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**The Jersey Law Review – June 2006**  
**JEAN POINGDESTRE'S COMMENTAIRES SUR LES CANONS DE**  
**JAMES I**

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1 The *Commentaires sur les Canons de James I* by Jean Poingdestre is the least known of his five works.<sup>1</sup> It is a commentary on Articles 26 to 29 inclusive of the Canons<sup>2</sup> of James I which were established as law in 1623 and remained substantially so until 1949 when an amendment changed canons 14, 26, 27 and 28.<sup>3</sup>

2 There is no recent historical interpretation of how the Canons of James I came to be promulgated.<sup>4</sup> One is therefore reliant on the generally trusty, (but lacking in thematic analysis) Balleine's History of Jersey<sup>5</sup> and a number of earlier works.<sup>6</sup>

3 The Canons were the result of the juxtaposition of King James I of England (1603-1625), and a Calvinist island of Jersey, and brought on by a local power struggle between Sir John Peyton, Governor, and those amongst the local clergy and inhabitants who were still wedded to Presbyterianism in the early seventeenth century. As a result of a report by Royal Commissioners, Sir Edward Conway and Sir William Bird, in 1617, the Dean (the Very Reverend David Bandinel) was appointed with a view to bringing order to the Jersey Church. Although unpopular amongst a section of the Jersey clergy, the Dean reached agreement with most of them on 58 Canons and laid them before the King in Council. The Royal Court sent delegates to oppose some of them. A compromise was then reached and in 1623 the King affixed his seal to the final draft.<sup>7</sup>

4 It is not entirely clear why Poingdestre chose to write about the Canons or why he focused on only four of them. His motivation probably derives from the fact that the Canons touched upon certain key aspects of his life: his passion for the law of Jersey and his own ministry in the Church. His passion for the law, particularly its provenance and interpretation, with a heavy emphasis on the need to be true to its roots, will be familiar to many lawyers. As to his own ministry, he had been ordained as a Deacon at York in 1641. Although a *Procureur* for the Parish of St. Saviour, at a time when the Parish body politic

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<sup>1</sup> His other four works are: *Caesarea or a Discourse of the Island of Jersey*, Société Jersiaise 1889) *Lois et Coutumes de l'Isle de Jersey*, Jersey Law Society 1928); *Commentaires sur l'Ancienne Coutume*, Jersey Law Society 1907; and *Remarques et Animadversions sur la Coutume Reformée* (still unpublished).

<sup>2</sup> A canon in this context can be said to be a rule of conduct in an ecclesiastic setting. In this case the canons were given force of law.

<sup>3</sup> *Recueil des Lois Tomes VII 1929-50* 558 10/49

<sup>4</sup> The most recent Channel Islands' scholarship in this area is to be found in D. Ogier, *Reformation and Society in Guernsey* (Great Britain 1996) which covers the period 1540 to 1640; Evans, *The religious history of Jersey 1558 – 1640* Ph. D thesis, Cambridge 2001; and Eagleston, *The Channel Islands under Tudor government 1485 – 1642*, Cambridge University Press, 1949.

<sup>5</sup> Syvret and Stevens, *Balleine's History of Jersey* (1981) pp 95-97 and (1998) P95 *et seq.*

<sup>6</sup> Le Patourel, *The Medieval Administration of the Channel Islands 1199-1399* (London 1937); P. Falle, *An Account of the Island of Jersey* (London 1694).

<sup>7</sup> Syvret and Stevens, *Balleine's History of Jersey* (Phillimore and Co. Ltd., 1998).

overlapped to close degree with the body ecclesiastic, there is however no suggestion that he was an active churchman in Jersey.<sup>8</sup>

5 Poingdestre's opening words make no bones about his stance in relation to Canons 26 to 29: "*Voici quatre Canons tout d'une suyte, qui renversent les plus essentielles & les plus fondamentales loix que nous ayons, à savoir celles qui regardent le Droict de succession.*" He becomes even more scathing: "*Voilà comme les Canons de nostre Doyenné ne subvertissent pas seulement nos Coustumes, ny ne contrarient pas seulement au Droict Escript pratiqué presque par toute l'Europe, mais ils avancent notablement par delà les Décrétales, & ils enchérissent par dessus la Coustume d'Angleterre qui est la plus contraire au Droict Commun en ce point. De quoy il ne faut par s'estonner; Vue que ny le Doyen d'alors ny aucun de ceux qui l'assistant à compiler lesdits Canons, n'entendoient rien en nos Loix comme estants tous estrangers.*"

6 Poingdestre treats us, in the eclectic and discursive style evident in his other works, to an attack on the changes made by the relevant Canons to the law relating to the filing of wills, to the inventories of the property of minors, to the jurisdiction over charitable bequests and in relation to *dîsmes*.<sup>9</sup> He is adamant that these changes are a wrongful interference in the law of Jersey, as drawn from Normandy, the *droit commune* and Roman law, which had evolved to equip the Civil Courts with the knowledge and experience to deal with the administration of the estates of the deceased. He pulls no punches in making it clear that in his view the changes are directed to the clear advantage of the Church, both in terms of power and fiscal gain.

7 The text of the Canons is not easy to come by. The following is drawn from Philip Falle's *Caesarea, or an Account of Jersey*.<sup>10</sup>

26. <sup>11</sup> <i>Le Doyen aura l'Insinuation &amp; Approbation des Testamens; lesquels seront approuvés sous le sceau de l'Office, &amp; Enregistrés; aura aussy l'Enregistrement des Inventaires des Biens Meubles des Pupilles, desquels il gardera</i>	26. The Dean shall have the Entry and Probate of <i>Wills</i> ; which shall be approved under the Seal of his Office, and Registered; He shall have also the Registering of the Inventories of Goods Mobiliary belonging to Orphans, whereof he
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<sup>8</sup> Balleine, *A Biographical Dictionary of Jersey* (London 1948).

<sup>9</sup> The Dixmes or Dimes were tithes - "the tenth part of the gross yield of products of the soil or increase in number of animals collected on a parochial basis for the church. The term also applied to grant by herds of the tenth part of their fief revenue" C.N. Aubin, *A Glossary for the Historian of Jersey* (Jersey 1997), page 27. In the translation of Poingdestre's comments on the Canons we use the word "tithes" for convenience.

<sup>10</sup> The work was originally published in 1694. A second edition ("revised and much augmented") was published in 1734. The canons are to be found in an appendix to the work.

<sup>11</sup> The text is as printed save that "f's have been converted to the modern form "s".

*fidèle Registre, pour en donner Copie toutes fois & quantes qu'il en sera requis. Item, baillera Lettres d'Administration des biens des Intestats, qui mourront sans hoirs de leur Chair, au prochain héritier.*

shall keep a faithful Register, that he may give Copies of them whenever he shall be required. Moreover, he shall give Letters of Administration of the Goods of Intestates, dying without Heirs of their Body, to the next of Kindred.

*27. Ceux qui seront saisis du Testament, soit Héritiers, Exécuteurs, ou autres, seront obligés de l'exhiber & apporter au Doyen dans un Mois; faute dequoy seront convenus en Court par Mandat, en payant doubles Coustages, pour la Compulsoire; & aura le dit Doyen pour les dits Testaments, Inventaires, & Lettres d'Administration, tels Droicts qui sont Spécifiés en la Table sur ce faite.*

27. They that have the *Will* in the Custody, whether they be Heirs, Executors, or others, shall be obliged to exhibit and bring the same to the *Dean* within one Month; in default whereof they shall be convened into Court by Mandate, paying double Charges for the Compulsory; and the said *Dean* shall have for the said Wills, Inventories, and Letters of Administration, such Fees as are specified in the Table made for that purpose.

