Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Godfray v. *Godfray, from the Royal Court of Jersey; delivered on the* 16*th February,* 1866.

Present:

LORD CHELMSFORD.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.

THIS is an Appeal from a Judgment of the Full Court of the Island of Jersey, dated the 29th February, 1864, by which that Court affirmed a Judgment of the inferior number, dated the 31st July, 1862. The Appellants, Hugh Godfray and John Godfray, are two of the children of Hugh Godfray the elder and Marie Elizabeth Jacque, his wife, both now deceased. The Respondent, William Francis Godfray (hereinafter called the Respondent), is another of their children, and Philip Godfray and Francis Godfray, who have been served with this Appeal, but have not appeared upon it, were and are their only other children. On the 24th March, 1835, at which time Hugh Godfray, the elder, and Marie Elizabeth Jacque, his wife, the father and mother of the Appellants and Respondents, were both living and were respectively seised of considerable real estate in the island, and also possessed of personal estate. The Respondent, by deed or instrument of that date, conveyed and transferred to the Appellant and his brothers Philip and Francis Godfray (hereinafter called the four brothers), in equal shares, for them and their heirs, all his parts and portions of heritages and moveables which should accrue to him by the deaths of his father and mother, situate in the Island of Jersey or elsewhere, from the day of

the opening of their successions, without any reserve on condition that he and his heirs should be discharged from the payment of the proportion of charges, moveable and immoveable, to which he or they *might be* subject on account of the successions, and in consideration of an annuity of 110*l.* 5*s.* 4½*d.*, which the four brothers bound themselves to pay to the Respondent for his life by four equal quarterly payments, the first payment to be made on the 24th June then next; and this deed contained a clause, common in the Island conveyances, binding the parties by oath that they would neither act, nor authorise any one to act, against those presents, on pain of perjury. This deed was in point of form duly made and passed on oath, and registered according to the laws of the island. On the 17th July, 1835, by another deed or instrument of that date, to which the Respondent was not made a party, after reciting the deed of the 24th March, 1835, and further reciting that the intention of the four brothers had not been to derive any personal advantage from the deed of the 24th March, 1835, but only to prevent the Respondent from dissipating the share which might eventually come to him from the successions of his father and mother, the four brothers agreed that the share, as well of moveables as of heritage, which should accrue to the Respondent of the successions of their father and mother, should, at the decease of their father and mother, be placed in their joint names. That there should be deducted from the share of the moveables, if sufficient, the sum of 9,600 livres (equal to 400*l.* Jersey currency) which they had agreed to pay on account of the Respondent, or such other sum as they should think proper to pay on his account, in the event of his owing debts to a larger amount, and also all sums which they should have paid to the Respondent on account of the annuity, with interest at 5*l.* per cent. per annum on the said several sums to the time of payment; and that, if what should accrue to the Respondent from the moveable successions of his father should not be sufficient to pay these sums and interest, then the four brothers should sell, or otherwise dispose of, rents necessary for the payment of them; and that, after these payments, the four brothers should receive the rents accruing on the share of the Respondent, and invest

the residue of the moveable succession in the most advantageous manner, and should in every year, in the month of January, make up an account of the rents and of the interest on the moveables, from which they should deduct the annuity, and, if there should be any surplus, should dispose of it as follows:— If the Respondent was not married, they should pay the amount to him, or apply it for his maintenance and support; and if the Respondent was married, they should apply it, in the whole or in part, to the maintenance and support, or in the education of his children, so that it should not, under any pretence, be stopped for the payment of his debts, and that in case, at the time of the death of the Respondent, he should leave any lawful child or children, the four brothers should continue the administration of the property, and the rents and interest should be applied for the maintenance and education of the children, and the surplus, if any, placed out for their benefit, and that, on the children attaining the age of twenty years, the capital and accumulations should be paid to them in equal shares, and that, in case the Respondent should die without leaving lawful children, or the children should die under the age of twenty years, the property should be divided in equal shares between the four brothers, and that, in case the Respondent should pre-decease his father, the loss of the sums paid in respect of the annuity should be borne by the four brothers in equal shares. By a memorandum at the foot of this deed, it was further agreed by the four brothers that, if the Respondent should leave a widow without children, the widow should receive one-third of the income during her life, and that, if he should leave a widow and children, one-third of the income should be paid to the widow for her life, and the remaining two-thirds be applied for the maintenance and education of the children. This deed and the memorandum at the foot of it were respectively signed by the four brothers. On the 1st of March, 1839, Hugh Godfray, the father, died; and on the 23rd March, 1839, a partition of his real estates in the island was made by the four brothers. The deed of partition was duly passed before the Court, and by the deed portions of the estates were allotted to the Appellant, Hugh Godfray, as the eldest son, other portions to the Appellants, John Godfray, and to Philip and

