

All these gentlemen are included in the committee list. In the course of our inquiry the following gentlemen appeared to claim, as they expressed themselves, "the titles which respectively belong to them," viz., Enrico Testaferrata, brother of Lorenzo Cassar Desain's father, and Luigi Testaferrata, brother of the above-named Lorenzo Antonio. The said Emmanuele Testaferrata and his brother Ignazio descend from Enrico Testaferrata, senior, first-born son of Mario, senior. The Barone Dr. Giuseppe Testaferrata is the first-born descendant in the primogenial line of Gilberto, second-born son of Mario, senior. Lorenzo Antonio Testaferrata and Luigi his brother descend from Lorenzo Testaferrata, second-born son of Mario, junior, who was born of the said Gilberto. Lorenzo Cassar Desain, and Enrico Testaferrata, his uncle, derive their descent from Filippo, younger son of the said Mario, junior. Emmanuele is, moreover, the first-born son in the descending line of Enrico, and he would undoubtedly be entitled to the enjoyment of the marquisate if this title legally existed, and if he could not be ousted from it by the paternal testament.

153. With regard to the claims of all the aforesaid gentlemen, we cannot but come to the same conclusion at which we arrived, after having inquired into the claims of Gio Paolo Testaferrata. We only beg to add that if the title subsists, and if it is to be taken to extend to all the contemporary descendants of the original grantee, all the said claimants, like Gio Paolo, would have the right of bearing simultaneously the present title. And under such construction, if all those claimants, most of whom are not the first-born descendants in the direct lines of the grantee, or do not descend from his first-born son, are entitled to the joint possession of the dignity we are considering, many other persons who belong to the same family, and who, as far as we know, have never asserted their claims to this title, would, as a matter of course, have the right of enjoying it. But if, on the contrary, the title lawfully subsists, and it is inheritable by the first-born son only, under the rule of primogeniture, the marchese would be the said Emmanuele Testaferrata, should the disinheritance in Mario's testament be void, but, if valid, the title belongs to the said Dr. Giuseppe Testaferrata.

154. As we have before remarked, all the arguments which have been adduced with respect to G. P. Testaferrata's claim, will apply equally to the claims of the other gentlemen, who, Lorenzo Cassar Desain alone excepted, have not produced in support of their respective claims any other documents but their genealogical tables with several proofs of their descent. Among the documents produced by Lorenzo Cassar Desain, relative to the recognition of the title, we find a copy of the diploma of Victor-Amadeus, another diploma of the Senate of Messina, and a copy of the deed of transaction received by Notary Giammalva. Our remarks on these documents have already been submitted in the foregoing paragraphs of this Report. The said claimant has also produced a genealogical tree showing his descent from Mario Testaferrata. He has likewise exhibited two papers containing several quotations from feudal writers, and an extract from the deed of foundation of the *Primogenitura* Cassar Desain; which last-mentioned document he produced in order to justify the change of his rightful family name *Testaferrata* into that of *Cassar Desain*.

155. Lorenzo Cassar Desain, who is a descendant through a male line of Mario Testaferrata, has, like his deceased father, dropped the surname Testaferrata and assumed that of Cassar Desain, in order to be able to possess the aforesaid *Primogenitura*, which was instituted by Gio. Battista Cassar Desain, in his testament received in the acts of Notary Paolo Vittorio Giammalva, on the 7th April 1781. That testament contains, among other disposition, the following clause: * "I further direct and expressly command " that the possessor of the said *Primogenitura* erected, as herein-before stated, by me, " shall always bear the surname Cassar Desain, without adding any other family name " thereto, and that he shall, at the same time, bear the armorial ensigns of the said family " Cassar Desain, under the penalty of forfeiture, upon breach of the said condition, " and my will is that, in such case, the said *Primogenitura* shall forthwith go to and be " vested in, such person as should have succeeded to it, after the death of such defaulter, " and not otherwise."

156. With reference to the foregoing extract, we beg to state that the family of which the said Lorenzo Cassar Desain is bound to bear the surname and armorial ensigns is not in possession of, nor has ever asserted any claim to, any title of nobility.

156a. After having submitted the reasons alleged by the claimant in order to establish the recognition of the present title, we feel it our duty to state, that from the Records of the Government Archives, it appears that in 1749 and 1750, Gilberto Testaferrata, and Mario his son, in 1776 and in 1777 were styled *Marchesi*, when appointed

If the title is to descend to all the contemporary lineal successors of the grantee, all the claimants and many other persons can enjoy it.

If it is inheritable only by the first-born it belongs to Emmanuele or to Dr. Giuseppe Testaferrata, according to the different cases.

Argument adduced with regard to G. P. Testaferrata's claim apply to the other claimants. Documents produced by Lorenzo Cassar Desain.

Change of surname Testaferrata into that of Cassar Desain accounted for. Conditions attached to the possession of the *Primogenitura* Cassar Desain.

The Cassar Desain family was never in possession of any title of nobility.

* Translation from the Italian.

Gilberto Testaferrata in 1749 and 1750, and Mario his son in 1776 and 77, styled Marchesi when they were appointed Jurats.

Mario only described as nobleman in 1778-79-80 on a similar occasion.

Suppression of the title formerly given to Mario accounted for.

Claimants failed to establish the recognition of the present title.

Recognition of title presumed to have been effected under the British Government.

Documents produced by G. P. Testaferrata Olivier.