*28. Toutes Légations Mobiliaires faites à l'Eglise, Ministres, Ecoles, ou Pauvres, seront de la Cognoissance du Doyen; Mais sur l'Opposition qui pourroit*

28. All *Legacies* Mobiliary made to the Church, Ministers, Schools, or Poor, shall be of the Cognizance of the *Dean*; But upon any Opposition made concerning the Validity

*estre faite de la validité du Testament, la Court Temporelle en déterminera entre les Parties.*

*29. Il appartient au Doyen de cognoistre de toute Substraction de Dixmes affectées à l'Eglise, de quelque Espèce qu' elles soyent, qui ont esté payées au Ministres, & don't ils ont jouy & sont en possession de puis Quarante ans; & toute personne convaincue de Substraction, fraude, ou Detention d'icelles Dixmes, sera ajugé a Restitution, avec les frais & coustages de la partie; & ou la Conservation de tous & chascun les Droicts Bénéficiaux, Dixmes, Rentes, Terres, & Possessions, il y aura un Terrier fait par le Bailly & Juréztz, assistés du Doyen & Procureur du Roy.*

of the Will, the Civil Court shall determine it betwixt the Parties.

29. It appertains to the *Dean* to have cognizance of all Subtraction of *Tythes* belonging to the Church, of what kind soever they be, which have been paid to the Ministers, and which they have enjoyed and have been possessed of forty Years; and every Person convicted of Subtraction, Fraud, or Detention of the said Tythes, shall be adjudged to make Restitution, and pay the Cost and Charges of the Party; and for the preservation of all and singular the Rights, Tythes, Rents, Lands and Possessions Beneficiary, there shall be a Terrier made by the Bailly and Jurats, assisted by the *Dean* and King's Procurator.

## CANONS 26. 27. 28. & 29<sup>12</sup>

*Voici quatre Canons  
tout d'une suyte, qui  
renversent les plus  
essentiellles & les plus  
fondamentales loix que  
nous ayons, à savoir  
celles qui regardent le  
Droit de succession:  
lesquelles loix ne sont  
ny particulières, ny  
nouvelles; mais sont  
extraites du Droit Civil,  
ou des meurs &  
coustumes des anciens  
Francois.*

Here are four canons  
which overturn the most  
essential and  
fundamental laws which  
we have, that is to say  
those which concern the  
law of succession: these  
laws are neither  
particular to us nor new;  
but are extracts drawn  
from Civil Law or the  
customs and usage of  
the French of long ago.

*Celles qui ont origine du  
Droit Civil sont  
l'Insinuation &  
approbation des  
Testaments, les  
Inventaires des biens  
des Pupilles, la  
cognoissance des Legs  
pieux; & des Dismes.  
Les autres sont la  
manière de succéder ab  
Intestat par la Coustume  
générale de France &  
de nos Isles par une  
possession continuée  
du deffunct au prochain  
héritier, sans aucune  
Lettre d'Administration*

Those which originate  
from Civil Law are the  
filing<sup>13</sup> and proving of  
wills, the inventories of  
the property of minors  
under *tutelles*, the  
cognisance of charitable  
bequests and tithes. The  
others are the manner in  
which one may succeed  
on an intestacy by the  
general custom of  
France and of our  
Islands by the continued  
possession from a  
deceased to the next  
heir without any letter of  
administration or other

<sup>12</sup> The lay out of the text has been designed to assist the reader who wishes to compare the translation with the transcription of the original which was in manuscript. The manuscript in question is in the Public Library, Jersey. It has not proved possible to translate all the Latin words and phrases and, in particular, some of the references to other writers. Some of the abbreviations in the original manuscript are clearly Poingdestre's own shorthand. The author has been greatly assisted in the translation by a number of people but in particular Graham Boxall, Solange Hucker, Sheila Meisé, and Professor Nicol Spence. We are particularly grateful to Mrs Meisé who transcribed the original manuscript prior to its translation.

<sup>13</sup> "Insinuation" has been translated as "filing", though strictly it translates as "entry".

*ou autre Acte extérieur, Ipso Jure; Et le terme de 40 Jours observé de tout temps chez nous pour faire approuver un Testament desquels il faut parler brièvement et distinctement. Par le Droit Civil tant l'Insinuation des Testaments que les Inventaires qui se font par les Tuteurs des biens des Pupilles, sous des Formes fort exactes & solennelles appartiennent au Magistrat Civil; & ne sont pas pratiquées seulement en nos Isles, mais aussy par toute la France, & aux autres Pays Chrestiens; mesme ou le Pape est obey, & ou la Jurisdiction Ecclésiastique est exercée en toute sa latitude.*

*Il est vray que par le Droit du Code, les Legs ad pias causas sont recommandez à la piété des Evêques; mais c'est en cas que le Magistrat Civil auroit négligé de faire son devoir, par voye de supplément, en faveur*

exterior Act<sup>14</sup>, by operation of law. And the period of 40 days observed from time immemorial here to prove a will, about which it is necessary to speak briefly and distinctly. Under civil law both the filing of wills and the making of inventories of minors' property by *tuteurs* under exact and solemn forms belong to the civil magistrate; and are not only practised in our Islands but also everywhere in France and other Christian countries; even where the Pope is obeyed and where ecclesiastic jurisdiction is exercised in all its freedom.

It is true that under the *Droit du Code*<sup>15</sup>, bequests for charitable purposes are referred to the piety of the Bishops; but that is in the case where the Civil Magistrate may have neglected to do his duty, *par voye de supplément,*

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<sup>14</sup> Presumably, an Act of a Court.

<sup>15</sup> Presumably the Codex Justinianus or [Justinian's Code](#).

*desdits Legs, & non en faveur des Evêques, ny pour augmenter leur Jurisdiction. Pour le Droict Canon, encore qu'il attire autant de causes qu'il peut au Tribunal Ecclésiastique, neantmoins la Vérité s'est trouvée si forte en cet endroit, que la cognoissance desdits Legs a esté déclarée mixti fori, de cognoissance mixte. Illud hic ad notare libet, non tantum ad Episcopum pertinere curam hanc exequendi extremam morientium voluntatem, ita vt haeredes aliosue Testamentarios Executores moneat & compellat executionis officium peragere, quod hic probatur in c. tua & in c. Johannes, isto Tit. Erum etiam Judicem Civilem eandem facultatem habere, ad huc in Legatis pijs: hoc etenim manus est mixti fori. Abb. & Barbat hic col 1 & 2 Text. in Authen. de Eccles. titu §*

[a] *siquis autem a diffic.*

in favour of the said bequests and not in the favour of the Bishops, nor for the purpose of increasing their jurisdiction. As for Canon Law, even though it draws as many cases as possible to the Ecclesiastical Tribunal, nevertheless truth in that place was found to be so strong that jurisdiction over these bequests was declared to be subject to both jurisdictions. Noteworthy at this point is the fact not only that this responsibility for administering the last will of the dying belongs to a Bishop, so that he instructs heirs and other testamentary executors and compels them to perform the duty of execution, which is a practice approved here in *c. tua & in c. Johannes, isto Tit.* but also that a Civil Judge has the same authority to this day in relation to charitable bequests. For this duty is one of shared jurisdiction. *Abb. & Barbat hic Col 1 & 2 Text in Authen. De Eccles. Titu.*<sup>16</sup>

[a] But if anyone *aedific*

<sup>16</sup> [Abb. & Barbat] here in Col 1 & 2 of the text in the [Authen] title concerning ecclesiastical affairs.