Francis Godfray respectively, and a part of the estates was also allotted to the four brothers as having the rights of the Respondent, William Francis Godfray, by virtue of the deed of the 24th March, 1835. A partition was also made of the father's personal estate, the share of the Respondent being in like manner allotted to the four brothers. After the making of these partitions, and on the 28th March, 1839, the Respondent signed a memorandum at the foot of the deed of the 17th July, 1835, by which he confirmed and ratified the deed of the 24th March, 1835, and approved the deed of the 17th July, 1835, and bound himself to conform to it in all its contents. On the 9th of May, 1839, the Respondent gave a general power of attorney to his brother, Francis Godfray, to act for him in all his affairs.

On the 17th September, 1844, Marie Elizabeth Jacque, the mother, died; and on the 10th May, 1845, a partition of her estate was made in the same manner, in all respects, as the partition of the father's estate had been previously made. After the death of his mother, and on the 12th October, 1844, the Respondent again confirmed the deed of the 17th July, 1835, by a memorandum written at the foot of it, and signed by him.

On the 14th October, 1844, the Respondent wrote to his brother, Francis Godfray, as follows:—"My mother having died, you know my intention has always been to execute the agreement passed between you and my brothers, in relation to my share of the moveables and heritages in the succession of my father and mother, which agreement was confirmed by me on the28th March, 1839, and which agreement I again confirm; and I beg you, as my attorney, to cause it to be entered on the rolls of the Royal Court of Jersey, to give it full and complete effect. As I ought to enjoy the entire income, I authorise you to raise every year the sum which you shall think proper to be applied in paying you the sum of 2,400 francs, which I owe you, and to form a capital of 5,000 francs, to be placed in your name, or in your name and that of one of my brothers, for the purpose of being applied by you, in case of my death, for the maintenance and support of the two children Georgina Ernestine and Eliza."

On the 7th November, 1844, the deed of the 17th July, 1835, was duly registered in Court, and con-

firmed by the Judgment of the Court in the presence of all the parties summoned for the purpose, Francis Godfray being a party, as well in his own individual name as in the character of attorney for the Respondent. This deed was also registered in the public registry of the island. Some time after the passing of the deeds of the 24th March and 17th July, 1835, and on the 9th February, 1856, the four brothers invested part of the Respondent's share of the personal estate affected by the deeds, in the purchase of rents in their names. The four brothers also, from time to time, paid over to the Respondent the income of his share of the successions, and rendered accounts to him, and on the 2nd February, 1860, the Respondent signed a memorandum acknowledging that he had examined the accounts and found them to be correct.

The Respondent has never been married. On the 8th May, 1862, he brought the action out of which this Appeal has arisen, against the four brothers to set aside the deeds of the 24th March and the 17th July, 1835, and the deeds of partition, and to recover his share of the successions of his father and mother, and for an account of the administration of them, founding the action upon these grounds: that at the date of the deed of the 24th March, 1835, his father and mother were living, and that all agreements or stipulations relating to the successions of living persons are *contra bonos mores et à l'ordre publique*, and radically null: That at the date of this deed the Respondent had no intention to sell, nor the four brothers to purchase, his (the Respondent's) share of the heritages and moveables in question, and that this appeared by the deed of the 17th July, 1835, and the formal declaration of the four brothers contained in that deed; and, further, by the Respondent's share of the successions having been kept undivided: That the alleged sale was fictitious, and intended only to protect the future property of the Respondent, and that it had no other effect than to vest in the apparent cessionaries the administration of the Respondent's future property, and did not operate to transfer the property to them: That even on the hypothesis of a sale, the sale would be null for want of an object which could be made the subject of agreement, and for deficiency of price, inasmuch as an annuity less than the revenue of the property