Jurats by the Grand Masters. Their appointment is regularly entered in the Minute Book. But any presumption arising from these facts is greatly weakened by the circumstance that, in subsequent acts, Mario was not designated by the title of Marchese by the Grand Masters. He was in fact reappointed Jurat for the years 1778-1779 and 1779-1780, and although on that occasion in the list of the Jurats and in the Records of the *Università* which were not compiled under the authority of the Grand Masters, the title of Marchese appears to have been prefixed to his name, yet in the bull only the designation of nobleman was given to him.

157. We have not been able to discover why in 1749 the title of Marchese was given to Gilberto; this circumstance may be only explained by supposing that the suppression of the title previously given to Mario, who in 1778 and 1779 was in the same condition as Gilberto his father in 1749 *, took place in consequence of a careful examination into the terms of the grant, and that the local sovereigns apprehended lest the precedent laid down on that occasion should carry with it the acknowledgment of the title in the person of the descendants who did not belong to the grantee's primogenial line. Our assumption is supported by the circumstance that the title of Marquis was withheld not only in 1778, but also in 1779; nor can its omission in the former year be attributed to an unintentional error on the part of the Grand Master, for in such case Mario would in 1779 have applied for and obtained the re-insertion of this title and the reintegration of his rights. It is moreover to be noticed that in the Bull by which the Grand Master's assent was given to the appointment of the Jurats for 1778-1779, all the titled gentlemen on whom that office was conferred, together with Mario, were properly designated by their respective titles. Thus we find that with the nobleman Mario Testaferrata, Barone Francesco Bonici was appointed Jurat in 1778, and his appointment was confirmed in 1779, and Barone D. Pasquale Scerberras, who had been elected Capitano della Verga in 1775, 1776, and 1777, was reappointed to that office in 1778, and his appointment confirmed in 1779. Nor can it be affirmed that, because Gilberto and his successors possessed the title for a certain space of time, the claimant's right has been established in virtue of prescription, for even admitting their assertion that titles of nobility may be acquired by a possession of 30 years, no prescriptive right may be claimed on this occasion, inasmuch as from 1749, when the designation of Marchese was given to Gilberto, to 1778, when that title was withheld, no uninterrupted possession appears to have been enjoyed for the term of 30 years.

158. Having premised these circumstances we think that the gentlemen who appeared to assert their rights to the present title have failed to show that those under whom they claim were under the government of the Order lawfully recognised as Marchesi by the sovereign authorities of the island.

159. Gio Paolo Testaferrata and Lorenzo Cassar Desain have produced several other documents to prove that the title has been recognised by Her Majesty's Government. It is not our province to express any opinion on the import of the acts by which those claimants have endeavoured to establish a recognition of their title. The Right Honourable the Secretary of State may perhaps form a correct opinion on some of these documents, and on some others the local authorities may furnish his Lordship with full and reliable information.

160. The first of these documents is a warrant of diploma whereby Henry Pigot, Major-General of His Majesty's forces, appointed on the 1st January 1801 the said Enrico Testaferrata, junior, to be captain of the militia. That warrant (of which the following is a translation from the Italian original), runs thus: "By virtue of the authority with which we have been invested we nominate and appoint you, Marchese Giuseppe Testaferrata, captain of the division of the militia in this island of Malta of which Conte Luigi M^a. Gatto is the commanding officer." This warrant is signed thus: "H. Pigot, M^r General," and "by order of his Excellency the Major-General John Dalrymple, A. Adj^t Gen^l."

161. The following are the other documents presented by the claimant Gio Paolo. 1st. A certificate signed by the Chancellor of the Municipal Corporation of the city of Notabile, by which it is attested that in the year 1803, the Noble Marchese Don Pandolfo Testaferrata was appointed first Jurat.

2nd. A diary or almanac of Malta for the year 1805, in which among the several Government employés, Marchese Don Mario Testaferrata is referred to as President of the "Monte di Pietà ed Redenzione," and Marchese Pandolfo Testaferrata as commanding officer of the Veteran's Company.

* Gilberto died on the 10th August 1774.

3rd. A copy of the "Times" newspaper of the 13th March 1812, which contains a description of a levée held by H.R.H. the Prince Regent at Carlton House. Among the marquises who are reported to have attended the levée there is "Testaferrato," and among the presentations which took place, that of "Marquis Testaferrata, of the Ancient Princes Capo di Ferro, Chargé d'Affaires Maltese." The Marquis alluded to in that description is not the claimant's ancestor, but Nicola Testaferrata, who at that time repaired to London with a deputation of Maltese gentlemen, in order to obtain some improvements in the system of the local government. The designations given in that issue of the "Times" clearly bespeak their origin.

4th. A passport, signed on the 5th July 1861, by "Wilford Brett, Acting Chief Secretary to Government," and issued in the name of Governor Sir John Gaspard Le Marchant. In this passport there are the following expressions:—"These are to request and require to allow the Marquis Gio Paolo Testaferrata Olivier, "Captain Malta Militia."

5th. A letter addressed by Sir Victor Houlton, Chief Secretary to Government, on the 22nd October 1868, to "Marquis G. P. Testaferrata Olivier," in which we read: His Excellency the Governor having considered it necessary "that a person should be appointed for the purpose of perusing the pieces to be performed at the Theatre "Manoel, I am desired to inform you that his Excellency has been pleased to appoint you to discharge that duty."