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*collat g melior in l  
haereditas ff de petit  
haered. quem hic  
singularem Barba. col. 2  
imo ex. eo probat,  
nemine petente officium  
Judicis exerceri posse  
circa executionem  
Legati pietatis causâ,  
Rom. in Auth. Similiter C  
ad leg Falied Speciali 20  
Ultimanum voluntatum  
hinc denique permissum  
est omnibus hominibus  
petere vt legata pia  
soluantur, adque  
executionem  
deducantur, si viderint  
aduersus Testatorium  
voluntatem, vel ex  
haeredis, executoris, aut  
certe Judicis segnitie,  
quicquam attentari.  
Text. opt. in l nulli. in fi.  
C. de Episcopes & Cler. &  
in d. Auth. de Ecclesiasticis  
Tit.*

*[b] § si autem que g  
hoc facere quem dicit  
singularem Aret. in c. ui  
olim de testib & Roman.  
cons. 69. Regia l.7 Tit.*

*collat. que melior in l  
haereditas ff de petit  
haered quem hic  
singularem Barbat col 2.  
And indeed, from that he  
proves that it is the  
entitlement of a Judge,  
even if no-one petitions  
him, to be able to be  
concerned in the  
execution of a bequest  
for charitable purposes.  
Rom. in Auth. Similiter C  
ad leg Falied Speciali  
20<sup>17</sup> about last wishes.  
From here, in short,  
licence is given to all  
men to require that  
charitable bequests be  
paid and that they be  
removed for due  
execution if it seems  
that, against the wishes  
of the testator, any  
attack is being made  
upon them in  
consequence of  
inactivity on the part of  
the heir or the executor  
or indeed of the Judge.  
The best text is in *l. nulli  
in fi. C. de Espicesces &  
Cler. & in d. Auth. De  
Ecclesiasticis Tit.*<sup>18</sup>*

*[b] But if g hoc facere  
quem dicit singulari Arct  
in C. ui olim de testib et  
Roman cons 69 Regia  
l.7 Tit. 10 parte 5 Couarr*

<sup>17</sup> In Roman authorship to the like effect [C. ad] the law of Falcidius [(Speciali 20)]

<sup>18</sup> [l. nulli in fi.] chapter on bishops and the clergy and in [d. Auth.] the title on church affairs.

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10 parte 5 Couarr To. 1  
de Testam. c. nu. 1.  
Mais certes, sauf le  
respect d'un si grand  
homme, & de ceux qu'il  
allegue, la loy  
Haereditas, qui est la 5<sup>e</sup>  
de Petit. Haered. ff. ne  
parle point d'autres legs  
ad pias causas, sinon  
de la construction ou  
erection du Tombeau du  
deffunct & dit que si  
celuy qui se portoit pour  
héritier, & qui a esté  
contraint de rendre  
l'héritage a un autre,  
parce qu'il n'y avoit pas  
de droict, se trouve  
avoir érigé ledit  
Tombeau à ses propres  
frais, lesquels il n'estoit  
pas raisonnable qu'il  
perdist, quoy que dans  
l'exactitude du Droict, il  
ne se trovast aucun  
remede pour luy, sinon  
qu'il perdist tous les  
frais faits en un héritage  
ou il s'estoit intrus sans  
cause.

[c] C'est pourquoi il  
falloit en ce cas avoir  
recours au Prince, ou au  
Souverain Pontife pour

To. 1 de Testam c. nu.  
1<sup>19</sup> But of course, save  
for the respect of a great  
man and for those  
authors whom he cites,  
la loy Haered. ff<sup>20</sup> which  
is the 5 de Petit. Haered.  
ff do not say anything  
about other bequests for  
charitable purposes,  
apart from the building  
or erection of the tomb  
of the deceased where it  
says that he who  
thought he was the heir,  
and who has been  
obliged to give up the  
inheritance to somebody  
else, because he was  
not entitled to it, finds  
that he has erected the  
said tomb at his own  
expense, when it was  
not reasonable that he  
should suffer loss,  
although according to  
the strict terms of the  
Law, there was no  
remedy available to him  
only that he would have  
lost all the money he  
had put out on an  
inheritance into which he  
had entered without  
cause.

[c] That is why in this  
case he would have had  
to appeal to the Prince,  
or to the Pope, to be

<sup>19</sup> [g hoc facere quem dicit singulari Arct in C. ui olim de testib et Roman cons 69 Regia] Book 7 title 10 part 5 [Couar.] tome 1 on the subject of wills chapter number 1.

<sup>20</sup> [the law of inheritance, which is the fifth, concerning claims of heirship and the passages which follow.](#)

*le faire rembourser de ses frais. D'où on pourroit inférer avec beaucoup plus de raison, que là où le Droit Civil a pourveu de remède, en ce cas-là le Souverain Pontife n'a nulle Jurisdiction: or est-il certain que le Droit Civil a pourveu en plusieurs endroits pour l'exécution des legs ad pias causas comme il se doit par les Loix sus-alleguées: Et partant il s'ensuyt que le Pontife ne s'en peut entremettre en tous ces cas là; sinon en cas que le Magistrat Civil auroit négligé. Mais pour le cas spécifié par ladite Loy Haereditas il appartenoit au Pontife Max: comme partie du Droit Pontifical: parce que les Droicts Sepulchraux en estoient anciennement: mais le Jus Pontificium faisoit partie du Droit Civil prins en sa latitude, ou du moins luy estoit soumis: car il y a encore dans les excerpta du Digeste; plusieurs particuliers qui en sont; lesquels sont de la cognoissance du Juge Civil parce-que le Pontife estoit subject, premièrement à la*

reimbursed. From which one could infer correctly and with very good reason that where Civil Law has provided a remedy, the Pope has no jurisdiction. Now it is true that Civil Law has provided in several instances for the execution of charitable bequests as it ought to by the laws above cited. And furthermore it follows that the Pope cannot mediate in all those cases; apart from the case where the Civil Magistrate has been neglectful. But for the case specified by the said Inheritance Law, it belongs to the chief priest: as part of the Pontifical Law, because in olden times Death Duties did so belong: but the Papal Law was part of the Civil Law exercised within its framework, or at least was subject to it: because there are still in the excerpts from the Digest several procedures which come under the jurisdiction of the Civil Judge, because the Pope was subject first to the Republic and after that to the Emperor; not even remotely did he have

*Republique & apprez  
cela à l'Empereur; tant  
s'en faut qu'il eust  
Jurisdiction distincte de  
la sienne.*

jurisdiction distinct from  
his.

