

THE LAWS OF OLERON.

[Reprinted from 1 Pet. Adm. Append. iii.]

This justly celebrated code was originally promulgated by Eleanor, Duchess of Guienne, the mother of Richard I. of England. Returning from the Holy Land, and familiar with the maritime regulations of the Archipelago, she enacted these laws at Oleron in Guienne, and they derive their title from the place of their publication. The language in which this collection of laws was originally clothed is that of Gascony, and their first object appears to have been the commercial operations of that part of France only.

By Richard I. of England, who inherited the dukedom of Guienne from his mother, this code was improved, and introduced into England. Some additions were made to it by King John, it was promulgated anew in the 50th year of Henry III., and received its ultimate confirmation in the 12th of Edward III.¹

England and France contend for the honour of having originated this system of laws; but we only notice this circumstance to introduce the observation, that it affords the strongest testimony of the value of the collection, and of the high respect in which it is held by the two greatest nations of the world. Indeed it forms the basis of the celebrated Ordinances of Lewis XIV. of France, and it is admitted as authority in the courts of common law, as well as the admiralty courts of England.

The translation now published is printed from the "Sea Laws," and the editor has carefully compared it with the copy published in French by Cleirac, in a work entitled "Les Us. et Coutumes de la Mer." He has not considered himself authorized to make any alterations in the text, but wherever a variance between the copies has been discovered, he has pointed it out, and he has given the words of the French copy, with a particular reference to the passage from which, in his opinion, they differ.

The "notes and illustrations," which are highly valuable, will be found by a reference to Cleirac, to have been principally abridged from his work, and, indeed, in some instances they are extracted verbatim. While an acknowledgment of the source from whence they were derived, would have been honourable to the candour of the compiler of the Sea Laws, these Commentaries would have obtained increased authority from the reputation and talents of their real author, who is justly estimated among the most distinguished jurists of France.

ARTICLE I.

When several joint owners make a man master of a ship or vessel, and the ship or vessel departing from her own port, arrives at Bordeaux, Rouen, or any other such place,

and is there freighted to sail for Scotland, or some other foreign country; the master in such case may not sell or dispose of that ship or vessel, without a special procuration² from the owners: but in case he wants money for the victualling,³ or other necessary provisions of the said vessel, he may for that end, with the advice of his mariners, pawn or pledge part of the tackle or furniture of a ship.

Observation.

The title of master is so honourable, and the command of a ship of such importance, that great care has been taken by all maritime nations, that none may be employed but honest and experienced men. By an ordinance of the admiralty in France, A. D. 1584, every master of a ship before he took upon him that trust, was to be examined whether he was fit for it. The Spanish naval laws require the same thing: *El maestro de la nave, para serlo, ha de ser marinero y examinado. Cedula real del Anno 1576. Impresa con las de Indias quarto tomo.* The ordinances and regulations of the Hanse Towns, do not only demand experience and capacity, but honesty and good manners. And none was to be admitted into the service of any citizen aboard his ship, without a certificate of his qualifications, as to his honesty and capacity. See their Book of Ordinances, book 6, art. 1.

The Greeks called the master of a ship *Πιστον*, *cujus fidei navis concreditur*, to whom the government of the ship is entrusted; but so, that the master cannot sell the ship itself, nor any of her tackle or furniture, without the order or consent of the owners. However, in case of necessity, when he is in a far country, he may pawn or pledge her tackle for provisions, and if that will not do, he may borrow money on the ship's bottom, though not without the consent of his officers and seamen. According to the Ordinances of Wisbuy, arts. 13, 15, and Philip II. King of Spain's Ordinances in the year 1563, art. 12. Those of the Hanse Towns forbids a master of a ship, notwithstanding he is part owner, not only to sell, but to do any thing, even to buy tackle or victuals, without acquainting the other owners of it, unless it be in a strange country, and in a case of necessity, well and lawfully attested. Articles 3-5 et seq.

By the ordinances and customs of the sea, it appears, that formerly it was not thought safe to entrust a master of a ship with the vessel

² In the copy of the Roll d'Oleron, published by Cleirac, in the original French, the words are, "procuration ou mandement special."

³ "Pour les depens," in Cleirac's copy.—E.

¹ 2 Brown, Civ. & Adm. Law, 40.

30 Fed. Cas.

and cargo, unless he was a freeman of that city, and part-owner of the ship; and if he was part-owner, when he had betrayed or abused his trust, the other owners might turn him out of the ship, paying him what his part of her came to at the same price he gave for it. See Ordinances of the Hanse Towns, art. 14. And if he pretended he had sold his part to another person for more than it was worth, the other owners might have it appraised, and take it to themselves, paying him what it was valued at by such appraisement. Article 53.

The master commonly took care of every thing belonging to the ship, from the poop to the mainmast. He was obliged to understand the art of piloting and navigation, that he might know how to control the pilot, and mind how he steers the ship, y si el maestre no fuere piloto es obligado a veyar un marinero diestro en la navegacion, tel que, pueda regir la nave a fala de piloto, according to the ordinances of Spain. The mate's command reached from the stern to the mizzenmast, the latter included. It will not be thought improper by the curious to mention here the several officers of a ship, either men of war, or merchantmen, as they were distinguished aboard, a century of years ago.

In royal navies the first officer was the admiral; then the vice-admiral, then the captain-major or chief of a squadron. In every man of war, the first officer was the captain, the second the pilot, who enjoyed that place in honour of the sciences he professed and practised; next to him was the master, who had the charge of the tackle and furniture, and then the captain, and lieutenant of the soldiers. In a merchantman the first officer was the master, the second the pilot, the third the mate, the fourth the factor, or supercargo; then his assistant, accomptants, the surgeons, the steward, four corporals, the cook, the gunner, the cockswain; the gunner and cockswain used to work before the mast, as well as the rest of the ship's crew, but their wages were more. There is a great deal of difference between the order of precedency on board of a ship now, and what was formerly: for the captain and lieutenant of the soldiers would think it very hard to give place to the pilot and master of a ship; and the factor, or supercargo, will as difficultly be persuaded to own the master of a vessel's superiority, except in what relates to the navigating the ship.

ART. II.

If a ship or other vessel be in a port, waiting for weather, and a wind to depart, the master ought when that comes, before his departure to consult his company, and say to them, Gentlemen, what think you of this wind? If any of them see that it is not settled, and advise him to stay until it is, and others, on the contrary, would have him make use of it as fair, he ought to follow the advice of the major part: If he does otherwise, and the vessel happens to miscarry, he shall be obliged to make good the same, according to the value upon a just appraisement.⁴

Observation.

It is a maxim, or general sea law, that a master of a ship shall never sail out of a port, never weigh or drop anchor, cut masts or cable, or indeed do any thing of consequence, let him be in whatever danger may happen, without the advice of the major part of his company, and the merchants, if there be any aboard.—He must call all together to consult. Wisbuy, art. 14.

⁴ "Ou la somme qu'elle sera prisee." Cleirac. —E.

ART. III.

If any vessel, through misfortune, happens to be cast away, in whatsoever place it be, the mariners shall be obliged to use their best endeavours for saving as much of the ship and lading as possibly they can: and if they preserve part thereof, the master shall allow them a reasonable consideration to carry them home to their own country.⁵ And in case they save enough to enable the master to do this, he may lawfully pledge to some honest persons such part thereof as may be sufficient for that occasion. But if they have not endeavoured to save as aforesaid, then the master shall not be bound to provide for them in any thing, but ought to keep them in safe custody, until he knows the pleasure of the owners, in which he may act as becomes a prudent master; for if he does otherwise, he shall be obliged to make satisfaction.

Observation.

The ship's crew are obliged to do all that lies in their power to save things from shipwreck, and gather up what they save, on pain of losing their wages; and those that hinder or dissuade them from it, shall be severely punished. This law is very well explained by an ordinance of King Philip II. of Spain, in the year 1563, by which it is ordained, that the seamen shall be bound to save as much as they can from shipwreck; and in such case, the master is bound to pay them their wages, and to give them a further reward for their labour out of the goods. But if the seamen refuse to do their endeavor to save the goods, they shall neither have pay nor reward. Hanse Towns Ord. art. 44; Wisbuy, art. 15.

ART. IV.

If a vessel departing with her lading from Bordeaux, or any other place, happens in the course of her voyage, to be rendered unfit to proceed therein, and the mariners save as much of the lading as possibly they can; if the merchants require their goods of the master, he may deliver them if he pleases, they paying the freight in proportion to the part of the voyage that is performed, and the costs of the salvage. But if the master can readily repair his vessel, he may do it; or if he pleases, he may freight another ship to perform his voyage. And if he has promised the people who helped him to save the ship the third, or the half part of the goods saved for the danger they ran, the judicatures of the country should consider the pains and trouble they have been at, and reward them accordingly, without any regard to the promises made them by the parties concerned in the time of their distress.

Observation.

This law does not relate to an entire loss, but only to salvage, or rather not to the shipwreck, but to the disabling of a ship, so that she cannot proceed in her voyage without refitting. In which case the merchants may have their goods again, paying the freight in

⁵ "Le maître est tenu de leur bailler salaire raisonnable pour venir en leurs terres." Cleirac.

proportion to the way the ship made. If the merchant has not money to pay the freight, and the master will not credit, the latter may take his goods in payment at the market price. Wisbuy, art. 33; Emperor Charles V. Ordinance, art. 40.

If the master can in a little time refit his vessel, and render her fit to continue her voyage, that is, if he can do it in 3 days' time at the most, according to the Hanse Town Laws; or if he will himself take freight for the merchandize aboard another ship bound for the same port to which he was bound, he may do it; and if the accident did not happen to him by any fault of his, the freight shall be paid him. *Lege Rhodior. Numb. 42, secundo & ultimo tomo juris Græco-Romani in fine*; Wisbuy, arts. 16, 37, 55; King Philip II. of Spain's Ordinance, under the head of "Averages," art. 30.

As for the charges of salvage, there are very great allowances made to the salvors, *lege Rhodior. secundo tomo juris Græco-Romani Nos. 45, 47; Hiermenopolus in Promptuario Juris, lib. 2, tit. 6*. By this law there was adjudged to the divers and salvors, the half, the third or the tenth of the things saved, and that according to the depth of the water out of which they were fished, fifteen, eight or one fathom; as also a tenth part for salvage on the coast, and the fifth to him that saving himself, carries and saves something with him. The promises that are extorted in danger on this account, ought always to be regulated according to justice, with reason and proportion, without keeping to the expressions of such promises; for this there are several laws in France, and an instance of it is thus recorded. A gentleman named La Mothe, embarked at St. Machaire with two horses in a boat, going for Bordeaux; as they were in their passage, one of the horses grew furious, and leaped overboard. La Mothe held him by the bridle; the horse splashed the water up in his face, and the gentleman pulling his handkerchief out of his pocket to wipe it off, at the same time pulled out a purse that had thirty pistoles in it, which fell into the water. The boatmen came, and La Mothe desired them to take notice of the place, by observing the trees and buildings that were near it, and when the tide was out, to seek after the purse; promising if they found it, to give them a pistole for their pains. The boatmen excused themselves; nevertheless, when they had put La Mothe and his horses ashore, they went to look for the pistoles when it was low water, and one of them found them where they were dropt. His companions demanded their share of them, but he who had the good fortune to find the purse, would not let them have any of the gold, and there was a law-suit about dividing it, before the judge of St. Machaire. Monsieur La Mothe hearing of it, came thither and put in his claim to the purse and pistoles; but the judge gave it against him. He then appealed to the seneschal of Guienne's court, but with no better success; at last he appealed to the parliament of Bordeaux, and that court decreed, he should have his pistoles, but should pay 60 livres to the boatmen for their pains and trouble.