alienated, could not be considered as a fair price, or that the sale would be rescindable *pour lésion ou déception d'autre moitié.* So far as respects the deed of the 17th July, 1835, the Plaintiff averred that it contained, on the part of the four brothers, a recognition and avowal that the deed of the 24th March, 1835, was no more than a fictitious contract so far as it imported sale, and that on the part of the Respondent it had no other object than to consent to the administration of his brothers, and to constitute them his mandatory administrators; that thenceforth, and whatever right they might previously have had, the four brothers, by their own avowal and consent, became the Respondent's ordinary mandatories, and that a mandate was temporary only, and subject to the will of the mandant, and was essentially and always revocable: That it was contrary to its nature and to the law to assign to it any certain duration, and that every stipulation of that kind ought to be considered as void, and that the right of revocation could not be renounced: That if the Respondent had power under certain circumstances, and on the solicitation of his brothers, to confer on them temporarily the administration of his property, such circumstances no longer existed, and as to the deeds of partition, that they were merely the consequences of the deed of the 24th March, 1835.

The Appellant, Hugh Godfray, pleaded to the action, as to the deed of the 24th March, 1835, that no deed passed before justice was null, and that deeds so passed were, at the most, subject to be set aside under circumstances: That in cases of deeds subject to be set aside, the action to set them aside must be brought within a year and a day after the opening of the rights of action, and that after the lapse of that time the deed could not be set aside, but remained in full force: That, supposing the deed of the 24th March, 1835, was at any time liable to be set aside, the Respondent's right of action to set it aside accrued immediately on the death of his father and mother, respectively, and that the Respondent having not only allowed the year and a day to elapse without having taken any proceedings to set aside the deed, but having recognised and ratified it, could not be allowed to demand its annulment; and, further, that a person who had passed a deed and taken an oath to do nothing contrary to it, could

not, at law or in equity, be allowed, against his oath, to liberate himself from the engagements which he had undertaken in passing the deed: That the deed of the 24th March, 1835, remaining in force, the Respondent had no right to demand that the deeds of partition should be set aside, and was equally without right to demand the annulment of the deed of the 17th July, 1835, which was a consequence of the deed of the 24th March, 1835, the parties to it having no power to make or agree to it, except from the deed of the 24th March, 1835, having vested the property in them. The Appellant, Hugh Godfray, further pleaded that the deed of the 24th March, 1835, was not liable to be set aside *pour cause de déception d'autre moitié du juste prix:* That the deed of the 24th March, 1835, the deed of the 17th July, 1835, and the deeds of partition, did not contain any disposition which was unlawful, or *contra bonos mores*, and that there was neither lesion nor fraud in the deeds, which had been passed of the free will and with the full assent of all the parties: That all the deeds had been frequently recognised, sanctioned, and confirmed by all the parties, and particularly by the Respondent, in having, on two occasions and at distant intervals, signed a formal approval of them: That the deed of the 17th July, 1835, having been entered on the rolls of the Court of Heritage, in the presence and with the consent of all the parties, ought, as to all the parties, to be deemed to have the force of a Judgment, and to be consequently irrevocable: That the deed of the 24th March, 1835, and the deed of the 17th July, 1835, had existed for twenty-six years, and had during all that time been acted upon with the consent of all the parties, and that many contracts of purchase and assignment had been passed, and transactions to a considerable amount effected on the faith of them, and that it would be contrary to all principle that, after having given effect to them for so long a time, one of the parties should be permitted to set them aside. The Appellant, John Godfray, pleaded to the same effect.