*[d] Quant à l'Insinuation  
des Testaments, les  
Canonistes distinguent  
en ceste sorte ou bien le  
Testam. Est fait ad piam  
causam, ou il ne l'est  
pas: s'il ne l'est pas,  
alors il y a 2 opinions;  
l'une que ledit  
Testament peut estre  
insinué devant le Juge  
Ecclésiastique, si les  
Exécuteurs veulent,  
mais non de necessitate  
Juris. L'autre qu'il ne  
peut estre Insinué  
ailleurs que devant le  
Juge Civil, quand  
mesme le légataire  
seroit Ecclésiastique; Et  
Couarr. au lieu pré-  
allegué se joint à ceste  
opinion, comme à la  
plus commune, &  
raisonnable, & allègue  
plusieurs Autheurs,  
outré La Glo. in c. fi de  
fide Instrum. Verbo.  
Episcopo. Laquelle  
opinion est soustenuë  
en Espagne (comme il  
témoigne) par les  
Constitutions Royales:  
comme aussy elle l'est  
en France par l'usage*

[d] As for the filing of  
wills, the canonists make  
the following distinctions.  
Either the will is made  
for charitable purposes  
or it is not. If it is not,  
then there are two  
opinions; firstly, that the  
said will can be filed  
before the Ecclesiastical  
Judge, if the executors  
so wish, but this is not  
compulsory by law. The  
other, that it can only be  
filed before the Civil  
Judge, even when the  
legatee is an  
Ecclesiastic. And  
Couarr. in the afore-  
mentioned place agrees  
with this opinion, as  
being the most universal  
and reasonable, and  
invokes several authors,  
in addition to La Glo. in  
c. fi de fide Instrum.  
Verbo. Episcop<sup>21</sup>. Which  
opinion is supported in  
Spain (as he testifies) by  
the Royal Constitutions;  
as it is also in France by  
ordinary usage,  
confirmed by the great  
Jurist *Guil Bened* in c.  
*Raynut verbo & uxori[m]*

<sup>21</sup> [La Glose in the chapter about credit, chattels, \[verbo\], the bishop.](#)

ordinaire, avoué par ce  
Grand Jurisconsulte  
Guil Bened. in c. Raynut  
verbo et uxori de  
Testam. 420. (400).  
Si le Testament a esté  
fait ad piam causam,  
c'est à dire, s'il a esté  
purement ou  
principalement fait pour  
quelque considération  
pieuse ou charitable,  
alors l'Insinuation en  
doibt estre faite devant  
le Juge Ecclésiastique  
par le Droict Canon.  
Mais par le Droict Civil,  
il n'en est pas ainsy; Car  
soit que les Testaments  
soient ad pias causas,  
ou qu'ils ne les soient  
pas, de Droict ils doivent  
estre insinuez coram  
Magistro Censûs; Et il  
est deffendu aux  
Ecclésiastiques de s'en  
mesler, en peine de  
cinquante livres d'or,  
absurdum est enim  
Clericis, immo etiam  
opprobriosum, si peritos  
se velint ostendere  
disceptationum esse  
forensium 1. Repetita.  
C. de Episc. & Cler.

[e] Et c'est ce qui a fait  
dire à Guido (ou Guyon)  
Pape, Decis 325. que le  
Juge ordinaire est le

de Testam. 420 (400).<sup>22</sup>  
If the will has been made  
for charitable purposes,  
that is to say, if it has  
been purely or  
principally made for  
some religious or  
charitable consideration,  
then it should be filed  
before the Ecclesiastical  
Judge according to  
Canon Law. But, under  
Civil Law, it is not like  
this, because if the wills  
are made for charitable  
purposes or if they are  
not, by law they should  
be filed in the presence  
of the *Magistro  
Census*<sup>23</sup>. And  
Ecclesiastics are  
forbidden to intermeddle,  
on pain of fifty pounds in  
gold, for it is absurd for  
the clergy, or rather an  
abuse of their role, to  
wish to put themselves  
forward as skilled at  
resolving forensic  
disputes 1. *Repetita. C.  
de Episc. & Cler.*<sup>24</sup>

[e] And this is what was  
brought *Guido (or  
Guyon) Pape* to say,  
*Deus 325*; that the

<sup>22</sup> Guil Bened in c. Raynut [verbo] & [uxor[im]] on the subject of wills. 420 (400)

<sup>23</sup> Master of the Register.

<sup>24</sup> [1. *Repetita.*] Chapter on the bishop and the clergy.

*seul compétent en cela,  
& quod si talis Insinuatio  
fieret per Episcopum  
non Valeret. Si cela ne  
satisfait le Lecteur, il n'a  
qu'à parcourir la Concl.  
109 du Card. Tuschus,  
à la lettre T où il verra  
que la publication des  
Testaments se fait  
aujourd'hui devant le  
Praeteur ou Podestat  
sans aucune distinction  
de la cause; si  
qu'apprez cela habent  
executionem paratam;  
autrement non; & il  
allègue Aegid. Bellam.  
cons. 1. nu. 26. & Cons.  
45 n. 4 v in nro, & Bald.  
Cons 52 Interdum  
petantur, lib 4 Signo vol.  
cons. 66. Mesme il  
semble que par les  
ordonnances Royaux,  
l'Insinuation des  
Testaments ne soit pas  
nécessaire en France:  
Car Ranchin tesmoigne  
que par les lesdites  
ordonnances il n'est  
nullement besoing  
d'insinuer une donation  
faite à cause de mort,  
en son Apostille sur la  
Decis. 610 de Guido; &  
Mathieu sur la mesme  
Decis. dit que par  
l'ordonnance de Hen. 2  
il n'est pas besoing*

ordinary Judge is the  
only one competent in  
that, and if such a  
registration were  
effected through the  
medium of a Bishop, it  
would not be valid. If that  
does not satisfy the  
reader, he should read  
*Concl. 109 du Card.  
Tuschus*<sup>25</sup>, at letter T  
where he will see that  
publication of wills is  
done nowadays before  
the Magistrates or  
Judges regardless of the  
cause; and that  
afterwards they are  
ready for execution;  
otherwise not; and he  
argues that *Aegid.  
Bellam cons. 1. nu. 26.  
& Cons. 45 n. 4 v in nro,  
& Bald. Cons 52  
Interdum petantur, lib 4  
Signo vols. cons. 66*<sup>26</sup>. It  
seems that even by  
Royal orders, the filing of  
wills is not necessary in  
France. Indeed, Ranchin  
testifies that by the said  
orders there is no need  
to file a gift made in  
contemplation of death,  
in his *Apostille sur la  
Decis. 610 de Guido*<sup>27</sup>;  
and Mathieu on the  
same Decis says that by  
order of Hen. 2, there is  
no need to insert either a

<sup>25</sup> Conclusion 109 of Card. Tuschus, at letter T.

<sup>26</sup> [Aegid Bellam] ordinance 1 number 26 and ordinance 46 number 4 [v in nro] and [Bald.] ordinance number 52 are sometimes invoked – book 4 [Signo vol.] ordinance 66.

<sup>27</sup> Apostil on the Decis 610 of Guido.

*d'insinuer ny Donation à cause de mort, ny legs Testamentaire; quia legatum est Donatio causa mortis. § Legatum Instit.*

gift made because of death or testamentary legacy; because a gift made in contemplation of death is a legacy. A legacy according to the law.

