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THE CUSTOMARY LAW IN RELATION TO THE FORESHORE (1)

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INTRODUCTION

1 Title to the Jersey foreshore was not an issue of public concern for much of the twentieth century. Most people considered the beaches to be part of the public domain. From 1986 however, until it was settled in 2003, the claim of Les Pas Holdings Limited to a private title in a significant part of the St. Helier seafront, excited more than a passing interest. There was much comment in the media and elsewhere on what is a complex and interesting subject, the roots of which extend to the origins of the customary law of Jersey and other jurisdictions which share a Norman inheritance. This article will discuss some, but not all, of the law and custom relating to the foreshore.

2 The article is in two sections. In the first we offer preliminary observations on Norman Custom, the feudal system and feudal jurisdiction all of which we consider to have been the same in Jersey as in continental Normandy. We identify and analyse selected passages from the texts of the Custom and some but not all of its Commentators. We examine the etymology of certain significant words, for example, *estrandes* and *gravage*. We then concentrate our focus on the foreshore *régime* in continental Normandy from the earliest period. The evidence will show that notwithstanding the Revolution of 1789, which *inter alia* brought about the abolition of the feudal system, private titles continued to exist in the foreshores of the Bay of Mont St. Michel far into the nineteenth century.

3 The second and concluding part of this article will focus more particularly on law in Jersey as affected by England and the English Crown. The exercise will include examination of the thirteenth and fourteenth century *Quo Warranto* Rolls, the *Extentes* of the Crown estate in the Island, the Royal Charters, a series of Royal Patents, feudal court rolls, judgments and other records against the background of legislative change in the nineteenth and twentieth centuries. Our review of fief records will concern, although not exclusively, the fiefs of Samarès and La Fosse. We shall certainly leave a host of matters untouched for future research and publication.

PRELIMINARY OBSERVATIONS

Les Iles du Cotentin
Norman Custom and Feudalism

4 "*Les Iles du Cotentin*" or more simply "*Les Iles*", is how the Channel Islands have for centuries been known to their immediate neighbours. The name recognises an intimate connection that is central to our argument. The geography is compelling. The Islands sit in the Bay of Mont St. Michel. On a good day from the ramparts of Mont Orgeuil one can see the spires of Coutances Cathedral. The Norman coast is clear: north towards Le Cap

de la Hague and south towards Granville. From Carteret, Jersey dominates the western horizon.

5 The ties which bound the Islands to continental Normandy in the Middle Ages were however more than geographical.[1] With minor differences the people were the same. They spoke the same tongue and bore the same family names. They traded with the same currency and shared the same Customary Law. The Bishop of Coutances provided spiritual governance in a diocese which included the Cotentin peninsula and the Islands. The churches and chapels of Jersey were dependencies of the great Norman monastic houses which also owned many of the larger landed estates. Many aristocratic families in the Cotentin had land in the Islands dependant from their larger continental fiefs. The Duke himself retained great swathes of the Islands as Ancient Domain.

6 After 1204, when John lost continental Normandy to King Philippe Auguste of France but retained the Islands, all the fiefs would henceforth be held from the English Crown in right of the ducal title. The monastic lands and priories, however, were kept by their mother houses in Normandy for another two centuries while diocesan rule from Coutances continued until the Reformation. Despite their political separation the law of the Islands remained the Customary Law of Normandy.[2]

7 It is that same Custom which for centuries governed the rights and privileges enjoyed by the seigneur of the maritime fief and in particular their exercise over the foreshore. We shall therefore have regard throughout to this maxim -

"La Coûtume est la plus forte, la meilleure de toutes les lois, car elle est l'expression des besoins d'un peuple. Son nom indique des usages auxquels une pratique continue a, par la succession des temps, donné force de loi."

["Custom is the strongest, the best of all laws, because it is the expression of the needs of a people. Its name indicates the usages to which constant practice over time has given the force of law."] [3]

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[1] Wace, the Jersey born twelfth century Norman poet says in his *Roman de Rou* III 5302-5308
"*jo di et dirai que jo sui/Wace de l'isle de Gersui/qui est en mer vers occident/al fieu de Normandie apent,"*
[I am Wace from the Isle of Jersey, which is in the sea towards the west and belongs to the territory of Normandy …."]. Wace, The *Roman de Rou*, Glyn Burgess and others (Jersey 2002) III, lines 5302-5308.
Elsewhere (*ibid* III lines 2771-74) Wace says:
"*Gersui est pres de Costentin/la u Normandie prent fin/en mer est pres devers occident ….".* [Jersey is close to the Cotentin, where Normandy comes to an end in the sea towards the west …."].

[2] Le Patourel, *Feudal Empires, The Origins of the Channel Islands Legal System*, (Hambleton Press, 1984) II page 203. "Basically then, the Medieval Law of the Channel Islands was the Customary Law of Normandy, which found its fullest expression in the *Grand Coûtumier* of the mid-Thirteenth Century … The general position is put most clearly in …. a statement made on behalf of the Islanders before the Court of King's Bench in 1333.
"To our Lord the King and to his Council show …. The community of the Islands of Guernsey and Jersey, that whereas the Islands are, from of old, a parcel of the Duchy of Normandy, and in such manner hold of our Lord the King as Duke, and in the said islands they hold and use and have always used the Custom of Normandy which is called the Summa of Maukael …."
….the *Grand Coûtumier* is thought to have been composed in the Cotentin and to represent, particularly, the Custom of that part of Normandy …. Since there are several other references to it in Channel Island records of the early Fourteenth Century, it may be that the Law of the Islands was as near to the central tradition of Norman Law as it could well be."

[3] Le Gros, *Traité du Droit Coûtumier de l'Ile de Jersey*, (Jersey 2007), page 456.

8 In England, Norman feudalism was planted on a conquered land. In the years following the Conquest all land would be held from William and his successor Kings. In contrast, whatever may have been true of continental Normandy, the men of the Isles did not consider themselves to be a conquered people. The significance of this will be addressed when we consider the doctrines of lost grant and *prima facie* Crown title to the foreshore in the Jersey context.[4]

9 In Normandy, the feudal hierarchy was perhaps less clear. Rollo the first duke wrested upper Normandy from the French King Charles the Simple in 911 and the terms of settlement reflected that fact. The treaty of St Clair sur Epte, according to tradition, divided the "*Regnum*" between King and Duke.[5] The land of Normandy would be held not in fee but "*quasi fundum et allodium*" — in absolute ownership. The French King accordingly retained no domain in what would become the Norman duchy.

10 The same source (Dudo) has it that Rollo did not grant land to his followers but rather shared it with them. "He measured out land for his counts by word of mouth, and to enrich his followers... He divided the land among his followers by measure".[6]

11 The Cotentin and possibly also the Islands, were in 933 incorporated into the duchy by Rollo's son, William Longsword. There was no royal domain in these lands. William held by conquest in his own right.[7] The King of France thus exercised little more than a nominal suzerainty over Normandy in the period from 911 to 1204[8] when Philippe Auguste took the Duchy from King John. The domaine of the French Kings in Normandy after 1204 would accordingly be limited to that of the Norman dukes whose title they now held. Indeed, as we shall see below, that position would be confirmed by the King himself in the grant of the *Charte aux Normands* a century later.

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[4] But the separation in 1204 was followed by conquest and re-conquest of the islands. It was only in 1218 that "the right of the Islanders to be ruled according to the customs prevailing in the reigns of King John and his predecessors is formulated by the Royal Chancery for the first time." Everard and Holt *Jersey 1204*, Thames and Hudson 2004 p79 *et seq.* See also *Rolls of Assises in the Channel Islands AD 1309* (Jersey 1903) p57 where the King's Attorney in Quo Warranto proceedings said (from the Latin) … "All the natives here should reckon their status in this land [Jersey] from the time of the Lord John of his last conquest, the time of which is contained within the time of memory…". We shall consider this issue in Part 2.

[5] Dudo of St. Quentin, *History of the Normans (Tenth Century)*, translation by Eric Christiansen (Boydell Press 1998) page 46 *et seq* and note 202. But as to "*quasi fundum et allodium*", see Reynolds, *Fiefs and Vassals, the Medieval Evidence Reinterpreted* (Oxford 1994) pagess 135-8.

[6] Dudo *op. cit*. note 217. Although Dudo's "history" perhaps lacks the rigour and objectivity demanded of the modern historian, it is submitted that Dudo was close enough to his source to give us a fair idea of how the early Normans viewed their tenures.

[7] This was certainly the view expressed by Wace. See *Roman de Rou*. Part II lines 3028 *et seq* (translation by Burgess). "Peace was discussed between Richard [grandson of Rollo] and the King, who would give him back his fief, not retaining even the tiniest part of it....He stood before the King and the King addressed him giving back and restoring to him Normandy and Brittany, and freeing him completely of any homage or service. In this way agreement was reached, and the King accepted that Richard would not offer service to the King or his heir, nor would the King or his heir seek service... The King swore what he had stated on holy relics...".
Wace, as a historian, is not to be discounted. See Matthew Bennett, "The Uses and Abuses of Wace's Roman de Rou" in *Maistre Wace, a Celebration* (*Société Jersiaise*, 2006) "….Wace's ability to combine material from a variety of sources makes him very useful indeed …. Nowadays, Wace's veracity and care with his sources are much more highly regarded by both historians and literary scholars alike."

[8] See the *Minquiers and Echrehos Case* ICJ 1953 Vol II page 38 *et seq*, page 105 *et seq* and page 314 *et seq* for this proposition; see also in the same report the French position Vol II pages 381—386, and the opinion of Judge Basdevant "sovereignty however, is not suzerainty" Judgment page 75. See also the Judgment of Judge Levi Carneiro page 85 *et seq.*

12 Normandy, according to the French legal historian Carabie, had a particularly thorough and long lasting form of feudalism.[9] The prevailing maxim was *nulle terre sans seigneur*.[10] The fief, says Besnier, a nineteenth century French historian, quoting the celebrated French jurist Charles Dumoulin (1500 - 1566), was a *concession gratuite, libre et perpétuelle* of immoveable property.[11] The seigneur (the lord) transferred to his tenant the *domaine utile* (that is, the possession and every day use) of the land. In exchange the tenant as *possesseur* recognised the *domaine direct* of the seigneur with *foi et homage*, services and certain rights owed. The seigneur, according to French jurists such as Accurse, Barthole, and Pontanus, was the true owner. It took the massive upheaval of the French Revolution in 1789 to undo the feudal system in Normandy and the rest of France and by eliminating the seigneur to leave the erstwhile feudal tenant as absolute proprietor.

13 The property in the commons or wastes of the Norman fief remained in the seigneur even though tenants could exercise certain rights in them. The position is described by Léopold Délisle in his monumental *Etudes sur la condition de la Classe Agricole et l'Etat de l'Agriculture en Normandie au Moyen Age*. In his chapter on *Prairies, Landes, Marais* [grasslands, heath, marshes][12] Délisle states-

"*On n'eût jamais dû . . . . perdre de vue les deux principes suivants, dont nous trouvons à chaque instant l'application dans la féodalité normande: assavoir, le seigneur est propriétaire tréfoncier des marais, des landes et de toutes les terres vaines et vagues, comprises dans les limites de son fief; ses hommes ont droit d'y exercer certain usages."*

[One must never lose sight of the following two principles which we find at every point applicable in Norman feudalism that is to say, the seigneur is proprietor of the soil of the marshes, heath and of all waste and vacant lands comprised within the limits of his fief; his men have right to enjoy certain activities thereon.] (emphasis added)

14 The foregoing is consistent with the opinion of the jurist Jean Poingdestre, a Jerseyman writing in the late seventeenth century. In the context of *Choses Communes*, Poingdestre writes about the property in the soil or *fonds* of the public roads[13] -

"Et certes, si le fonds appartenoit à quelqu'un autre, outre les dits bornants, il faudroit que ce fust aux Seigneurs des fiefs, qui sont Seigneurs directs de tout le fonds desdits fiefs et non au Roy, sinon sur les siens …."

[And certainly, if the soil belonged to anyone other than to those who border them, it must be to the Seigneurs of the fiefs, who are *Seigneurs directs* of all the soil of the said fiefs and not to the King unless on his own ….]

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[10] Carabie, *La Propriété Foncière dans le Très Ancien Droit Normand - la Propriété Domaniale*, (Caen, l943) pages 227-230, 244-260.
[10] [no land without a seigneur].
[11] [gratuitous grant, free and perpetual] Besnier, *Les Paysans de Basse Normandie au XVIIIème Siècle* (Paris 1892) pages 784 -787.
[12] (Paris 1903) page 102.
[13] Poingdestre, *Les Lois et Coûtumes de l'Ile de Jersey* (Jersey 1927) page 116.

