

with them only so much of the English law as is applicable to their own situation, and the condition of an infant colony, such, for instance, as the general rules of inheritance and of protection from personal injuries." The common law of England has been claimed and recognized as the birthright of every British subject in the colonies, and has been so considered, as well by the most eminent lawyers in England as by the Supreme Court of Judicature in most, if not all, the British Colonies in North America before the Revolution. The Act of Federation which established the present Constitution of the United States, recognizes the Common Law of England as the basis of it.

It will not then be contended but that the inhabitants of this Province are subject to and intitled to the benefits and privileges of the Common Law of England.

If so, the same judgment must be given in this case as in the case of Somerset in England, unless slavery is established by some municipal law in force here.

It will not be contended that any of the local laws passed by the Legislatures of the different Colonies and Islands are binding here.

Perhaps it may be said that the custom of tolerating slavery in many of the Colonies is binding in this Province. Let us examine this position. "By the old custom of the realm," says St. Germin, "no man shall be taken, imprisoned, disseized, nor otherwise destroyed, but he be put to answer by the law of the land, and this custom is confirmed by the stat. of Magna Charta, Cap. 26." "Every general custom of the realm is a part of the Common Law." D. & St. D. 1, c. 7
Co. Lit. 1 & 5, 6
1b.

It will not be denied that this part of the common law extends to this province as an English Colony, planted by English subjects. It is equally clear that this law cannot be altered, but by some direct positive law of a Legislature having authority for that purpose, either the Parliament of Great Britain or the General Assembly of the Province. "The Common Law," says Lord Coke, "hath no controller in any part of it, but the High Court of Parliament, and if it be not abrogated or altered by Parliament, it remains still as Littleton saith." "The Common Law appeareth in the Statute of 'Magna Charta,' and other ancient statutes, which, for the most parts, are affirmations of the Common Law."

It is true that particular customs or laws which affect only the inhabitants of particular districts, are also a branch of the unwritten laws of England. 1 Bl. Com. 74.

Consuetudo ex certa causa rationabili usitata privat communem legem. Quia consuetudo contra rationem introducta, potius usurpatio, quam consuetudo appellari debet. Consuetudo prescripta et legitima vincit legem. Co. Lit. 113a.

All particular customs must be particularly pleaded, and as well the existence of such customs must be shewn as that the thing in dispute is within the custom alledged. 1 Bl. Com. 76.

"When a custom is actually proved to exist, the next inquiry is into the legality of it; for if it is not a good custom, it ought to be no longer used. *Malus usus abolendus est* is an established maxim of the law."

With regard to the existence of the custom of slavery in this Province, it is presumed it never has existed, and that of course no proof can be produced of it.

That some masters have brought slaves here is true, and that the slaves have, in some instances, continued with their masters without disputing the right of their masters to their service, is also true. But it must also be