Ordinance itself is a mere reproduction of certain English statutes. It left many offences unpunishable. It in no way introduced into St. Lucia the criminal law of England. The criminal law of France was, however, abolished in the Colony by an Ordinance of July 1875; and in 1888 the enactment of a Criminal Code[2] and Code of Criminal Procedure,[3] framed on the lines of English law, completed the departure of St. Lucia, so far as her substantive and adjective criminal law is concerned, from the old French régime.

The English language was made the language of the Law Courts as from January 1, 1842. In recent years St. Lucia has still further assimilated her law to that of England. The distribution of the assets of insolvent non-traders was adopted. Although divorce *a vinculo* is not admitted,[4] provision has been made by local legislation[5] for the grant of protection orders to married women, similar to those made in England under the Summary Jurisdiction (Married Women) Act, 1895.[6] The law of England has been followed as to bills of exchange.[7]

[1] M.S. letter of Armstrong C.J. to the Administrator (Des Vœux), September 14, 1876.
[2] No. 101 of 1888. [3] No. 102 of 1888.
[4] C.C. St. Lucia, Art. 155. [5] Ordinance 3 of 1902. [6] 58 and 59 Vict. c. 39.
[7] No. 11 of 1893: and see No. 8 of 1907.

In Mauritius the English language was tentatively introduced. An Order in Council of February 25, 1841,[1] directed that it should be used for all Ordinances and Proclamations. In 1845 another Order in Council[2] provided that all proceedings in the Courts of Justice should be in English as from July 15, 1847, due regard being had to any reasonable claim to exemption on behalf of any particular person admitted as an advocate or *avoué* at the time of, or within the fifteen years next after, the surrender of the Island.

A tradition of the Bar records the circumstances under which, at the appointed time, the French language made its official exit from the Courts of law. The Assize Court was in session at Port Louis, trying a prisoner for murder, and up to midnight before the appointed day commenced, the proceedings would, of course, be in French. The trial was a heavy one, and the Court sat late. As the fateful hour approached, counsel for the defence was still addressing the jury in the old tongue. At the stroke of twelve he stopped abruptly, and continued his speech in English. It is to be hoped that such a memorable occasion was signalised by an acquittal, at least on the capital charge. To the best of my recollection, I have told this story as it has often been told to me; whether it is true, or merely one of the artistic traditions out of which so much history is made, I cannot say. But I can perhaps supply one adminicle of corroborative evidence of its genuineness by saying that as juries in Mauritius were not, and I think are not, allowed to separate before verdict, in cases of murder, there is no inherent improbability in that part of the narrative which represents the Assize Court as still in session after midnight. I have myself been engaged in the trial of a murder case at Port Louis at half-past eleven p.m. But notwithstanding its formal banishment as the language of pleading from the Courts of Justice in Mauritius, the French tongue has still retained even there a kingdom of its own. Evidence can be, and is, taken in French, where the judges and counsel understand it, without interpretation,[3] and although the leaders of the local Bar speak English with perfect ease, and are, in many cases, men to whom it is a liberal education even in English law for a judge to listen, the forensic asides, prompted by interruption in the course of argument, are not infrequently conducted in French.

How far French law is still in force in Mauritius—and this observation holds good in the case of Seychelles also—is often a question most difficult to answer. For, apart altogether from the express repeal of portions of the Codes by local legislation, there is a wide field in regard to which the possibility of incidental repeal, as for instance by legislation conferring equitable[4] powers on the Supreme Court, or by the introduction (effected

[1] Rev. Laws, iv. 62. [2] O. in C. of September 13, 1845; Rev. Laws, iv. 64.

[3] No. 29 of 1891. Except in the case of the patois "creole"; *ibid.*

[4] Ord. 2 of 1850, s. 3 (as regards Mauritius); O. in C. Aug. 10, 1903; Art. 6 (as regards Seychelles).

in Mauritius in 1904) of the modern English system of pleadings, has to be reckoned with.