ART. V.

If a vessel departing from one port, laden or empty, arrives at another, the mariners shall not leave the ship without the master's consent: if they do, and by that means she happens to be lost or damaged, they shall be answerable for the damage; but if the vessel be moored, and lying at anchor, with a sufficient number of men aboard to keep the decks and lading, they may go without the master's consent, if they come back in

good time; otherwise they shall be liable to make satisfaction, if they have wherewithal.

Observation.

This article relating to seamen, it will not be unacceptable to the reader to observe what other customs and ordinances we have met with concerning them.

Mariners are obliged to look carefully after every thing that relates to the preservation of the ship and goods. *Consolato, c. 169; Wisbuy, art. 47*. For which reason, they ought not to go ashore and leave the vessel, without the master or mate's permission: if they do, they are bound to answer all the damages that happen to the ship or merchandize in their absence. *Wisbuy, art. 17*. The emperor Charles V.'s Ordinance in the year 1552, arts. 9 and 10, conformable to the Rhodian Law, *secundo tomo juris Græco-Romani, Num. 20*. The Regulations of the Hanse Towns, art. 40, ordain, that if any seaman goes ashore without license, and if in his absence the ship happens to be lost for want of hands, the seaman thus absent shall be apprehended, and kept a year in prison on bread and water; and if any one should be killed or drowned in his absence, and that be the cause of it, he shall be corporally punished. The same ordinances condemn those mariners that lie out of their ship all night, to pay all the damage that shall happen while they are absent. Those of the Hanse Towns, arts. 22, 23, add imprisonment. Some laws forbid them to undress themselves, and the Hanse Towns, art. 32, to lie with their wives aboard. The reason is, that they may always be ready to assist their fellows in the discharge of their duty in the preservation of the ship and goods. The obligation of the mariner to the master, begins as soon as he is hired and terms are agreed; and ends when the voyage is finished, and they are returned. The obligation of the mariner to the merchant is from the beginning of his charge, and the mariner is obliged to stow and unstow the goods, according as the place they are in is commodious or not, to keep them from damnifying, and promote or hinder the ship's trimming; and if by their refusing to do so, the merchandize is damaged or spoiled, they are bound to make the damage good. *Wisbuy, art. 48; Philip II. art. 19*. By the laws of Wisbuy, they are also bound to unlade some goods with the shovel, and some to hand ashore; for which they are to have no extraordinary allowance; but for letting things up or down, they are by the same laws to be allowed something extraordinary, that is above their wages. The laws are very severe against those seamen that run away from ships after they are hired. In men of war, desertion is punished with death; in merchantmen, by the Hanseatic laws, or those of the Hanse Towns, they are to be marked in the face with a red hot iron, that they may be known, and be infamous as long as they live. If the mariner runs away before the voyage, when he is taken, he ought to refund half as much as the master was to have paid him for the whole voyage. If he hires himself to two masters, the first may demand him, and by the Hanseatic law, art. 1, he is not bound to pay him any wages. Provision is made for such seamen as run away, only because the master has used them ill. By the same laws, if any master entices away a mariner hired before by another, the last master shall forfeit to the first 25 livres, and the mariner, half the wages he was to have had of the master that so enticed him. That master who knowingly hires a mariner who was hired before, shall pay double the wages he was to pay the mariner, and the latter be bound to follow and serve the first master. However, a mariner may demand, and ought to have his discharge, either before or during the voyage, for these

four reasons: in case he is made master or mate of another ship; if he marries, and then he is obliged to refund what he has received; if he made any provision in his bargain for quitting the ship; if the voyage is finished, the ship disarmed, unloaded and light, the sails, tackle and furniture taken away and secured. See Laws Wisbuy, arts. 54, 63.

If the master gives a mariner his discharge, without any lawful cause, and for his pleasure only; in case he does it before the voyage, and while the ship is in port, he ought to pay him as much as he was to give him for the whole voyage; but if he discharges him after the ship is sailed, he ought to pay him all his wages. Wisbuy, art. 111.

By the Hanseatic law, the master is to pay a third of the wages only, and not to bring it to his owners' account. He is obliged also to pay him not only all his wages, if he discharges him in his voyage, but to defray the charges of his return. If after a bargain is made between the master and mariner, if the voyage happens to be hindered by war or pirates, or any other lawful account, the mariner, according to King Philip's Laws, art. 9, shall have a quarter part of the wages that were promised him for the voyage; and the master by a French law shall have half the freight. A master may turn off a mariner if he finds he is ignorant in maritime affairs, and incapable to perform the voyage, particularly a pilot, to whom in such cases he is not bound to pay any wages, and at his return may have him punished for his rashness, according to King Philip's and the Hanseatic laws. If it happens that the master finds out the pilot or mariner's ignorance when he cannot discharge them, they shall be obliged at their return to refund all the money he had advanced to them, and pay the master besides half what he had promised them: but if the pilot declares first he is dubious, and cannot depend on his knowledge, that he is out of the way, and does not very well understand his business; if it is when he is outward bound, he shall be paid half what was promised him; if homeward bound, all. If the master finds that any officer or seaman aboard his ship has any infectious distemper that is dangerous, he may put him ashore at the first place he comes to, without paying him any thing; but then he must prove it by two or three witnesses. He may also turn away any thieving mariner, or any quarrelsome or factious fellow; but as to the latter, he should have a little patience, to see if he can be brought to reason. Vide Hanseatics, art. 29; Laws of Wisbuy, art. 25.

ART. VI.

If any of the mariners hired by the master of any vessel, go out of the ship without his leave, and get themselves drunk, and thereby there happens contempt to their master, debates, or fighting and quarrelling among themselves, whereby some happen to be wounded: in this case the master shall not be obliged to get them cured, or in any thing to provide for them, but may turn them and their accomplices out of the ship; and if they make words of it, they are bound to pay the master besides: but if by the master's orders and commands any of the ship's company be in the service of the ship, and thereby happen to be wounded or otherwise hurt, in that case they shall be cured and provided for at the costs and charges of the said ship.⁶

⁶ "Ils doivent être guéris & pansés sur le coût de ladite nef." Cleirac, 15.—E.

Observation.

By the Laws of Wisbuy, art. 18, those mariners that are mutinous and quarrelsome, are obliged to refund all they have received, and pay besides what the master is forced to give to others whom he hires in their places above the wages he was to give them.

The Laws of Charles V. art. 23 et seq., ordain certain punishments, according to the heinousness of the offences and crimes committed by seamen. If the mariners are wounded, or any wise hurt in serving the master of the ship, they shall be cured, taken care of, and indemnified at the charge of the ship. Wisbuy, art. 18; Hanseatics, art. 39; Charles V. arts. 27, 28; Philip II. art. 16. If mariners are taken by corsairs in his, and his ship's service, the master is bound to redeem them, and besides that, to pay them their wages, during their captivity, as much as if they had all that time been in his service. This law is in the Consulat, c. 182. If in defending himself, or fighting against an enemy or corsairs, a mariner is maimed, or disabled to serve on board a ship for the rest of his life, besides the charge of his cure, he shall be maintained as long as he lives at the cost of the ship and cargo. Vide the Hanseatic Law, art. 35. An instance of this is told by our author.

In the year 1621, Giles Esteben, a citizen and merchant of Bordeaux loaded a vessel of 36 tuns with wine for Calais, and gave the charge of the cargo to one Fiton his servant. The vessel set sail, and when she was at sea met with a Turkish rover. The corsair came up with her, and took her, but did not meddle with the vessel or the wine, either because the Alcoran forbids the Mahometans to drink or deal in wine, or because he held intelligence with the master of the vessel, who was a Scotchman; for he did him nor any of his crew no manner of hurt, but took away Fiton and sold him in Barbary for a slave. He remained there four years and a half in great misery and poverty; at last he was redeemed by alms in the year 1625, and paid for his ransom 780 livres. Fiton returning to Bordeaux, found that his master Esteben was dead; however, he entered an action in an inferior court against the widow, for his wages, as well for the time he was detained in slavery, as for that before his captivity, as also for the reimbursement of his ransom money, his losses and interest. The widow removed the suit to the higher courts, and from thence it came before the parliament, who decreed, that the widow should pay Fiton 1000 livres in full for his wages, redemption, expenses, loss and interest.

ART. VII.

If it happens that sickness seizes on any one of the mariners, while in the service of the ship, the master ought to set him ashore, to provide lodging and candlelight for him, and also to spare him one of the ship-boys, or hire a woman to attend him, and likewise to afford him such diet as is usual in the ship; that is to say, so much as he had on shipboard in his health, and nothing more, unless it please the master to allow it him; and if he will have better diet, the master shall not be bound to provide it for him, unless it be at the mariner's own cost and charges; and if the vessel be ready for her departure, she ought not to stay for the said sick party⁷—but if he recover, he ought to

⁷ "Et s'il guerit il doit avoir son loyer tout comptant, en rabattant les frais, si le maître lui en a fait, et s'il meurt, sa femme et ses prochains le doivent avoir pour lui. Voyez le

have his full wages, deducting only such charges as the master has been at for him. And if he dies, his wife or next kin shall have it.

Observation.

The nineteenth article of the Laws of Wisbuy, the forty-fifth of the Hanseatic law, the twenty-seventh of Charles V., and the sixteenth of Philip II., which he compiled for the Low Countries, were all founded upon this law of Oleron, in what relates to a sick mariner, and agree exactly with it, both if he recovers his health, or dies in the voyage. The Spaniards have another custom in the West India voyages; for in case a mariner falls sick, he must substitute another in his place, otherwise he loses all his wages for the time in which he could not work. By the Hanseatic law, art. 45, if a mariner is detained ashore by sickness, the voyage ought not to be retarded on his account. By Charles V.'s ordinances, if the mariner dies as he is outward-bound, his wife and heirs shall receive half his pay: if as he is homeward-bound, they shall have all, deducting the charge of his funeral, if there has been any. In ships of war the custom in some places has been more favourable to sailors; for we find in a treatise written by Francis Pyrrard de Laval, entitled, "Advis pour aller aux Indes Orientales," that if a man died the first day of the voyage, his heirs were to be paid as much as if he had completed it.