The cause was heard before the Inferior Number, in the months of June and July, 1862, and on the 31st July, 1862, that Court gave judgment to this effect. After recapitulating the facts to the effect above stated, the Court adjudged that, under the

circumstances, the Plaintiff (the Respondent) by his acts since the opening of the successions and other subsequent acts, as well before as after the entering of the deed on the rolls of the Royal Court, had not only debarred himself of his right to insist on the nullity of the deed of the 24th March, 1835, but had become bound to hold all transactions, both hereditary and moveable, done in his name by his mandatories, in consequence of the said deed, to be good and irrevocable; but considering that the Defendants (the four brothers), by the deed concluded between them on the 17th July, 1835, had acknowledged that their intention was not to derive any personal advantage by the passing of the deed of the 24th March, 1835, but that that deed was passed with a view to prevent the Plaintiff (the Respondent) from dissipating his property, and that the measures which were taken were to save and administer his property for him, and in his name and for his advantage, and that the Defendants (the four brothers) had acted with this object ever since, and that, looking to the actual circumstances, there was no reason for continuing these precautions in force, the Court recognised the Plaintiff's (the Respondent's) demand to revoke the mandat which he had entrusted to his brothers, and adjudged that he was capable to act and interfere by himself in the administration of his property, and accordingly ordered that the parties should go before the Greffier, and that the Defendants (the four brothers) should deliver to the Plaintiff (the Respondent) all the rights, titles, documents, and evidences belonging to him, which were in their possession or at their disposal, relating to the personal estate and heritages of the Plaintiff (the Respondent) of which they had had the administration, and should render accounts of their administration since the 31st December, 1859, to be passed in conformity with the transactions between the parties.

From this Judgment the Appellants appealed to the full Court; but the full Court, by the majority of the Chief Magistrate, affirmed the Judgment. The Appeal we have now to dispose of is from the Judgment of the full Court.

The first points to be determined upon this Appeal are, whether, according to the true effect of the deeds of the 24th March, 1835, and the 17th

July, 1835, the Appellants became, as they have been held in the Courts of the island to have become, the mandataries of the Respondent, William Francis Godfray, and, if not, what was the true purport and effect of those deeds, assuming them to be valid and effectual according to the laws of the island. These points, it is to be observed, depend wholly upon the contents of the deeds, there being no evidence to explain them; if, indeed, such evidence could have been received. It is to be observed, also, that a mandat, in the sense which the Courts of the island have attached to the word in this case, is an authority from a principal to his mandataries to manage the property of the former on his behalf, and as his agents.

First, then, having regard to these observations, can the deed of the 24th March, 1835, be considered as a mandat? Now, in the first place, it is in the highest degree improbable that the Respondent could have intended, at that time, to appoint agents to manage property to which he had not yet succeeded, and his succession to which was doubtful, and might be distant. And, in the next place, the deed itself is, in every respect, in the form of a deed of purchase. And it imposes on the four brothers of the Respondent an obligation wholly foreign to the character of a mandat—an obligation enforceable at law, to pay him out of their own pockets an annuity for life, at the risk of their never being reimbursed, for he might die in the lifetime of his parents, after receiving his annuity for several years, or his parents might leave nothing. This instrument, therefore, certainly does not, of itself, bear the character of a mandat, and the view that it was not intended to bear that character is confirmed by the deed of the 17th July, 1835.

That deed recognises the deed of the 24th March, 1835, and the obligation created by it for the payment of the annuity, as in full force; and it purports to deal with the property conveyed by the deed of the 24th March, as if the four brothers were absolute owners of the property. The Respondent was not made a party to it, which was perfectly natural and correct, if they were such owners, but would be most strange and unaccountable if the deed formed part of a mandat, and comprised a scheme for the manage-

ment or disposition of his own property. Moreover, it provides for the application of the income in a mode calculated and expressly intended to protect the property from the claims of the Respondent's creditors. But this, of course, could not be effected by a mere revocable mandat. It would require that the property should be withdrawn altogether from his power and control. This deed of the 24th March, 1835, cannot, therefore, in our opinion, be held to be a mandat.