*[f] De sorte que la Coustume d'Angleterre, par laquelle tous Testaments sans aucune Distinction sont insinuez devant le Juge Ecclésiastique se trouvera fort solitaire, si on la compare aux autres pays de la Christienté. Ce qui n'est pas pourtant grand merveille; parce que chasque pays a dans ses Coutumes quelque chose de particulier, qui peut avoir esté introduit du commencement pour quelque cause bien juste et raisonnable; comme celle d'Angleterre le fut; pour protéger les Successeurs, sous l'ombre de l'Eglise qui estoit puissante, contre les violences & extorsions des Seigneurs Féodaux, lesquels dans le commencement de la succession des Roys Normands, s'emparoiert ordinairement de tous*

[f] By reason of which English Customary Law, by which all wills without exception are filed before the Ecclesiastical Judge, will be all alone, if one compares it to other Christian countries. Which however is not a great surprise; because each country has in its customary laws something peculiar to it, which could have been introduced at the beginning for some perfectly correct and reasonable purpose. As that of England was; to protect successors, under the shadow of the Church, which was powerful, against the violence and extortions of the feudal Seigneurs, who at the beginning of the succession of the Norman Kings, normally took possession of all the movables of their vassals who died without direct heirs; and also to give effect to charitable

*les meubles de leurs  
 Vassaux mourants sans  
 hoirs de leur chaire: &  
 aussy pour assurer les  
 Legs pieux, lesquels se  
 faisoient  
 coustumièrement par  
 ces personnes-là:  
 comme vous pouvez  
 remarquer par la lecture  
 du chap. Statutum, de  
 Testam. au Provincial  
 Lind. in c. Item quia eod  
 Tit. § Insinuationem, en  
 parle fort ingénument  
 Haec (inquit) Publicatio  
 de Consuetudine  
 Angliae pertinet ad Jud.  
 Ecclesiticum; sicut patet  
 in Constit. Otto. boni,  
 Libertatem secus tamen  
 est de Jure comuni, ut  
 patet C. de Testam. l.  
 Consulta Divalia, &  
 Testamenta, cum. Ibi  
 notatis, & C. de Episc. &  
 Cler. l. Repetita. nec  
 obstat c nos quidem, &  
 si haeredes & c tua Extr.  
 eod in quibus videtur  
 talia spectare ad  
 Episcopum; quia  
 loquuntur in actu  
 executionis ultimae  
 voluntatis, non autem  
 Insinuationis sive  
 Publicationis  
 Testamenti, ut ibi patet.  
 Et sic stat l. nulli C. de  
 Episc. & Cler.*

bequests, which were  
 customarily done by  
 those persons; as you  
 can see by the reading  
 of *chap. Statutum de  
 Testam. Au Provincial  
 Lind. In c. Item quia eod  
 Tit. Insinuationem*<sup>28</sup> one  
 is speaking most  
 ingeniously. This  
 publication, he says,  
 under the English  
 custom is the province of  
 an Ecclesiastical Judge;  
 just as is made clear in  
 the Ordinance of *Otto-  
 boni* on Freedom. It is  
 different however under  
 the common law as is  
 made clear in the *C. de  
 Testam l. Consulta  
 Divalia, & Testamenta,  
 cum. Ibi notatis, & C. de  
 Episc. & Cler. l.  
 Repetita*<sup>29</sup>. Nor is it a  
 stumbling-block for us  
 indeed, and for [s] heirs,  
 and for your *Extr. eod* in  
 which it seems that such  
 matters appertain to the  
 Bishop; because they  
 are talking in relation to  
 the act of execution of  
 the [deceased's] last  
 wishes, but not in  
 relation to the  
 registration or  
 publication of the  
 testamentary document,  
 as is made clear therein.  
 And thus *stat. l nulli C.*

<sup>28</sup> The chapter on [Statutum] about the subject of wills [au Provincial Lind. in c.]

<sup>29</sup> Chapter on wills of the book 'Divine Decrees' and the book 'Wills', with the notes thereon, and the chapter on Bishops and the Clergy. [1 Repetita]

*de Episc. Cler.*<sup>30</sup>

[g] *Et pour monstrer que cela ne luy est pas eschappé par inadvertence, voicy encore qu'il dit, au chap. suyvant § ad quos pertinet. Sivee Decedens sit Clericus sive Laicus, quicquid sit a parte Juris Comunis faciendum, videmus a parte consuetudinis talium Testamenta per Metropolitana Insinuari. Et au § suyant; Haec approbatio pertinet ad Jud. competentem; licet de Jure Civili ad hanc approbationem faciendam Judex Competens sit in sua Jurisdictione Judex Laicus, de consuetudine, in Anglia haec approbatio pertinet ad Judices Ecclesiasticos Episcopos. viz & eorum officiales: pro qua consuetudine facit c. tua nob. Extr. Eod. Tit. & sic notatur consuetudo per Hostien. de fide Instr. c. si Instrumenta glo. 1. ubi plene videre poteris materiam publicationis & Insinuationis Testamentorum. Et ibi dicit Host. in vers.*

[g] And to show that this has not accidentally escaped him, here again is what he said, in the following chapter to whom it concerns. Whether the deceased be a clerical or a lay person, whatever has to be done from the standpoint of the common law, we see that as a matter of custom the testamentary documents of such persons are registered through the medium of a Bishop of a metropolitan church. And in the following section this granting of approval is the province of a competent Judge. Although under Civil Law the Judge competent to grant approval is a lay judge acting in his own jurisdiction, according to custom in England this granting of approval is the province of the Ecclesiastical Judges, namely the bishops and their officials *pro qua consuetudine facit c tua nob Extr eod Tit.* And this is the custom that is noted by *Hostien de fide Instr. C. si Instrumenta*

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<sup>30</sup> [Stat 1 nulli] the chapter on bishops and the clergy.

*coram ordinario, posse dici quod in possessionibus Ecclesiasticis talis Insinuatio pertinet ad Judices Ecclesiasticos,, sed in possessionibus Temporalibus pertinet ad Jud. Seculares. Et toutes fois mesme par la Coustume d'Angleterre, les Testaments où il se trouvoit aliquid Feodi Laicalis Legatum, quelque legs purement Laïque pouroient estre insinuez devant le Juge Séculier, selon le Texte au Chap. Statutum pré-allegué & ibi Lmd.*

*[h] Voilà comme les Canons de nostre Doyenné ne subvertissent pas seulement nos Coustumes, ny ne contrarient pas seulement au Droict Escript pratiqué presque par toute l'Europe, mais ils avancent notablement par delà*

*glo.*<sup>31</sup> where you will be able to see a full account of publication and registration of wills. And there Hostien says *in vers. coram ordinario* it can be said that in relation to possessions belonging to the Church, such registration is the province of Ecclesiastical Judges but in relation to temporal possessions it is the province of the secular Judges. However, even by the customary law of England, wills where one found some legacy of *Feodi Laicalis* a few purely secular legacies could be filed before the secular Judge, according to the text in the chapter on ordinances cited above, and there *Lmd.*

[h] That is how the Canons of our Dean overthrow not only our customs, and upset not only the written law practised by nearly the whole of Europe, but they advance significantly here and there beyond the *Decretales* and they outdo the customary law

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<sup>31</sup> Hostein in his work concerning credit and chattels [C si] chattels [glo 1]

*les Décrétales, & ils  
enchérissent par dessus  
la Coustume  
d'Angleterre qui est la  
plus contraire au Droict  
Commun en ce point.  
De quoy il ne faut par  
s'estonner; Vue que ny  
le Doyen d'alors ny  
aucun de ceux qui  
l'assistant à compiler  
lesdits Canons,  
n'entendoient rien en  
nos Loix comme estants  
tous estrangers. Mais si  
quelcun des enfants du  
Pays, qui ne doivent pas  
avoir leur Patrimoine si  
cher comme les Loix de  
leur Patrie, ayant esté  
deuement informés de  
ceste contrariété y  
persistoit avec  
opiniâreté, il y auroit  
raison de prendre cela  
pour ung prodige.  
L'ancienne Coustume  
de Jersey est que les  
Testaments soient  
présentés en la Cour  
Civile (non pas 30 mais  
dans) 40 jours du decez  
du Testateur; Afin que  
s'il se trouve quelcun  
qui veuille en avoir  
Copie Authentique, ou  
s'y opposer & le faire  
caster comme fait  
contre loy ou usage, il le  
puisse faire dans an &  
jour; & que par ce  
moyen la validité ou  
invalidité dudit*

of England, which is the most contrary to the *Droit Commun* on this point. At which we must not be surprised. In view of the fact that neither the Dean nor those who assisted him to compile the said Canons, understood anything of our laws, as they were all foreigners. But if one of the natives of the country, who must not hold their patrimony as dear as the laws of their country, having been duly informed of this constraint and having persisted with tenacity, there would be reason to take that for a real feat. The old custom of Jersey is that wills are presented in the Civil Court within (not 30, but) 40 days from the death of the Testator. So that if anybody wants to have an authentic copy, or to oppose the will and break it because it was made contrary to law or usage, he can do so within a year and a day and by this means, the validity or invalidity of the said will is clarified. Which being within the remit of the Civil Judge, there is all the reason in the world to believe that filing and proving, falling

*Testament apparaisse; laquelle estant de la cognoissance du Juge Civil, il y a toute la raison du monde que l'Insinuation & Approbation comme connexes en soient aussy.*

into the same domain, fall equally into the remit of the Civil Judge.