15 Of *percages*, and other vacant lands Poingdestre writes[14] -

"Et pour les Perquages abandonnez et les autres terres vacantes lesquelles se trouvent sur les fiefs des Particuliers, elles deveroient appartenir aux Seigneurs desdits fiefs, comme faisants partie de la Terre dont ils ont le Domaine direct (dominium directum) et non pas au Roy".

[And as for abandoned perquages and the other vacant lands which are to be found on the fiefs of individuals, they must belong to the Seigneurs of the said fiefs as forming part of the land of which they and not the King have the superior property.]

16 Having treated with abandoned public things including roads and archery ranges, Poingdestre goes on to say[15] -

"Pour les banques et rivages de la mer, elles appartiennent à des particuliers presque partout; ou bien aux Seigneurs des fiefs sur lesquels elles sont; et le Roy peut disposer de celles qui sont vacantes sur les siens."

[As for the banks and foreshores of the sea, they belong to individuals almost everywhere, or otherwise to the Seigneurs of the fiefs on which they are situated and the King is entitled to dispose of those which are vacant on his own.]

17 Poingdestre is thus clear (and in this is consistent with Carabie, Besnier, Dumoulin and Délisle) in maintaining that the soil of the fief belonged to the Seigneur. He had direct dominion over it and, subject only to the rights, if any, of his tenants, power of disposal. The King's right in the soil (including the power to dispose of vacant land) was limited to those fiefs of which he was himself seigneur.

18 The most detailed analysis of Jersey's experience of feudalism is to be found in GFB De Gruchy's *Medieval Land Tenures in Jersey*.[16] According to his reviewer Professor John Le Patourel FBA, and one of the leading medievalists of his day,[17] De Gruchy's work, albeit that of an amateur historian, should not be underestimated. De Gruchy was himself Seigneur of the Fief de Noirmont and deeply interested in the history of his own fief and the procedure of its court.[18] More generally, De Gruchy's analysis of medieval records presents a thoroughly feudal picture of Jersey in this period[19] similar to that described by the likes of Carabie and Besnier in continental Normandy.[20]

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[14] *Ibid* page 117.
[15] *Ibid* page 118.
[16] (Jersey 1957), see in particular pages 113-141
[17] Bulletin of the Jersey Society in London, 6 June 1958. Amongst Le Patourel's own works are: *The Medieval Administration of the Channel Islands* (London 1937); *The Norman Empire* (Oxford 1976); *Feudal Empires, Norman and Plantagenet* (London 1984). Le Patourel was a Guernseyman.
[18] See De Gruchy's "The Court of the Fief and Seigneurie of Noirmont", *Bulletin of the Société Jersiaise* 1923-1927, pages 237-258.
[19] De Gruchy does not explain what he understands by the 'medieval period'. One has to infer from the text that he took the narrow view and that it encompassed the period from about 1000 A.D. to the fifteenth century
[20] See Chapters I, IV and VI.

19 In simple terms, in Jersey as in Normandy, the fief was a parcel of land, owned to all intents and purposes, by the Seigneur. By the thirteenth century at the latest, his title had become patrimonial.[21] In the larger fiefs, the seigneur retained possession and farmed some of the land, his domaine. Possession of other lands was given to tenants who held subject to the performance of services and duties and the wastes and commons were subject to a seigneurial regime which in the case of the Jersey foreshore will be considered in greater detail in Part 2.

20 The *1861 Report of the Royal Commissioners appointed to inquire into the Civil, Municipal and Ecclesiastical Law of Jersey* provides a snap-shot of Jersey feudalism as it was in the middle of Victoria's reign -

"The basis of the Law of Real Property in Jersey is the general Feudal Law, as qualified by local circumstances, but much less altered by legislation than in England. … The Sovereign is the feudal lord paramount of the entire soil of Jersey, comprising an area of about 40,000 acres, at the highest estimate, and divided into numerous manors

…

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

…

On some of the manors there are common lands, upon which the tenants of the manors have certain rights, the freehold being in the lord. With the exception of the common lands, and of such portions as the lords retain in their own hands, the lands of the several manors (for the most part extremely rich and productive) are parcelled out, generally in small portions, amongst a very numerous body of freeholders, tenants in fee, who usually cultivate their own properties, and may be characterized as a thrifty, intelligent, and, for their station in life, well-educated body of persons.

…

The manors which have come into possession of the Crown by escheat or otherwise, and also manors belonging to subjects of Your Majesty, have each their separate feudal Courts. In some instances, where several manors have been united in the hands of the

[21]These titles were certainly understood in the reign of Henry II. See for example, the dramatic account of William the Conqueror's funeral given by Wace in his *Roman de Rou* (Glyn S Burgess part III, lines 9292-9330 inc. We read how Ascelin Fitz Arthur, dispossessed of land to provide a grave for William protests (in translation): "…. this church is mine by right and belongs to my fief …. I did not sell it or charge it, forfeit it or give it away, nor did William have it from me by pledge or give any security for it. He took it from me by force…..". The bishops asked those around him if what he said was true, and they said it was right. The land had been his father's and had passed from generation to generation."

same lord, a single Court is held for the united manors. … From the decisions of the Manor Courts there is an appeal to the Royal Court. … The *aveu* is a written statement, made and signed by the tenant, and delivered in Court to the Seneschal, containing a detailed description of all the real estate possessed by the tenant in the manor, and of all rentes due upon that property. … If the *aveu* be withheld or be insufficient, he is condemned in default to present a correct *aveu* at the next sitting of the Court; and after the fourth default, the Court orders possession of his real property in the manor to be delivered to the lord, until he shall have given a correct *aveu* at some future sitting of the Court. The practical use of the *aveu* is to ascertain correctly and keep in remembrance the lands composing the lord's fief, and the property of each tenant, with a view to the exercise of the lord's feudal rights. …

…

The lords of some fiefs have a privilege of cutting and collecting the *Vraicq* or seaweed (a manure much prized in Jersey), for a certain period before the generality of the people, the time for collecting it being regulated by law. This right, which is of some but no great value, is still exercised, and we did not hear it complained of.

…

Of the casual rights and profits of the seigneurs, one is the *Année de Succession* already mentioned. … On all alienations, Reliefs (*saisine et désaisine*) are due to the lord, by a custom of uniform and universal application… The lord is further entitled to the *Escheat* of the real estate of tenants dying without heirs, or convicted of crimes involving death or banishment, and in some instances - by special grant from the Crown - to the goods and chattels of convicts. Where his manor borders on the sea he is also entitled to *Wreck*, except certain things which belong to the Sovereign in right of the Crown."[22]

21 As this summary shows, the basis of land tenure in Jersey, at least up to the mid-nineteenth Century (and, we would say, well beyond) remained thoroughly feudalised. Although the feudal economy and the exercise of seigneurial jurisdiction had by then largely fallen away, the Custom remained substantially intact.

Jurisdiction

22 As the Commissioners observed in 1861, a fundamental characteristic of the fief was the privilege which custom gave the seigneur to hold a court. It was a jurisdiction in part to settle differences between tenants of the fief, but it was more particularly concerned with the administration and enforcement of the seigneur's rights. Whereas the King/Duke exercised a wide jurisdiction over all the land of his Duchy, the jurisdiction of the seigneur was limited, and, crucial to our argument, strictly territorial. The effect was that the seigneur's officers could, save for a limited right of pursuit, only enforce his

[22] Printed for HMSO, 1861 page viii *et seq*

authority within the confines of the fief. The *Grand Coûtumier de Normandie* ("GCN") in the chapter "*de Justicement*"[23] puts the matter succinctly: *"nul ne peut faire justice hors de son fief*". [No man is entitled to exercise jurisdiction beyond his fief.]

23 The *Coûtume Reformée de Normandie* ("CRN") at Article 30 restates the principle: seigneurs "*ne peuvent justicier ou prendre namps que sur leurs fiefs ne poursuivre personnes qui ne tiennent d'eux, s'ils ne les trouvent en leurs fiefs".* [No one may exercise jurisdiction or arrest goods except on his fief or pursue those who are not his tenants unless discovered on his fief.]

24 All the commentators consulted on the Ancient and Reformed Custom expressly or by necessary implication when discussing feudal rights in Normandy, recognise that the seigneur's power did not extend beyond his territory. This fundamental principle is central to our theme. For just as the seigneur's jurisdiction was necessarily confined within the boundary of his fief, so the corollary was also true: any area, for example, foreshore, over which jurisdiction was routinely exercised, was considered to be in the possession of the seigneur and hence parcel of his fief. The logic of this proposition, thus simply stated and later elaborated, will colour much of what follows in this article.

A definition of foreshore

25 What do we mean by the foreshore? English law is clear: the foreshore is to be considered as land, having *mutatis mutandis* the same character as *terra firma*. Coulson and Forbes' *The Law of Waters* offers the following definition -

"The seashore or foreshore may be defined as that portion of the land which is alternately covered and left dry by the ordinary flux and reflux of tides. Although in common parlance the word "shore" has more often a more extensive meaning - taking in all that extensive belt of waste ground or strand, shingles and rock liable to the action of every kind of tide - yet it is now finally settled that in legal intendment no more of that unclaimed tract is seashore or foreshore than that portion which lies below high-water mark of ordinary tides." [24]

26 The position in the Islands generally is, however, in one fundamental respect, different from England and, indeed, the rest of the British Isles. Custom, rather than case law, has from the earliest period, defined the character and extent of the foreshore in Normandy and its Isles. We infer from the texts that the foreshore is to be regarded as one with the adjacent land, that is to say, as one with the rest of the maritime fief. The relationship of physical dependence is a matter of simple observation; where municipal sea defences do not interpose an artificial division, the beach and *terra firma* are a continuum.

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[23] De Gruchy, *Ancienne Coûtume de Normandie* (Jersey 1881) page 18.

[24] (London, 1953) page 22. But note (paras 27 and 28 below) that by the Norman Custom the highest point of the foreshore, is not as in England, the high water mark of ordinary tides, but *le plein de mars*, the highest reach of the tide at the vernal equinox.

27 Custom also determined the practice of the Jersey conveyancer. He has always employed the phrase "*le plein de Mars*" (the full March tide) or "*ancien plein de Mars*" to indicate the seaward boundary of tenantable land. He would not demarcate the seaward boundary of a maritime fief. The extent of the foreshore is defined by the reach of the equinoctial tides which also determine the physical area within which the seigneur could exercise his customary rights over the foreshore. In the conveyance of a seaside fief accordingly, there is no reference to the *plein de Mars*, an internal boundary, or to the seaward extent of the fief. The typical contract is concise, the draftsman concerned rather to record a mutation of title than to define boundaries. Rights pass by the simple use of laconic formulae, such as "*cum suis appendiciis*", "*avec ses appartenances*" or the like. Where therefore, in the Middle Ages and later, contracts conveying foreshore listed rights passing, for example, *gravage*, *salines*, *pescheries*, etc., such terms embodied customs well understood both by the new seigneur taking possession and his tenants.

28 In the late nineteenth century, the *Loi (1882) établissant des Parcs à Huîtres*, conferred on the States of Jersey power to grant oyster concessions over the foreshore. We shall in Part II consider the significance of such legislation in terms of foreshore ownership. It is sufficient here to note that the law defined foreshore thus -

"sera réputé "bord et rivage de la mer" tout ce qu' elle couvre et découvre pendant les nouvelles et pleines lunes et jusqu'où le grand flot de Mars peut s'étendre sur les grèves".

["Edge and foreshore of the sea" shall be deemed to mean all that it covers and uncovers during the new and full moons and as far as the great tide of March can extend over the beaches.]

29 It is our contention that, despite its twice daily inundation by the tides, there is a private, heritable and alienable title (a *ius privatum*) in the foreshore thus defined, subject to certain public rights (a *ius publicum*), for example, navigation. We shall illustrate that proposition by reference to practice, particularly in Normandy, where grants and disposals of foreshore were formerly common on the coasts facing the Islands across the narrow sea.

Use of the foreshore

30 Briefly, because we shall expand on this matter below, the foreshore has at all times been an important resource for the seigneur and his tenants on the maritime fief. The huge tidal beaches of continental Normandy and the Islands provided access to food in the sea, on the foreshore, in the sand or clinging to the rocks, fertiliser in the shape of *vraic* or *tangue* or silt and, specifically for the seigneur, rights over goods (*choses gaives*) lost and found, salvaged at sea and landed on the fief (flotsam, jetsam and lagan) and *varech* or wreck brought by the tide to the manorial shore. Such seigneurial rights, abolished in continental Normandy in the Revolution of 1789, continued, in the case of

Jersey, to be enjoyed or potentially enjoyed, on its dependant islets, offshore reefs, shoals, tidal races etc, until the middle of the twentieth century.

