

gistered in Canada and, consequently, their provisions not having been adopted, our hypothecary system remained unaltered.

From the passing of the Constitutional Act of 14 Geo. III, the attention of the Legislature of Lower Canada does not seem to have been directed to this subject, until 1829, when it passed two Acts affecting our hypothecary system. The first, 9 Geo. IV, c. 20, merely provides the means which a purchaser should use who desires to become acquainted with the mortgages with which his purchase is encumbered, and to remove them. This Act, known by the name of the *Ratification Statute*, did not attain the end which the Legislature seems to have had in view, on account of its contradictory provisions.

For example, the VIIIth section declares, that the dower not yet open (*le douaire non ouvert*), the rights of minors and interdicts, shall be discharged unless an opposition be filed for the preservation of these rights against obtaining the judgment of ratification, within a specified period. The VIIIth section on the contrary enacts, that nothing contained in the said Act shall prejudice these same rights. Between these two opposite texts, a choice was to be made; and according to the English rules for the interpretation of Statutes, the last section was considered as containing and expressing the intention of the legislator, and consequently the purchaser reaped no benefit from this Statute, since it left the dower untouched, that scourge of all the transactions and alienations relating to immoveable property in the country.

The other Act, passed in the same session, was the seventy-seventh chapter, which enacted, that, in the localities where property was held in free and common socage, a special conventional mortgage could only be effected; this provision established an exception to the common law of the country, which allowed general mortgages to be effected and made them spring of necessity, even in default of stipulation, solely from the mere execution of a Notarial deed.

Subsequently, this same legislature, passed the Acts 10 and 11 Geo. IV., and 1 Will. IV., establishing in the Townships of Lower Canada, Offices for the registration of mortgages; all these Acts were further exceptions to the hypothecary system of the country.

Such are the modifications made in this system by the Legislature of Lower Canada. The question of the establishment of a general system for the registration of mortgages was debated at different times in this Legislature; and a bill to this effect was introduced by the Honorable Vallières de St. Réal, now Chief Justice for the district of Montreal. This bill discussed with no little warmth, found able defenders and not less skillful adversaries. Public opinion seeming to be opposed to this innovation, or perhaps also the country being as yet unprepared for the operation of this system, the question was abandoned. If it proposed great advantages, it proposed also great inconveniences and those of very grave nature.

Political difficulties had buried this question in oblivion, when the Special Council, the successor of our ancient Legislature, set about making laws, pruning and cutting to the quick into all the institutions of the country. In spite of this acknowledged mania of legislation with which the Special Council was possessed, no one imagined that it would signalize the last moments of its existence by taking up such a

thorny subject and one so surrounded with difficulties and embarrassment as that of the hypothecary system. But to the great surprise of the country, its people beheld all at once the appearance of the Ordinance 4th Victoria, chap. 50, *professing* to establish a new hypothecary system and to ameliorate in *certain particulars the law relative to the alienation and hypothecation of real property.*

As the examination of this Ordinance forms the subject of the present report, we will consider how far its provisions justify the lofty pretensions of its title.

To attain the object of this examination, we will consider, 1st. What is the object of laws establishing Registry Offices; 2ndly. Whether the Ordinance has attained this object or that which it intended. 3rdly. The defects of the Ordinance. 4thly. Its operation in regard to ancient Instruments. 5thly. Its operation in regard to new Instruments. 6thly. The inefficiency of the Ordinance and its causes. 7thly. Suggestions and amendments to be made in the system introduced by the Ordinance. 8thly. We shall speak of the payment or salary of the Registrars.

#### I.—WHAT IS THE OBJECT OF LAWS ESTABLISHING REGISTRY OFFICES?

#### II.—HAS THE ORDINANCE ATTAINED THIS OBJECT?

The Laws establishing Registry Offices have as their immediate object the publicity of secret incumbrances; or, in other terms, their object is to afford to the purchaser and to the lender all the security possible in such matters, in giving them the means of knowing with ease and certainty the incumbrances or debts with which the property of those with whom they wish to deal is charged, so that the one may be sure of not being, at some future period, ejected from his acquisition, and the other certain that he runs no risk in the investment of his capital.

This is also the object which the author of the Ordinance seems to have proposed to himself, to judge of it by the preamble of this Law which is in the following terms: (We make use of the version published by authority.)

“Whereas great losses and evils have been experienced from *secret and fraudulent conveyances of real estates*, and incumbrances on the same, and *from the uncertainty and insecurity of titles to lands in this Province, to the manifest injury and occasional ruin of purchasers, creditors, and others: and whereas the registering of all titles to real or immoveable estates, and of all charges and incumbrances on the same, would not only obviate these losses and evils for the future, but would also, with some alteration of the existing laws, whereby the removal of inconvenient and inexpedient restraints and burthens on the alienation of real estates might be effected, greatly promote the agricultural and commercial interests of this Province, and advance its improvement and prosperity. Be it enacted, &c.”*

It is evident that the object of the author of the Ordinance was 1st. To prevent secret and fraudulent conveyances; 2nd. To secure possession to purchasers of immoveable property; 3rd. To facilitate loans in order to promote the agricultural and commercial interests by the registration of secret mortgages. But how far has the author attained this object? An examination of the provisions of the Ordinance will solve this