ART. VIII.

If a vessel be laden to sail from Bordeaux to Caen, or any other place, and it happens that a storm overtakes her at sea, so violent, that she cannot escape without casting some of the cargo overboard for lightening the vessel, and preserving the rest of the lading, as well as the vessel itself; then the master ought to say, "Gentlemen, we must throw part of the goods overboard"; and, if there are no merchants to answer him, or if those that are there approve of what he says by their silence, then the master may do as he thinks fit; and if the merchants are not pleased with his throwing over any part of the merchandize, and forbid him, yet the master ought not to forbear casting out so many of the goods as he shall see to be for the common good and safety; he and the third part of his mariners making oath on the Holy Evangelists, when they arrive at their port of discharge, that he did it only for the preservation of the vessel, and the rest of the lading that remains yet in her. And the wines, or other goods, that were cast overboard, ought to be valued or prized according to the just value of the other goods that arrive in safety. And when these shall be sold, the price or value thereof ought to be divided livre a livre among the merchants. The master may compute the damage his vessel has sustained, or reckon the freight of the goods thrown overboard at his own choice. If the master does not make it appear that he and his men did the part of able seamen, then neither he nor

they shall have anything. The mariners also ought to have one tun free,^s and another divided by cast of the dice, according as it shall happen, and the merchants in this case may lawfully put the master to his oath.

Observation.

Of two evils, to choose the least is the law of nature as well as of nations; and when a ship is in danger of perishing, the lives of the seamen, and the safety of the rest of the cargo make the throwing part of it overboard the least evil. But that the master's ignorance or fear might not hurry him to do any thing to the detriment of the merchant, without good grounds for it, he must consult the merchants, passengers, or mariners aboard his ship, and, according as the necessity of it appears to them, to throw the goods overboard. This he is warranted to do by the Rhodian Law. Secundo Tomo Juris Græco-Romani, Num. 9, and by 20th, 21st, and 38th articles of that of Wisbuy. The 20th and 38th articles provide also, that if the merchants alone are against the proposition of throwing the merchandize overboard, and the rest, who have their lives and goods also to lose, consent to it, the master and third part of the seamen purging themselves as soon as they come ashore by oath, that necessity forced them to do it, and that otherwise they could not have been saved, may do it, and shall then be justified for what they did. The master is not obliged, when he comes to this extremity, to throw his own goods overboard first. The custom of the Levant is, the traveller or merchant first flings out something of his own. Philip the Second's Ordinances, under the title of Avarages, require, that the ship's utensils should be first thrown overboard, such as old cables, firewood, anchors and guns, which weigh heavy, and are not of the greatest service; then the chests belonging to the ship's crew, as being of the least value. All those things which are thrown overboard come into an average, except those that belong to the sovereign.

By the thirty-eighth article of the Laws of Wisbuy, the clerk of the ship ought to register all the goods that are thrown overboard; and if there is no clerk aboard, it is convenient for the mariners to make attestation of them at the first port they come to.

By the Rhodian Laws, the goods that are damaged by the storm come into an average. By the same laws, if the master, by overloading his ship, is the occasion of the goods being thrown overboard, he shall make good the damage. The Laws of Wisbuy, art. 46, except, in this case, those goods which were so laden with the consent of the merchant. If the master has let out more freight than he has stowage for, he must not therefore overload his own ship, but by the Consolato is bound to find freight for them in another. If the merchants, passengers or mariners have any plate or other precious goods in their chests or cabinets, they ought to inform the master and clerk of it; otherwise their chests will not be liable to any average for any thing more than what is known to be within them. Persons never are reckoned in an average, but all sorts of goods whatsoever. Victuals belonging to the ship are exempted from the laws for throwing goods overboard, and privileged from paying contributions in averages. Seamen's wages are not liable to averages. By the Hanseatic Law, art. 28, these wages ought to be paid by three payments, a third part before the ship goes out of the port, a third part when she is unladen, and a third part at her return.

By the Rhodian Law, the sailors ought to have

tit. 6 de l'Ordonnance de 1681. Au surplus les malades sont mis a l'hôpital, & traités aux dépens du navir tant que dure le voyage." Cleirac, 17.—E.

^s "Et pour recouvrer le dommage, les mariners doivent avoir un tonneau franc." Cleirac, p. 18.—E.

a ton freight free from contributions in averages, when goods are thrown overboard. To explain this it will be necessary to observe—that sailors were used to hire themselves out for a voyage for several considerations; some had a certain sum of money for the whole voyage, or so much a month, or so much a day; others hired themselves for such a proportion of the freight, or a liberty to load so much goods aboard, or let out so much freight to others. But the most common way, and the best of hiring themselves, was for part in wages, and part in freight, either for themselves or to let out. Those seamen who had wages only, contributed nothing to the average for goods thrown overboard. Those who had goods contributed, unless those goods were bought with their wages, and they had only one ton exempted. The merchants who hired their freight of them had the same privilege by it as themselves.

Having had occasion to make mention of *livre a livre*, an explanation of it will not be unacceptable to the reader. The civilians consider every thing as one whole; as for example, an inheritance composed of several parts, makes together one whole or mass of inheritance, of whatever importance it may be, great or small, as if the whole of his inheritance made one *livre*, one pound, as *hereditatis*. This pound divided into twelve equal parts, is named ounces. The merchants and masters of ships, in case of averages for goods thrown overboard, or damaged in storms, have the same view; that is, they consider the ship and cargo together as one pound, and the goods lost or damaged as another; so that he who had a tenth in the pound of the cargo, a fifteenth, or any other share, must carry a tenth, a fifteenth, or any other share to the pound of the average; and this proportion of one pound to another, is what is called by the French naval laws, "*livre a livre*," pound to pound.

ART. IX.

If it happen, that by reason of much foul weather the master is like to be constrained to cut his masts, he ought first to call the merchants, if there be any aboard the ship, and such as have goods and merchandize in the vessel, and to consult them, saying, "Sirs, it is requisite to cut down the mast to save the ship and lading, it being in this case my duty." And frequently they also cut their mooring cables, leaving behind them their cables and anchors to save the ship and her lading; all which things are reckoned and computed *livre by livre*, as the goods are that were cast overboard. And when the vessel arrives in safety at her port of discharge, the merchants ought to pay the master their shares or proportions without delay, or sell or pawn the goods and employ the money he raises to satisfy by it the same, before the said goods be unladen out of the said ship: but if he lets them go, and there happens controversies and debates touching the premises, if the master observes collusion therein, he ought not to suffer, but is to have his complete freight, as well for what goods were thrown overboard, as for what he brought home.⁹

Observation.

No merchant is obliged to pay average for goods thrown overboard, unless the master can prove he did it for the safety of his own and

⁹ "Ains doit avoir son fret, comme si les tonneaux fussent pèris." Cleirac, 24.

his men's lives, and the preservation of the ship and the rest of her cargo. What loss happens by accidents, breaking the masts, or burning the sails, or pirates taking part of the goods, shall not come into the common average. By the Rhodian Laws, every merchant shall bear his own loss, and the master shall do the same. See also the twelfth article of the Laws of Wisbuy. Averages are by that to be paid for damages done *ad intra*, and not for those *ad extra*; therefore the master and mariners are obliged to purge themselves by oath, how the damage came, in the first court of admiralty they come to, and that it was done in very great necessity. Indeed if pirates take the ship and cargo entire, and both are redeemed for a sum of money, the average for that shall be common, and all the concerned shall pay contribution. If the merchants and passengers aboard the ship desire the master to put into any port out of his way for fear of pirates, and in going out of that port he loses anchors or cables, those who desired him to put in there shall pay for them, and the ship ought not to pay anything toward that loss. After a general shipwreck there is no average or common contribution, but save who save can, as is vulgarly said on this occasion. If any goods that were thrown overboard in a storm, to lighten the ship, happen to be recovered, the owner of them ought to restore what he had recovered for damages by average, to those that paid him, deducting for the loss he may be at by his merchandize being damaged. The Rhodian Law enjoins this.

ART. X.

The master of a ship, when he lets her out to freight to the merchants, ought to shew them his cordage, ropes, and slings, with which the goods are to be hoisted aboard or ashore; and if they find they need mending, he ought to mend them; for if a pipe, hogshead or other vessel, should happen by default of such cordage or slings to be spoiled or lost, the master and mariners ought to make satisfaction for the same to the merchants.¹⁰ So also if the ropes or slings break, the master not shewing them beforehand to the merchants, he is obliged to make good the damage. But if the merchants say the cordage, ropes or slings are good and sufficient, and notwithstanding it happens that they break, in that case they ought to divide the damage between them; that is to say, the merchant to whom such goods belong, and the said master with his mariners.

Observation.

By the twelfth article of the Laws of Wisbuy, and the seventh of King Philip's, the master when he lets his ship out to freight, is

¹⁰ The following important passage has been omitted in the translation of this article: "Et si doit le maître payer selon qu'il doit prendre du guindage, et doit le salaire du guindage être mis à recouvrer le dommage, et le rest ou surplus doit être départi entr'eux." Cleirac, p. 26.

In France the owners of ships receiving freight, are not obliged to pay the expenses of loading or unloading, but they form a separate charge against the owners of the cargo. The passage above quoted authorizes a deduction from this charge, of the value of any article lost or injured from the negligence of the master to furnish proper cordage, &c. If this charge is not sufficient to compensate for the loss, the master and mariners are to make up the difference.—B.

bound to shew her to the merchants or their agents. The Consolato requires the same, and that the master should let the merchants visit not only the ropes, but all the ship above decks and below, that they may see what is wanting, and have it mended; and if it is not mended, and the merchandize is damnified, the master shall make good the loss. The forty-ninth article of the Laws of Wisbuy enjoins the mariners to give the master notice of the faults and defects in the cordage; otherwise they shall be responsible for all accidents that may happen; and if after such notice given, the master does not take care to have them mended, he shall answer the damage out of his own pocket.

The Rhodian Laws Secundo Tomo Juris Græco-Romani, Num. 11; wills and ordains, that the merchant who loads a ship, shall inform himself exactly of every thing, "Diligenter interrogare debet mercatores qui prius in ea navi navigaverunt." The law says he should enquire of those that have sailed in her before; but that is of little use, except as to her sailing, for ships grow daily more and more out of repair, and should be always viewed by the person that is going to be concerned in them, without trusting to the information of others.

ART. XI.