The Scandinavian roots of Norman maritime law

31 In the tenth century, the Vikings or Norsemen seized the territory which still bears their name. In Neustria, an outpost of the former Carolingian Empire and in relatively small numbers they imposed themselves on what was then a Christian and French speaking population. Conversion was a condition of acceptance. Sons took the names of Christian saints at baptism but preserved indelible evidence of their Norse origins in patronymics such as Ogier, Ozouf, Mauger, Renouf, surnames still common in the Islands. Notwithstanding that provenance, within a few generations, their Old Norse tongue forgotten, the Vikings were absorbed by the Gallo-Roman majority. Yet some Scandinavian influence did survive, in particular on the coasts and in maritime customs where the settlement had been concentrated.[25] The most durable impact of Scandinavian influence seems to have been in the north of the Cotentin, that is to say that part of continental Normandy nearest to the Islands.[26]

32 English law requires a grant or the presumption of a lost grant to found a title to the foreshore against the Crown. This is consistent with the notion that all land derives in origin from a Royal grant. It is the basis of what is known in England as the doctrine of *prima facie* Crown title to the foreshore.[27] Norman Custom, in contrast, required no grant; it assumed seigneurial title to foreshore including the right to wreck and other rights, as we shall see below. This assumption may well have a Norse origin. As Bates has noted, "…the laws relating to shipwreck (*varech*) and several other maritime customs… were assuredly not the product of a Carolingian legacy".[28] The Udal or Odal law of Viking Norway provided for heritable title to land, and for that land to be held in absolute ownership without acknowledgement of any superior. Udal law in the Orkneys and Shetlands, for centuries a Norwegian earldom, retains to this day, an ancient customary feature: the riparian land owner is deemed to own the adjacent foreshore to the lowest ebb of the tide, to the exclusion of the Crown.[29] Bates has this to say of Rollo the first Duke of Normandy: "Rollo himself was closely related to the Norwegian rulers of the Orkneys".[30]

33 It seems reasonable to conclude in the light of this evidence and other modern authority that thirteenth century Norman Custom in relation to foreshore and related rights, derived from the original division of land by Rollo among his followers.[31] Such a division

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[25] For general support of this proposition see: Bates, *Normandy before 1066* (London 1982) page 201. For a detailed treatment of the Scandinavian influence on maritime law, see: Musset, '*Les Apports Scandinaves dans le Plus Ancien Droit Normand'* in *Droit Privé et Institutions Régionales – Etudes Historiques offertes à Jean Yver (Rouen 1976)* pages 559-575.
[26] For a helpful analysis of such cultural and linguistic influence, see Renaud, *Les Vikings et la Normandie* (Rennes, 2006), page 201 "*Le Nord du Cotentin a été la région la plus franchement nordique de toute la Normandie."*
[27] This doctrine and its criticism is the subject of the monumental *History and Law of the Foreshore and Seashore* by Stuart A. Moore (3rd Edition, 1888). Moore is quoted with approval by Le Gros *op.cit*. pages 190-191.
[28] *Op.cit*. page.201
[29] *Op.cit*. page7
[30] *Smith v The Trustees of the Port and Harbour of Lerwick (1903) F.690* and *Shetland Salmon Farmers Association v Crown State Commissioners (*1991) SCT 160.
[31] See paragraph [10] above.

must have been made in accordance with the law and custom brought from Scandinavia and which, in the case of the Cotentin and its Isles would, in origin, have been Udal or Odal law. The connection is, in our submission, strong.

34 This proposition is supported by Henri Basnage -

"*Je ne doute point que cette Coutume qui donne le droit de Varech au Seigneur, n'ait tiré son principe des fiefs, et qu'il ne soit en usage dès le temps de leur établissement, soit que les premiers Normands auxquels les fiefs tombèrent en partage par la distribution qui leur en fut faite par le Duc Raoul ou par ses successeurs, s'en soient mis en possession comme d'un droit adhérent et dépendant des fiefs, lorsqu'ils ont leur extension sur les rivages de la mer ou qu'il leur eût été accordés par les inféodations, à la réserve de certaines choses que les Ducs se réserverent, et dont le Roi s'est conservé la possession."*[32]

"[I do not doubt that this Custom which gives the right of varech to the Seigneur has drawn its principle from the fiefs and that it was in existence from the time of their establishment… when the first Normans to whom the fiefs fell by share in the distribution made by the Duke Raoul (Rollo)… as a right adherent and dependent from the fiefs, when they have their extension on the foreshores of the sea… subject to certain things the Dukes reserved to themselves and which the King had retained."]

Maritime vocabulary

35 Words of Scandinavian origin are common in the vocabulary of the coast and the shore. Although we shall return to the precise meaning of certain key words later, some general observations may be made here. The nineteenth-century philologist Edouard Hericher[33] introduced his subject thus -

"Le Viking s'établit sur le bord, Bank, de la mer, sur une crique, Vik, près d'un cap ou Ness, dont nous avons fait Nez, pour dominer le pays, le Garder, Ward, d'où nous vient le nom communal de Montgardon, à portée d'un ruisseau, Bec, et d'une pescherie Gard, d'où le français Gord, et il appelle Hogue, Hague, Heu, une hauteur du bord des eaux, Baile, une colline, en irlandais Bali, monticule, Homme (holm de l'île ou presqu'île d'eau douce qui est dans sons voisinage, et Ey, l'île maritime. Du côté de la mer, il construit un retranchement ou Dik……"

[The Vikings settled on the margin, Bank, of the sea, on a creek, Vik, near a headland or Ness, which we changed into Nez, in order to dominate/overlook the country, to guard and protect it, Garder, Ward, which gave us the communal name of the Montgardon, near a brook, Bec, and a fishery Gard, hence the French Gord, and he calls Hogue, Hague, Heu

[32] *La Coûtume Reformée du Payse et Duché de Normandie commentée par Me Henry Basnage etc* (4th Edition 1778 Rouen) Vol.II page 552. Basnage has long been regarded as one of the most authoritative Commentators on the CRN.
[33] *Histoire et Glossaire du Normand, de L'Anglais et de la Langue Française* (Paris and Avranches) pages 151-157. See also and more recently on this subject Jean Renaud, *op.cit*. See Chapter 3, *"Le Patois Normand"* and Chapter 4 "*Les Toponymies Scandinaves en Normandie*."

a height near water,, Baile, a hill, in Irish Bali, hillock, Homme (Holm), l'ile or fresh water peninsula which is in its vicinity, and Ey, the maritime island. On the side of the sea, they would build an entrenchment or Dik…]

36 More specific to this Island, the Scandinavian legacy is considered in some detail by GFB de Gruchy -

"The reefs and waters around the Islands are full of the Scandinavian place-names which are typical of other similar settlements. Such are – *étacq*, a high pyramidal rock, with its diminutive *étacquerel* and augmentative *étachon*; *grune*, a rock near low-water level, a very common term; *boue*, an outlying rock on which the sea overfalls; *sond*, a navigable channel; *rouste*, a tide race. The coasts of the Islands tell a similar tale. The typical name for a cape is *nez*, not the Latin cap; some of the inlets along the shore are called *vic* or *vau*, usually much corrupted; though *falaise*, probably Frankish, is used for the steeper cliffs, the lower ones are called *banque*; the sandy dunes along low shores are *mielles*, and the grass growing thereon *melegreu*; a small point is called *crocq*, diminutive *crocquet*; *varde* is a cairn by the shore." [34]

37 The etymology of specific words reveals the same Nordic origin. The word *varech* for example, features prominently in this article. The Compact Oxford English Dictionary provides one definition as "that which is cast ashore by the sea in tidal waters". It gives the following variants on the word: *werec*, *waerece*, and *warec* and links it to Old French, Old Norse, Norwegian, and Icelandic. In Guyot's 1785 *Répertoire de Jurisprudence*, one finds under *varech* [35] -

"Terme usité depuis très longtemps en Normandie pour désigner un droit qui appartient à tout possesseur de fief situé sur les côtes de la mer. On appelle aussi de ce nom une herbe qui croît en mer sur les rochers, et que la mer arrache en montant, et jette sur ses bords."

[A term which has long been used in Normandy to designate a right that belongs to every possessor of a fief bordering the sea. This word is also used to denote a plant that grows in the sea on rocks, and which the rising sea uproots and throws onto its shores.]

38 The word *varech* was thus in current use or understood in Jersey from early times. Philippe Le Geyt's *Constitution, Lois et Usages de Jersey*, written in the seventeenth century, devotes a whole chapter to the subject under the title *Du Varech*[36]. He begins with the words: "*Les Auteurs font diverses conjectures sur ce mot de Varech, qu'on appelle ordinairement à Jersey, Gravage ou Estrande.*"[37] De Gruchy's view was that *varech* was kindred to *vraic*, a word used in Jersey (and indeed elsewhere) to mean

[34] *Op.cit.* page 186.
[35] *Répertoire Universel et Raisonné de Jurisprudence Civile, Criminelle, Canonique et Bénéficiale* (Paris 1782) Vol 2 page 448.
[36] (Jersey 1846) page .334 *et seq*.
[37] [Authors make various conjectures on this word of *Varech*, which in Jersey is usually called *gravage* or *estrande.*]

seaweed, and both derived from the Old Norse *vreki* or *vrek* which meant "anything drifted ashore."[38]

39 The etymology of the word e*strandes* is also, in this context, significant. GFB de Gruchy points to an Old Norse origin which persists in the Norman dialect *estran*, meaning foreshore.[39] Icelandic *strand*, Swedish *strond* and English *strand* all share a common root and point unmistakeably in the same direction. The OED gives variant forms: *strand*, pre-1100 and post thirteenth century; *strande*, from twelfth to sixteenth centuries; and *strond*, from thirteenth to eighteenth centuries. An etymology is indicated *via* Old English, which includes among other Teutonic strands, Old Norse, Swedish and Danish. The OED also gives as a variant meaning for *strand* the verb "to drive or force aground on a shore", whence the modern usage "stranded". This is consistent with Jersey where manorial records survive in which *estrandes de mer* or simply *estrandes* are terms used to indicate both what lands on the manorial shore and the shore itself.

THE SEIGNEUR AND THE FORESHORE

Varech

40 Moving from etymology and Norse origins, we now consider *varech*, the feudal right by Custom to claim things drifting or driven ashore by the sea. *Varech* rather than *estrandes* or *gravage* is the term favoured in the texts of the Custom. We begin here principally because those texts and their Commentators, when defining *varech* and describing its related procedure, either expressly or by necessary implication, recognise the foreshore to be parcel of the maritime fief.

Ancienne Coûtume

41 The Norman Custom is largely contained in texts written between the thirteenth and sixteenth centuries. All describe *varech*. We shall consider them in order.

42 The earliest compilation appears in Latin, Norman French and French versions and dates from the first quarter of the thirteenth century. This work, in two parts, is generally known as the *Très Ancien Coûtumier* ("TAC"). The French version under the caption *De Wereq* reads as follows -

"1. Il distrent del wereq que se nef est depeciee, si que nus n'en eschape qui sa[che]dire qui les choses estoient qui sont venues a wereq, li dus en doit avoir l'or e l'argent, e l'ivuirre, e le rohal, e le vair, e le gris, e les piaus sebelines, e les dras de soie, le trossel lié, les destriers, e les frans chiens, les frans oisiaus, e les ostoirs, e les faucons.

[38] *Op.cit.* page 217.
[39] *Op.cit.* page 205.

2. Se aucuns prant aucune chose del wereq e il ne le dit a la justice ainz que il li soit demandez, li plez enn apartient au duc. Toutes les autres choses apartienent as barons en qui terre li wereq arrive."

[1. They say of wreck that if a ship is destroyed/broken up so that none escape from it who might say to whom the effects belong which have come as wreck, the Duke must have the gold and silver, the ivory, the marine (walrus and possibly narwhal) ivory (or possibly rock crystal), the bi-coloured squirrel fur and the grey (if not fur, ambergris or perhaps verdigris), the sable pelts and the silk cloths, the bound bundles, the war horses, and the dogs and birds of chase, and the hawks and the falcons.

2. If anyone do take anything from the wreck and fail to declare it to the Court before it be demanded the pleas thereof belong to the duke. All other things belong to the barons on whose land the wreck came to shore.]