6th. A letter addressed on the 21st July 1863, by Frederic Rogers, Esq., to Marquis Testaferrata Olivier and Commander Walter Strickland, R.N., which is to the following effect:—"I am directed by the Duke of Newcastle to acquaint you that the Lords of the Committee of the Privy Council for Trade have forwarded to this office a letter addressed to that department by yourself and Captain Strickland, enclosing a programme of a proposed Exhibition of Maltese Industry, General Products, and Fine Arts; and I am directed, &c."

7th. A copy of the Malta Government Gazette, containing a list of persons deemed to possess the qualifications required by law in order to vote for the election of members of the Council of Government for the Island of Malta. In this list the claimant is designated as "Testaferrata Olivier, Marquis Gio Paolo." It is proper here to remark that, as in the memorandum by that gentleman it is stated that the prefix of "Marchese" was added to his name in pursuance of a decision, a copy of which was not produced by him, we are inclined to believe that the claimant alludes to some order which may have been given on the subject by the Commissioners charged with conducting the election of Members of the Council of the Government of Malta. But those Commissioners had certainly no power to give a title to a gentleman who had no right to bear it.

8th. Lastly, a printed list of the different schools of the Lyceum of Malta, showing the names of the students to whom prizes had been awarded or who had distinguished themselves at the annual examinations, as well as the names of the teachers of the said schools. In that list we read: "School of History and Geography, under the direction of Marchese G. P. Testaferrata Olivier."

162. But from information obtained in the course of our inquiry, it appears that when on the 9th September 1852, the claimant was appointed Captain of the Militia, he was simply designated as G. P. Testaferrata; and that in official documents concerning public departments he was described with his baptismal and surname only, down to 1870, since which period the title of Marchese has been prefixed to his name.

163. After this detailed examination of the documents exhibited by G. P. Testaferrata Olivier, we now come to inquire into those produced by Lorenzo Cassar Desain, viz.:—

1st. A passport issued on the 19th May 1857, under the administration of Sir William Reid. It runs thus:—"These are to request and require to allow the "Marquis Philip James Cassar Desain, of the Royal Malta Fencible Regiment, " accompanied"

2nd. Another passport, issued in the name of the head of the Government, on the 17th June 1863, and conceived in the same terms which were used in the one just mentioned.

3rd. Two passports, issued from the Foreign Office on the 19th and 22nd October 1863. They contain the following expressions:—"We, John Earl Russel Her Majesty's Secretary of State for Foreign Affairs request and require "in the name of Her Majesty to allow Lieutenant the Marquis Philip James Cassar Desain (British subject), of the Royal Malta Artillery." The gentleman referred to in the above-named passports is the claimant's father.

The said Gio Paolo was not styled Marchese in the Government notices and other official acts down to 1870. Documents exhibited by Lorenzo Cassar Desain.

Other members of the Testaferrata family how designated in public Acts.

164. In connexion with these documents, we beg to state that the late Sir Giuseppe Vincenzo Testaferrata, brother of Pandolfo, the grandfather of the claimant Gio Paolo Testaferrata, was repeatedly mentioned in Government public acts. In six Government Notices dated respectively the 16th and the 26th June 1817, the 1st January 1819, the 15th January 1820, the 15th January 1821, and the 15th January 1822, he is designated as "Giuseppe dei Marchesi Testaferrata;" in twelve other notices of the 1st January 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, and the 11th January 1832, the 1st January 1833, the 2nd January 1834, he is styled, in the English version of the Government Gazette, "Sir Giuseppe Vincenzo Testaferrata;" and in the Italian, "Cav. Giuseppe Vincenzo, Testaferrata." In a notice which appeared in the Gazette of the 15th May 1833, announcing the appointment of that gentleman to the commandership of the order of St. Michael and St. George, we read the following expression: "Signor Giuseppe dei Marchesi Testaferrata," in the Italian version, and the word "Marquis" in the English. In a notice of the 29th May 1833, which contains an account of the ceremony of the investiture of the newly elected knights, he is called "Marquis" in the English version, and "Marchese" in the Italian. He is designated as "Cav. Giuseppe v. Testaferrata, C.C.M.G." in the Italian version, and "Sir Giuseppe v. Testaferrata, K.C.M.G." in the English, in five notices which appeared in the Government Gazette on the 2nd January 1835, the 1st January 1836, the 2nd January 1837, the 1st January 1838 and 1839. On the other hand, Gilberto Testaferrata Viani, who like Sir Giuseppe v. Testaferrata, was not the first-born descendant in the primogenial line of the family, was styled as Marchese in twenty notices which contained his appointment as Lord Lieutenant in the years 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839.

165. We also found in several lists of the electors of the members of council for Malta and Gozo, published under the Government authority, the said Gio Paolo Testaferrata referred to as "Marchese" in the list of electors for Gozo, and as "dei Marchesi" in the list of those of Malta. In some notices the late Francesco Gauci Bonici, who was for several years member of the Council of Government, is designated as Barone, which title had originally been given to one of his ancestors, for the term of his natural life only. (*Sua naturali vita perdurante*).

No importance formerly attached by Government to the use of titles.

