

much discrimination, partly from France and partly from England; it has grown up by a sort of tacit usage and recognition, without any orderly design or arrangement, and has not as yet received any well-defined or symmetrical form from the decisions of our courts . . . Much of what has been established by usage may more safely be left to be interpreted in like manner and to be modified as new combinations and experience of new wants may suggest.' "

To those who give any consideration to the subject it is evident there exists a strong similarity between the provincial commercial law of Quebec just referred to and that of the other provinces. But there are other fundamentals common to the Civil Code of Lower Canada and the common law of the other provinces. Both have one common ancestor, the Roman Code. As pointed out, the Civil Code of Lower Canada corresponds somewhat closely to the Code Civil Français, sometimes designated as the Code Napoleon. The father of that Code was a lawyer, a Doctor of Laws of the University of Pisa, M. L'Abbé who says:—

"de Rome nous avons admis et nous observons encore presque tous les principes de droit privé quoique notre organisation sociale soit profondément différente."

It is to be noted that in respect of real property the Code of France reproduced the Roman law; it differs from the old English system of tenures, of descent and transfer. This, however, is not material for our consideration for in most provinces the old English system has been so modified by statute as to be scarcely recognizable, at all events, in respect of that portion of our Real Property law in general use. That the Roman law was an important source of our common law is not doubted. Bracton, a Chief Justice of England in the reign of Henry III., about the middle of the Twelfth Century, wrote his commentary. Sir Henry Maine says about this:—

"One of the most hopeless enigmas of the history of jurisprudence, is that an English writer of the time of Henry III. should have been able to put off on his countrymen, as a compendium of pure English law, a treatise of which the entire