43 The Latin version of this section is not materially different although in the present context it is worth noting the phrase "*reliqua vero de verisco baronum sunt in quorum terris applicuerint*" which was rendered in French as "*Toutes les autres choses apartienent as barons en qui terre le wereq arrive*." (our emphasis)

44 This passage is clear. If no one survived to claim or identify the wrecked goods, the Duke was entitled *ex officio* (or, as the Commentators say "*par dignité*") to take his pick of the listed things; if any. The lord of the fief on which the wreck had grounded had the residuary rights. The Duke would exercise jurisdiction only in the event of a breach of procedure and, by inference, if there was nothing to interest him, the lord would have jurisdiction over the *varech*. It was upon his land the wreck had come: *en qui terre le werecq arrive*. We have, we believe, correctly translated *arrive* [40] in this thirteenth century text as "come to shore". In any event, wreck by definition comes onto the foreshore. Thus the seigneur had a right, and it was a right which arose from the wreck's, touching or reaching his shore. The language of the text is unmistakably specific. The right of the seigneur was territorial.

45 About half a century after the TAC, the Custom was again reduced to writing in a work of great clarity and intellectual distinction. The Latin version, (according to Tardif) was known as the *Summa de Legibus Normannie* and the French *Le Grand Coutumier de Normandie* ("GCN"). Both texts, the Latin *Summa* and the *Grand Coûtumier*, were published together by WL de Gruchy as *L'Ancienne Coutume de Normandie*.[41] The

[40] As to etymology, "*arriver*" comes from the Latin "*adripare*": it means come to shore. Classical Latin medieval '**p'** drops to '**b'** in popular Latin and this '**b'** in turn drops to '**v'** in French; Brachet, *An Etymological Dictionary of the French Language* (Oxford, 1873) page 33. As to contemporary usage, Brachet gives us this: In a twelfth century poem, The Life of Gregory the Great, a fisherman pilots travellers to an island …. after many efforts "… *en rocher il les arriva" i.e.* he made them touch or reach the shore. This original meaning is still visible in a collection of administrative rulings of the thirteenth century in the "*Livre de Justice. op.cit*". page 33.

[41] See also Tardif, *Coûtumiers de Normandie. Textes Critiques: Tome II, La Summa de Legibus Normannie in Curia Laicali* (Rouen and Paris, 1896). In his introduction (pages ccxxxiii *et seq*) Tardif emphasises the close connection between this text and the Islands of the Cotentin *"…C'est en Basse Normandie qu'a été profondément remanié, sinon composé, le coûtumier*

relevant Latin chapter, like that of the TAC, is headed *De Verisco*, the French, *De Varech*. The text is significantly longer than that of the TAC.[42]

46 The French text reads as follows -

"Le Duc doibt avoir la court des querelles et des choses en quoy sa droicture est espécialement: si comme du varech. En quelque terre que le varech soit trouvé ou arrivé, quant le seigneur du fief le sçaura, il le doibt faire garder saulvement au port ou près d'ilec le plus profitablement qu'il pourra; et ne le doibt appeticer reverser mouver ne muer devant que le Bailly ou son commandement l'ait veu et regardé diligemment. Il doibt ester baillé au seigneur de fief, ou à preudes homes de quoy justice prenne bon plége et seureté que ils le garderont jusques à ung an et ung jour; se c'est chose qui si longuement puisse ester gardée sans empirer: si comme drap [p]eaulx cire or argent et tels choses. Et se c'est chose qui ne puisse ester gardée longuement sans empirer, certaines enseignes en doibvent estre retenues; et la chose doibt estre vendue à la veue de la justice et de preudes homes, et le pris doibt estre gardé ainsi comme la chose mesmes. Se dedans l'an et le jour vient avant aulcun qui feust à la nef quant elle despêcha, et prevue par tesmoings créables et par certaines enseignes que le varech soit sien en tout ou en partie, il luy doibt estre rendu. Se l'an et le jour sont passés il remaindra tout en paix au seigneur du fief: ne jà puis à auleun qui le demande n'en sera respondu. Mais le Duc en doibt avoir aulcunes choses qui espécialement luy appartiennent par l'ancienne dignité du duché, en quelque terre que le varech soit trouvé ou arrive: si comme l'or et l'argent en quelque espèce qu'il soit, en vaissiaulx en monnoye ou en masse, pourtant que il vaille plus de vingt livres: et les destriers et les francs chiens et oyseaulx, l'yvire et le rochal et les pierres précieuses; et par dessus ce l'escarlate, le vair, le gris et les peaulx sebelines qui ne sont encores appropriées à aulcun usage de home, et tous les trousseaulx de draps entiers lyés, et tous les draps de soye entiers; et tout poisson qui par luy viendra à terre ou qui aura esté prins à terre: car tout ce que l'eaue aura getté ou bouté à terre est varech. Toutes les aultres choses remaindront au seigneur en quel fief le varech aura esté trouvé. Et toutes les querelles qui naistront par raison du varech doibvent estre déterminées en la Court au Duc de Normendie."

[The Duke has jurisdiction over disputes and things where his own right is especially affected for example, wreck. On whatever land the wreck may be found or shall come to shore, when the Seigneur of the fief shall come to know of it, he shall be bound to keep it safe in a secure haven or the like as well as he is able; the seigneur shall not be entitled to enjoy or move the same before the Bailiff or his delegate shall have viewed and inspected it carefully. The wreck must be left in the care of the Seigneur or prudent men from whom the Court shall take pledges and security and they shall guard the same for a year and a day if it be a thing which may be kept thus long without wasting, as for example, cloth, fur,

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latin…C'est dans le baillage de Cotentin seulément que le coutumier de Normandie et plus tard la Coûtume Réformée ont été en vigeur dans leur entier…"
[It is in Lower Normandy that the latin customary was profoundly recast if not composed….It was in the bailiwick of the Cotentin only that the Norman Customary and later the Reformed Custom were in force in their entirety.]

[42] De Gruchy *op.cit*. pages 48-50.

wax, gold, silver and such things. If however, it is a thing which cannot be kept long without spoiling, a means of identification of the thing must be retained; the thing must be sold under the supervision of the court and of prudent men and the proceeds of sale shall be held in the same way as the thing itself. If within the year and a day there shall come someone who was in the ship when it was wrecked and shall prove by credible witnesses and other evidence that the wreck is his in whole or in part, it must be given up to him. If the year and a day shall pass it shall remain in the hands of the Seigneur of the fief and thereafter he shall not be bound to answer to anyone in respect of it but the Duke shall be entitled to have any things which may belong especially to him by the ancient dignity of the Duchy in whatever land the wreck shall be found or arrive, for example, gold, silver in whatever form it shall be, in a vessel, in coin ou “en masse”, provided it has a value of more than 20 livres; and the war or ceremonial horses, hunting dogs, birds, ivory, rock crystal, precious stones; scarlet, furs, verdigris and sable fur not appropriated to man’s use, and all whole measures of cloth , and whole measures of silk; and all fish which may by itself come to land because all that the sea shall have thrown or pushed to land is wreck. All other things shall remain to the Seigneur on whose fief the wreck shall have been found. All differences which shall arise by reason of wreck shall be determined in the Court by the Duke of Normandy.]

47 This important section, and its Latin counterpart, are more expansive than the TAC, but founded on essentially the same principles. From the point of view of ownership, the words used to indicate the foreshore are significant. Wreck is all that the sea throws up onto the land. The Duke is entitled to his perquisites in whatever land the wreck is found or comes to shore. Similarly, on whatever land the wreck is found, the seigneur of the fief must keep it safe and look after it. The fief in question is the fief on which the wreck is found. The inference is clear. Varech was a feudal right. It was not a personal privilege. It crystallised and accrued when the floating wreckage touched the fief.

48 The passage repays further close analysis. No matter whose land it was, the first issue to be decided concerned jurisdiction. Was the relevant jurisdiction ducal or seigneurial? Custom recognised the hierarchy of power. The ducal jurisdiction would certainly be exercised in the event of dispute or if the King/Duke's rights were in issue; if, for example, there was something in the wreckage, which he could claim by virtue of his office. If there were no such Royal/ducal involvement, the position was clear: adjudication of the *varech* would fall within the jurisdiction of the seigneur on whose shore it had landed. The Royal or ducal jurisdiction was exercised exceptionally. The exercise of feudal jurisdiction was the norm.

49 The wreck was in the seigneur's possession because it was on his land and, subject only to the contingent right of the King/Duke, within his jurisdiction. His title was perfected after a year and a day, the classic period in Norman custom for grounding possessory title. It is noteworthy that the GCN allows a period for prescription. This represented a civilising evolution of the Custom and contrasts with the TAC which allowed for a more summary

division of the spoils between the Duke and the lord with no provision made for the true owner (if any) to make his claim.

50 Between the texts of the Ancient Custom and the Reformed Custom mentioned below, comes *La Charte aux Normands* granted to the people of the Duchy by King Louis Le Hutin in 1315. The ancient Duchy had been troubled by the changes wrought by the French King over the period since continental Normandy had been wrested from King John in 1204. The Normans demanded reassurance and the grant of the *Charte* in response was, accordingly, largely confirmation of ancient privileges and custom. The *Charte* accordingly represents a bridge of authority supporting the continuity of Norman custom up until the time when the ancient text was reformed and promulgated by Royal Edict in 1585 and beyond.[43]

51 Among the seigneurial privileges confirmed and restated in the Charte is *varech* -

"Que chacun noble ou autre par la raison de sa droicture ou de son fief qu'il tient en la duché de Normandie, d'orenavant varech & choses gayves en sa terre et & prenne entierement, si comme il est contenu au registre de la Coustume de Normandie …."

["That every noble or other by reason of his title or his fief held in the Duchy of Normandy shall henceforth take wreck and lost or abandoned things on his land as the same is provided in the register of the Custom of Normandy …"]

La Coûtume Reformée de Normandie

52 In 1583 the Norman custom was again set down in written form, this time as a result of an official enquiry. Promulgated by royal ordinance in 1585, *Les Coustumes du Pays et Duché de Normandie, Anciens Ressors et Enclavesd'icelui* ("CRN") had the force of law. The reformers, were for the most part content to restate and clarify what in the older texts had become obscure with the passage of time. Here they confirmed and elaborated the rights and procedure concerning *varech*. [44] The subject is considered in two parts of the CRN: first, under the heading *De Fiefs et Droits Féodaux* (Article 194) -

"Tout Seigneur féodal a droit de Varech à cause de son Fief tant qu'il s'étend sur la rive de la Mer comme semblablement des choses gayves."

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[43] Kelleher, *The Charte aux Normands* (2007) 11 Jersey and Guernsey Law Review 167, at page 170; see also Or, *England and Normandy and the Middle Ages* (Hambleton Press 1994) at pages 226 and 227. The Charter "was confirmed in 1485, …. in 1508…. in 1517, in 1550 and lastly by Henry III in 1579 … The estates of Normandy demanded that it should be respected in 1583, 1585 and 1595 ….[Its authority was invoked at the eve of the Revolution]. Since the end of the Middle Ages the Charter had been copied many times, notably as an appendix to the numerous [editions] of the *Coûtume de Normandie*." ….. "It is vital to remember that Normandy remained a distinct political unit throughout the 13th and 14th Centuries, attached to the French Crown but not to the kingdom and jealously protecting its distinct legal and administrative traditions against the intrusive policies of the late Capetian and early Valois kings," page 198.

[44] We are using the version printed in Bérault; *La Coustume Reformée du Pays et Duché de Normandie* (4th Edition Rouen 1632). There is some variation in the numbering of articles between published editions of the CR. For consistency, we use the numbering in the 1632 edition.

[194 - Every feudal seigneur has right of wreck in virtue of his fief insofar as it extends over the foreshore of the sea likewise things abandoned or lost (*choses gaives*).]

53 Later, under the heading *Varech* (Articles 596-602) the procedure is confirmed in detail.

"596 - Sous ce mot de Varech & choses gayues, sont comprises toutes choses que l'eau iette à terre par tourmente & fortune de Mer, ou qui arriue si près de terre qu'un home à cheval y puisse toucher avec sa lance."

"597 - La garde du Varech appartient au Seigneur du fief sur lequel il est trouué, sans qu'il la puisse enleuer ou diminuer aucunement, iusques à ce qu'il ait esté veu parla iustice du Roy."

"598 - La Iustice apres visitation deuement faicte, doibt laisser le Varech au Seigneur du fief. Et au cas qu'il fust absent, & qu'il n'y eust home soluable pour luy, doibt estre baillé à personnes soluables pour le garder par an & iour."

"599 - Et si c'est chose qui ne se puisse garder long temps, sans empirer, elle sera vendue par auctorité de Iustice, en retenant marque & eschantillon d'icelle pour recognoissance, Et sera le prix baillé, ainsi que dit est, pour estre gardé comme la chose mesme."

"600 - Si dans l'an & iour le Varech est reclamé par personne à qui il appartient, il luy doibt estre rendu, en payant les fraiz raisonnables faicts pour la garde & conseruation d'iceluy, tels que iustice arbitrera."