If a vessel being laden at Bordeaux with wines, or other goods, hoists sail to carry them to some other port, and the master does not do his duty as he ought, nor the mariners handle their sails, and it happens that ill weather overtakes them at sea; so that the main yard shakes or strikes out the head of one of the pipes or hogsheads of wine; this vessel being safely arrived at her port of discharge, if the merchant alleges, that by reason of the main yard his wine was lost; and the master denies it: In this case the master and his mariners ought to make oath (whether it be four or six of them, such as the merchant hath no exception against) that the wine perished not by the main yard, nor through any default of theirs, as the merchants charge them, they ought then to be acquitted thereof; but if they refuse to make oath to the effect aforesaid, they shall be obliged to make satisfaction for the same, because they ought to have ordered their sails aright before they departed from the port, where they took in their lading.

Observation.

This article is explained by the 23d of the Laws of Wisbuy, which ordains, that if the cargo is ill stowed, and the ship ill trimmed, and the mariners do not manage their sails rightly, and any damage happens by it to the ship or goods, they shall be responsible for the damages as far as they have wherewithal to do it with. There were formerly, in several ports of Guyenne certain officers called "arrameurs" or stowers, who were master-carpenters by profession, and were paid by the merchants, who loaded the ship. Their business was to dispose right, and stow closely all goods in casks, bales, boxes, bundles or otherwise; to balance both sides, to fill up the vacant spaces, and manage every thing to the best advantage. It was not but that the greatest part of the ship's crew understood this as well as these stowers; but they would not meddle with it, nor undertake it, to avoid falling under the merchant's displeasure, or being accountable for any ill accident that might happen by that means. There were also sacquiers, who were very ancient officers, as may be seen in the 14th book of the

Theodosian Code, Unica de Saccariis Portus Romæ, lib. 14. Their business was to load and unload vessels laden with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, or cheating him of his merchandize otherwise.

ART. XII.

A master, having hired his mariners, ought to keep the peace betwixt them, and to be as their judge at sea; so that if there be any of them that gives another the lie, whilst they have wine and bread on the table, he ought to pay four deniers; and if the master himself give any the lie, he ought to pay eight deniers; and if any of the mariners impudently contradict the master, he also ought to pay eight deniers; and if the master strike any of the mariners, he ought to bear with the first stroke, be it with the fist or open hand; but if the master strikes him more than one blow, the mariner may defend himself: but if the said mariner doth first assault the master, he ought to pay five sols, or lose his hand.

Observation.

The law restrains the correction of the master to one blow with his fist, which the mariner ought to bear, and no more. The Consulate, c. 16, explains how far the mariner is bound to suffer his master's assaulting him, in these terms: "The mariner is obliged to obey his master, though he should call him ill names, and is enraged against him, he ought to keep out of his sight, or hide himself in the prow of the ship; if the master follows him, he ought to fly to some other place from him; and if he still follows him, then the mariner may stand upon his defence, demanding witnesses how he was pursued by the master; for the master ought not to pass into the prow after him."

The twenty-fourth article of the Laws of Wisbuy punishes the giving the lie. The same article is very severe against the mariner that strikes the master. The mariner that strikes, or lifts up arms against his master, was to lose half his hand in a very painful way. If the mariner has committed a crime too great for the master's authority to punish, then the master and his officers ought to seize the criminal, put him in irons, and bring him to justice at his return.

ART. XIII.

If a difference happens between the master of a ship, and one of his mariners, the master ought to deny him his mess thrice, ere he turn him out of the ship, or discharge him thereof: but if the said mariner offer, in the presence of the rest of the mariners, to make the master satisfaction, and the master be resolved to accept of no satisfaction from him, but to put him out of the ship; in such case the said mariner may follow the said vessel to her port of discharge, and ought to have as good hire or wages, as if he had come in the ship, or as if he had made satisfaction for his fault in the sight and presence of the ship's company; and if the master take not another mariner into the ship in his stead, as able as the other, and the ship or lading happens thereby to be, through any misfortune, damnified, the master shall be obliged to make good the same, if he hath wherewithal.

Observation.

To deny him his mess, is, in the original, *oter la touaille*, an old Gascon phrase, which signifies to deny him the table-cloth or victuals for three meals; by which is understood a day and a half. The Wisbuy Law, art. 25, provides for the master's making satisfaction for the damages that may happen through the want of the mariner he turns off. And the Laws of the Hanse Towns, art. 27, require the master not to give the seamen any cause to mutiny; not to provoke them, call them names, wrong them, nor keep any thing from them that is theirs; but to use them well, and pay them honestly what is their due. Some French laws ordain, that no mariner should be admitted under 18 years, nor above 50. The choice of the crew is entirely in the master: the reason is, that he ought to be himself very well assured of his seamen's ability, and not take it upon trust by report of others.

ART. XIV.

If a vessel, being moored, lying at anchor, be struck or grappled with another vessel under sail, that is not very well steered, whereby the vessel at anchor is prejudiced, as also wines, or other merchandize in each of the said ships damaged. In this case the whole damage shall be in common, and be equally divided and appraised half by half;¹¹ and the master and mariners of the vessel that struck or grappled with the other, shall be bound to swear on the Holy Evangelists, that they did it not willingly or wilfully. The reason why this judgment was first given, being, that an old decayed vessel might not purposely be put in the way of a better, which will the rather be prevented when they know that the damage must be divided.

Observation.

This law agrees exactly with the 26th, 50th, 67th, and 70th articles of the Ordinances of Wisbuy. The dividing the loss in halves, is, to prevent any cheat; for an old vessel that's worth little or nothing, might else be put in a new one's way: and if she runs against her, more damages be pretended, than the old ship might fairly be valued at.

ART. XV.

Suppose two or more vessels in a harbour, where there is but little water, so that the anchor of one of the vessels lie dry; the master of the other vessel ought, in that case, to say unto him whose anchor lies dry: "Master, take up your anchor, for it is too nigh us, and may do us a prejudice;" if neither the said master nor his mariners will take up the said anchor accordingly, then may that other master and his mariners (who might be otherwise thereby damaged) take up the said anchor, and let it down at a farther distance from them; and if the others oppose or withstand the taking up of their anchor, and there afterwards happens damage thereby, they shall be bound to give full satisfaction for the same: but if they put out a buoy or anchor-mark, and the anchor does any damage, the master and mariners to whom it belongs are not

bound to make it good; if they do not, they are; for all masters and mariners ought to fasten such buoys or anchor-marks, and such cables to their anchors, as may plainly appear and be seen at full sea.

Observation.

The 28th and 51st articles of the Ordinances of Wisbuy, require masters to put out buoys to warn others where their anchors lie, on pain of making satisfaction for whatever damage may happen for want of them: for anchors hid under water, may do a great deal of mischief at ebb and low water. If any master spies them, and they lie near him, he may remove them, and prevent any damage coming to his ship. *Harmenopolus in promptuario titulo de rebus nauticis, licet in discrimen adductus, qui se aliter explicare non possunt, alterius navis anchoras salutis suae causa præcidere.* The buoys that are made use of, are either empty barrels, or pieces of the trunk of a tree, or any other light wood with baskets that swim on the top of the water, and shews where the anchors lie.

ART. XVI.

When a ship arrives with her lading at Bordeaux, or elsewhere, the master is bound to say to his company, when she is ready to load again, "Gentlemen, will you freight your own share yourselves, or be allowed for it in proportion with the ship's general freight?" the mariners are bound to answer one or the other. If they take as the freight of the ship shall happen, they shall have proportionably as the ship hath; and if they will freight by themselves, they ought to freight so as the ship be not impeded or hindered thereby. And if it so happen, that they cannot let out their freight, or get goods themselves, when he has tendered them their share or stowage, the master is blameless; and if they will there lade a tun of water instead of so much wine, they may: and in case there should happen at sea, an ejection or a casting of goods overboard, the case shall be the same for a tun of water, as for a tun of wine, or other goods, *livre by livre*.¹² If they let out their proportion of freight to merchants, what freedom and immunity the said mariners have, the said merchants shall also have.

Observation.

This articles has some relation to the eighth, which treats of mariners' wages and their freight aboard. The thirtieth article of the Laws of Wisbuy is founded upon it. By the seamen's immunity, is meant the privilege of being the last that must throw overboard in a storm, and having a tun free from all averages. The mariners' freight should be first full; for the master is not obliged to stay for them when his cargo is all aboard. The reasons given by our author, why, in case of throwing overboard, the mariners' tun of water shall come in equally in the average, *livre a livre*, for a tun of wine, are, a mariner may make what use he pleases of his stowage, because he takes it as part of his pay: besides, in such case, the water he has aboard, lightens the ship as much as if it was wine. And the

¹¹ "Le dommage du coup doit être prisé et parti moitié des deux nefes." Cleirac, 33.—E.

¹² "Parquoi les mariniérs se puissent défendre et s'aider a la mer." Cleirac, p. 36. This is omitted in the translation of the XVth article.—E.

mariner by throwing over his water, which by his privilege he may refuse to do, not only helps to save the ship and cargo, but to save the latter the more entire; for if any thing the merchant had aboard, of more value than wine, stood before his tun of water, it must have gone first, and his throwing his water overboard being so much for the common interest of the ship and cargo, he is allowed to come in upon an average, as if it had been a tun of wine. How far this law of Oleron prevails in our maritime courts now, the civilians must determine; but by the common law of England, a tun of water would never be rated *livre a livre*, pound by pound, with a tun of wine.

ART. XVII.

The mariners of Brittany ought to have but one meal a day from the kitchen, because they have beverage going and coming. But those of Normandy are to have two meals a day, because they have only water at the ship's allowance; and when the ship arrives in a wine country, there the master shall procure them wine to drink.

Observation.

The custom of giving every man a certain allowance is very ancient, and to prevent jealousies, complaints and disorders, that allowance is settled at so much a head, and exactly delivered out to all alike. As to the allowance of wine and meals by this article, the twenty-ninth of the Ordinances of Wisbuy agrees with it. In those voyages where wine is to be had, the master is bound to provide it for the mariners, and then they shall have but one meal a day. But when they drink water only, they shall have two meals. Charles V. and Philip II.'s Laws ordain, that the master shall order the mariners to have three certain meals a day, and if they would have more meat, they shall only have what was last at their meals, unless upon extraordinary occasions. By the fifty-second article of the Hanseatic Laws, the masters of German ships bound for France and Spain, are not to provide victuals for their mariners when they are outward bound; but when they are homeward bound, if the ship is let out to freight and loaden, the masters are obliged to maintain their mariners; if they return light or empty, they are not obliged. The Portuguese in their East India voyages, maintain both mariners and soldiers outward bound, and allow each a pound and a half of biscuit, 3 pints of wine, and 3 pints of water a day, and 31 pound of salt fish a month, some dry fish, garlic and onions. But in their homeward bound voyages, they have only biscuits and water to the Cape of Good Hope, and after that they live every man on his own provision.

—Facilis descensus ad Indos:

Sed revocare gradum, veteremque evadere ad Orbem,

Hoc opus, hic labor est—

In cases of necessity, when provisions fall short, those that have victuals aboard ought to communicate to those that have not, by the Rhodian Law.

ART. XVIII.