165. The above stated circumstances lead us to conclude that no great importance was formerly attached by the Local Government to a proper use of the titles of nobility. In confirmation of this statement, we may mention that in several Government notices the late Baldassare Sant was styled Count, to which title he had no right. His son and heir, Lazzaro Sant, does not claim but the titles of Conte and Barone Fournier de Pausier, which he inherited from his mother Luigia, wife of the said Baldassare, to whom they were not certainly communicable. It must, however, be remarked that since 1870 the said Gio Paolo Testaferrata and Lorenzo Cassar Desain have been styled Marchesi in several Government notices concerning the Agrarian Society, and the Society of Arts, Manufactures, and Commerce.

166. With reference to the foregoing papers, by which the above-named claimants have attempted to establish the recognition of the title now under consideration, on the part of the British Government, we beg to refer his Excellency's attention to the fact, that, as far as we are aware, such official documents emanating from the head of the Local Government and other authorities of the island, were not issued pursuant to orders received from Her Majesty or her predecessors, who are the source of all honours and distinctions.

Authorities quoted by the claimants Testaferrata and Cassar Desain to prove that the title is inheritable by all the grantee's contemporary descendants.

166a. We now proceed to submit our remarks on certain authorities quoted, as already stated, in the memorandums by G. P. Testaferrata and Lorenzo Cassar Desain, who seem to think that those authorities are sufficient to establish:—1st. That the feudal laws recognise two sorts of fiefs, one termed "ad usum Francorum," and the other "ad usum Longobardorum:" that the former are indivisible, their possession belonging to one person exclusively, such as those existing in the kingdom of Naples; whilst the latter are divisible, pertaining to several persons jointly, "ut feuda Lombardiæ, Etruriæ, aliorumque Italiæ partes versus montes." 2nd. That it is a custom (which obtained throughout Italy) that the fiefs to which a dignity is annexed, that of Duke alone excepted, are divisible. 3rdly. That the principle according to which fiefs are divisible with regard to the dignity annexed thereto, proceeds not from the common feudal law, but from a custom which prevailed in Germany, Lombardy, and in many parts of Italy. 4thly. That in Germany the sons of Counts and Marquises are likewise styled Counts and Marquises, and in Lombardy, the fiefs to which a dignity is attached are divisible, so that they descend equally to all the holder's children; 5thly. That a dignity does not become divisible merely because all the children and descendants of the grantee actually enjoy it. 6thly. That there are also divisible fiefs with or without any dignity annexed thereto.

7thly. Lastly, that there are honorary and nominal titles, without any fiefs or other landed property to which they are attached.

167. We think that we have fully explained what the claimants had in view to establish by the authorities quoted by them. But those authorities will be found to be inapplicable to the question under consideration, if the present title was not recognised by the local authorities; and the applicability of most of them depends on the decision of the question whether that grant is to be regulated by the Sicilian feudal laws or by the custom prevalent at that time in Savoy.

Such authorities inapplicable if the title is to be regulated by the Sicilian feudal laws.

168. If by that grant it was intended to raise Mario to the nobility of Savoy, we fully concur in the opinion that it is inheritable by all the grantee's contemporary descendants. In Germany, in Lombardy, and in other parts of Italy, including the Duchy of Savoy, a custom since a distant period obtained under which the titles of nobility that are annexed to fiefs (which in those countries are divisible), as well as those which are purely nominal, descend after the decease of a count or marquis to all his sons, who all assume the title of count or marquis, as the case may be. But if the succession to the grant is to be regulated by the feudal law which was in force in Sicily, considering that the title was created by a King of Sicily and registered in the Office of the Privileges of the Kingdom of Sicily, the consequence is widely different. In Sicily, as a general rule, (admitting of course some exceptions) fiefs are not divisible, and the joint possession of titles by more than one person is unknown in that country. As an illustration of this fact, we beg to submit the following important quotations from eminent feudists. Cumja, a leading Sicilian writer on feudal law, "In capite 'si aliquem mortis' num. 176 and 177," says, "Sed in hoc nostro Siciliae Regno hodie non inveniuntur feuda dividua per Cap. 'Volentes. In fin. secundum communem interpretationem, ubi 'feudo integro et indiviso perdurante,' et etiam per istud C. Si aliquem, ubi ab intestato Francorum jure vivitur, ut discimus secundum communem intellectum in verbo Francorum. Unde hodie in hoc Regno, . . . quia feuda omnia individua sunt, et ille textus de dividuis loquitur." Octavius Corsetus, who is also a Sicilian feudist, Con. 23, Num. 2, observes, "Bene tamen verum est quod cum in Regno feuda sint indivisibilia ex dispositione constitutionis *Divæ Memoræ* et capituli *Volentes*, et utrobique dicunt Doctores ad unum tantum est necesse quod deveniat corpus feudi illeque erit primogenitus masculus, ita dicunt passim nostrales," and in the second annotation appended to the said "Consilium," the author remarks, "Dignitatis feudum integre capiat primogenitus." In the Commentaries of Muta, on the "Capituli Regni Siciliae," cap. 33, n.n. 96, 97, tom. I., the following passage is worthy of notice: "Et hoc ex quodam jure medio succedendi in feudis, nam non mere vivimus jure Longobardo, ut dico in prædicto cap. *Volentes*. Ristrict. 2: etenim tunc succederent æqualiter omnes, omniumque esset feudum. (*d. Cap. I. in principio de success. feudi*), vel dividebant cum consensu imperatoris, vel ex consuetudine inducta, scientibus et videntibus etiam Dominis ipsis Imperatoribus, ut ait Iserniæ in tit. de feudo Marchiæ, num. 4 . . . ubi quod in Lombardia omnes liberi essent. Marchiones (*d. cap. Omnes Filii si de feud. fuer. controvers. Pietr. de Gregor. p. 4 q. I, n. 9.*) Etiam jure Francorum, ut dicam inferius, in versie. Quoniam vero: Sed est inter hæc duo jura medium jus . . . quod introducitur ex ipso Capitulo *Volentes*, ubi Etiam Dom. Fimia qui ait: *Quod ex quo in feudorum successione vivatur quasi jure Francorum, nam feudum debet esse integrum et per consequens ad unum pervenire, id est ad primogenitum* ex Iserniæ doctrina, in tit. De natur, success. feudi, in fin. et de prohib. feudi alienatione per Federici paragrapho *Prætera* . . . addo Jacob de S. Georgio de Feudis, in verbo Dux, fol. 8 et 9, n. 10, ubi tres assignat rationes. Primo quia ista feuda præsertim de Comitatibus, Marchionatibus, Ducatibus, etc. et sic in feudis titulatis et dignitatibus . . . in tantum quod redigantur ad nihilum, stante quia sunt regales et loquitur ipse de S. Georgio de Comitatibus etc. *Feudis Sabaudicæ* . . . Secunda ratio, dicit ipse, quia aliqua feuda, et ut plurimum omnia quæ sunt nominata, et si dividerentur, perderent nomina et consequenter carerent fructu et effectu . . . aliam assignat rationem, eo quia talia feuda sunt (ut dixi) dignitates et dignitas est indivisibilis." This last reason clearly shows that dignities or titles of nobility in Sicily are indivisible, and that their indivisibility is desumed from the indivisibility of feuds, and not *e converso* the latter from the former.