The criminal procedure of Mauritius has been in accordance with that of English law since 1853.[1] The Penal Code of 1838—a local adaptation in French and English, printed in parallel columns, of the corresponding French Code—is still in force and maintains substantive French criminal law. For instance, affirmative proof by the Crown of premeditation is essential in cases of murder (*assassinat*) as distinguished from manslaughter (*meurtre*). The same distinction is preserved in the new Penal Code of Seychelles,[2] which indeed is practically a reproduction of the Mauritius Code of 1838. Nor has Seychelles in other matters exerted its new legislative powers by cutting itself adrift from the spirit of the old law.[3] In Mauritius, in matters not dealt with by the Evidence Ordinance, 1881,[4] which preserves,[5] by the way, the French procedure of the examination of the parties to a suit on unsworn personal answers, English law is to be followed.[6] A bankruptcy law[7] framed on English lines but confined to debtors who are "traders," a category from which the sugar-planter is excluded, has superseded the provisions of the Code de Commerce in regard to bankruptcy. But *cessio bonorum* is still recognised.[8]

And now I must draw to a close. That there should have been points of departure from French rules and ideals was inevitable. For the different countries whose systems of jurisprudence we have been considering had become integral parts of the British Empire, and were being brought every day into closer touch with British administration and law. With their political and social growth, new needs arose, which the Customs of Paris and Normandy, and the French Codes, in their original shape, stamped although they were with the imprint of the genius of Napoleon, had not foreseen, and could not satisfy. In France itself, the great bodies of law that had at one point and another entered into or influenced the jurisprudence of the Empire had been undergoing constant change. The legislation of the monarchy had been superseded by the legislation of the Revolution. The legislation of the Revolution, itself divisible into two periods, the first (1789—1794) "a period of progress not always enlightened,"[9] the second (1794—1804) "a period of reaction not always obscurantist," had given place to the Codes. And, later on, the Codes too were changing. So everything—the new strong wine of fresh political and social conditions, that

[1] Ord. 29 of 1853.
[2] No. 10 of 1904.
[3] See, *e.g.*, Ordinances 5 of 1904, and 6 of 1904, consolidating the law of mortgage and registration respectively.
[4] No. 15 of 1881.
[5] Art. 17.
[6] Art. 15.
[7] Ord. 23 of 1887.
[8] See Ordinances 23 of 1856 and 14 of 1864.
[9] See Sir Courtenay Ilbert's paper on "The Centenary of the French Civil Code" in the *Jour. Comp. Leg.* vi. 22; and for details, Mr. Herbert Fisher's chapter on "The Codes" in the volume "Napoleon" (vol. viii.) of the Cambridge Modern History.

refused to be poured into the old bottles, changes in France, and the constant pressure at all points of an atmosphere of English law conspired to substitute English for French juridical ideals and methods within the Empire. So far, the main changes effected have been the introduction, more or less completely, of the English language as the language of oral and written pleadings in the Courts of Justice; the substitution, although not universally, of English for French criminal law and procedure; the tentative adoption of the English law of evidence; and the steady assimilation of the mercantile law of all parts of the Empire to the rules of the law merchant as defined by the English Courts. How far such processes of substitution and assimilation are destined to lead us, the future will show. The old forces that make for change are still at work—new developments, political, social, and commercial, that have to be met, increasing freedom—of which the recent laws simplifying the formalities of marriage [1] and protecting the earnings of married women [2] afford striking instances—in France itself in the treatment of the ideals and the rules of the Codes, and in every part of the Empire, far better understood, and far stronger than ever before, the pressure of an atmosphere of English law. There is wide room for speculation, and for difference of opinion, as to the mixed questions of policy and law that such considerations involve. But on one point at least all lawyers will agree. The maintenance of French law within the Empire—which even the Roman and the Muhammadan conqueror had recognised not as a personal law of the inhabitants of certain conquered and ceded colonies, but as a territorial law—has borne its own part for good in the making of the jurisprudence and the legal administration of the Empire. It has enlarged our outlook. It has introduced us to a world of which no lawyer will ever be content to lose sight who has once entered it, seen its wealth, strength, and beauty, and felt its abiding charm.

[1] Law of June 21, 1907: *Ann. de Leg. fran.* 1907, p. 159.
[2] Law of July 13, 1907: *Ann. de Lég. fran.* 1907, p. 199.