

question. We shall not undertake to examine and to comment on each of the fifty-nine clauses more or less unintelligible, but all equally obscure, as much on account of the continual redundancy of expressions not clear in themselves, as on account of the want of method and connexion between each of the clauses. This fault, so dangerous in the drawing up of laws in general, is still more dangerous in a law establishing an unknown system, the operation of which depends upon its perspicuity, its precision, in a new law and one so important in its object and effects as the Ordinance in question.

Let us examine if this Ordinance has attained its object, that of the publicity of incumbrances, the security of the buyer and of the creditor, whether with reference to Instruments executed before the operation of this law, or to those executed since.

First, let us direct our attention to the Acts passed before the Ordinance came into operation.

Here, we commence our labours by noticing an inconceivable omission in the drawing up of the fourth Section of the Ordinance which prescribes the registration of Instruments made before the operation of this Law. This section is in the following terms :

“ And he it further ordained and enacted, that a memorial of all notarial obligations, contracts, instruments in writing, judgments, judicial acts and proceedings, recognizances, privileged and hypothecary rights and claims, now in force, or which shall be in force on the day on which this Ordinance shall come into force and effect, whereby any debt or debts, sum or sums of money, goods or chattels, have been contracted, stipulated or secured, or have been recovered or made, and are payable or deliverable, and whereby any lands, tenements or hereditaments, real or immovable estates, have been and are hypothecated, charged or incumbered, for the payment, satisfaction, or delivery thereof, shall be registered in such manner as is hereinafter prescribed, within twelve calendar months, from and after the day on which this Ordinance shall come into force and effect; and such registration, when so made within the period last aforesaid, shall have the effect of preserving such hypothecs, privileged and hypothecary rights and claims, according to their respective rank and priority, in the same manner as if this Ordinance had not been made.”

In reading this clause, the words *all contracts, instruments in writing*, would seem to comprehend all the contracts or instruments in writing of whatever nature they be, and to whatever species they belong but the author desiring to explain to us of what contracts or instruments he wishes to speak, adds : “ *whereby any debt or debts, sum or sums of money, goods or chattels, have been contracted, stipulated or secured, or have been recovered or made, and are payable or deliverable, and whereby any lands, tenements or hereditaments, real or immovable estates, have been and are hypothecated, charged or incumbered, for the payment, satisfaction, or delivery thereof.*”

Thus, according to the terms of this clause and the explanation which it contains, the Ordinance requires only the registration of Acts or bargains having for their object things of a moveable nature, or the delivery of effects or merchandize, or the payment of a certain sum of money, for the payment or delivery of which

the security of a hypothec has been added. It follows then, from it, that this clause, containing nothing which affects or which can be reasonably made to apply to Deeds or Titles securing immovable property, it follows therefrom, we say, that Acts of sale, of donation, wills, contracts of marriage, in a word, all Instruments conveying property of a date anterior to the commencement of the operation of the Ordinance do not fall under the controul of the Ordinance, any more than do the Acts relating to tutors and curators (of *Intelle* and *curatelle*) which were passed previously to this period.

Here there is an omission very fatal to the publicity of hypothecs and to the operation of the system introduced by the Ordinance, a singular remedy applied to *secret and fraudulent conveyances and sales of real estates* of which the Ordinance speaks in its preamble. And how ascertain if the vendor is really the proprietor of the immovable property sold, if he is in possession of this immovable property only as usufructuary, or conditionally, &c. &c. But this is not all : admitting that the omission we have observed upon does not exist, let us see if the formalities required by the Ordinance are calculated to give publicity to hypothecs.

Let us suppose that Peter wishes to purchase Lewis's farm. He goes to the Registry office of the County in which the land is situate; he asks the Registrar if there is any hypothec in his Registers against Lewis's property. The Registrar, after having made a search, tells him there is none, and hands him a certificate declaratory of this fact. On this information Peter purchases. For greater security Peter applies for letters of Ratification of his deed of purchase according to the provisions of the Statute of Lower Canada, 9 Geo. IV c. 20; no opposition being filed to the demand of Peter, he obtains the ratification or confirmation of title which he asked for and pays Lewis the purchase money. It would appear that, after having observed all these formalities, Peter, under the guarantee of two laws enacted expressly with the object of protecting the purchaser, ought never after to be ousted from the immovable property acquired from Lewis. Nevertheless, some years after, Peter, to his great surprise, receives notice to surrender to Charles half of the property purchased from Lewis, Charles pretending that he is the proprietor of half this property, because his father, at his marriage in 1810, was the proprietor of this property—That not having made a contract of marriage, the half of this property was applicable to the customary dower, and that by the death of his father and mother, he Charles, finds himself the proprietor of half of Peter's property.

To this Peter replies : but your title to the dower which you claim was not registered at the time of my purchase of the property from Lewis, and moreover my property is freed from the dower. Not at all, replies Charles, the Ordinance to which you appeal, section IV, does not require the registration of titles to real property; and though it did require it, the dower which I claim does not fall under its controul, because this section only requires the registration of Acts, Contracts or Instruments in writing; now the dower in question does not issue from an Act in writing, since none such exists, and my title to the property accrues from the mere operation of the law. This section seems to assume that no other means exists whereby to create a right or a hypothec, but by an Act or Instrument in writing. This law which you invoke cannot militate against me. But, Peter will say, I have obtained a judgment