Laws and customs prevalent in Lombardy and other countries respecting the succession to fiefs. Different laws and customs obtained in Sicily.

169. At num. 105 the learned Sicilian writer says: "Immo ut sequar materiam in tantum hoc ampliat ipse Molina supra citatus (Molina de primogenitis, cap. 11. lib. I. n. 10. cum seq), ut etiam procedat quando rex donaret alicui aliquod castrum sibi et suis descendentibus, cum titulo ducatus aut marchionatus, quia nihilominus, mortuo concessionario, ad unum tantum transire debeat, non obstante quod multi *temerint contrarium.*"

170. These last words, quod multi tenuerint contrarium, employed by Muta, induced us to consult Molina, quoted by that writer, and the authorities referred to in his works. The writer "De Primogeniis Hispanis," after having clearly explained their import and meaning, thus concludes:—"Ut autem de hac re perfecta resolutis habeatur, "duæ species diversissimæ considerandæ sunt: aut enim agitur de sola dignitate, quæ quoad officium et administrationem conceditur: aut de ea dignitate quæ simul cum oppidis et territorio donata est. In prima specie subdistingendum erit, aut enim ea dignitas simpliciter alicui a principe concessa est, aut pro se et suis descenditibus ac successoribus. Si simpliciter ea dignitas concessa fuerit, hæc dignitatis concessio morte donatarii expirabit, nec ad primogenitum nec cæteros filios nec hæredes transitoria erit Si vero ea dignitas alicui pro se ac suis descenditibus concedatur, tunc ad hæredes et successores transitoria erit, ut superius ostendimus. In hoc autem casu, dignitas ipsa, jusque in ipsa dignitate succedendi individuum erit, primogenitoque solo pertinebit. Est tamen regulare ut quoties similes dignitates sint ad hæredes transitoria, non ad omnes filios sed ad primogenitum tantum, pertinere debeant Dignitates nempe hujusmodi sive in feudum, sive libere concessa sint, semper individua esse debent idque si ad solius dignitatis jus referatur, verissimum est, nisi consultudine contrarium sit observatum. Tunc enim omnes filii, Duces Comites et Marchiones vocabuntur, prout in Italia et Allemania observari solet quæ consuetudo numquam in Hispania (to which may be added nunquam in Sicilia) observata fuit, et in hac specie nulla est inter scribentes Hispanos controversia. In secunda specie, ubi scilicet cum ipsa dignitate, proprietates territorii seu castra ac oppida concessa sunt, se offert opinionum varietas, de qua superius mentionem fecimus. Prima, quod hæc bona libera sint judicanda, secunda opinio, quod ea bona majoratu subjecta censenda sunt. In hac autem opinionum varietate secunda opinio mihi probabilior videtur etc." (L. 1. c. XI. n. 21 et seq.) To this conflict of opinions Muta alluded by his expression "quod multi tenuerint contrarium."

The words "all the descendants" employed in the patent of creation imply the right of all the grantee's descendants to inherit the title successively under the rule of primogeniture (habitualiter), and not to possess it simultaneously (actualiter).
Conclusion.

