

favor of the person whom he or she may marry, exceeding the least share of any of the children. If it exceed that share it is subject to reduction. In making this reduction, the number of children is computed at the time, not of the second marriage, but of the death of the deceased. The prohibition extends to every species of donation made by the person so re-marrying to the person whom he or she is about to marry. (1) The share to which the donation or advantage is reduced, is the least to which any one of the children is entitled. Thus, if a widow, having children of a former marriage, marries again, and by her contract of marriage makes a donation to her new husband, and, by her will, makes her children universal legatees, with the exception of one by the first marriage, to whom she leaves only his legitime, (2) the donation, if it exceed the legitime—which is the least share either of the children takes—is subject to be reduced to the amount of such *legitime*. Although the edict of 1560 was introduced for the protection of the children of the first marriage, yet the reduction of the donation operates equally for the benefit of those of the second. The excess which is the subject of reduction becomes distributable amongst the children of both marriages. (3)

*Legitime* is the one half of such part and portion as each child would have had in the succession of his father and mother, grandfather and grandmother, or other ascendants, dying intestate, if the said father and mother or other ascendants had not disposed of the same by donation, *inter vivos*. (4)

The provision of the Edict by which the party marrying a second time, is bound to reserve the property for the children, formerly subjected the wife to a species of fidei commissary substitution in their favor, which took effect on her death; but since the enactment of our Provincial Statute, 41 George III, c. 4, (which removed all restrictions with respect to the persons to whom property might be bequeathed,) it would seem that the conjunct, so re-marrying and having children of a former marriage, may, although still restricted from advantaging the new conjunct by a contract of marriage, effect the same object by will, provided, of

(1) 1 Duplessis p. 533. (2) Burge p. 403. (3) Poth. Mar. No. 567. 1 Burge 403. (4) C. P. Art. 298.