

with Roman influences through the issue of the great ordinances which, as has been stated, were not registered in the American colonies of France, and were consequently not part of the legal systems there. Somewhat strange and paradoxical as it may appear, a large part of the Roman influence which now appears in the civil jurisprudence of Quebec and Louisiana made its way to these jurisdictions, not during the period of French dominion, but since the expulsion of France from the New World. This may be best illustrated, perhaps, by confining attention to the former of these two jurisdictions alone.

It is a recognized principle of English public law that the conquest of alien territory does not, *ipso facto*, involve the extension thereto of the English law of property and civil rights.<sup>1</sup> On the contrary, the law of the conquered territory remains in full force and effect until such time as the new suzerain may alter or abrogate it by explicit enactment. The conquest of Canada, therefore, left the colony with its old law for the time being. But this ancient jurisprudence was soon set aside, for within three years after the conquest, on October 7, 1763, a royal proclamation provided for the establishment of new courts in the colony and directed specifically that these tribunals should "hear all causes, both criminal and civil, as near as may be agreeable to the law and equity of England."<sup>2</sup>

The intent of this proclamation was without doubt to abrogate entirely the Custom of Paris and the other factors in the old law system of the province, replacing these by the common law and equity jurisprudence of England. But it is quite an open question whether the king of England, by the mere exercise of his royal prerogative and through the elementary agency of a royal proclamation, had power to make this sweeping change. There are those who believe that a change of this nature could be made only by Act of Parliament. The question is one which has been discussed at considerable length by the legal savants of French Canada, and until very recently the weight of opinion has inclined to the view that the king did not possess the right to abrogate the old law by proclamation.<sup>3</sup> One of the higher courts of Quebec,

<sup>1</sup> The leading case on this point is *Campbell v. Hall*, 1 Cowp. 204.

<sup>2</sup> Canadian Archives, Series Q., Vol. 62A, Pt. I, pp. 114 ff. An exact copy of the proclamation is printed in "Documents relating to the Constitutional History of Canada" (ed. A. Shortt and A. G. Doughty, Ottawa, 1907), pp. 119-123.

<sup>3</sup> Rudolphe Lemieux, *Les origines du droit franco-canadien* (Montreal, 1901), pp. 363 ff.