"601 - Et où ancun ne se presentera dans l'an & iour pour le reclamer, le Varech appartient au Seigneur, sans que puis après il en puisse estre inquieté."

"602 - L'or & l'argent en quelque espece qu'il soit, en vaisseaux mõnoyé ou en masse pourueu qu'il vaille plus de vingt liures, cheuaulx de seruice, francz Chiens, Oyseaulx, Yuoire, Courail, Pierrerie, Escarlatte, le ver, le grix & les peaulx sebelynes qui ne sont encores appropriees à aucun vsage d'homme, les trousseaulx des draps entiers liez, & tous les draps de soye entiers, & tout le poisson royal qui de luy vient en terre, sans aide d'homme, appartient au Roy en quoy n'est comprise la Balayne; & toutes autres choses appartiennent au Seigneur du Fief."

[596 - Under the word "wreck" and "things abandoned or lost" (*choses gaives*) are comprised all things which the water throws on land by storm and the fortune of the sea or which arrive so close to land that a man on horseback can touch them with his lance.

597 - The care of the wreck belongs to the Seigneur of the fief on which it is found, subject to his not being able to take it away or diminish it until it shall have been seen by the King's Court.

598 - The Court after the visitation having been duly made, must leave the wreck in the possession of the Seigneur of the Fief and in the event that he shall be absent and there shall not be any creditworthy person to speak for him, the wreck must be placed in the possession of creditworthy persons to hold for a year and a day.

599 - And if it is a thing which cannot be kept for long without wasting, it shall be sold by the authority of the Court retaining details thereof for the purposes of identification and the proceeds of sale shall be kept in the same way as the thing itself.

600 - If within a year and a day the wreck be claimed by the person to whom it belongs, it must be rendered up to him on his paying the reasonable costs incurred in the care and conservation thereof and which the Court shall tax.

601 - And in the event that no-one shall present himself within a year and a day to reclaim it, the wreck shall belong to the Seigneur who shall not thereafter be disturbed in his possession.

602 - Gold and silver etc. and any Royal fish which shall come on land without the aid of man, shall belong to the King excepting whales and all other things shall belong to the Seigneur of the fief.]

54 What then is new in Articles 194 and 596 to 602 and, in particular, what is relevant to our argument? Most significant is Article 194 which is listed among *Droits Féodaux*. What in the earlier texts was implicit is now express. *Varech* is a right to be enjoyed, save for contrary title, by the seigneur of every maritime fief. Unlike the earlier texts where *varech* is said to come onto “the land” of the seigneur, Article 194 expressly declares “the land” to be part of the fief, "*tant qu'il s'étend sur la rive de la mer*". Later, in Articles 596 to 602, the text, for the avoidance of doubt, refers to the "fief" when necessarily speaking of the foreshore. The rest is detail of varying interest and importance. The perquisites now belong to the King, not the Duke; mention is made now of the King’s not the Duke’s court; the owner of the property if he arrives to claim it within the year and a day must pay the reasonable costs of its care; there is more emphasis on the feudal aspects of the rights and obligations in question; and, interestingly, the definition of wreck (now linked with *choses gaives* – things abandoned or lost) includes not only what arrives on the dry shore, but what can be touched with a lance by a knight on horseback in the water.

55 In Jersey, at least, this last point may not represent new custom. The Rolls of the Assizes held in the Islands in 1309 describe the tenure of two Jersey maritime fiefs, Rozel and Augrès whose foreshores, divided by a stream, shared the harbour of Rozel. These seigneurs were obliged to ride up to their horses’ girths into the sea to greet the King/Duke

(doubtless travelling from the nearby Cotentin) and thereafter to be in attendance for the duration of his visit.[45] It seems reasonable to conclude from this custom, still observed in attenuated form today when the Sovereign visits the Island, that the duty fell on those particular seigneurs because it was on their fiefs that the visiting Sovereign was most likely to land. They met their feudal lord at the edge of their fiefs at a depth in the sea which allowed a man or his horse to stand. Beyond were the waters of the King. The significance here is that it was on this same boundary that wreckage floating in on the tide would be considered to be in the *de jure* possession of the seigneur and brought to shore as *varech*.

56 The reference to possession in Article 598, and indeed in the earlier texts, warrants a gloss. Title based on peaceful possession for a year and a day is fundamental custom. Here, the seigneur took the thing landed upon his foreshore into his possession. Protective possession was important in customary law. CN Aubin, in his *Glossary*, [46] notes that the phrase *par voie de garde* refers to the seigneur's right to the custody of untenanted or vacant land on his fief.[47] The same right underpins the protective custody of property washed up on the shore. An analogous right was also at the heart of other feudal procedures in Jersey. For example, in the case of *décret* (bankruptcy) the seigneur was entitled to hold and enjoy the fruits of possession of the land of a bankrupt tenant pending his replacement by a solvent *tenant après décret* . If no tenant could be found, that is to say, if everyone entitled to declare himself tenant had renounced his claim, the seigneur's possession became absolute. Such custom supports the proposition that the seigneur, subject to the rights of tenants and others, had at least a residual claim not only to all the land comprising his fief but also to things abandoned or lost on it.

Commentators on the Norman Custom

57 The Commentators on the Custom ancient and reformed do not add much weight to our argument principally because the subject of their commentary is *varech* and not the foreshore. Almost all the Commentators, however, necessarily imply that the foreshore is parcel of the maritime fief.

58 Bérault, for example, is an early Commentator on the CRN. His work *La Coustume Reformée du Pays et Duché de Normandie* [48] has a lengthy commentary on *varech* but says little on foreshore. He is clear however on the territorial basis of the right to *varech* and this is reflected in his discussion of a case in 1608 concerning a ship which grounded

[45] *Extente de l'Ile de Jersey*, 1331 Edward III pages 14 and 53 (*Société Jersiaise*, Jersey 1876).
[46] Aubin, *A Glossary for the Historian of Jersey* (Jersey 1997) page 39.
[47] See also *Rolls of the Assizes held in the Channel Islands in the Second Year of the Reign of King Edward II A.D. 1309* (Jersey 1903), page 281 (translated from the Latin)"And Peter de St. Helier holds his manor of Samarès of the Lord the King …. We shall meet the Lord the King when he comes to this Island on the seashore up to the spurs/girth of his horse …. of the Lord the King while he shall be in this Island". The foreshore here was evidently that of La Fosse, a dependant fief of Samarès which includes the harbours and foreshore of St. Helier and accordingly the obvious landing point for the King when approaching the Island from the south.
[48] (4th Edition Rouen 1632).

near Cherbourg. He refers to the three Seigneurs who arrived to claim their right of varech "*sur les terres desquels abordoyent les merchandises."* [49]

59 Merville, another Commentator, in his *Décisions sur Chaque Article de la Coûtume de Normandie*[50] is helpful in this context. His gloss on Article 194 of the CRN seeks to add clarity to what is already, in our opinion, plain: "*ce droit est un droit féodal, qui s'étend dans toute l'étendue autant que le fief s'étend sur le bord & la longue de la mer"*.

[This is a feudal right which extends over its whole area insofar as the fief extends over the shore and along the sea front.]

60 Elsewhere Merville writes, "*En fait de droit de varech toutes les choses échouées & naufragées appartiennent au Seigneur du fief, dans l'étendue duquel l'échouement & le naufrage sont arrivez…."*.[51]

61 Merville also provides some insight into the rights to *vraic* and *tangue* (sand used as fertiliser). He notes that parishioners occupying land adjoining the sea were entitled to take *vraic* and sand without the permission of the seigneur of the fief. There would, in this context, have been no point in Merville raising the issue of permission had the parishioners' activity not otherwise constituted a trespass upon the Seigneur's foreshore.[52]

62 Pesnelle was a late Commentator on the CRN.[53] His commentary on *varech* includes *choses gaives* both of which are linked in Article 194 of the CRN. Pesnelle is particularly useful because he takes account of the views of other writers, for example, Basnage, and demonstrates knowledge of the terms of the Royal *Ordonnance de la Marine* of 1681, of which more below. Such rights as *varech* and *choses gaives* are, for Pesnelle, strictly territorial -

"*elles doivent les unes et autres être mises ès mains du Seigneur du fief, dans l'étendue duquel elles sont trouvés.*

[They (varech and choses gaives) must all be placed in the possession of the Seigneur of the fief within the area of which they were found.]

The corollary is obvious: the Seigneur was clearly not entitled to lost or mislaid property outside the boundaries of his fief.

63 In these and many other documents perused by the authors, wreck is always described as coming "onto the fief" or as being a right enjoyed "over the land" of the seigneur. Such phrases point unmistakeably to the conclusion that the foreshore was, by

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[49] [on the lands of whom the merchandise had arrived.] VcXcvii at page 759.
[50] (Paris, 1731)
[51] [In accordance with the law of *varech* all things grounded and shipwrecked belong to the Seigneur of the fief within the extent of which the grounding occurred and the shipwreck came to shore….] Article DCII page 555
[52] Article DXCVI, page 551
[53] Pesnelle, *Coûtume de Normandie* (4th Edition, Rouen, 1771)

Custom, always regarded as an integral part of the maritime fief. Given however, that this was the basic assumption of lawyers it is not surprising that no direct statement to that effect occurs. There was no need to state the obvious. Moreover, as will be seen below, the claim to the *solum* of the fief is implicit in the use of the words *gravage* and *estrandes* in legal records both in Normandy and in Jersey.

64 There is however at least one important writer, Guyot, who, in a discussion of Customary Law relating to *varech*, specifically addresses the question of foreshore ownership. Guyot was a widely respected jurist of the seventeenth century. His *Répertoire de Jurisprudence* went to several editions.[54] Guyot is particularly useful here because his discussion of Norman Custom is based upon a review, not only of the texts of the Custom, but also of the many writers on the subject listed in his bibliography. The following discussion directly considers the boundary between the King's domain and the seigneur's fief -

*"*Mais quelle fera la ligne de démarcation qui limitera la grève appartenante au feigneur, confiderée comme faifant partie de fa propriété, & formant une extenfion de fon fief, & qui la féparera du domaine du roi*? [emphasis added] Doit-on donner à celui-ci toute l'étendue de terrein que la mer couvre aux deux équinoxes de mars & de feptembre, fur le fondement que le rivage de la mer, qui doit en faire partie, s'étend jufques-là; littus maris eft quatenus hybernus fluctus maximus excurrit: ou plutôt doit-on refferrer le domaine du roi dans les bornes dont la mer ne fort jamais.*

Il paroît jufte de fuivre cette dernière opinion, parce que le droit du fouverain, qui dérive du domaine qu'il a de la mer, ne doit pas naturellement s'étendre au-delà du terrein qui refte tousjours couvert de fes ondes.

D'ailleurs cette décifion femble réfulter du texte même de la Coutume: en effet, ce n'eft qu'au moment du reflux de la mer qu'on travaille à recueillir ce qu'elle a jeté fur fes bords: or la coutume ne donne pas feulement au feigneur à droit de Varech les chofes jetées à terre, & qui font hors de l'eau, mais elle lui donne auffi celles qui en font encore environnées, pourvu qu'un homme à cheval puiffe y toucher avec fa lance; d'où il fuit que le droit du feigneur s'étend jufqu'à cette diftance même dans la mer baffe." [emphasis added]

65 The following is a translation of the above section and of a passage which precedes it.

[It follows from this that *varech* is a thing lost on the sea (*épave maritime*) and that the right to it belongs to the Seigneur only when the shipwrecked things have been thrown to land or so close to land that one may regard them as being actually there. It is essential

[54] *Répertoire Universelle et Raisonné de Jurisprudence etc* (Paris 1782). The 1824 edition of Pothier's collected works mentions Guyot as a "*juris consulte estimable*" who competed with Pothier for the chair of French law. It was Guyot, later Professor of Law in Pothier's place, who was chosen to preside over the preparation of a posthumous edition of the latter's work.

that chance alone has brought them there and not the hand of man. If these two circumstances do not coincide, that is to say that if the débris of the wreckage remain in the sea at a distance greater than that which is fixed by Custom, or if it is the Seigneur or other persons who by their work and industry have brought the débris onto the beach, the right of *varech* does not arise; in such event it is the right of shipwreck properly described and the right of the King alone which is concerned …. but what shall be the line of demarcation which limits the beach belonging to the Seigneur considered as forming part of his property and constituting an extension of his fief [emphasis added] and which shall separate it from the domain of the King? Must one give to the former the whole extent of land which the sea covers at the two Equinoxes of March and September on the basis that the foreshore which must form part of it [emphasis added] extends so far? The bed of the sea is as far as the greatest winter tide shall run or must one rather confine the domain of the King within the boundaries from which the sea never parts? It seems to me logical to follow this last opinion because the right of the sovereign which derives from the dominion which he has over the sea must not naturally extend beyond the land which remains always covered with the waves. Moreover, this decision seems to result from the very text of the Custom: in effect it is only at the moment of the reflux of the sea that one works to recover that which has been thrown on its edge. Thus the Custom does not only give to the Seigneur by right of *varech* the things thrown onto land and which are out of the water but it gives him also those which are still environed in the water provided that a man on horseback may touch it with his lance – from which it follows that the right of the Seigneur extends as far as that distance even at low water.] (our emphasis)