When a vessel is unladen, and the mariners demand their freight, some of them having neither bed, chest, nor trunk aboard, the master may lawfully retain part of their wages, till they have brought back the ship to the port from whence she came; unless they give good security to serve out the whole voyage.

Observation.

The thirty-first article of the Ordinances of Wisbuy agrees exactly with this. The seamen's wages are not regularly due till after their work is entirely done, or the time they hired themselves for expired; except there are any private agreements to the contrary. The twenty-eighth article of the Hanseatic Law ordains, that their wages should be paid at three several payments; one third when they set sail upon a voyage, one third when they arrive at their port of discharge, and the other third when the ship is returned home.

ART. XIX.

If the master hire the mariners in the town to which the vessel belongs, either for so much a day, week or month, or for such a share of the freight; and it happens that the ship cannot procure freight in those parts where she is arrived, but must sail further to obtain it: in such case, those that were hired for a share of the freight, ought to follow the master, and such as are at wages ought to have their wages advanced course by course, that is, in proportion to the length of the voyage, in what it was longer than they agreed for, because he hired them to one certain place. And if they go not so far as that place for which the contract was made, yet they ought to have the whole promised hire, as if they had gone thither; but they ought likewise to bring back the vessel to the place from whence she at first departed.

Observation.

This article is explained by the eighth and sixteenth, and what is said upon them. The thirty-second of the Laws of Wisbuy, the twelfth and thirteenth of Charles V., and the twenty-fourth of the Hanseatic Laws, are to the same purpose. By the ninth article of Philip II.'s Laws, if the voyage is broken off by wars, pirates, or the command of the sovereign, the seamen ought to have a quarter part of the wages they agreed to have, if they had completed it. In the year 1626, about October, all the English ships that were then in the river of Bordeaux, were stopped by order of Monsieur de Luxemburg, governor of Blaye. Several of these ships were loaden with wine, and others with other merchandize. They were forced to return to Bordeaux, and unload; after which the masters demanded the whole freight of the merchants who had freighted them, by virtue of the law. *Colonus §. Navem conduxit. D. Locati.* Inasmuch as it was not their fault that they did not make their voyage, and carry the goods to their intended port: the freight was then 15 or 16 livres a tun: the admiralty court adjudged them a quarter part of it; they appealed to the sovereign court, who after two hearings set aside their appeal. Which instance of our author, makes somewhat against his own remarks.

ART. XX.

When a vessel arrives at Bordeaux, or any other place, two of the mariners at a time may go ashore, and take with them one meal of such victuals as are in the ship, therein cut and provided; as also bread proportionably as much as they eat at once, but no drink: and they ought very speedily, and in season, to return to their vessel, that thereby the master may not lose his tide;

for if so, and damage come thereby, they are bound to make satisfaction; or if any of their company be hurt for want of their help, they are to be at such charge for his recovery, as one of his fellow mariners, or the master, with those of his table shall judge convenient.

Observation.

The reason of this law now ceases for Bordeaux, for which place it was originally intended; for the said river is so full of eating-houses and taverns on both sides, that it is not likely sailors will carry any of their salt provisions ashore, when they can get fresh. The reason of it was to keep the seamen in health and vigour; for by encouraging them to go ashore, two at a time, when their attendance was not necessary aboard, the master gave them an opportunity to refresh themselves at land, which is the best remedy in the world for the scurvy, contracted on shipboard by living on salt meats and dry biscuit, and being crowded up in a close place for a considerable time: their eating fresh provisions, and breathing the free air at land, makes them strong, and the better able to go through their business. It was not lawful for mariners to be drunk, nor to feast on shipboard, unless there was good cause for their feasting, and the master allowed it. As we find by the thirty-first article of the Hanseatic Law, and the old law of Rhodes, *Vector in navi piscem ne frigit, & exercitor id ei ne permitto*,—as one of his fellow mariners. In the original, it is "son matelot," which we in English call "comrade": for it is the custom at sea to divide the ship's crew into couples; every two are comrades, and this the French call "matelotage." These two companions, or comrades should be loving and assisting to one another. Their task is generally the same, and they are always posted together.—Those of his table. The mariners in Spanish ships dress their meat, and pay for it, each man for himself; but in the English, Dutch, German and French, there is always a cook, and the seamen eat all together at the same table, six in a mess. There is commonly two tables; the master's, which is served with a table-cloth, and there himself and his officers eat; and the mariners, where they have their messes.

ART. XXI.

If a master freight his ship to a merchant, and set him a certain time within which he shall lade his vessel, that she may be ready to depart at the time appointed, and he lade it not within the time, but keep the master and mariners by the space of eight days, or a fortnight, or more, beyond the time agreed on, whereby the master loses the opportunity of a fair wind to depart; the said merchant in this case shall be obliged to make the master satisfaction for such delay, the fourth part whereof is to go among the mariners, and the other three-fourths to the master, because he finds them their provisions.¹³

Observation.

The thirty-fourth article of the Ordinances of Wisbuy, and the thirty-ninth of the emperor Charles V., are entirely agreeable to this law. By the Hanseatic Law and Philip II.'s the merchant is obliged to pay the whole freight, if he does not load the ship in 15 days after the

time agreed upon; and by the Theodosian Code de Naviculariis, when a vessel arrives at a port laden, the merchant to whom the cargo belongs, must unload in 10 days; but in our times, on account of holydays and Sundays, the common time for unloading a ship is 15 days: but that should not hinder the paying the freight, which ought to be cleared in eight days, whether the ship be discharged or not. The master for his pay cannot detain the merchandise aboard; but when they are in the boat or lighter, he may stop them until he is satisfied.

ART. XXII.

When a merchant freights a vessel at his own charge, and sets her to sea, and the said vessel enters into an harbour, where she is wind-bound, so that she stays till her monies be all spent, the master in that case ought speedily to write home to his own country for money; but ought not to lose his voyage on that account; for if so happen, he shall be obliged to make good to the merchant all damages that shall ensue. But the master may take part of the wines or other merchant goods, and dispose thereof for his present necessities; and when the said vessel shall be arrived at her port of discharge, the said wines that the master hath so disposed of, ought to be valued and appraised at the same rate as the other wines shall be commonly sold for, and accordingly be accounted for to the merchant. And the master ought to have the freight of such wines, as he hath so taken and disposed of, for the use and reason aforesaid.

Observation.

The thirty-fifth and thirty-ninth articles of the Laws of Wisbuy are to the same purport as this; but by the sixty-eighth article of those laws, if the ship happens afterwards to be cast away, the master shall pay the merchant for the wines or other goods he sold in a case of necessity, without pretending to deduct any thing for the freight. The Hanseatic Laws forbid any master to borrow any money on any other security but the ship's bottom, that if she should be lost the debt might be paid; nor do they allow him when he is at home, to borrow any thing on her bottom, or otherwise, without acquainting the owners with it. By the forty-fifth article of the Laws of Wisbuy, the ship is bound to the merchant whose goods the master has sold in this manner, to make him satisfaction, though she should be herself sold, and have other owners.

ART. XXIII.

If a pilot undertakes the conduct of a vessel, to bring her to St. Malo, or any other port, and fail of his duty therein, so as the vessel miscarry by reason of his ignorance in what he undertook, and the merchants sustain damage thereby, he shall be obliged to make full satisfaction for the same, if he hath wherewithal; and if not, lose his head.

ART. XXIV.

And if the master, or any one of his mariners, or any one of the merchants, cut off his head, they shall not be bound to answer for it; but before they do it, they must be

¹³ The right of the mariners to a part of the compensation allowed for the delay of the ship, could only arise, when they received a part of the freight instead of wages.—E.

sure he had not wherewith to make satisfaction.

Observation on the Two Foregoing Articles.

The original calls these pilots "locmen"; for when those laws were written, there were officers aboard all ships, called pilots, who went the whole voyage, whereas the locmen were like our pilots, mariners hired at every river to guide the ship; for, dwelling on the place, the locman was supposed to know the shore better than the ship's pilot, who perhaps was never there before; for which reason he commonly required the master to have a locman, to avoid rocks, shelves, shoals and sands, which he must be well acquainted with by long using the river: that of Roan is very dangerous on this account, and there are sworn pilots every two leagues to guide ships up the Seine. They are very necessary all over Brittany. The forty-fourth and fifty-ninth articles of the Ordinances of Wisbuy, oblige the master to take a new pilot, if his own and the ship's crew demand one of him. The master finds him maintenance, and the merchant pays him, by the sixtieth article of the Ordinances of Wisbuy. The loss of the pilot's head, if through his ignorance or negligence the ship is lost, is taken from the Consolato, c. 250,—and answers to that known maxim in the law, "Qui non habet in aere, luet in corpore."

ART. XXV.

If a ship or other vessel arriving at any place, and making in towards a port or harbour, set out her flag, or give any other sign to have a pilot come aboard, or a boat to tow her into the harbour, the wind or tide being contrary, and a contract be made for piloting the said vessel into the said harbour accordingly; but by reason of an unreasonable and accursed custom, in some places, that the third or fourth part of the ships that are lost, shall accrue to the lord of the place where such sad casualties happen, as also the like proportion to the salvors, and only the remainder to the master, merchant and mariners: the persons contracting for the pilotage of the said vessel, to ingratiate themselves with their lords, and to gain to themselves a part of the ship and lading, do like faithless and treacherous villains, sometimes even willingly, and out of design to ruin ship and goods, guide and bring her upon the rocks, and then feigning to aid, help and assist, the now distressed mariners, are the first in dismembering and pulling the ship to pieces; purloining and carrying away the lading thereof contrary to all reason and good conscience: and afterwards that they may be the more welcome to their lord, do with all speed post to his house with the sad narrative of this unhappy disaster; whereupon the said lord, with his retinue appearing at the places, takes his share; the salvors theirs; and what remains the merchant and mariners may have. But seeing this is contrary to the law of God, our edict and determination is, that notwithstanding any law or custom to the contrary, it is said and ordained, the said lord of that place, salvors, and all others that take away any of the said goods, shall be accursed and ex-

communicated, and punished as robbers and thieves, as formerly hath been declared. But all false and treacherous pilots shall be condemned to suffer a most rigorous and unmerciful death; and high gibbets shall be erected for them in the same place, or as high as conveniently may be, where they so guided and brought any ship or vessel to ruin as aforesaid, and thereon these accursed pilots are with ignominy and much shame to end their days; which said gibbets are to abide and remain to succeeding ages on that place, as a visible caution to other ships that shall afterwards sail thereby.

ART. XXVI.

If the lord of any place be so barbarous, as not only to permit such inhuman people, but also to maintain and assist them in such villainies, that he may have a share in such wrecks, the said lord shall be apprehended, and all his goods confiscated and sold, in order to make restitution to such as of right it appertaineth; and himself to be fastened to a post or stake in the midst of his own mansion house, which being fired at the four corners, all shall be burnt together, the walls thereof shall be demolished, the stones pulled down, and the place converted into a market place for the sale only of hogs and swine to all posterity.