171. Nor is there any difference between the purport of the expressions "all the descendants" contained in the patent of creation of this title, and that of the word "descendentes" which occurs in the foregoing quotations. Cardinal De Luca in his treatise De Feudis, dis. 115. n. 11, observes much to the point: "Et quamvis scribentes pro actoribus, in eo insisterint, quod voluntas dicenda potius esset clara, dum investitura cantat de descenditibus masculis in genere, et in numero plurali, de sui natura apto comprehendere omnes, idque apud judices primæ instantiæ plausum habuerit; attamen id pro meo sensu continebat potius levitatem, nimiumque debile fundamentum videbatur, quoniam vocabulum omnes apponitur ad denotandam habitualem capacitatem, et comprehensionem omnium de illo sanguine vel genere, compatibiliter tamen cum restrictione ad majorem natum seu primogenitum, circa actum, seu eo modo, quò in jure patronatus vel presentandi, aliisque similibus, passim habemus. Et in his terminis feudalibus comprobatur actualis praxis investituræ feudorum in Regnis utriusque Siciliæ quod cantat 'pro se et hæredibus ex corpore descenditibus,' ideoque omnes habitualiter vocati sunt. Et tamen actualiter successio inter eos defertur jure singulari, et cum ordine primogenituræ."

172. In concluding this part of our Report, we beg to state that after a full and impartial examination of all the circumstances of the case, and of the numerous documents which have been produced, we are of opinion that the claimants have failed to establish their right to the title, and their names, therefore, will not be inserted in the list of titled gentlemen appended to this Report.

IV.—Title of "Conte" granted by King Victor-Amadeus to Giuseppe Preziosi.

This title was given with succession to the grantee's male issue.

It was regularly registered in the Cancellaria.

173. This title was conferred by Victor-Amadeus, King of Sicily, Duke of Savoy, &c., and Perpetual Vicar of the Empire, by a patent given at Rivoli on the 19th October 1718, in the fifth year of his reign. It was granted to Giuseppe Preziosi to hold to himself and his legitimate and natural male descendants in lawful wedlock begotten, whether born or to be born. The original patent of creation was not produced before the Commission, it having probably been burnt up during the government of the French Republic in these islands in pursuance of an order by which, as already stated (§ 144), all the patents of nobility were to be set on fire. It was, however, regularly registered in a record of the Cancellaria, in consequence of a rescript of the Grand Master, bearing date the 20th June 1720, so that in the present case no recognition of the title was necessary. Although in the patent registered in that record the following expressions occur:—"We command that it should be registered in our

"Secrétairerie of State," no allusion is therein made to the place in which it was enrolled agreeably to the King's commands.

174. In order to determine the question whether the title belongs to the first-born son of the family only, or is to be taken to extend simultaneously to all the male descendants of Giuseppe Preziosi, first count, as it is assumed by several gentlemen who claim it, we think that most of the remarks made by us with reference to the preceding title of marquis, may be properly applied to the present case. As we are not called upon to express any opinion on this question, we shall simply mention the names of the gentlemen who appeared to assert their claims to this title; these gentlemen are, Amadeo Preziosi, Dr. Antonio, Dr. Camillo, and Alessandro Preziosi, and Dr. Vincenzo Camilleri. Amadeo is the first-born son of the late Conte Francesco, eldest son of the Conte Luigi Preziosi, and last holder of the title. The Conte Luigi was born of Conte Gio Francesco Preziosi, son of the original grantee Conte Giuseppe. Dr. Antonio, Dr. Camillo, and Alessandro Preziosi, are younger sons of the said Conte Luigi; but Dr. Camilleri descends from the said Conte Luigi, through his mother Rosa Camilleri, née Preziosi. The first-born son in the primogenial line of the grantee is therefore Amadeo Preziosi.

Gentlemen who assert a claim to the present title.

175. If according to the terms of the grant, the title is to be enjoyed jointly by all the contemporary male descendants of the Conte Giuseppe Preziosi, the number of such descendants, exclusive of the males descending from daughters, would be nine; but including the male descendants of daughters that number would amount to 59.

Number of gentlemen who would succeed to the title if it is inheritable by all the grantee's male descendants.

V.—Title of "Conte di Mont' Alto" conferred upon Bernardo Piscopo by Francis I., Duke of Parma.

176. The title of "Conte di Mont' Alto," in the Duchy of Parma, which is claimed by Monsignor Salvatore Manduca Piscopo Macedonia, was, together with the fief of Monte Alto, conferred, at the grantee's request, by Francis I. (Farnese), Duke of Parma, upon Bernardo Piscopo, by a Rescript given at Piacenza on the 8th July 1720.

Title conferred at the grantee's request.

177. Subsequently to the grant, the said Bernardo having no issue, in a petition addressed to the Duke of Parma, represented "that * he was desirous of obtaining the power of disposing of the fief in favour of Felice Manduca Piscopo, his grand-nephew, or of one of the brothers of the said Felice, and so in favour of such of them as the petitioner (Bernardo) might designate his heir, and of his legitimate and natural male children and descendants from a real and lawful wedlock issuing in infinitum, according to the order of primogeniture, or in such any other manner as petitioner might prefer to dispose thereof, so that in case he should die without issue, as aforesaid, the above-mentioned fief, with the title of Count, with its jurisdictions, power of the sword, and its *merum* and *mixtum imperium* should be vested in the aforesaid Manduca, or in such of his brothers as the petitioner might nominate to be his heir, in the same manner and form as if the latter were expressly included and designated in the said grant and investiture, and this (he requested) in order that in the family of his said grand-nephews, that is of such of them as might be his heir, the glorious token of a perpetual vassalage to the Most Serene dynasty of your Highness might always be preserved in its lustre." He consequently requested that H. S. Highness, should grant him the power of disposing of the said fief, in the way hereinbefore stated, and that pursuant to such a disposition, his highness should "nunc pro tunc" invest the above-mentioned Manduca Piscopo, his grand-nephew, or another brother of his, as aforesaid, for himself and his legitimate and natural sons and male descendants, from a real and lawful wedlock issuing in infinitum, and declare that, in such case, he should be considered as invested with the said fief of Monte Alto and with a title of Conte, as if the said Felice or such of his brothers as might be the petitioner's heir, as aforesaid, had been expressly included and designated in the grant and in the investiture. He also prayed that H. S. Highness might be pleased to grant him license to create on that fief a regular and lineal *Primogenitura*, in favour of the legitimate and natural first-born descendants in infinitum of the said Felice or another of his brothers, as petitioner might prefer.