Then, ought the deed of the 17th July, 1835, to be so considered? Now this deed is in every respect in the form of a settlement containing limitations and provisions not in favour of the Respondent only, but in favour also of any wife or children he might have, and failing wife and children, in favour of the four brothers, and there is no power of revocation contained in the deed. We see, therefore, no ground for holding that this deed could have been intended of itself to operate as a mandat. Reliance was placed, on the part of the Respondent, and the Courts of the island appear also to have relied, upon the recital contained in this deed:*—"Vu que le but dedits Hugh Godfray, &c., n'était point de retirer aucun avantage personnel par la passation dudit contrat, *mais d'empêcher que ledit W. F. Godfray ne dissipât la part qui eût pu lui revenir dans les successions de son père et de sa mère.*" But this recital does not seem to us in any way to import that the instrument was to operate as a mandat. It states no more than what the object of the brothers was in making the purchase, leaving it to the operative parts of the deed to explain the mode in which that object was to be carried into effect; and as to the statement that the brothers did not intend to derive any personal advantage from the purchase, this is answered by nothing more being reserved to them than a mere contingent interest in the property, failing any wife or child of the Respondent. The recital, in fact, has reference merely to the principal object of the transaction, which no doubt was to secure the property for the benefit of the Respondent and any family which he might have. These transactions, therefore, do not appear to us to operate as a mandat.

* Appendix, page 6, line 46.

We think the true character of them was this. An absolute purchase by the brothers of the Respondent's successions, followed by a settlement, voluntary on their part, chiefly and mainly for the support of him and his family, and the payment of his past debts, and only in case he had not a family, for themselves ultimately, who would in that case be his natural successors.

Much was said in the course of the argument upon the question whether these instruments were to be considered as separate transactions, or as separate parts of the same transaction; but this does not appear to us to be material as to this part of the case, for in either view there would be a settlement quite inconsistent with a mandat. We find ourselves unable, therefore, to agree in the opinion which the Courts of the island have formed on this case. We have hitherto, it will be observed, dealt with the case upon the footing of the deeds to which we have referred, being valid and effectual according to the laws of the island. We now proceed to consider whether they are so or not, which in truth seems to us to be the real question we have to decide. In considering this question, it will be convenient to deal separately with the two deeds.

First, then, is the deed of the 24th of March, 1835, according to the laws of the island, valid as a deed of purchase?

The Respondent contends that it was not merely voidable, but absolutely void *ab initio*, and incapable of confirmation; and that, even if it was merely voidable, he had a period of forty years, or at least of thirty years, to set it aside, the shorter of which periods had not expired when he commenced this suit.

The Appellants, on the other hand, contend that a sale by an expectant heir of his expectancy is, by the law of Jersey, perfectly good and unimpeachable; and that, even if such a sale be impeachable, it cannot, in the absence of fraud or undervalue, be impeached after the lapse of a year and a day from the time of the opening of the succession. In support of their first proposition, the Appellants rely on three precedents of deeds passed by the Royal Court and registered, of sales of their expected successions by expectant heirs, and on two precedents

of decisions by the same Court in contested cases. But as to two of the deeds referred to* the parents from whom the expected successions were to come were parties to the deeds, and this is a circumstance which is allowed on all hands to form an exception, and to make the transaction valid. As to the third deed,† however, the parent was not a party; but this precedent can hardly be considered to prove more than this—that sales of this kind, whether questionable or not, sometimes take place without being questioned.

As to the decisions referred to, in one of them, Le Bas *v.* Le Bas,‡ a case not quite like the present case, but not very dissimilar, the father of the vendor being the owner of the property, the succession to which formed the subject of the sale, was a party to the transaction, and therefore the case is not in point. As to the other of them, Le Feuvre *v.* Le Feuvre,§ a case in which a female, in consideration of being maintained by the purchaser for the remainder of her life, and decently buried after her death, conveyed to him all her future expectations, and the transaction was attempted to be impeached by her heir, the grounds on which the Court upheld it do not appear.

We think, therefore, that the Appellant's first proposition, that sales by expectant heirs of their expectancies are absolutely unimpeachable, cannot be supported upon the authority of these precedents, more especially having regard to the general law upon the subject, to which we shall presently refer.