*[i] Pour le Registrement ou Inventaire des biens meubles des Pupilles, les Juge Ecclesiastique n'y a que faire non plus par le Droict Civil; jusques là, que quand un Ecclesiastique seroit Légataire dans le Testament du Deffunct, il pourroit estre cité par le Juge Civil à y assister, selon Angel in l.1 § haec stipulat col. 8 in repetit. v. solum restat. ff. siquis plus quam per 1. Falcid ou à tout le moins, par le moyen de son ordinaire. Dec. Cons. 700. In causa Anth: ad. fi. v. non obstat. Cela se prouve par une infinité de Loix, & par les Escripts de presque tous les Canonistes & Jurisconsultes, qui ont amplement estallé les formes & solemnitez des Inventaires & particulièrement du*

[i] As to the registration or inventory of movable property of minors, according to Civil Law, the Ecclesiastical Judge has nothing to do with this. Only in the case where an Ecclesiastic is a legatee in the will of a deceased, can he be called by the Civil Judge to appear, according to *Angel in l.1 § haec stipulat col. 8 in repetit. V. solum restate. ff. siquis plus quam per 1. Falcid*<sup>32</sup>, by means of his *Dec. Cons 700. In causa Anth. ad fi v. non obstat*. This is proved by an enormous number of laws and by the writings of nearly all the Canonists and Jurists, who have fully established the forms and solemnities of inventories and particularly of *Specule*. And the whole of France

<sup>32</sup> Angel in book 1 [§] he stipulates these things [col.8] in [repetit. v. solum restat. ff.] if anyone more than permitted by the law of Falcidius.

*Specule. Et toute la France & les autres Pays Chrétiens en usent ainsi, aussi bien que nos Isles; où il feroit beau voir un Doyen faire proclamer quelques inventaires à la Croix et y convenir les Crédeurs héréditaires, y faire vendition de biens, et autres Actes de Sergeant de l'Espée, selon les Loix du pays. Que si on réplique que l'Inventaire du Doyen sera seulement un fidelle Registre des meubles; sans aucune solemnité, afin de les faire conserver aux Pupilles. Je responds que Frustra fit per plura quod potest fieri per pauciora. Et que l'Inventaire Légal est le plus asseuré & efficace comme celui où les meubles inutiles, superflus & perissables se vendent par Autorité de Justice, & les Crédeurs sont forcez à en prendre à un prix avantageux pour lesdits Pupilles; au quel point le Juge Ecclesiastique manque de pouvoir; car de conserver ces biens-là en espèce pour des enfants qui n'en auront peut-estre jamais affaire ou qui les trouveront*

and other Christian countries have come to the same conclusion, as well as our islands; where it is unheard of to have the Dean proclaim inventories at the altar and there to convene creditors of the estate, sell goods and perform other Acts of the *Sergeant de l'Espée*, according to the law of the country. That if one responds that the Dean's inventory is only a faithful register of property; without any other ceremony, in order to preserve the property for the minors. I reply that it is pointless for something to be done by more means, when it can be done by fewer. And that the legal inventory is the safest and most effective, as that where useless property, superfluous and perishable, is sold by authority of law, and creditors are forced to accept at a price advantageous for the said minors; at which point the Ecclesiastical Judge lacks power; for to retain these goods in kind for children who can never have any use for them and who would find them spoiled when they

*pourris ou gastez à leur enaagement, ce n'est pas pitié, mais folie.*

come of age is not piety,  
but madness.

*[j] Quant à ces Lettres d'Administration qu'on prétend donner aux héritiers Ab Intestat, cela est encore plus superflu: car ce seroit vouloir leur donner un pouvoir & ung Droict duquel ils jouissent d'avance; veu que c'est une Règle indubitable & sans aucune Exception, que par nostre Coustume, pratiquée & receue par tout le pays Coustumier comme une Loy fondamentale, l'héritier, aussi bien ad intestat que Testamentaire, est saisy actuellement & réellement de toute la Succession du Deffunct in Ipso Instanti mortis, sans aucune Sentence, Decret, Brief, Lettre d'Administration, ou autre Acte extérieur; et ce par une Maxime receue & approuvée généralement, et observée inviolablement comme un oracle que le mort saisist le Vif. En vertu de laquelle saisine légale, il a toute*

[j] As for these Letters of Administration which are claimed to be given to heirs on intestacy, that is even more superfluous. For this would be to wish to give them a power and a right which they enjoyed already. Seeing that it is an absolute rule and without any exception that by our Custom, practised and accepted by all those areas governed by Customary Law as a fundamental law, the heir, either through an intestacy or through a will, becomes seized at the very moment of death of the whole of the succession, without any decision, decree, *breve*<sup>33</sup> or letter of administration or other exterior Act; and this by a maxim accepted and generally approved, and inviolably observed as an oracle that *le mort saisist le vif*. In virtue of which legal *saisine*<sup>34</sup> he is in charge of all the administration and management of

<sup>33</sup> *Brefs* according to Houard were "permissions que le Roi accordoit pour intenter une action ou y defendre." *Dictionnaire Analytique de le Coutume de Normandie* (Paris 1780).

<sup>34</sup> Possession.

*d'administration & manement de tout ce qui se trouve en ladite succession tant meuble qu'immeuble, & peut à toutes intentions intenter les Interdits & Actions civiles réelles & possessions, avec la mesme efficace, voire beaucoup plus grande que s'il avoit esté mins en possession par Brief ou Décret de Juge; d'autant que ce qui est donné & dirigé par la Loy mesme, est plus ferme que ce qui dépend de la cognoissance du Juge, qui est incertaine. Laquelle Coustume & Maxime estant incognue aux Anglois, ou le mort ne saisit personne, en se dessaisissant de ce monde; mais est requis que l'héritier ab Intestat aye pouvoir d'administrer les biens du Deffunct, comme son proche héritier; Ce n'est pas de merveilles si en ce pays-là on pratique les Lettres d'Administration; qui chez nous destruiroyent la plus solemnelle Coustume que nous*

everything in the said succession, both moveable and immoveable and can to all intents bring the *interdits*<sup>35</sup> civil actions, real and possessory, with the same effectiveness, or even more so than if he had come into possession by *brief* or decree; all the more so since what is given and directed by the law itself is stronger than that which depends on the knowledge of the Judge which is uncertain. Which custom and maxim is unknown to the English, where *le mort ne saisit personne*, on leaving this world, but it is required that the heir on intestacy has power to administer the goods of the deceased as his closest heir. It is not surprising that in that country Letters of Administration are used, which here would destroy the most solemn custom that we have.

