

by explicit provision. The conquest of Canada therefore left the colony with its old law for the time being. But a step in the direction of abrogating this legal system was not long delayed. The cession of the territory to England was made final and definite by the Treaty of Paris, which was ratified on March 10, 1763, and on October 7 of the same a royal proclamation was issued providing for the establishment of courts of justice in the colony, and directing that these courts should »hear and determine all causes, both criminal and civil, according to law and equity, and as near as may be agreeable to the laws of England«¹⁾.

It was clearly the intention of this proclamation to abrogate entirely the old jurisprudence and to replace it with the law and equity of England. But it is indeed an open question whether the king of England, by the mere exercise of royal prerogative and through the simple agency of a royal proclamation had power to make this sweeping change, or whether, on the other hand, the change could be effected only by an Act of Parliament. This is a question which has been discussed at considerable length by the legal savants of French Canada. Until very recently the weight of opinion has inclined to the view that the king did not have the power which by the issue of this proclamation he purported to possess; and this attitude was assumed by one of the higher courts of Quebec in an important judicial decision²⁾. In one other very significant case the chief justice, Sir Louis H. Lafontaine, argued at considerable length in the same direction and in a most convincing way³⁾. But the most recent writer upon this subject has concluded, after a discriminating review of the whole field, that the power to issue the proclamation of 1763 was within the prerogative of the crown and that by the issue of this document the entire jurisprudence of the old régime in Canada was legally abrogated⁴⁾. I am convinced that this conclusion is entirely sound. The question is, however, one of academic rather than of practical interest, for the terms of the proclamation, in their original form, were not put into general operation.

¹⁾ Canadian Archives, Series Q, Vol. 62 A, Pt. I, p. 114 ff. The proclamation is printed in A. Shortt and A. G. Doughty's *Documents relating to the Constitutional History of Canada* (Ottawa 1907), p. 119—123.

²⁾ *Stuart v. Bowman* (1851), 2 Lower Canada Reports, p. 369. See also Rudolphe Lemieux's *Les origines du droit franco-canadien* (Montreal 1901), p. 366, Note.

³⁾ *Wilcox v. Wilcox* (1857), 8 Lower Canada Reports, p. 34 ff.

⁴⁾ F. P. Walton, *The Scope and Interpretation of the Civil Code of Lower Canada* (Montreal 1907), p. 12—19.