Apart altogether from the question of its legality there were important practical difficulties in the path of the general change which the proclamation of 1763 essayed to bring about. For one thing it was immediately found that the new English law of real property could not be applied by the courts to the settlement of disputes concerning proprietary rights, for the obvious reason that this law dealt mainly with the principles and incidents of socage tenure whereas the land tenures of Canada was at this time almost wholly feudal, and it seemed to be the intention of the British authorities that they should be permitted to remain so. As the new legal arrangements were so obviously unadapted to the existing system of land tenure the colonial authorities took it upon themselves to instruct the courts that, where disputes concerning real property could not be adjusted properly by the application of English law, resort was to be had to the ancient laws and usages of the province. This action was duly confirmed by the home authorities who, in 1766, gave instructions that in »all suits and actions relative to the titles of land, and the descent, alienation, settlement, and encumbrance of real property«, the colonial courts, despite the terms of the proclamation, should »govern themselves in their proceedings, judgments, and decisions by the local customs and usages which have hitherto prevailed and governed within the province« [1]).

This action somewhat alleviated the legal chaos; but it did not seem to go far enough. The new governor of Canada, General Guy Carleton, believed that the administration of justice would not be successful until the whole body of the old law relating to civil rights should have been restored; and he advised the British government to this effect [2]). But he soon found an important difficulty in the way. This difficulty resulted from the fact that the jurisprudence which it was proposed to restore had never been entirely codified or brought together in any systematic form. The Custom of Paris was, it is true, a compact body of rules, easy to follow; but many of his provisions had never been regarded as applicable to the colony, had never been enforced there, and were not thought of as being part of the »ancient laws of the province«. Furthermore, the royal decrees issued during a whole century of the colony's history were still in manuscript, in a handwriting difficult to decipher, unarranged, unindexed, and to some extent incomplete. The colonial ordinances were in precisely the same

[1]) »Instructions to the Honorable James Murray« (June 24, 1766), in Public Record Office, London, Board of Trade, Canada, Vol. XV.

[2]) Carleton to Shelburne (December 24, 1767), in Canadian Archives, Series Q, Vol. V, Pt. I, p. 216 ff.