<sup>35</sup> In Roman law, interdicts “were probably the most important of the praetorian remedies. They were orders normally issued after a complaint by an aggrieved person, instructing a person to do or refrain from doing something....interdicts were classified in various ways, for example, as possessory and non-possessory. The latter category (much used in practice) included interdicts protecting public rights in the use of roads and highways...The possessory interdicts were very important in the development of the law of property, offering effective protection in various ways of a person’s right to possession.” A. Borkowski, *Textbook on Roman law* (London 2001) page 79.

ayons.

*[k] Venons au 29 Canon, qui parle des Dismes, & voyons jusques où elles peuvent estre de Jurisdiction Ecclésiastique. Pour vuider ce Point, nous réduirons ces questions Décimales à 3 chefs principaux; le premier, Touchant l'exemption de payer Disme; le second, Touchant les Dismes affieffées aux personnes séculières. Le Troisième, Touchant les Dismes possédées par les Recteurs ou Curez des Paroisses où elles sont deües, de quelque espèce qu'elles soient. Pour le premier Chef, C'est chose hors de question que quand un Juge Ecclesiastique moleste quelque particulier pour payment d'une Disme, pour l'exemption de la quelle il peut monstrer prescription de temps immémorial, ou usage & Coustume; en ce cas, la cause doit estre traictée devant le Juge Civil, qui peut prohiber au Juge Ecclésiastique de procéder en la cause, & s'il n'acquiesce*

[k] Let us come to Canon 29, which speaks of tithes and let us see just up to what point there can be an ecclesiastical jurisdiction. In order to examine this point, we reduce the questions relating to tithes to three principal headings; the first, concerning the exemption to pay tithes; the second concerning tithes assigned to secular persons. The third concerning tithes owned by the Rectors and Curates of the parishes where they are due, of whatever kind they are. For the first heading, it is out of the question that when an Ecclesiastical Judge harasses some private person for the payment of a tithe, for the exemption of which he can show prescription from time immemorial, or usage and custom; in this case the cause must be heard before the Civil Judge who can prohibit the Ecclesiastical Judge from proceeding with the case and if he does not comply, can force him by law. It is the fourth

*le contraindre par Droit. C'est la 4me Conclus. de Couarruias To.2 Practicar quest cap. 35 laquelle est confirmée par la Pratique d'Espagne, de Naples, de Flandres et de la France mesme comme tesmoigne Charles de Grassailles lib. 2 Regal. Francia. Or de ceste sorte d'Exemptions nous n'avons que bien peu en Jersey.*

*[I] Le second Chef nous fournira ceste 2de Conclusion qui approche de celle dudit Couarr. au lieu pré-allegué; Que lors que quelque Disme se trouve affieffée à aucune personne Laïque & dont il jouist selon les Loix ou Coustumes de l'Estat, de temps Immémorial (comme il s'en trouve assez de ceste sorte en Espagne et en France & encore plus en Angleterre (quoy que le Titre en soit bien differend des autres) lesquelles on appelle Appropriations, ou plustost Impropriations; telles que sont les Franches Dismes que le*

conclusion of *Couarrunias To. 2 Practicar quest cap 35* which is confirmed by the practice of Spain, of Naples, of Flanders and of France itself as witnesses *Charles de Grassailles lib. 2 Regal Francia*. Now, we only have very little of this kind of exemption in Jersey.

[I] The second heading provides us with this second conclusion which approaches that of the said Couarrunias, in the place already mentioned, that when some tithes are assigned to a secular person and which he enjoys according to the laws and customs of the state, from time immemorial (as exist many of this kind in Spain and in France and even more in England, although the title of them is very different from the others) which we call appropriations, or rather inappropriations; such as the free tithes which the King owns in Jersey. I say that these tithes

*Roy possède en Jersey; Je dis que la cognoissance de telles Dismes appartient au Juge Civil, parce que ce ne sont plus choses spirituelles, ny au regard de la chose, ny au regard de la personne, mais temporelles, & quant à la propriété et quant à la possession. Et ledit Couarrunias dit qu'il en a tousjours veu user ainsy en la Cour souveraine de Grenade, où il estoit Juge; & pour le Royaume de France il allègue Charles du Molin, ni Consuetud Paris. Tit. 1. Rubric p.46 q.4. Jean Imbert – Instit Forens. Lit. 1 .25. Et selon ceste Règle, nous voyons que les Dismes Impropriées se demandent & décident en Angleterre devant les Juges ordinaires, par Actions – qu'ils appellent of Common Lawe. Et je n'ay jamais appris que la Cour Ecclésiastique s'en soit meslée: Et ces Dismes-là passent de l'un à l'autre par contracts & par loye de Succession comme patrimoine temporel. De ceste mesme espèce sont les Dismes de la Paroisse de St. Sauveur,*

come under the jurisdiction of the Civil Judge, because these are no longer spiritual things, neither with regard to the thing nor with regard to the person, but temporal, both as to the ownership and as to possession. And the said Couarrunias says that he has always seen them treated as such in the Sovereign Court of Grenada, where he was Judge. And for the kingdom of France he cites *Charles du Molin, ni Consuetud Paris. Tit. 1 Rubric p. 46 q. 4. Jean Imbert – Instit Forens. Lit. 1. 25.* And according to this rule, we see which inappropriate tithes are asked for and decided in England before ordinary Judges, by actions – what they call of Common Law. And I have never learned that the Ecclesiastic Court interfered in this. And these tithes pass from one to the other by contracts and by law of succession as temporal patrimony. Of this same kind are the tithes of the parish of St. Saviour, which have been awarded to the Dean by

*lesquelles ont esté affieffées au Doyen par la bonté du Roy, par voye de Provision ou Salaire: Je dis que ces Dismes-là demeurent toujours Impropriées comme au précédent; parce qu'encore qu'elles soient à présent possédées par un homme d'Eglise, elles ne le sont pas comme Dismes; car quelles Dismes peut un Doyen demander en vertu de sa charge? Veu que les Dismes se payent non pas pour une Jurisdiction, mais pour les fonctions Pastorales or si SM avoit restauré ces Dismes-là au Bénéfice de St. Sauveur pour estre recueillies & possédées par le Recteur comme d'ancienneté & comme elles le doivent estre selon leur primitive Institution & du Droict soit positif soit Dicem; en ce cas je dirois qu'elles auroient esté restituées à l'Eglise, et je les placerois sous le troisième Chef: Car puisque les Dismes sont un Droict qui se paye en choses temporelles à celui qui administre les spirituelles par ceux à qui elles sont*

the generosity of the King, by means of provision or salary. I say that these tithes still remain as inappropriated as those before-mentioned; because although they are at present possessed by a man of the church, they are not so possessed as tithes; for what tithes can a Dean ask for by virtue of his office? Seeing that tithes are paid not for a jurisdiction, but for pastoral functions, then if His Majesty had restored these tithes for the benefit of St. Saviour to be gathered and owned by the Rector as in time past and as they ought to be according to their initial institution and by law be it positive or *Dicem*. In this case I say that they would have been restored to the Church and I would place them under the third heading: for since tithes are a right which is paid in temporal things to he who administers spiritual matters by those to whom they are administered and thus that they are parochial rights, it follows that nobody can receive them as such, other than he to whom those rights

*administrées & par ainsy que ce sont Jura Parochiale, Droicts Parochiaux, il s'ensuyt que personne ne les peut percevoir comme tels, sinon celuy à qui ces Droicts la appartiennent: Et je dis encore davantage, que quand mesme le Doyen seroit Recteur de St Sauveur, ces dismes-là n'en seroient pas moins Impropriées; parce-qu'il ne les recevroit pas comme Recteur mais comme Doyen. Et partant puis qu'elles n'ont pas changé de nature, il ne les peut demander à sa propre Cour; mais la cognoissance en appartient, comme devant, à la Cour Civile.*

*[m] Pour la troisieme espèce de Dismes, ascavoir celles qui sont en la possession des Recteurs ou Curez des Paroisses on distingue entre le Pétitoire, c'est-à-dire, la Propriété ou le Titre et le Possessoire; & alors, si nous nous en rapportons à quelques rigides Canonistes, c'est au Juge Ecclésiastique à cognoistre de l'un & de l'autre. Mais si nous*

belong: and I say further, that even if the Dean were the Rector of St. Saviour, those tithes would not be less inappropriate; because he would not receive them as Rector but as Dean. And consequently because they have not changed in nature, he cannot demand them from his own Court; but the cognizance belongs, as before, to the Civil Court.