Another point on which the Appellants relied in support of their first proposition was that the Respondent was precluded from disputing the sale by the oath which he took to abide by it. And the case Gabelder *v.* Gallichan‖ was cited on that point. There the Plaintiff alleged that a parcel, not intended to be included in a purchase, was by the Defendant fraudulently inserted in the purchase deed; and the Court held, that as the Plaintiff had sworn to observe the deed, he could not afterwards gainsay it: it was his duty to read

* Appendix, Nos 42 and 43.

† Ibid., No. 44.

‡ Ibid., No. 37.

§ Ibid., No. 39.

‖ Ibid., No. 35.

it before he pledged himself to its observance. Whatever may be thought of the soundness or unsoundness of this decision, it does not go to the length for which it has been cited. But it would be strange indeed if the decision were to be applied universally: it would be making the oath an instrument of injustice, by restraining parties in the most flagrant instances of wrong from obtaining redress. It is only right to consider the oath as containing a tacit reservation of just grounds of complaint. Upon this head Berault is explicit. Speaking of an hypothecation invalid as *contra bonos mores*, he observes:* "N'importe si elle [*scil.* la obligation] est validée par serment, parce que le respect de la religion ne confirme point les mauvaises mœurs;" and he cites the civil law to the same effect.

No authority, then, has been cited, and probably none can be cited, sufficient in our opinion to show that a sale by an expectant heir of his expected succession, made without the concurrence of the person from whom it is to descend, is absolutely unimpeachable. All the text writers and commentators on the Norman law treat it as either voidable or void: but in which of these two lights it ought to be viewed there is a great difference of opinion. Writers of great and equal eminence range themselves on different sides. The controversy extends to transactions of other kinds, whereby future rights are interfered with or modified. Many of the writers upon the subject make a distinction between contracts forbidden because they affect the rights of individuals, and contracts forbidden as *contra bonos mores*. They consider the former to be only voidable, that they are good until set aside by judicial process, and may be confirmed or rendered indisputably good by the lapse of a short period of prescription without reclamation. They consider the latter to be absolutely null, as if they had never been made, not admitting of confirmation, and not requiring a judicial sentence to set them aside, and that possession under them is simply adverse and wrongful possession. Other writers draw no such distinction, but include all such contracts in the former class of voidable contracts.

The prohibition against an expectant heir dealing

* 1 Comm. de Berault, 586 (Ed. Rouen, 1776).

for his future inheritance is derived from the civil law, which, amongst other objections to it, treated it as *contra bonos mores*, because *inducit votum captandæ mortis alienæ*;* and the prohibition as well as the reasons for it, were thence imported into the Norman law. It is not perhaps clear, having regard to the relationship of the parties and the rights of succession consequent upon it, that a case like the present would fall within that principle.

But even assuming the contract to be *contra bonos mores*, the question still remains which, of the opinions of the writers on the subject should be adopted, that the contract was void, or that it was only voidable. If we were to rely exclusively or chiefly on the continental writers upon the Coutume, it might be difficult to arrive at a conclusion on this point: but we have, upon this subject, the authority of Le Geyt, as high an authority as can be produced on the local law of Jersey. He flourished later than the eminent writers to whom reference has been made—Rouillé, Terrien, Godefroy, Berault, Basnage, and others, who are the most frequently quoted in the Courts of the island. He filled, with the greatest approbation, the highest judicial office in the island, that of Lieutenant-Bailiff, for a period of sixteen years (1676—1692); he then resigned that office, but continued on the bench as a jurat for a further period of eighteen years.† During this latter period he composed his various legal treatises, which appear to have been very carefully prepared.‡ Since his time they have always been considered of authority.§ Until recently they existed only in MS., in which form many copies had long been circulated in the island. In 1846 they were printed under the authority of the States, and at the public expense. In his treatise "De la nullité des contrats et des sentences,"‖ he discusses the question of the degree of invalidity attributable to contracts of a nature cognate to that in the present case, and, like it, prohibited by the Coutumier; deeds by a proprietor

* Corpus Jur. Civilis: Code, lib. viii, tit. 39; Dig., lib. xlv, tit. 1, l. 61.

† See his "Life," by the present Advocate-General of Jersey, prefixed to the first volume of his works.

‡ See Le Geyt's Preface.