66 What then can one conclude from this passage? Guyot does not doubt seigneurial foreshore ownership in Normandy. It is the very premise upon which his argument is based: the question Guyot addresses is not whether such property exists, but rather how far the seigneur's beach extends. His answer is clear and consistent with Custom; it is as far as the equinoctial tides recede and beyond to where the iconic horseman's lance extends. Guyot here echoes these words of Bérault in his account of the issues arising from the discovery in 1608 of a ship abandoned off the Island of Sark -

"… la question est à qui elle eut appartenir, ou au Roy, ou au Seigneur ayant le fief proche de la mer? La chose gayve trouvée sur le fief appartient au Seigneur du fief. Si elle est trouvée sur la mer proche du rivage d'une lance, elle est au Seigneur féodal comme varech. Mais estant trouvée plus loin, … ou le Seigneur n'a point de droi… car le droit de son fief ne s'estend point si avant …"[55]

["The question is to whom it [the ship] belonged, whether to the King or to the Seigneur having the fief near to the sea? The *chose gayve* found on the fief belongs to the Seigneur of the fief. If found on the sea the distance of a lance from the foreshore it

[55] *Op.cit*. (4th Edition 1632, page 762). See Kelleher, *"The Mysterious Case of the Ship Abandoned off Sark in 1608: the Customary Law of Varech and Choses Gaives"* in *Commise 1204* (Guernsey 2005) pages 171-190.

belongs to the feudal Seigneur as *varech*, but being found further out … where the Seigneur has no right … because the right of his fief does not extend so far …"].

67 A similar view was expressed in a learned paper given at the *Semaine de Droit Normand* held in June 1931 by Charles Leroy under the auspices of the University of Caen.[56] Much of the paper reviews the elements of wreck and the respective rights of King/Duke and seigneur. It is noteworthy that Leroy, viewing the Custom in the light of all the Commentators from the TAC to date, noted that the feudal right to wreck abolished in Normandy at the time of the Revolution, had lived on in the Channel Islands.

Alluvion, dereliction and reclamation

68 Norman writers such as Guyot and Le Roy, indeed all the Commentators on the Custom, tend to confine themselves to analysis of the texts illustrated only occasionally by reference to decided cases. It is therefore to historians such as Dupont, Bottin (whose work we consider below) and Délisle, that we turn for primary evidence of the economic and social world which gave rise to the particular customs at the heart of our study.

69 Délisle includes the foreshore in his survey of the medieval exploitation of land in Basse Normandie. This is the land least capable of cultivation –

"il nous reste à examiner les terres du bord de la mer. Nous n'avons guère à nous occupier des grèves qui n'étaient exploitées que pour la fabrication du sel. Ces grèves ne sont, pour ainsi dire, récouvertes d'aucune vegetation…En general, les atterrissements et les relais appartenaient au Seigneur sur le fief duquel ils se formaient."

["It remains for us to consider the lands on the edge of the sea. We have little to concern us in the beaches which were only exploited for the fabrication of salt. These beaches are not covered with any vegetation…In general the deposits of land which the sea forms along the foreshore belonged to the Seigneur on the fief of which they formed."[57]]

70 Confirmation for Délisle's remarks on *atterrissements* (otherwise alluvion) is to be found in Article 195 of the CRN.

"*Les terres d'alluvion accroissent aux propriétaires des héritages contigus, à la charge d'en bailler aveu au Seigneur du fief s'il n'y a titre, convenant ou possession au contraire."*

[Lands of alluvion accrue to the proprietors of the contiguous land subject to their making an *aveu* to the Seigneur of the fief unless there is any title, covenant or possession to the contrary.]

[56] *Le Droit de Varech en Normandie* (Caen 1933)
[57] *Op.cit.289*

The *aveu* of which this article speaks is a form of declaration and acknowledgement made by a tenant to his Seigneur that his land formed part of the fief and was subject to seigneurial rights.

Of Article 195 Jean Poingdestre[58] has this to say –

"*Cet Article s'entend avec cette condition, pourvu que les propriétaires facent devoir de prendre saisine de ladite alluvion à mesure qu'elle adirendra; car s'ils la lassoient vacante par quarante ans, alors le Seigneur du fief y auroit droict: principallement aux alluvions qui arrivent sur le ravage de la mer et se font par un visible accroissement, auxquelles les Seigneurs voudroient pretender."*

[This Article agrees [with the Ancient Custom] subject to the condition that the proprietors take possession of the said alluvion as it grows because if they leave it vacant for forty years then in such case the Seigneur of the fief has right to it principally to those alluvions which emerge on the foreshore of the sea and are made by appreciable increase and to which Seigneurs would wish to lay claim.]

72 Poingdestre's interesting commentary would allow the proprietors, that is to say the tenants of the maritime fief, the right to take possession of alluvion adjacent to their properties but which right they would lose if they did not exercise it within forty years: a process of extinctive prescription. The clear assumption is of an underlying seigneurial title. This is not Crown domain. The Crown does not figure in the discussion.

73 Délisle goes on to talk about reclamation of land from the sea.[59]

"*Les relais et atterrissements naturels nous conduisent à parler des travaux executés par l'homme soit pour protéger le rivage contre l'action des flots, soit même pour conquérir sur la mer des terrains considérables. Depuis au moins sept cents ans, ces travaux sont connus sous le nom de dics – nous allons suivre notre littoral, en signalant les anciens endiguements dont l'existence est attestée par des documents authentiques."*

[The natural process of alluvion leads us on to speak of works executed by man either to protect the coast against the action of the waves or even to acquire from the sea considerable areas of land. For at least seven hundred years these works have been known by the name of *Dics.* We are going to follow our coastline indicating the ancient reclamations whose existence is attested by authentic documents.]

74 The Custom provided for reduced Seigneurial dues or relief for the poorest land as witness CRN Article 162

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[58] Poingdestre, *Remarques et Animad versions sur la Coustume Reformée de Normandie ou il est Monstré jusques ou ladite Coustume est practicable dans les Isles de Jersey et Guernsey*. This valuable work remains unpublished.
[59] *Op.cit.* 292

"*Les terres non cultivées anciennement nommés gaignables sauvages ou sauvées de la mer* [our emphasis] *doivent de relief six deniers pour acre au Seigneur duquel elles sont tenues"*

[Land left uncultivated for a long time and described as *gaignables*, wild or recovered from the sea, owe six deniers per acre by way of relief to the Seigneur from whom they are held.]

Délisle gives numerous examples of reclamation both by the Seigneurs and by their men who then paid dues to their lords on such lands[60].

75 As noted by Délisle the practice of *endiguement* on the coasts of the Cotentin had a long history which long predated the CRN. Guillaume Terrien,[61] revered in the Islands as the principal commnentator on the *Ancienne Coûtume* of Normandy, includes reclaimed land in his definition of *terres sauvages*

"terres sauvées contre la mer, qu'on appelle mortes terres, comme steriles et rapportant peu de fruict"

[Land saved from the sea, called dead lands, as being sterile and bearing little fruit]

Gravage

76 An examination of the use in historical records of the word *gravage* and related words in Jersey and Normandy affords significant insight to the issue of foreshore ownership. It is our contention that *grève* and *grave* are effectively the same word, meaning "beach" or "foreshore", *grave* being an ancient form. The variants of this word are: *grave, gréye, gravia, gravage, greyage, graivager* and *gravier.*

77 Frédérick Godefroy's monumental and authoritative *Dictionnaire de L'Ancienne Langue Français et tous ses Dialectes du Neuvième au Quinzième Siècles* gives the principal meaning of *gravage* as *grève, bord de la mer.* Godefroy offers examples of this usage (with emphasis added):

"De la saisine de plusieurs veres arrivez en certaines mettes ou gravage de la mer (1336)."

[Concerning possession of several pieces of wreck come to certain places or foreshore of the sea".] (Godefroy gives "*limites*", "*places*" and "*territoires*" for "*mettes*").

"Coumme feust venuz et arrivez à vereg en la Paroisse de Morsalines ou/au gravage (1375)."

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[60] *Op.cit.* 292-296

[61] Terrien, *Commentaires du Droict Civile tant Public que Privé observe au Pays et Duché de Normandie,* Paris 1574

[As there came (two barrels of wine) as wreck to the foreshore in the Parish of Morsalines.]

"Et contient ledit fief six cens acres de terre sans y comprendre le graviaige de la mer qui contient un lieue ou environ (1395)"

[And the fief contains 600 acres of land without including the foreshore of the sea which contains a league or thereabouts.]

78 The secondary meaning given by Godefroy for *gravage,* is: "*Droit sur les varechs, etc, rejetés par la mer*". The example given as an illustration of usage is almost as helpful as those quoted above:

"Aussi m'appartient les gravages par toutes les mectes d'endroit mondit fief.....".

[Also belong to me the rights of wreck *etc*., over the full extent of my said fief, (alternatively) also belong to me the rights on the foreshore over the full extent of my said fief.]

79 Medieval Latin absorbed many words from the vernacular. Documents of this period contain such words, *gravia* being one, having in this context, a particular legal resonance.[62] An example of such usage is cited by Délisle in a footnote which reads (in translation)

[In the Twelfth Century Jourdain de Barneville gives to the Abbey of St. Saviour, "*graviam de dominio meo* ..." [the beach forming part of my domain]; "*Graviam deu Tot sicut Willelmus de Barnevilla, pater meus, abbatie Saneti Salvatoris dedit* .... " [which William de Barneville my father gave to the Abbey of St. Saviour …. There are certain beaches which owe three "*boisseaulx*" of salt according to the measure of Barneville."] [63]

It is worth noting that Jourdain de Barneville was at the same time dealing with land in Jersey.[64]

80 Délisle tells us that in the twelfth century, the seigneurs in Normandy controlled the digging of sand or *tangue* from the lower foreshore.[65] In a footnote, he cites a deed of 1186 in which one Richard du Hommet confirmed the grant of a right to the monks of Mont St. Michel to exploit salt on the foreshore and forbade his tenants to dig the sand in such a way as to prejudice salt extraction.

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[62] See paras 33 *et seq* above and generally "*Revised Medieval Latin Word List*", (OUP, 1994) and viii. "the Latin language of the British Isles and elsewhere in Western Europe continued for over a thousand years to enrich its means of expression …. clerks who drew up manorial accounts and court rolls did not scruple to Latinise terms employed by local peasants, fishermen and craftsmen ….".

[63] *Op. cit*. page 289.

[64] Charter of sale to the Abbey of St. Helier including plough land in Jersey and other land in Barneville. Dupont, *Histoire du Cotentin et de ses Iles*, Caen 1870, *pièces justicatives* No. 9.

[65] *Ibid.* page 269.

81 Délisle is evidently describing a seigneurial regime. In the Middle Ages, the economic exploitation of the foreshore included the production of salt by the method known as *lavage des sables*, the washing of the sand.[66] . The mixture of salt and sand was dissolved in seawater which used to be boiled until it evaporated, the owners of forests woods and copses in the vicinity supplying wood for this purpose. Such activity necessarily implied possession and a property in the soil, sand and gravel of the beach. In addition to the employment which this industry provided, there was also a considerable trade in salted produce with Rouen and Paris, and large scale smuggling (a very profitable occupation) of salt into neighbouring areas which were liable to the *gabelle* (salt tax). Hence the value attached to the ownership of the beach.

82 Court Rolls relating to fiefs once held by the Abbesse of St[e] Trinité, Caen, have survived and are primary evidence of usage and rights in the Norman foreshore.[67] A record from 1430 concerns a decision of the *Parlement de Paris* adjudicating in favour of the Abbess "*certains poissons, nommés chauderons, trouvés sur le gravage de Morsalines*". It is clear that *gravage* here means the beach at Morsalines and, given the underlying seigneurial right to the fish stranded on it, the word *gravage* can only refer to a right in the soil. Another example comes from an Assise held at Quéttéhou in 1439 which condemned a man "*pour s'être en saisine de certain quantité ou portion de certain grand poisson à couenne qui venu et arrivé, était au gravage desdites religîeuses, ès mettes de la Hougue de St. Vast par devers ledit lieu de Quéttéhou...*"[68] This, like the preceding extract, makes the meaning of the word *gravage* perfectly clear. The fish (no doubt a grampus) was found on the beach within the boundary of the "*Hougue de St. Vaast par devers*", that is before the said place of Quéttéhou. Elsewhere in these rolls we have seen the copy of an eleventh century grant of the same fief of Quéttéhou by Duke William to the Abbesse. There was in that grant no description of the rights attaching to the fief and certainly no mention of *gravage*. In the light of such fifteenth century decisions, therefore, one is bound to conclude that in the eleventh century and before the TAC was written, Custom understood that the maritime fief included both *gravage* and the right of wreck.