Observation on the Two Foregoing Articles.

We shall find something very curious in the remarks made by the French author on these articles. These two laws, says he, were made upon account of that inhuman *Droit de Bris sur le Naufrages*, the right of lords of coasts to shipwrecks; by which those miserable wretches who were cast away, their very persons, and the goods that were saved, were confiscated for the prince who was lord of the coast. In the barbarous times men used to put this law in practice, especially the Gauls, who took all strangers for their enemies, and not only robbed them of their goods, but of their lives, sacrificing them to their false gods. From which bloody custom, Hercules brought them off according to Diodorus Siculus, lib. 5, Hist. cap. 2. Pomponius Mela, lib. 3, de Situ Orbis, cap. 2. The Romans, though they were covetous to excess, and greedy after other men's goods, never approved of this cruelty, but condemned and abrogated the use of it to the utmost of their power. *Toto titulo de Incendio, Ruina & Naufragio. Et de Naufragiis libro undecimo Codicis, leg. 1, and leg. 3.* But the empire degenerating in its decadency, when so many barbarous nations poured in upon it out of Scythia and Scandinavia, and tore it to pieces; this wicked *Droit de Bris sur le Naufrages* was renewed, particularly on the coasts of Gaul, called *Littus Saxonicum*, on account of the frequent invasions of the Saxons there. Sidonius Apollinaris, lib. 8, epist. 6, & carmine septimo. Afterwards the Normans being by chance thrown upon that coast, were immediately dispatched by the inhabitants; and in course of time this pretended right insinuated itself, and prevailed not only against enemies and invaders, but against any persons that were shipwrecked. *Quid quid evadabat ex naufragiis totum sibi fiscus lege patriae vindicabat, passosque naufragium miserabilibus violentia principis spoliabat quam procella, as says Hildebertus Turonensis, Archiepisc, epist. 32 & 65.* At last the counts and dukes of Armorer, Bre-

tagne, and Gaul, were obliged by civility, and the request of the neighbouring people of Bordeaux and Rochelle, to change this barbarous custom of slavery and confiscation, into a tax for all such as procured licences from them; of which licences there were three sorts, Bref de Sauveté, Bref de Conduite, and Bref de Victualle. The first was to save them in case of shipwreck from the old forfeitures to the lord, and exempt them from the cruel Droit de Bris. The second was to allow them convey upon reasonable terms. The third was for liberty to buy provisions in Bretagne. The dukes of Bretagne established an office and officers for giving out these licences, as at Rochelle and other places. The Droit de Bris was also practised in Guienne, Saintonge, Artois and Poictou, but much more civilly and humanely than it was used in Bretagne; for the lords of the coasts took only a third or a quarter part, according to their several customs; the salvors as much; and the rest was restored to the poor wretches that were shipwrecked, and their persons were free. This barbarity is abolished in England, Italy, Germany, Spain and France, unless it be practised against the enemies of the state, infidels or pirates; but the Spaniards observe this custom beyond the line against all but natural Spaniards. This Droit de Bris, which was not however so cruelly executed in Guienne, as in Bretagne, was solemnly abrogated by Henry III., king of England and duke of Aquitaine and Guienne. His edict for this purpose is registered and preserved among the rolls at Bourdeaux, and is as follows:

"Henricus Dei gratia rex Angliæ, dominus Hiberniæ, dux Normandiæ, Aquitan. & comes Andegavensis. Archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, justitiæ præpositis et magistris, et omnibus ballivis et fidelibus salutem: Sciatis quod nos pro salute animæ nostræ, et antecessorum et hæredum nostrorum, et ad malas consuetudines abolendas concedimus, et hac nostra carta confirmamus pro nobis et hæredibus nostris in perpetuum, quod quotiescunque contigerit de cetero aliquam navem periclitari in potestate nostra, sive in costera maris Angliæ, sive in costera Pictaviæ, sive in costera insulæ Oleronis, sive in costera Vasconniæ. Et de navi taliter periclitata aliquis homo vivus evaserit, et ad terram venerit, omnia bona et catalla in navi istæ contenta remaneant, et sint eorum quorum prius fuerant, et eis non deperant nomine Ejecti. Et si de navi taliter periclitata nullo vivo homine evadente contingat, qualemcunque bestiam vivam evadere, vel in navi illa vivam inveniri; tunc bona et catalla illa per manus ballivorum nostrorum, vel hæredum nostrorum, vel per manus ballivorum dominorum in quorum terra navis fuerit periclitata libenter quatuor probis hominibus custodienda deponantur usque ad terminum trium mensium: Ut si illi quorum catalla illa fuerunt intra terminum illum venerint, ad exigenda catalla illa, et probare possint catalla illa sua esse, eis libenter restituant. Si vero infra prædictum terminum nullus venerit ad exigenda catalla sua, tunc nostra sint et hæredum nostrorum nomine Ejecti, vel alterius qui libertatem habet ejectum habendi. Si veru de navi taliter periclitata nullus homo vivus evaserit, nec alia bestia sicut prædictum est, tunc bona et catalla in navi illa contenta nostra sint et hæredum nostrorum nomine Ejecti, vel alterius ubi navis fuit periclitata qui libertatem habet ejectum habendi: Quod volumus, et firmiter præcipimus pro nobis et hæredibus nostris. His testibus, venerabili patre Edvardo Karkol, episcopo, Bertrando clerico comiti Lincol. et constabulario, Petro de Mulo-lacu, Henrico de Trubleville, tunc senescaldo Vasconniæ, Hugo de Dispencie, Godefrido Crantonibus, Amande Santo-Amando, Gulielmo de Crob. Anno 1226. Regni nostri vigesimo."

As to that part of these laws requiring traitorous pilots to be hanged on the shore, in some

eminent place, to be a warning to all mariners: Andronicus, emperor of Greece, who reigned about the year 1150, ordered the same or the like punishment for such as made spoil of wrecks, as Nicetas reports in the second book of his Annals. The Lord Verulam in his History of Henry VII. writes, that it was heretofore the custom in England to leave the dead bodies of pirates on gibbets near the water side, for a warning to seafaring men. *Morte affecti circa oras maritimas, ut loco signorum nauticorum & laternarum essent, & assecclas a littoribus Angliæ absterreere possent.* The hanging such as are condemned for crimes committed at sea by the water side, and some of the most criminal in chains, has been practised since in this kingdom. Those malicious fishermen, who in the night make fires in dangerous places to attract mariners thither, to the loss of their ships by making them believe they are near ports and inhabited places, deserve the same punishment. The author whom we have made use of on this occasion tells us, that "catalla," a word in king Henry's charter, is originally Gascon, and signifies riches or merchandize. The Picards in their idiom have it "cateus," in Spanish it is "caudal," and in English "chattels," than which no term is more frequent in the common law. The word in the French which is rendered "caution" in English, is "belise," properly a beacon; but in this place it is used metaphorically: for a gibbet would be an odd sort of a beacon in our language. There are several sorts of these belises or beacons at sea, set up to direct mariners to the right course they ought to take to avoid danger. These are very necessary in those parts where there are bars, that is, entrances, where there must be a high tide to carry ships over them. Sometimes buoys are made use of for belises, and sometimes trees, light-houses, and other things. The burning the criminal's house, mentioned in these two articles, and all that is in it, shews what an opinion the legislator had of the heinousness of the crime. Coiners were in France burnt in old times, and their false money with them; their buildings were levelled with the ground, their woods felled and rooted up, and the places that belonged to them condemned and strewed with salt, as was the town of Poicters, in the reign of King Dagobert.

ART. XXVII.

A vessel being arrived at her port of discharge, and hauled up there into dry ground, so as the mariners deeming her to be in good safety, do take down her sails, and so fit the vessel aloof and aft, the master then ought to consider an increase of their wages kenning by kenning; and if in hoisting up wines, it happens that they leave open any of the pipes or other vessels, or that they fasten not the ropes well at the ends of the vessel, by reason whereof it slips, and falls, and so is lost, and falling on another, both are lost; in these cases the master and mariners shall be bound to make them good to the merchants, and the merchants must pay the freight of the said damaged or lost wines, because they are to receive for them from the master and mariners, according to the value that the rest of the wines are sold; and the owners of the ship ought not to suffer hereby, because the damage happened by default of the master and mariners, in not making fast the said vessels or pipes of wine.

Observation.

Kenning by kenning, *veue par veue*, is a phrase used by mariners, as is also *course* by *course*, in the nineteenth article of these laws. These phrases are very ancient, and kenning was particularly used when navigation was performed by views, and by observations on the land from one prospect to another (Plin. lib. vi, c. 13), which was before the invention or knowledge of the use of the compass. It signifies what the logicians or metaphysicians called agreement; the arithmeticians and geometricians proportion, and others express otherwise.

ART. XXVIII.

If two vessels go on a fishing-design in partnership, as for mackarel, herrings, or the like, and do set their nets or lay their lines at Olonne, St. Gilles, Survie, or elsewhere; the one of the vessels ought to employ as many fishing engines as the other, and so shall go in equal shares, as to the gain, according to the agreement betwixt them made. And if it happens that one of the said vessels, with her fishing-instruments, engines and crew, perish, and the other escaping, arrives in safety; if the surviving friends of those that perished, require of the other to have their part of the gain, as also of their fish, fishing-instruments, and boat, they are to have, upon the oaths of those that escape, their part of the fish, and fishing-instruments; but they shall not have any part or share in the vessel itself.

ART. XXIX.

If any ship or other vessel sailing to and fro, and coasting the seas, as well in the way of merchandizing, as upon the fishing account, happen by some misfortune through the violence of the weather to strike herself against the rocks, whereby she becomes so bruised and broken, that there she perishes, upon what coasts, country or dominion soever; and the master, mariners, merchant or merchants, or any one of these escape and come safe to land; in this case the lord of that place or country, where such misfortune shall happen, ought not to let, hinder, or oppose such as have so escaped, or such to whom the said ship or vessel, and the lading belong, in using their utmost endeavours for the preservation of as much thereof as may possibly be saved. But on the contrary, the lord of that place or country, by his own interest, and by those under his power and jurisdiction, ought to be aiding and assisting to the said distressed merchants or mariners, in saving their shipwrecked goods, and that without the least embezzlement, or taking any part thereof from the right owners; but, however, there may be a remuneration or consideration for salvage to such as take pains therein, according to right reason, a good conscience, and as justice shall appoint; notwithstanding what promises may in that case have been made to the salvors by such distressed merchants and mariners, as is declared in

the fourth article of these laws; and in case any shall act contrary hereunto, or take any part of the said goods from the said poor, distressed, ruined, undone, shipwrecked persons, against their wills, and without their consent, they shall be declared to be excommunicated by the church, and ought to receive the punishment of thieves; except speedy restitution be made by them: nor is there any custom or statute whatsoever, that can protect them against the aforesaid penalties, as is said in the twenty-sixth article of these laws.