§ Report of Commissioners of 1859, p. iv.

‖ Works, vol. i, p. 119, *et seq.*

in possession in favour of some members of his family in derogation of the rights of succession of other members. After reviewing the conflicting opinions of the continental writers on the Coutumier, he comes to the conclusion that the strictness of the civil law had been much mitigated, and that all such contracts are merely voidable, requiring a judicial sentence to supersede them. He next deals with contracts by expectant heirs, and with respect to these he comes to the same conclusion.† "Un autre exemple d'un contrat contre loy, *mais qui n'emporte pas une pleine et absolute nullité de droit*, c'est quand on contracte de la succession d'un homme vivant, *pactum de hereditate viventis*." He is treating throughout of the local law of Jersey, upon which his opinion ought to be allowed greater weight than that of any of the old French commentators, however eminent, upon the Coutume, and, *a fortiori*, than that of more modern French writers, who speak of the existing law of their own country.

The current of modern decisions of the Courts of the island is altogether in accordance with the opinion of Le Geyt. The Appendix to the present case contains fourteen precedents,† ranging from 1588 to 1842, of cases upon transactions forbidden by the Coutumier, but upheld by the Courts, and so upheld upon grounds which imply that they were voidable only. It is true that not one of these cases was the case of an expectant heir selling his expectancy; but some of them were cases of transactions condemned by the old law as *contra bonos mores*, and are therefore authorities in point. No authority has been produced on the other side of the question, where the transaction was free from the taint of fraud or under-value.

Provided, then, that the purchase of March 1835 was free from fraud or inadequacy of consideration, the just conclusion appears to us to be that, originally, the transaction was merely voidable. Taking then the deed of the 24th March, 1835, to have been voidable only, it is next to be considered what period was allowed for avoiding it, and we think that the law of Jersey leaves no doubt upon this point, that in the absence of fraud or under-value, the deed could not be impeached by the

* Woks, vol. i, p. 122. † Nos. 21—34.

Respondent after the lapse of a year and a day from the days of the opening of the successions, and that after the lapse of those times without any suit being instituted to set aside the purchase, the deed became absolute and indefeasible as regards the succession from each of Respondent's parents. All the text writers, and all the cases last referred to, establish this point. Had, indeed, the doctrine of absolute nullity prevailed, the Respondent might have been entitled to a period of forty years from the death of each parent to claim his succession from that parent,* subject, of course, to any impediment which might have arisen from the settlement of July 1835 having been confirmed by him.

The Respondent attempted to found an argument for his right to the longer period of forty years upon the fact of his share having been to the present time kept together, instead of being partitioned among his four brothers. But this argument is, in our opinion, untenable. Where the principal heir fails to make a partition, or wrongfully retains in his own hands the share of a parcener, the latter is allowed this period for claiming his share. But here the estates of the parents respectively were properly partitioned after their deaths, the Respondent's share forming one of the five portions, and being expressly allotted to the purchasers of it.† This was quite regular; it belonged to them, and they had agreed, as they had a right to do, to keep it together for the purpose of applying it according to the trusts which they had created.

Failing the right to the period of forty years for impeaching this sale, the Respondent insisted that he was entitled to a period of thirty years for impeaching it, upon the ground that the sale was for inadequate consideration, and he claims to set it aside on that ground. He claims to do so in one or other of two ways,—either under the customary law, as now established in the island, or by applying the principles recognised in English Courts of equity with reference to sales by expectant heirs.

By the local customary law, parties wronged by unconscionable bargains are allowed a period of

* See Report of Commissioners of 1859, p. xii.

† Appendix, Nos. 6, 9, and 48.

thirty years, reckoning from the date of the sale, to set them aside. But the ratio of inadequacy of consideration is strictly defined.* According to the Coutumier, in order to justify the interference of the Court to set aside a sale, proof must be given by the Plaintiff that less than half the value has been given for the property purchased. A case of the year 1598, Lempriere *v.* Trachy,† has been cited, from which it would appear that the ratio had been altered in Jersey to two-thirds; but this alteration appears to stand upon the questionable authority of the ordinances of the Commissioners, Messrs. Pyne and Knapper.‡ But whichever of the two be the present legal limit, the result, in this case, is the same: the cases of sales of property of uncertain value do not fall within the rules.