[m] For the third kind of tithe, that is to say those in the possession of the Rectors or Curates of the parishes, one distinguishes between the *pétitoire*, that is to say the ownership or title, and the *possessoire*. And then, if we recall what certain rigid Canonists say about this, it is up to the Ecclesiastic Judge to know both. But if we

nous arrestons à la pratique de France, nous trouverons que quand il s'agit principalement du Possessoire, et du Pétitoire seulement obiter par voy d'Incident, la cognoissance en appartient au Juge Royal; parce-que cela se vuide et détermine par voye d'Interdict Possessoire, lequel regarde la manutention de la paix & tranquillité publique; & par conséquent n'appartient qu'à ceux qui portent l'Autorité du Prince, lequel en est Souverain Arbitre & modérateur, & auquel seul appartient de punir ceux qui l'auront violée. Voyez Guido Pape Decis 1 85 & 207 & les Apostilles de Du Ferrier & de Ranchin sur la 1 & 5 Decis. & encore plus au long sur la 81. Bened in c. Raynut in verb. & uxorem in 2. Decis. nu 39 Boer. quaest. 69. Outre ceux qui son alléguez par le dit Guid & par les Apostilleurs. Voilà comme le seul Pétitoire, Titre ou Propriété des Dismes possédées par les Curez des Paroisses est

stop at the practice in France, we find that where possession is principally concerned, and of title only incidentally, the cognisance belongs to the Royal Judge; because that is determined by means of an *Interdict Possessoire*<sup>36</sup>, which concerns the maintenance of peace and public tranquillity; and thus belongs only to those who carry the authority of the Prince, who is the sovereign arbiter and moderator, and to whom alone belongs the right to punish those who have violated it. See *Guido Pape Decis 1 85 & 207 & les Apostilles de Du Ferrier & de Ranchin on the 1 and 5 Decis* and again at greater length on 81. *Bened in c. Raynut. in. verb. and uxorem. in. 2 Decis nu 39 Boer. quaest. 69.* in addition to those who are cited by the said Guid and by the Commentators. That is how the sole title or ownership of the tithes possessed by the Curates of the parishes has remained with the

<sup>36</sup> Possessory interdiction: an injunction as to possession.

resté au Juge d'Eglise.  
Et partant le feu doyen  
eut beaucoup de raison  
de s'attribuer la  
cognoissance  
seulement des Dismes  
affectées à l'Eglise (il  
falloit dire appartenants  
et non pas affectées car  
elles n'y sont pas  
affectées, mais de  
Droict & d'origine) & en  
la possession des  
Pasteurs & dont ils ont  
jouy depuis 40 ans.  
limitations qui ne luy  
laissent pas grand  
chose, quand le point du  
Possessoire aura esté  
vidé par la Cour Civile:  
car le seul point de  
Propriété luy demeure,  
de celles qui sont  
présentement en la  
possession des Pasteurs  
au Droict de leurs  
Bénéfices, dont ils ont  
jouy par & puis 40 ans;  
(je croy qu'il l'entend  
ainsy quand il dit depuis  
40 ans, veu qu'il n'y a  
point de possession au  
dessoubs de la  
quadragénaire qui  
puisse donner Titre en  
Pétitoire & par  
conséquent qui puisse  
estre de sa  
cognoissance;  
autrement ce seroit une  
Cause possessoire, qui  
appartiendroit à la Cour  
Civile). Et par ces

Judge of the Church.  
And consequently, the  
late Dean had much  
reason to attribute to  
himself the cognisance  
only of tithes awarded to  
the Church (one should  
say belonging to and not  
awarded to, because  
they are not awarded,  
but of right and origin)  
and in the possession of  
the Pastors and which  
they have enjoyed for 40  
years. Limitations which  
do not leave him much,  
when the point of  
possession has been  
decided by the Civil  
Court; for the only point  
of ownership remaining  
to him, of those which  
are presently in the  
possession of the  
pastors in right of their  
benefits, which they  
have enjoyed for and  
since 40 years; (I think  
he means it thus, when  
he says since 40 years,  
seeing that there is no  
possession beyond 40  
years which can give  
title and as a result  
which can be of his  
cognisance. Otherwise  
this would be an action  
for possession which  
would belong to the Civil  
Court). And by these  
same limitations the  
above mentioned tithes  
of St. Saviour are

*mesmes limitations les susdites Dismes de St. Sauveur sont exclues de la Jurisdiction & appartiennent à la Cour Civile, tant en Pétitoire qu'en possessoire. Car premièrement elles ne sont point affectées à l'Eglise mais à une office Ecclésiastique, ny en qualité de Dismes, mais plustost de Salaire, qui pouvoit avoir esté tiré de quelque autre Revenu d'import en la possession de S.M. Secondement elles ne sont point en la possession du Pasteur de St. Sauveur, mais du Doyen. En troisième lieu, elles n'ont point esté possédées par les Doyens par et puis 40 ans sans interruption, & quand elles l'auroient esté par une Inscription commencée & consommée depuis la Dapte de ces Canons (qui est du dernier jour de Juin, l'an 21 du Règne du Roy Jaques) cela ne serviroit de rien. Car le Canon ne parle point d'une Inscription à venir, ny d'une possession future, mais d'une Inscription já accomplie & d'une possession qui avoit já esté continuée par 40*

excluded from his jurisdiction and belong to the Civil Court, both with regard to ownership and as to possession. For firstly they are not allocated to the Church but to an ecclesiastical office, not as tithes, but rather as salary, which could have been drawn from some other important revenue in the possession of His Majesty. Secondly, they are not in the possession of the Pastor of St. Saviour, but of the Dean. In the third place, they have not been possessed by the Deans for and since 40 years without interruption, and when they will have been started by a registration and completed since the date of these Canons (which is the last day of June, in the 21<sup>st</sup> year of the reign of King James) that would not make any difference. Because the Canon does not talk about a registration to come, nor of a future possession, but of a registration already accomplished and of a possession which had already continued for 40 years. Which cannot apply to the tithes which

*ans; Ce qui ne peut  
convenir aux Dismes  
que le Roy affectoit pour  
lors au Doyenné, & dont  
il n'avoit encore jouy ny  
possédé en aucune  
façon; & finalement dont  
la propriété n'est pas  
fondée sur la Prescripte  
quadragénaire; mais sur  
le Titre de Donation  
Royale.*

the King allocated to the  
Dean and which he had  
neither enjoyed nor  
possessed in any way;  
and finally the ownership  
of which is not founded  
on the forty year  
prescription; but on the  
title of Royal gift.

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