Observations on the Two Foregoing Articles.

The civil law almost every where allows all shipwrecked persons, a right to gather up their shipwrecked goods. The Codex and the Rhodian Laws are particular in this matter. King Henry III.'s charter, before recited, is very plain upon it; and the reader is referred to it.

ART. XXX.

If a ship or other vessel entering into harbour, happens by misfortune to be broken and perish, and the master, mariners and merchants, which were on board her, be all drowned; and if the goods thereof be driven ashore, or remain floating on the sea, without being sought after by those to whom they belong, they being ignorant of this said disaster, and knowing nothing thereof; in this most lamentable case, the lord of that place or country ought to send persons to save the said goods, which he ought to secure and to put into safe custody; and give the relations of the deceased persons who were drowned, notice of it, and to satisfy for the salvage thereof, not out of his own purse, but of the goods saved, according to the hazards run, and the pains taken therein; and what remains must be kept in safe custody for one year or more; and if in that time they to whom the said goods appertain, do not appear and claim the same, and the said year be fully expired, he may publicly sell and dispose thereof to such as will give most, and with the monies proceeding of the sale thereof, he ought to give among the poor, and for portions to poor maids, and other charitable uses, according to reason and good conscience. But if he assumes the said goods either in whole or in part unto himself, he shall incur the curse and malediction of our mother the holy church, with the aforesaid pains and penalties, without ever obtaining remission, unless he make satisfaction.

Observation.

The keeping such goods a year, is in the civil law (l. ii, Cod. Naufragis); but the parliament of Paris in the year 1584, pretended to reduce the time to two months: which time was to commence from the day of proclaiming such goods in public market and fixing a placquard of it on the doors of the parish church. The Consulate provides for the salvors more largely, allowing them half of the goods saved, and the lord and the poor the other half (chapter 252). By some laws in France, as long as the goods are in being and

unalienated, the merchant to whom they belong, has a claim to them, paying the charge of salvage: but if after a lawful time, they are sold and become another's property, he has no claim to them. The casuists are of opinion, that if he who finds them is rich, he ought to give all to pious uses: if poor, to keep all himself, *hostiensis in summa de pœnitentia*. And the thirty-sixth article of the laws of Oleron agrees with the judgment of the casuists

ART. XXXI.

If a ship or other vessel happens to be lost by striking on some shore, and the mariners thinking to save their lives, reach the shore, in hope of help, and instead thereof it happens, as it often does, that in many places they meet with people more barbarous, cruel, and inhuman than mad dogs, who to gain their monies, apparel, and other goods, do sometimes murder and destroy these poor distressed seamen; in this case, the lord of that country ought to execute justice on such wretches, to punish them as well corporally as pecuniarily, to plunge them in the sea till they be half dead, and then to have them drawn forth out of the sea, and stoned to death.

Observation.

To plunge them in the sea, "plonger en la mer," is what the French now call "bailler la cale," and we "keel-hawling." The word "Καλαποντισμός," in Greek, signifies as much. The Goths heretofore used to practise it as a sport or exercise, *Olaus magnus historiæ Septentrionalis*, lib. v, et lib. x, c. 16. And one may conceive an idea of the barbarity of the northern nations, when that was a diversion to them, which was a punishment to others; as it was of old among the Celtes and Franks, and is now among the modern navigators. Lazy and scandalous persons had some such sort of punishment by the customs or laws of the old Germans, *Tacitus de Moribus Germanorum*, Num. 5. *Turnus Herdonius* was punished thus to death for abusing and railing at the king *Tarquinius Superbus*, *T. Livius*, lib. primo decadis primæ. Bawds and whores are served so at *Bordeaux*; and scolds something like it in *England*, when they are put into the ducking stool. By an old ordinance of *Philip II*, of *France*, blasphemers had the same punishment. The comparison of a mad dog is perhaps made use of here, on account of the cure for his bite, by plunging in the sea before the poison has taken too deep root, which is reckoned the most sovereign remedy for it. *Augustine de Moribus Manicheor*, lib. ii, cap. 8. *Apuleius Metamorphos*, lib. 9. It is said *Baldus* the great civilian, died miserably of the bite of his favorite dog, though the bite was very inconsiderable, as to any thing but the effects of it; see the twenty-first book of *Ambrose Parre's Treatise of Poisons*; and *Diogenes* the cynic, according to *Laertius*, died the same death. My author has tempted me unawares to this digression, which he very ridiculously continues about a hundred times as long; for in truth it may well be called a digression, at least, all that is not necessary to explain the metaphor in the text, and much farther we have not gone.

ART. XXXII.

If by reason of tempestuous weather, it be thought expedient, for the lightening of any ship or vessel at sea, or riding at anchor in any road, to cast part of the lading overboard,

and it be done accordingly for the common safety, though the said goods so ejected, and cast overboard, do become his that can first possess himself thereof, and carry them away: nevertheless, it is here to be further understood, that this holds true only in such cases, as when the master, merchant, and mariners have so ejected or cast out the said goods, as that they give over all hope or desire of ever recovering them again, and so leave them as things utterly lost and given over by them, without ever making any enquiry or pursuit after them: in which case only the first occupant becomes the lawful proprietor thereof.

Observation.

The property of things thrown overboard remains in the merchant, and the finder has no right to them, unless they were thrown out with an intention to leave them there, and look no more after them (l. 2, in fine, l. qui levandæ D. *Lege Rhodia*, l. quod ex naufragio). D. de acquirenda vel amittenda possessione. *Neptunus fastidiosus ædilis est*. Siquæ sunt improbæ merces factat omnes; as *Plautus* says in *Stichor*. The sea drives all things to land: *mari hæc est natura, ut omne immundum, stercoreumque; littoribus impingat, Seneca naturalium quæst.* lib. iii, cap. 26. On this assurance, every one that flings his goods overboard in time of danger, hopes and desires to recover them again after seeking for them, and those things non sunt in derelicto, sed in deperdito. l. Si quis merces. D. pro derelicto. It is true, what is abandoned through contempt or carelessness belongs to the first occupiers; quod dominus ea mente adject, ut in numerum rerum suarum esse nolit, qui primus occupaverit statim dominus sit *Jure Naturali*, *Instit. de Rerum divisione* §, qua ratione: & *Lege l. D. pro derelicto*.

ART. XXXIII.

If a ship, or any other vessel, hath cast overboard several goods or merchandizes, which are in chests well locked and made fast; or books well clasped and shut close, that they may not be damaged by salt water; in such cases it is to be presumed, that they who did cast such goods overboard, do still retain an intention, hope, and desire of recovering the same: for which reason, such as shall happen to find such things, are obliged to make restitution thereof to him who shall make a due enquiry after them; or put them to pious uses, according to his conscience and the advice of some prudent neighbour.

Observation.

Well clasped; this is conformable to the gloss on the *Rhodian law*. D. *Lege Rhodia*.

ART. XXXIV.

If any man happens to find any thing in the sea, or in the sand on the shore, in floods or in rivers, if it be precious stones, fishes, or any treasure of the sea, which never belonged to any man in point of property, it belongs to the first finder.

ART. XXXV.

If any searches the sea-coasts to fish, or find gold or silver, and he finds it, he ought to restore it all without any diminution.

ART. XXXVI.

If any going along the sea-shore to fish, or otherwise, happens to find gold or silver, he shall be bound to make restitution thereof, deducting for his own pains; or if he be poor he may keep it to himself; that is, if he knows not to whom to restore it; yet he shall give notice of the place where he found it, to the neighbourhood and parts next adjacent, and advise with his superiors, who ought to weigh and take into consideration the poverty of the finder, and then to give him such advice as is consonant to good conscience.

Observations on the Three Preceding Articles.

There are three sorts of goods which the sea naturally drives to land: as entire wrecks; for which the cruel *droit de bris* was in old times established by pernicious and barbarous custom: but humanity, licenses and passports have abolished it in ours. The second is, what is flung overboard for the preservation of men's lives, the ship and cargo. Neither of these, by law, nor the custom of the sea, change their proprietors, but may be claimed and recovered by them, within the lawful time appointed by ordinances and customs to claim them, even while the goods are in being and unsold, as appears by what has been said in and upon the 30th article. The third sort comprehends the two first, which are not owned and demanded by the proprietor, and besides that, includes all the treasures of the sea which come out of its bowels, and it naturally drives ashore; as aromatic amber on the coast of Guienne, amber succinum in the German ocean, red, black, and white coral on the coast of Barbary, precious stones, fish-shells, and other riches which the sea produces, and which in the thirty-fourth article of these laws are called "*herpes marines*," in English, "*treasures of the sea*"; for it cannot be otherwise so fully expressed. The word "*herpes*" was taken from an old Gaulish term "*harpir*," which signifies to take, and its contrary "*voerpir*," is to leave: perhaps, says my author, taken from the Greek word "*ἁρπάγω*," *aurum mihi intus harpagatum est*, Plautus in *Aulularia*; that is, the property of such things is in the finder, or the person who first takes them from off the ground. *Vocari autem elecirum harpaga, eo quod attritu digitorum accepta anima folia paleasque vestium fimbrias rapiat*. Isidorus, orig. lib. xvi, cap. 8. Nor is he who first lays his hand on them, obliged to give those that are there with him a share of what he has found, unless he pleases to do it out of courtesy, *l. si is qui ultimo. D. acquirendo rerum Dominio. Robustus de Privilegiis Scholasticorum*, num. 61, notwithstanding the constitution of the Emperor Leo, which is contrary to it. This is the law of nature, but princes and lords of the coast have usurped this privilege, and laid claim to all the treasures of the sea, that it throws on their royalties. The lords of the coasts, that is, of the manors or lands on the coasts of France, were notorious usurpers in this, till the reign of Louis XIII., when Cardinal Richelieu, by an order of the council bearing date the 13th of December, 1629, took away the pretended rights of several lords, or very much abridged them; but he did not restore the law of nature in this case; he only enlarged his own and his successor's privileges and authority, he being great master and superintendant general of the navigation and commerce of France. This order of council caused great disorders, and the Count de Olonne was particularly so enraged at it that his officers by main force drove away those of the admiralty, who came upon his royalty. But the French kings were now masters of their

subjects' lives and fortunes, and it would have been in vain for many such counts to have disputed the king's edict with these words in it, "*Car tel est notre plaisir*"; the standing reason of the French laws at this time.

ART. XXXVII.

Touching great fishes that are taken or found dead on the sea shore, regard must be had to the custom of that country where such great fishes are taken or found. For by the custom, the lord of that country ought to have his share, and with good reason, since the subject owes obedience and tribute to his sovereign.

Observation.