83 A similar but more detailed picture of the foreshore is painted by CLJ Bottin who was both a lawyer and an historian.[69]

84 The Bay of Lessay lies opposite Jersey and, at the middle of the nineteenth century, was divided into scores of *tanguiers* which Bottin tells us had been held by their maritime proprietors for centuries before that. In 1859 the French Government had set up an enquiry to investigate the titles of those proprietors who, like their ancestors before them, were exploiting the sand and silt in the Bay of Lessay. Their claims to property evidently

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[66] Tabiés, *France in the Age of Louis XIII and Richelieu* (London 1974). The author is referring to the *lavage des sables* in Basse- Normandie.
[67] *Société des Antiquaires de Normandie Tome* 8, 1834
[68] [for having taken possession of a quantity or portion of a certain great fish which having come and arrived on the foreshore of the said religious within the boundaries of the Hougue or St. Vast in the environs of the said place of Quéttéhou]
[69] *Domaine Maritime* XI[e], XII[e], XIII[e] et XIV[e] *Siècles sur le Littoral Normand et Spécialement dans la Baie de Lessay*, Bottin, *Juge du Paix du Canton de Carentan, Membre du Conseil Général du la Manche, Chevalier de la Légion d'Honneur* published (St. Lo, 1868) by the Société d'Agriculture, d'Archélogie et d'Histoire naturelle du Département de la Manche.

appeared anomalous to the Administration. Bottin prepared his treatise as a memorandum for use by all parties to the enquiry. It is almost wholly based on original documents.

85 Bottin set out to show that the titles to the nineteenth century *tanguiers* at Lessay went back some 800 years. They had been the subject of grant, purchase, sale and inheritance over the whole of the period. The proprietors ultimately derived their titles from the Abbey of Lessay which in turn had been founded and endowed in the eleventh century by the Seigneurs of La Haye du Puits whose fief stretched along the Norman littoral facing (and visible from) Jersey.

86 Bottin proves that the whole of the Normandy coast was in medieval times subject to a comprehensive seigneurial régime – the littoral being as much part of the fief and its economy as the *terra firma*. This was indeed central to Bottin's purpose: to demonstrate that part of the beach and thus the *tanguiers* had in origin been possessed by feudal tenants. Possession of the rest had been retained by the seigneurs themselves or by religious houses such as Lessay, in right of them.

87 Bottin demonstrates, in our view conclusively, by citing a huge number of charters, grants and contracts, that in the eleventh to fourteen centuries the *grèves* or *gravages* of the Norman littoral were normally and automatically included in transactions involving maritime fiefs. Indeed, the universality of usage revealed by the examination of ancient grants and manorial records suggests the source of the authority of the texts of the Ancient Custom. What once might have been expressed in a grant, would, after the Custom had been reduced to writing, be regarded as a right adhering by Custom to the fief and passing automatically on any mutation of title.

A Jersey usage

88 The use of the word *gravage* was not confined to continental Normandy. It is frequently to be found in Jersey records of the seventeenth to nineteenth centuries. A few examples will suffice to demonstrate a meaning consistent with usage in Normandy.

89 Writing on *dîmes*[70] Poingdestre in his *Lois et Coûtumes de Jersey* observes -

"Finallement pour la pesche, il n'y a pas encore trois cents ans que tous les fiefs principaux possedants gravage avaient droict d'esperquerie ou esperkerie, qui estoit un droict que les Pescheurs payoient pour les congres qu'on sallait et sechait sur la perque …"[71]

[70] Tithes, "The tenth part of the gross yield of certain products of the soil or the increase in the number of animals collected on a parochial basis for the church", Aubin *op. cit.* page 27
[71] *Op.cit.* page 278

[Finally, in relation to fishing, less than three hundred years ago all the principal fiefs which possessed gravage had the right of eperquerie which was a due paid by the fishermen for congers that they salted and dried on the poles.]

Poingdestre plainly used *gravage* here to mean foreshore. He is referring to that part of a fief *i.e.* the foreshore which gave rise to *eperquerie*, a feudal right.

90 Philippe Le Geyt, a contemporary of Poingdestre, uses the word *gravage* in its two meanings and the context makes it abundantly clear which sense is intended. Thus Le Geyt variously refers to "*Le gravage trouvé sur aucuns fiefs." ["Gravage* found on any fiefs*"] (meaning wreck)*[72] *and "visité une pièce de bois venue au gravage du Fief du Mont de St. Hélier entre le Havre de Bas (sic) et le Havre Neuf sur le Fief de la Fosse"* ["visited a piece of wood come on the shore of the Fief du Mont de St. Helier between Havre des Pas and the Havre Neuf on the Fief de la Fosse"] (meaning foreshore). Later in the same chapter, Le Geyt considers the problem of boundaries on the foreshore and the principles to apply to avoid dispute between Seigneurs -

"Plusieurs Fiefs qui bordent icy sur la mer n'ont que peu ou point de gravage. Il y a des costes ou des bayes ou divers fiefs aboutissent et font comme un bout de cercle: on demande de quelle manière il faut distinguer leurs grèves …."[73]

[Several fiefs which border upon the sea have little or no foreshore. there are coasts or bays where several fiefs abut and make part of a circle: the question is how to distinguish their beaches"]

On any reasonable construction here Le Geyt must be understood to be saying that *prima facie*, the seaside fief includes its dependant foreshore.

91 The conveyancer also used gravage to mean foreshore. By a hereditary deed of partition passed before the Royal Court of Jersey in 1784 the maritime Fief of St. Ouen was parcelled out among a number of female heirs.[74] Each party was given a parcel of *gravage* co-extensive to her portion of the fief on *terra firma*.

92 As we shall see in the second part of this article, the title necessarily implicit in this eighteenth century division of foreshore among heirs is consistent with claims made by the Seigneur of St. Ouen in fourteenth century *Quo Warranto* proceedings. It is moreover consistent with the further claim of the Seigneur of this fief made and reported on another occasion to have the disposal of *vraic* landing on the foreshore of this fief, a matter which is also discussed below.

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[72] Le Geyt, *La Constitution, les Lois et les Usages de cette Ile, Tome* I, (Jersey 1846) page 342
[73] *Ibid*, page 345.
[74] *Registre Public* 83/102

93 Both usages of *gravage*, that is to say the foreshore itself and the rights attached to its ownership, occur repeatedly in the manorial books of the Fief de la Fosse, a fief of which more anon.

94 Finally, CS Le Gros is also an authority for this usage. HM Vicomte de Jersey and Advocate of the Royal Court he was also Docteur (Honoris Causa) of the University of Caen. In his chapter, du Varech,[75] to which we shall return., Le Gros states –

"*nous rapportons ici plusieurs jugements qui portent sur les objets trouvés au flot de la mer ou apportés à gravage (grève, bord de la mer) sur un fief*."

[We report here several judgments which concern objects found at sea or brought to the gravage (the beach, edge of the sea) on a fief]

Dupont: les droits de mer en basse normandie au moyen age

95 This work,[76] by the historian of the four volume *Histoire du Cotentin et de ses Iles* contains matter highly relevant to our argument. It also strongly supports Bottin's thesis written two years earlier. Dupont was among other things *Ancien Conseilleur à la Cour d'Appel de Caen*, and President of the *Société des Antiquaires de Normandie*. His monograph is some 45 pages long of which the first ten are devoted to a discussion of the Custom and the rest to the particular rights enjoyed by the monastic houses with maritime fiefs around the coasts of Normandy and the Channel Islands. Dupont saw that the Custom had its genesis in the geography of Basse Normandie with its long shoreline. He states his subject to be -

"Les Droits qui dérivaient de l'exploitation en tout voisinage de la mer et qu'on designait sous le nom generique de droits de mer: jura maris ou jura in littore maris."

[The rights which derive from the exploitation in the neighbourhood of the sea and which were described under the generic title of "Rights of the Sea": rights of the sea or rights in the foreshore of the sea.]

Such rights were -

"une conséquence et une accessoire de la propriété du rivage maritime"[77]

[a consequence of and accessory to the property in the maritime foreshore]

Dupont had no doubts.

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[75] *Op.cit*. page 396 *et seq*
[76] Dupont, *Les Droits de Mer en Basse Normandie au Moyen Age. Bullétin de la Société des Antiquaires de Normandie*, Caen (1870). John Le Patourel in his *Medieval Administration of the Channel Islands* (OUP 1937) at pages 1 and 2 describes Dupont's work as "scholarly" and "based on a wide knowledge of the Channel Island documents preserved in France."
[77] *Op.cit.* page 441

96 The sea was the source of important feudal profits to the seigneurs of maritime fiefs on the extended coastline of Normandy. The profits arising from foreshore or coastal activities were of three kinds: the first resulted from the exploitation of natural products, for example, fishing, the extraction of salt and (which particularly concerned Dupont's contemporary Bottin) the exploitation of *tangue*; the second, the right of *varech*; and the third, the *impôts* on navigation. The majority of these maritime fiefs were held by monastic houses.

97 Rights of fishery were of two kinds: those exercised directly by the men of the fief or by farmers to whom the seigneur leased the fishing in special fisheries. Other rights or dues were levied on fishing boats going to sea. In the first case these were the *droits de pecherie*. In the second case the rights were known as the *coûtume de maquereaux* (*custuma makerellorum*) a name indicating the typical catch.

98 Many fixed *pecheries* on the shores had been in existence for an extended period. Dupont tells of a tradition that St. Magloire, (who brought Christianity to the Islands) had in the sixth century possessed important *pecheries* off Sark, which were of considerable commercial value.[78] The Iles du Cotentin are as much part of his subject matter as continental Normandy.

99 We learn from Dupont about *pecheries*, stone structures reinforced with stakes driven into the sand and strung with nets in which the fish entering on the rising tide were caught on the ebb. The property in them was not in issue.

"Ces tenanciers les exploitaient en commun et payaient une redevance au Seigneur féodal auquel appartenait la baronnie ou la sieurie dont elles étaient une dépendance. Le suzerain avait la propriété de certaines autres, qui étaient affermées à des tiers et qui étaient construites et entretenues par des hommes du fief …."[79]

[These tenants exploited them in common and paid a due to the feudal lord to whom the barony or fief belonged of which they were dependant. The suzerain had the property in certain others which were farmed out to third parties and which were constructed and maintained by the men of the fief. …]

100 Dupont speaks of salt production and the digging of *tangue* for fertiliser -

"enfin le domaine maritime comprenait le droit d'exploiter les sables apportés par les marées, soit pour en extraire le sel , soit pour fertiliser les terres. Les salines étient les établissements qui avaient la première destination; elles étaient fort nombreuses depuis la Dives jusqu'au Couesnon, et sur tout le longue de la Baie du Mont St. Michel. Quant à

[78] *Op.cit.* page 435
[79] *Op.cit.* page 444

l'exploitation des sables fertilisants ou tangue, elle n'avait lieu que dans cette dernière baie, ou s'étendent d'immenses grèves, et dans la baie de Veys."[80]

[Finally, the maritime domain included the right to exploit the sand brought by the tides, whether for the extraction of salt, or for the fertilisation of land. The salt pans enjoyed priority. They were very numerous from the river Dives as far as the Coueson and above all along the Bay of the Mont St. Michel. As for the exploitation of the fertilising sand or tangue this only took place in that last bay where there are immense stretches of beach and in the Bay of Veys.]

101 Dupont discusses the incidents of wreck -

"en principe, le warec appartenait au prince; en fait il était devenu, comme le droit de pêche, un droit féodal. Les Seigneurs l'exercaient dans l'étendue de leurs fiefs, si ces fiefs étaient riverains de la mer."[81]

[Wreck in principle belonged to the prince: in fact it had become like fishing, a feudal right. The Seigneurs enjoyed it within the boundaries of their fiefs if those fiefs bordered upon the sea.]

Dupont's view as an historian is clearly consonant with the texts of the Custom and in particular the wording of Article 194 of the CRN, discussed above. It is equally consonant with the views of the Commentators.