Application of Bernardo Piscopo for the extension of the title.

178. On the foregoing petition the Duke issued the following rescript. "Concedimus investimus, mandamus, declaramus, approbamus, et derogamus in omnibus et per omnia ut petit. Et non obstantibus (Dat. Comitii, die 19 Mensis 7 bris anni 1724, Franciscus Dux."

Rescript issued on the foregoing petition.

179. From the tenor of that petition it appears: 1st. That Bernardo applied for the extension of the grant in favour of Felice Manduca his grand-nephew and his descendants

Grant extended in favour of one

* This petition is translated from the Italian.

the grantee's grand-nephews and his issue.

Bernardo's testament cannot afford any construction to the grant in question.

Operation of the expression "according to the order of primogeniture."

Bernardo in his petition only alluded to the issue of Felice or of another of his grand-nephews who would be his heir.

Bernardo's testament in favour of Felice Piscopo.

Succession to the primogenitura how

or of another brother of the said Felice and his descendants exclusively, that is, in favour of such of them as he should have nominated his heir, according to the order of primogeniture; 2ndly. That he did not, in his application, contemplate the case of the extinction of the descending line of Felice, or of another of his grand-nephews, whom he would have designated as his heir; 3rdly. That he did not apply for, and consequently, by the rescript *juxta preces*, did not obtain the grant, that the title should be enjoyed by all those who, according to his testamentary dispositions, would have possessed the *Primogenitura*, but he only obtained thereby the power of transmitting the title to one of his grand-nephews who would be his heir, and to his descendants, under the rule of primogeniture.

180. Thence it follows that the dispositions contained in Bernardo's testament, to which we shall hereafter refer, and according to which the devolution of the *Primogenitura* was to be regulated, cannot be attended to in interpreting the grant which, in substance, does not contain but an alternative power.

181. We do not think that it may be legally assumed that the expression "according to the order of primogeniture" have, in the present instance, the strength of establishing that the title we are considering is inheritable by all the holders of the *Primogenitura*, even though they do not descend from Felice or from one of his brothers whom the grantee would have nominated to be his heir. That expression implies merely that the descent of the title to the lineal successors of such heir must take place according to the rule of primogeniture; and certainly Bernardo in making use of that expression did not contemplate the removal of the title, under the law of primogeniture, to a line different from that which he had preferred, and which subsequently became extinct. The words (which immediately precede the expression "according to the order of primogeniture") "in favour of Felice Piscopo his grand-nephew, or of one of the brothers of the said Felice, that is, of such of them as petitioner might designate his heir, and his legitimate and natural male children and descendants, from a real and lawful wedlock issuing," leave no doubt on the subject. It is true that after the words "according to the order of primogeniture" Bernardo proceeds to say "or in such any other manner as petitioner might prefer to dispose thereof" but the applicant in order to explain what he meant by those expressions "or in such any other manner as petitioner might prefer to dispose thereof," immediately adds, "that in case he should die without issue, as aforesaid, the above-mentioned fief, with the title of Count . . . should be vested in the aforesaid Manduca, or in such of his brothers as the petitioner might nominate to be his heir."

182. Bernardo in a subsequent part of his petition says, "and this" (he requested) "in order that in the family of his said grand-nephews, that is of such of them as might be his heir, the glorious token . . . might be preserved in its lustre." By these expressions Bernardo evidently did not allude to the family of all his grand-nephews, that is, of Felice and of all the brothers of Felice, and their respective descendants, but to the family of that alone of his grand-nephews whom he should have nominated to be his heir. If, therefore, Bernardo in his testament designated Felice as his heir, no one of the brothers of Felice and no descendant of any of the brothers of Felice can have a reasonable claim in virtue of the Rescript of the 19th September 1724, to the title of "Conte di Mont' Alto."

183. Now, Bernardo in his solemn testament received in the acts of Notary Tommaso Vella, on the 9th March 1725, nominated his heir in the following terms:—"I further nominate . . . Felice Manduca my grand-nephew, son of Signor Francesco Manduca, to be heir to all and singular my property . . ." The testator proceeds to say, "But whereas, being destitute of issue, it was always my particular intention to preserve my property, that it may be in perpetuum enjoyed by the descendants of Maria, my late paternal half-sister, my will and direction is that all my said property shall be erected . . . into a perpetual *majoratus*, under a very close *fidei commissum* prohibiting . . ., for it is my will that the said property be perpetually preserved and enjoyed by the first-born or eldest son, and by his male children and descendants forever, and on failure of male issue by the first-born daughter, nominating as I do nominate the aforesaid Signor Felice my grand-nephew, son of Signor Francesco Manduca, to be the stock of the said *Primogenitura* and *Maggiorato*, provided, however, that he as well as all his descendants who shall enjoy the *Maggiorato*, shall bear the family name Piscopo Macedonia and my own armorial ensigns . . . and not otherwise."

