

PAPER BY MR. PEERS DAVIDSON, M.A., ADVOCATE, MONTREAL, ON REAL ESTATE SECURITIES IN THE PROVINCE OF QUEBEC.

The paper recently read before the Insurance Institute, of Montreal, by Mr. Peers Davidson, M.A., advocate, on "Real Estate Securities in the Province of Quebec," is an excellent specimen of the art of presenting a highly complicated legal question with the lucidity requisite for its general comprehension by laymen. With pleasant irony he disclaims any intention to so enlighten the hearer or reader as to render him independent of legal advice. He seems indeed to be like a pilot who accompanies an inexperienced mariner along the sinuosities of a difficult channel for the purpose of pointing out its shoals, hidden rocks and currents, in order, while giving an exhibit of its course, to caution the uninstructed against attempting to navigate such a passage without the aid of an experienced hand at the tiller. In regard to the origin of the laws relating to real estate in the Province of Quebec Mr. Davidson says:

"Property and civil rights in this Province are governed entirely by the principles of the ancient customary law of France, as crystallized in our Civil Code. The Quebec Act of 1774, granted to French Canada its language, religion and laws, thereby, in large measure, preserving it to the British Crown. Statutory enactments since that date have introduced modifications and innovations on many subjects, but our system of land securities remains unaffected thereby."

The essayist considers that confusion, if not rebellion, would have been caused by forcing the English system on an alien population at the time Canada was ceded to the British Crown. The following passage will be read with surprise by those who regard French laws with nationality prejudices.

"Canadians of English extraction are inclined, I believe, largely from unfamiliarity, to cavil at our French laws. I think unjustly so, for they are unsurpassed in English law by either equity, reason or philosophy, and are, in fact, more directly derived from that great fountain of law, the "Corpus Juris Civile" of Justinian. Our system gives ample and absolute security to the investor and enables us to ascertain the status of titles with almost mathematical accuracy. All are practically held in fee simple, there is little or no leasehold. The phrase "real estate security," signifies to the English lay mind, "a mortgage." It signifies to the professional mind in the Province of Quebec, "a hypothec." These terms are usually used as synonymous. They are not so. I however, so use them for convenience sake. The word "hypothec" is a compound of two Greek words, which together, mean "I place under." It had, originally, several different forms in Roman law. By one, both the property and possession were transferred to the creditor, subject to the right of the debtor to reclaim it on payment of the debt. By another, the debtor retained the ownership, but granted the possession to the creditor, subject to the same right in the debtor to retake it on payment of the debt, and also to the right of the creditor to take and sell the property

if the debt was not paid at the expiry of the term."

If, as Mr. Davidson affirms, the status of titles under the Quebec Code can be ascertained "with almost mathematical accuracy," the real estate laws of this Province are superior to those of Ontario and other provinces. Some years ago, a very able paper was read on this subject by Mr. J. Herbert Mason, the pioneer of the loan companies of Ontario, whose experience with mortgages is unrivalled in Canada. He therein gave instances of titles being upset after having undergone all possible examination by expert lawyers and been passed as sound. The system, first established in Australia, of an official examination of titles by government officials, by whom a title up to a certain date is guaranteed to be perfect, is somewhat too expensive for general adoption, but the money is well spent when property is valuable, as the cost of an unchallengeable title is exceeded by the additional value given to property. Mr. Davidson defines the hypothec as follows:

"The hypothec of the French Code may be defined as a real right upon immovables made liable for the fulfilment of an obligation, either for the payment of money, the doing or not doing of something, or of any other legal obligation. In virtue of this right the creditor may cause the immovables in question to be sold, and have a preference upon the proceeds of the sale in order of rank, as fixed by the Code. You will note that the mortgagor retains both the ownership and the possession. He may continue to enjoy it or may alienate it, but only subject, in all cases, to the hypothec created upon it."

In the next section, Mr. Davidson shows clearly how far a hypothec covers improvements made after it is effected. He warns also against neglecting to collect interest on loans so secured.

"Care must be taken, however, not to allow the interest to fall into arrears, as your hypothec will not carry with it a privilege for more than two years' arrears and the interest of the current year. If, by a remote chance, such an accumulation occurred, it could only be protected by a registration last in rank to all other claims already registered."

In this feature, we may say, the Quebec "hypothec" differs from an Ontario "mortgage," for, whatever interest due on the latter is allowed to remain unpaid is added to the principal of the debt and usually, but not necessarily, a new mortgage is made to cover the amount of the original loan and whatever has become due upon it.

Mr. Davidson states, that, "there are three kinds of hypothec—the legal, the judicial and the conventional," which he defines as follows:

"Legal hypothec is that which results from the law alone; as for instance, that created to secure the wife's rights against her husband's property, that in favour of minors and interdicts against tutors and curators, and that in favour of the Crown. These hypothecs are always denoted by documents registered against the title, and can always be definitely ascertained. Another form