102 There were, it appears, exceptions to the general rules regarding wreck. Dupont cites the case of Guernsey -

"sur les côtes de la Normandie et des Iles du Cotentin, ces règles subissaient quelques modifications ….. ainsi …. le Roi, avait à Guernsey la moitié du warec, l'autre moitié se partageait entre l'Abbé du Mont St. Michel et le Seigneur Guillaume de Chesney …".[82]

[On the coasts of Normandy and of the Isles of the Cotentin these rules were subject to some modifications … thus…. the King had in Guernsey half of the wreck and the other half was shared between the Abbot of Mont St. Michel and the Lord Guillaume de Chesney….]

103 It is not necessary for our argument to follow Dupont in his close examination of the rights enjoyed by each of the many monastic houses of medieval Normandy. A sample will suffice. Many of these houses had vast possessions. The most important maritime domain and one of the most important religious houses in Western France was the *Abbaye de la Trinité de Caen*. The great estates of the *Abbesse* in *Basse Normandie*

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[80] *Op.cit*. page 441
[81] *Op.cit.* page 442
[82] *Op.cit.* page 443: but see also *Rolls of the Assises, 1309* (Jersey 1903) page 46-47 where an account of an agreement for the division of *varech* is given by the Jurors.

included land in Jersey and in the Cotentin, whose foreshore and *pecheries* in relation to the Fief of Quéttehou we have already considered above.[83] One of the related pecheries, la Tocquaise, had by the time of Dupont (1870) become an oyster bed. The title to the fishery, it seems, "*comme pour continue les traditions léguées par le moyen age, a même été récemment l'objet d'un grave et long procès*". [as if to continue the traditions of the Middle Ages has even recently been the subject of weighty and long drawn out litigation].

104 The Abbot of Troarn had vast salt marshes and beaches dependant from his lands. According to Dupont -

"son domain était moitié terre et moitié eau et ses principaux revenues se tiraient de l'exploitation de la chasse, de la pêche et de nombreuses salines qu'elle possédoit sur le littoral."[84]

[his domain was half land and half water and his principal revenues derived from the exploitation of hunting and fishing and from numerous salt pans which he possessed on the litoral.]

105 The feudal rights to the foreshore of all the religious houses originating in the Middle Ages continued to be litigated and enforced right up to the Revolution of 1789 which abolished both religious houses and the feudal system in France. In discussing the rights of the Abbey of Troarn, Dupont notes -

"La derniére procédure ne précéda que de peu d'années la Révolution de 1789."[85]

[The last proceedings fell away only a few years before the Revolution of 1789.]

106 Dupont describes connections between the great Norman monastic houses and the Islands of the Cotentin. Of the Abbey of Cherbourg for example, he cites a Charter of Henry II confirming the monks in the enjoyment of all their rights "*d'eaux et de pecheries*" dependant from the domaines which had been given to them and he goes on to say -

"une autre chartre confirmait également omne jus in littore maris; et au commencement du XIII siècle, c'est-à-dire à l'époque ou Philippe Auguste avait conquis la Normandie, Hughes, Éveque de Coutances, mentionnait ces mêmes droits dans nue lettre qu'il adressait au gardien des Iles du Cotentin, Philippe d'Aubigny, pour lui, recommander les biens que les religieux de Cherbourg deteriat dans l'archipel Normand."[86]

[Another Charter equally confirmed "*Omne ius in littore maris*" ("all right in the foreshore of the sea"); and at the beginning of the thirteenth century, that is to say, after Philippe Augustus had conquered Normandy, Hugh, Bishop of Coutances mentioned the same

[83] See para 75 above
[84] *Op.cit.* page 446
[85] *Op cit.* page 459
[86] *Op.cit.* page 466

rights in a letter addressed by him to Philippe D'Aubigny the Warden of the Islands of the Cotentin to seek his protection for the properties which the religious of Cherbourg owned in the Norman archipelago.]

We shall consider in the second part of this article the gradual deterioration of relations between the English Crown and the Norman monastic houses which followed the separation in 1204 and which led ultimately to the "seizure of the alien priories" in the Island by Henry V two centuries later.

107 The Abbey of St. Helier in Jersey, having been reunited with the Abbey of Voeu in 1184, its lands, rents and revenues passed to the second named house which thereafter possessed the marsh of St. Helier and also of the Island of Herm. This little Island situate at a very short distance from Guernsey, had been given to the Abbey of St. Helier by Henri Beauclercq. His gift included in addition to the soil of the Island, *"…. toutes ses appartenances, la pecherie qui en dependait, cum piscatione ad eamdem insulam pertinente."* [all its[87] appurtenances, the fishery which is dependant and the right to the fish belonging to the same island].[88]

108 In 1066 William the Conqueror granted to the Bishop of Coutances the Islands of Sark and Alderney *avec les droits de mer qui en dépendent.* Later in a *Quo Warranto* under Henry III heard before Richard de Gray, Guardian of the Isles in 1266, it was acknowledged that the Bishop and Chapter of Coutances shared half of the Island of Guernsey and that their part included *les droits de mer – item habent jura maris in terra sua.* ["the rights of the sea – item, they have the rights of the sea <u>on their land</u>"] (our emphasis).[89]

109 The Abbot of Blancheland had properties in the Cotentin including maritime fiefs in England and in the Channel Islands. At an Inquest held in 1366 in Guernsey before the Itinerant Justices -

"en présence des justifications faites par l'abbé, le bailli de l'ile lui adjugea". l'esperquerie de congres, coutumes de poisson, cache de connius, vereck de mer et verp de bestes gaives."[90]

[In the face of the abbot's contentions, the Bailiff of the Island awarded to him the *eperquérie* of congers, the customs of fish, the hunting of rabbits, wreck of the sea and the pound for stray animals.]

110 The Abbot of Mont St. Michel enjoyed vast possessions in the Islands. Dupont notes in this connection the great importance of the sea to the economy of the Islands -

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[87] *Op.cit.* page 466
[88] *Op.cit.* page 466
[89] *Op.cit.* page 472
[90] *Op.cit.* page 475

"Les droits de mer, on le comprend avaient une importance exceptionnelle, dans ces contrées qui l'Océan entourait de toutes parts. La pêche en était la principale et probablement l'unique industrie."[91]

[The rights of the sea, one understands, had an exceptional importance in those communities which the ocean surrounded on all sides. Fishing was the principal and probably the only industry.]

The Abbot of Mont St. Michel had wreck on the coasts bordering the Isles of Lihou and Jethou and the *eperqueries des congres*. The fisheries were leased to farmers for an annual rent.

The absence of a French royal title

111 Given the origins of the Duchy we have discounted any general claim by the French Crown to the foreshores of Normandy. In this we are supported by Délisle, Bottin and Dupont all of whom provide examples of foreshore titles with a provenance reaching back before 1204 to the Norman and Angevin Dukes. We rely too on the texts of the Custom and the *Charte aux Normans* all of which are inconsistent with such a claim. This body of evidence did not however, prevent the French Crown by Royal *Ordonnances* in 1566, 1584 and 1681 from asserting the Norman foreshore to be part of an inalienable royal domain. The inventive reliance on the notion of inalienability, a palpable device to circumvent the Chartre aux Normands made possible royal challenges to the rights of those in possession of foreshore on the coasts of Normandy. The issues raised by these *Ordonnances* are central to Bottin's treatise. His answer to the Crown's claim was to demonstrate the existence of medieval titles all around the coasts of the Cotentin. He was able to show, as we have seen, that many of the monastic possessions had their origin in grants from the Norman and Angevin King/Dukes. Bottin, moreover, demonstrated that grants had been made by the French Kings after 1204 out of what had been ducal lands formerly held by King John. He concluded that all such grants had been made of land governed by Norman Custom and in relation to which the concept of inalienable royal domain was foreign. One object of the King may have been to recover ancestral lands and restore a royal domain which had been depleted by prodigal grants in earlier centuries. The King's principal object was however, all too clear; it was to raise revenue by forcing claimants in possession who could not point to ancient title, in effect to purchase their own inheritance.

112 In fact, as Bottin argues, a prescriptive title could, be made out against royal claims.[92] We shall see in the second part of this article that it was upon the basis of immemorial possession that the Jersey Seigneurs answered the *Quo Warranto* writs of the English Crown. Bottin relied upon the *Charte aux Normands*. However, when, pursuant to the royal *Ordonnance* of 1710, the Crown challenged those in possession of foreshore

[91] *Op.cit.* page 476
[92] *Op.cit.* pages 1, 3, 5, *et seq.*

pêscheries, salines etc, in practice it confirmed ancient titles while exacting fines from others as the price for the confirmation of their more recent possession.

113 It seems hardly necessary to state that the concern of the French Kings at the real or imagined loss of the royal domain and their claim to the foreshores of the kingdom could have had no effect in Jersey. Seen from the perspective of Paris and the draftsmen of the 1681 *Ordonnance de la Marine* the position of Normandy in 1681 may have seemed anomalous. It would not have seemed anomalous in the Islands.

The French Revolution and beyond

114 It seems that after the Revolution, the French State by decree of 1809 ordered the delimitation of the domain lands in the Bay of Mont St. Michel and charged one Boudent, a member of the *Conseil-Général*, to carry out the operation. Bottin quotes (in translation) from Boudent's report -

"The second object with which we are concerned ... the white beaches exploited for the production of salt. These beaches begin with a long bank or ramparts of sand which constitute the dunes' ends. It is there also that the sea begins to leave between its tides an interval long enough for the salt to be dried by the action of the sun … We have had represented to us the titles of each property bordering the beach and we are convinced that each point of the coast was or had been the site of a salt pan and that from a time beyond memory these salt pans were the object of sales, *partages* and of all kinds of transactions and in effect, that they were constantly designated in all deeds or acts with *droit de grevage* (these are the customary expressions) and that the beach dependant from each salt pan was in all the titles recent and ancient bounded by the sea or the river which is the same thing.

Many contracts have been shown to us of which several were more than 150 years old. All were agreed in attributing to each salt pan the beach as far as the sea. Among these titles there were even found those which emanated from the administrative authorities which designated the sea as being the limit of the beach dependant from each salt pan. These last are the adjudications passed by the Directorate (1791)".

115 Boudent concludes his report with the words (in translation) -

"That the beaches from Le Bec-d'Andenne as far as Pont-a-Languille are private property … that all the beaches of the Commune between d'Huisnes … are still private property."

It seems that Boudent's Report was communicated to the Director of the Domain who in turn reported in 1811 that all the claimants (in translation) "must be considered proprietors both of the salt pans and of the beaches. …. and as for Articles 558, 559 and 560 (of the *Code Napoléon*) it seems sufficiently established that these properties known as *Marais d'Huisnes*, constitute a property of ancient origin.*"*

116 The Report of Boudent, a servant of the French Republic, is of particular interest. The Revolution had, two decades before, swept away all seigneurial privileges when abolishing the seigneur's *domaine directe* in the tenements of his men. The Revolution had not, however, abolished titles to property in the soil. Thus it seems that the former seigneur and the former tenant each kept lands which were in their possession, and their ancient rights in the soil of the foreshore were recognised by the State.

117 It is beyond the scope of this article to take the history of the Norman foreshore further. It appears however, that many of the private *pecheries* were suppressed by the Emperor Louis Napoléon in the mid nineteenth century on the ground *inter alia* that they represented a hazard to navigation.[93] After a long, bitter and unequal struggle which lasted for some thirty years, a whole coastal community whose ancestors had for centuries enjoyed possession of the foreshore and made their living from its harvests, was destroyed. Those who survived did so by taking concessions from the State for their oyster parcs and mussel beds. In so doing however, they surrendered their ancient titles.[94]

110 The contrast between the history of France both before and after the Revolution and that of the feudal Bailiwick of Jersey is obvious. Instead of revolutionary change and arbitrary edict, the process in Jersey has been evolutionary. In the second part of this article we shall seek to demonstrate, notwithstanding such differences, a shared continuity of Norman Custom in relation to foreshore title.

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[93] Sinsoilliez, *La Bataille des Pêscheries (Editions l'Ancre de Marine* page 9). The Emperor's Edict of 1852 was in these terms "*L'exercise de la pêche cotière ou pêche à pied du poisson des coquillages et des crustaces est soumis au dispositions suivantes: aucun établissement de pêcheries de quelque nature qu'il soit, aucun parc à huîtres ou à moules, aucun dépôt de coquillages ne peuvent être formés sur le rivage de la mer, le longue des côtes ni dans les fleuves, rivières, étangs et canaux où les eaux sont salées, sans une autorisation spéciale delivrée par le Ministre de la Marine."* ["Coastal fishing or fishing on foot for fish, cockles and crustacians is subject to the following Regulation: no fishery of whatever kind, no oyster parc or mussel bed and no store of cockles shall be established on the foreshore of the sea along the coasts or in the streams, rivers, lakes and canals where the waters are saline without special authority from the Minister of the Marine."]

[94] *Op.cit.* page 188