This law declares, that by the ancient customs of countries, as well sovereigns as all particular lords of royalties to whom duties and tribute were due, had both heretofore certain rights to the *espaves de mer*, strays of the sea. The *Coustoumier de Normandie* under the article of *Varech*, specifies what belongs to the one, and what belongs to the other, and particularly that whales and other oil fish, belong to the particular lord of the royalty where they were found, that is, off whose land they were taken: on the shore—in the original it is—a *la rive de la mer*; and how far that is to be understood to belong to the lord of that royalty, may be found in the above mentioned *coustoumier*: where the *Varech* understands as far as a man on horseback can reach with his lance; for if the fish is found farther off the shore, the lord has no right to it, though it be brought or driven a-shore afterwards.

ART. XXXVIII.

The lord ought to have his share of oil fish, and of no other, according to the laudable custom of the country where they are found; and he that finds them is no farther obliged than to save them, by bringing them without the reach of the sea, and presently to make it known to the said lord of the place, that he may come and demand what is his right.

Observation.

The *Coustoumier de Normandie* mentions two sorts of fish, the royal fish, which are the dolphin, the sturgeon, the salmon, the turbot, the sea-dragon, the sea-barbel, and in general all fish fit for a king's table: and oil fish, as whales, porpoises, sea-calves, and the like, of which oil may be made: all other fish are the property of those that take them in the sea, near the shore or afar off. The duke of Espernon, which is the capital of a little territory called de Buch, had a right to the eighth penny of all the fish sold in the market at Bordeaux, that were taken within his precinct of de Buch, the fishermen having been heretofore vassals to the Lords de Buch. And further, whatever part of the province of Guienne the duke was in, those fishermen were on all fast days bound to supply his table with fish for himself and his family; but then the duke must pay a reasonable price for them, and allow them something for their trouble: this right is called "*bian*," and is still, or was thirty years ago, in being.

ART. XXXIX.

If the lord of the place pleases, and if it be the custom of the country where the fish is found, he may cause the same to be brought by him that found it, to the public and open market place, but no where else; and there

the said fish shall be appraised by the said lord, or his deputy according to custom. And the price being set, the other party that made not the price, shall have his choice, either to take or leave it at that price; and if either of them, whether per fas or nefas be an occasion of loss or damage to the other, though but to the value of a denier, he shall be obliged to make him restitution.

ART. XL.

If the costs and charges of carrying the said fish to the said market place would amount to a greater sum than the fish itself may be worth, then the said lord shall be bound to take his share at the place where such fish was found.

ART. XLI.

The said lord ought likewise to pay his part of the aforesaid costs and charges, because he ought not by another's damage to enrich himself.

ART. XLII.

If by some chance or misfortune the said fish happens to be stolen away, or otherwise lost from the place where it was found, after or before the said lord has visited it; in this case he that first found it shall not any ways be obliged to make it good. *Casus fortuiti in quibus est aggressura latronum a nemine præstantur l. quæ fortuitis. C. pignoratitia actione.*

ART. XLIII.

In all other things found by the sea side, which have formerly been in the possession of some one or other, as wines, oil, and other merchandize, although they have been cast overboard, and left by the merchants, and so ought to appertain to him that first finds the same; yet herein also the custom of the country is to be observed as well as in the case of fish. But if there be a presumption that these were the goods of some ship that perished, then neither the said lord, nor finder thereof, shall take any, to convert any part of it to their own use; but as has been said, distribute the money it produces amongst the poor and needy.

ART. XLIV.

If any ship or other vessel at sea, happens to find an oil fish, it shall be wholly theirs that found it, in case no due pursuit be made after it; and no lord of any place ought to demand any part thereof, though they bring it to his ground.

Observations on the Preceding Articles.

The French author pretends, that by the forty-fourth article of these laws, which he says answers to the thirty-seventh, the kings of England, who were also dukes of Guienne, acknowledged that the sea is no man's particular property; but that, as well as the air, it is common to all, *Instit. de Rerum Divisione, § 1. l. injuriarum, § si quis me prohibeat. D Injuriis*; which, says he, contradicts what the learned Selden writes in his treatise *De Dominio Maris*, composed by him for the kings of

England, whom he supposed to be kings of the sea, exclusive of all other kings and sovereigns; and unless the opposers of Selden can find out some better arguments than hitherto they have alleged, the kings of England will always believe the dominion of the sea is annexed to their crown. Under this article the author makes a long digression on the whale fishery on the coasts of Guienne, which might in former times be very famous, but now is very inconsiderable. After a description of whales, not at all pertinent in our sea laws, he tells us, when those animals used to come on these coasts; and because there is something historical in the relation, we shall give the reader a short abstract of it. The whales used to pass by the coasts of Guienne, near the ruins of the old castle of Ferragers, about a league from Bayonne, from the autumnal equinox till the winter was almost over. The fishermen had then some of their band always out upon the watch night and day, in huts built on purpose by the sea-side, having their boats and fishing tackle ready. When these centinels discovered a whale, which they knew by the noise he makes in breathing, and the exhalation that rises from it like smoke, they gave notice, by a token they had for that purpose, to their fellows, who immediately ran to them, and leaping into their boats put off to sea, rowing up to the animal, to whom they approached very near, and attacked him in the head, that the wounds they gave him might be the more mortal; besides they were afraid of being struck by it, which was commonly mortal to them: when they had killed him, they towed him ashore and extracted the oil. The fishermen were for the most part Biscainers, who were very bold and dexterous in this dangerous fishery: but what my author says on this subject will surprise the reader. The great gains the inhabitants of Cape Bezton near Bayonne, and the Biscainers of Guienne, found in the whale fishery, and the ease with which they did it, tempted them to run any hazards to come at whales. They ventured into the ocean, and set out ships to seek after the common abode of these monsters: inso-much, that following their route, they discovered the great and little banks of cod-fish, the island of Newfoundland, and Canada or New France, where the sea abounds in whales, one hundred years before Christopher Columbus's navigation; and if the Spaniards have been so unjust, as to rob the French of the glory of having first discovered the great Atlantic isle called the West Indies, they should confess with Cornelius Vuytler and Anthony Magin, Flemish cosmographers, F. Antonio St. Roman, Monge de St. Benico, del *Historia General de la India*, lib. i, cap. ii, p. 8, that the pilot who carried the first news to Christopher Columbus, and gave him any knowledge of the New World, was one of the French Newfoundland Biscainers. But all this is so contrary to every other history, that there is no credit to be given to it. Indeed it would have been very extraordinary, if there should have been any honour pretended to by any nation, and the French had not put in a claim to it. In the year 1627, some Biscainers, assisted by the merchants of Bordeaux, fitted out a ship for the whale fishery towards the frozen sea of Greenland, to the north of Ireland and Scotland, and at Spitzberg: where they at last found the common station of the whales during a six months stay which they made there. But now we come to what he is pleased to say of the English.

The English, who had not the address or industry for this fishery being advised of it, grew jealous. They hastened thither and did all they could to molest them in their work, and hinder their landing, which they did every year. At last they positively forbid them to land in Greenland, to melt their whales' fat into oil. The Biscainers complained to Lewis XIII, and Cardinal Richelieu; but there were

so many things of more importance then negotiating between the crowns of France and England, that they could not obtain any article in their favour, nor truce for their fishery. Afterwards they fished in the open sea, caught whales where they could, and with much trouble brought the fat home, where they melted it into oil. The company of north Holland, tempted some of these Biscainers to shew their fishermen the art of whale-fishing, and after they were become expert in it, they also forbade them to fish on the coast of Greenland, and then this fishery was lost to them. There is an air of fiction in this history:—By what authority could the English forbid the Biscainers to land in Greenland; does that country belong to the crown of England? But it is not a little the French will go out of their way to carry any point they drive at.

ART. XLV.

If a vessel by stress of weather be constrained to cut her cables or ropes by the end, and so to quit and leave behind her both cables and anchors and put to sea at the mercy of the wind and weather; in this case the said cables and anchors ought not to be lost to the said vessel, if there were any buoy at them; and such as fish for them, shall be bound to restore them, if they know to whom they belong; but they ought to be paid for their pains, according to justice. And if they know not to whom to restore them, the lords of the place shall have their shares, as well as the salvors; but for preventing further inconveniences, every master of a ship shall cause to be engraven, or set upon the buoys thereof, his own name, or the name of his ship, or of the port or haven to which she belongs: and such as detain them from him shall be reputed thieves and robbers.

ART. XLVI.

If any ship, or other vessel, by any casualty or misfortune happens to be wrecked and perished, in that case, the pieces of the hulk of the vessel, as well as the lading thereof, ought to be reserved and kept in safety for them to whom it belonged before such disaster happened, notwithstanding any custom to the contrary. And all takers, partakers, or consenters of, or to the said wreck, if they be bishops, prelates or clerks, they shall be deposed and deprived of their benefices respectively; and if they be laymen they shall incur the penal-

ties aforesaid. De his autem quos diripuisse probatum sit, præsidet ut de latronibus, gravem sententiam dicere convenit. I. ne quid. I. quo Naufrag. D. Incendio, ruina, & naufragio. I. navigia, C. furtis. The penalties aforesaid are in the 25th, 26th, and 29th articles.

ART. XLVII.

This is to be understood only when the said ship or vessel so wrecked, did not exercise the trade of pillaging, and when the mariners thereof were not pirates, sea-rovers, or enemies to our holy Catholic faith; but if they are found to be either the one or the other, every man may then deal with such as with rogues, and despoil them of their goods without any punishment for so doing.

Observations on the Three Foregoing Articles.

Every one has a *Droit de Bris* against pirates. *Piratae communes generis humani hostes sunt, quos idcirco omnibus rationibus persequi incumbit*, says the lord Verulam, de Bello Sacro, p. 346. For which reason, according to the civilians, *Sunt ipso jure dissidati, cum quibus publice bellum habemus*. Strachia in tertia parte de nautis; and again it is cruelty to have any mercy towards pirates, *Solum pietatis genus est in hac re esse crudelium*. There is no right of action amongst them, and they have none to bring against one who attacks them or robs them. *Quia in omnium furum persona constitutum est, ne ejus rei nomine furti agere possint, cujus ipsi fures sunt, lege cum qui § quarto, lege qui re sibi § primo. lege qui res. § si ego. De furtis, &c.* They have no action among themselves. *Communi dividundo lege. communi § inter Prædiones. D. communi dividundo*. On the contrary, for one pirate to take from another is very lawful, and will bear no action. *Leges sed ipsi Nautæ, &c.*

The test of these laws in this copy, is,

Witness the seal of the isle of Oleron, established for all contracts in the said isle, the Tuesday after the feast of St. Andrew, in the year one thousand two hundred and sixty-six.

This date of 1266, is too modern, and does not agree with the time when this piece was put forth, as the learned and curious Selden, libro secundo, capite 24. De Dominio Maris, very well observes: so that it is thought that this date of the time of the delivery of the copy, from whence the edition printed at Rouen was taken, and the test the seal established for contracts in the isle of Oleron, denotes, that it was a copy taken out by a notary from the original.