184. The testator moreover directed that in the succession to the *Primogenitura* the following order should be observed, that is, "that after having been enjoyed *pleno jure*

* The above is a translation from the Italian original.

“ by the aforesaid Signor Felice my grand-nephew, for the term of his life, it shall after regulated by
 “ his death descend to his first-born son, if he shall happen to be alive, and if he shall testator.
 “ not, to his first-born son, from whom it shall be transmitted to the first-born grandson
 “ or other descendants, the one after the other, from one first-born descendant to
 “ another, the degree of primogeniture being observed, in perpetuum, even beyond
 “ the tenth and twentieth degree *in infinitum*, during the existence of the line
 “ of the said Felice, provided such descendants* be lawfully and naturally born, so
 “ that he shall succeed who shall be the first-born surviving son, and his line, and
 “ the male or other surviving descendants issuing from such line, and after their decease
 “ *quando cumque* the succession shall devolve upon the second-born son of the said
 “ person first nominated, and his son, grandson, or great grandson, according to the
 “ order of primogeniture *in perpetuum* and *in infinitum*, and in the failure of the second-
 “ born son as aforesaid, it shall devolve upon the legitimate and natural third-born son,
 “ and on the first-born among his legitimate and natural male descendants.”

185. By the foregoing testamentary dispositions Bernardo Piscopo contemplating only Bernardo
 his grand-nephew Felice, designated him alone as his heir, he created a *Primogenitura* exhausted by
 of which he nominated the said Felice to be the stock and *stirps*. In regulating the succes- his testament
 sion to that *Primogenitura*, moreover, he ordered that it should descend to the first- the powers
 born son of Felice and his issue according to the order of primogeniture; and foreseeing granted him
 the possibility of the extinction of the descending line of Felice's first-born son, in the
 he specified the manner in which he intended that in such case the *Primogenitura* should rescript.
 pass to the other descendants of the said Felice. It is, therefore, obvious that Bernardo
 by his testament exhausted the powers granted him by the Duke of Parma, who had
 authorised him to dispose of the title in favour of Felice, or of one of the brothers of
 Felice.

186. Bernardo's testament contains no disposition as to the devolution of the Bernardo's
Primogenitura, in case the line of Felice should be extinguished, and no substitution is testament
 in such case ordered in favour of any of Felice's brothers. It is only therein contains no
 provided that “ if the said Felice shall infringe the conditions herein-before expressed, provision
 “ he shall forfeit the succession to, and the enjoyment of, that property, and the whole for the case
 “ shall go to, and be vested in, Bernardo his brother, or his sons, and in case both shall of the
 “ violate what has been as herein-before ordered, the whole shall fall to the benefit of their extinction of
 “ other brothers and sisters and their sons, after each other, the order of primogeni- the line at
 “ ture, as aforesaid, being always observed.” Felice.

187. Nor can it be inferred from the foregoing disposition, that the line of Felice The disposi-
 having become extinct, we are to extend to the case of death the disposition which tions made
 appears to have been made for the case of contravention; and even if this were assumed, for the case
 it would not follow that Bernardo, after having designated Felice as his heir, had in of contra-
 virtue of the Rescript of 1724, the power of disposing, either directly or by way of vention not
 substitution, of the dignity with which he had been ennobled by the Duke of Parma, to be taken
 in favour also of another of Felice's brothers. If, therefore, we hold that Bernardo extend to
 substituted in the *Primogenitura* other lines to that of Felice, (which it was certainly in the case of
 in his power to do) this assumption does not lead to the conclusion that he had the power death.
 of transferring the title to any of the persons belonging to the line he had substituted.

188. Now, looking to the facts, it appears that the line of Felice, who left no male Line of
 issue, was determined by the death of his two daughters, the Contessa, Maria Manduca, Felice Pis-
 wife of Barone Pietro Paolo Testaferrata and of the Contessa Felicita Manduca, wife copo deter-
 of Barone Ignazio Bonici, both of whom had no offspring. After the decease of Con- mined by
 tessa Felicita, the *Primogenitura* was inherited by Bernardo Manduca, brother of Felice, the death
 who died also without issue, and then it fell to Sir Vincenzo Manduca, who was born of of his two
 Salvatore, another deceased brother of Felice, and who was also issueless. daughters.

189. After the death of Sir Vincenzo Manduca, the *Primogenitura* was inherited by Primogeni-
 Monsignor Manduca, who is the present claimant of the title of “ Conte di Mont' Alto.” tura awarded
 He is the son of Paolo Manduca and grandson of the aforesaid Salvatore Manduca, and to claimant
 there is no doubt that, but for the circumstance of the title having become extinct, his by a judg-
 claim would rest on good legal grounds. The possession of the *Primogenitura* was ment of the
 awarded to Monsignor Manduca by a decision of the Civil Courts of these islands, based local courts.

190. After a careful consideration of all the foregoing circumstances, we are neces- Present title
 sarily led to the conclusion that the title of “ Conte di Mont' Alto” was determined extinguished
 on the 14th May 1775, by the death of Conte Felice Manduca, who had no male by the death
 issue.* of Conte
 Felice
 Manduca.

* Vide Chap. XI. § 218, et seq.