The Commentators who are of authority upon the subject lay it down that the process for rescinding a bargain for inadequacy of consideration cannot be applied to sales of things of doubtful value. Thus, Berault:—§

" Faber resoult que ladite loy n'a point de lieu en vente de choses douteuses. Ce qui fait à la question tant debattue si elle a lieu en vente de choses universelles, come d'une succession, ores que la consistence en soit inconnue au vendeur: car la valeur en est incertaine, à cause de l'ignorance des debets et charges passives: Et conséquement le vendeur ne peut alléguer de déception qui a reçu un prix certain pour une chose uncertaine."

Pothier is of this opinion.‖

The local law of Jersey thus providing for the case, it is, of course, out of the question to apply the principles of the English law, if, indeed, it could in any case be done.

In the view which we have taken of this case it may not, perhaps, be necessary for us to enter into the question of the validity of the deed of the 17th July, 1835; but as it was argued that the whole transaction between these parties was in effect a transaction of settlement of the Respondent's suc-

* "Grand Coutumier," by Rouillé, ad finem (Stille de procéder), lxxx: Rouen, 1539. Terrien, 329: Rouen, 1554.

† Appendix, No. 55.

‡ See Report of Commissioners of 1859, pp. vii, lv.

§ 1 Berault, 77: Rouen, 1776.

‖ "Œuvres de Pothier," vol. ix, p. 326: Paris, 1827.

cessions, and not a purchase, it may be right for us to state our opinion as to the effect of this deed. The Respondent raises two objections to it; first, that it was not passed on oath, in the usual way; and, secondly, that the performance of the trusts cannot be enforced.

Until recently trusts were unknown in Jersey.* Within the last half-century several instances have occurred of conveyances of land upon trusts for public objects; two samples are given in the Appendix.† In each case the deed, passed on oath in the usual way, served both as a conveyance of the land and for the declaration of the trusts. In the present case the property was first conveyed by the deed of the 24th March, 1835, and the legal ownership has since remained unchanged; but a subsequent declaration of trust was made by an independent instrument, that of the 17th July, 1835. Did this require the same formalities as a legal conveyance? Probably the question has never yet arisen in Jersey, and will now have to be determined on principle. There seems to be no ground for holding that such formalities are necessary. A writing signed by the competent parties ought surely to be sufficient evidence of the trusts, if the law allows such to be created; and the law of Jersey does not, it would seem, forbid the creation of trusts by acts *inter vivos*.‡

Next, were the trusts of the settlement binding upon the parties who executed it? Whatever was the case before the death of the father of the parties, and before the contents of the settlement were communicated to the Respondent and acted upon, it would appear, on principle, that when it was so communicated and adopted by him, and acted upon by all parties, it became binding upon them. The Respondent adopted it, for he confirmed it twice, and received payments in excess of his annuity from the very first, in strict conformity with its provisions.§ On the other hand, the four brothers were clearly bound by it.

It was suggested in argument that these deeds were open to impeachment upon the ground of

* Report of the Commissioners of 1859, p. xxv.

† Nos. 45 and 46.

‡ Report of Commissioners of 1859, p. xxv.

§ See the Accounts in Appendix, Nos. 15 and 16.

fraud, or inadequacy of consideration. With the question of inadequacy of consideration we have already dealt, and there appears to be no ground whatever for imputing fraud to the four brothers.

There are many other facts in this case which are much in favour of the Appellants, more especially the acts of confirmation on the part of the Respondent, the long period during which he has received the benefit of the instruments in question, and the great delay on his part in instituting these proceedings, this action not having been brought by him until twenty-seven years after the bargain was made, twenty-three years since the father's succession fell in, and eighteen years since the mother's fell in; but we do not think it necessary to comment upon these points. For the reasons which we have stated, we are of opinion that the Judgment under appeal cannot be maintained, and we shall humbly recommend Her Majesty to reverse it, and to dismiss the action with costs, to be paid by the Respondent, who must also pay the costs of the Appeal.