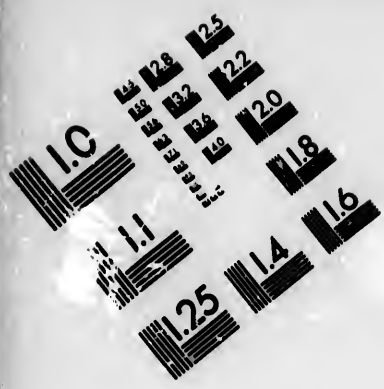

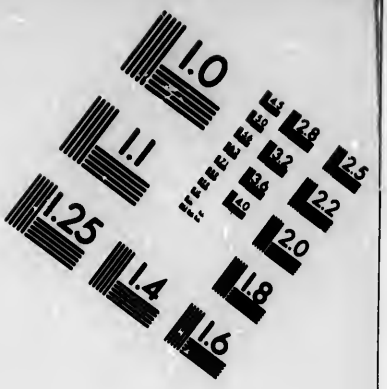

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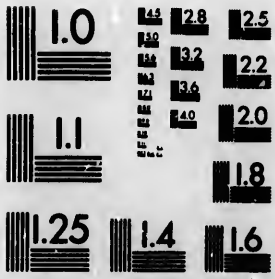

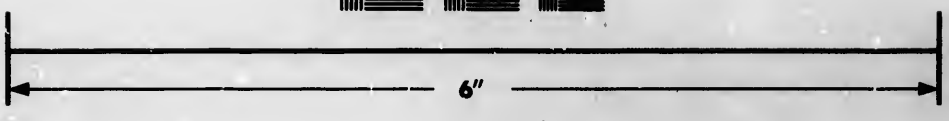

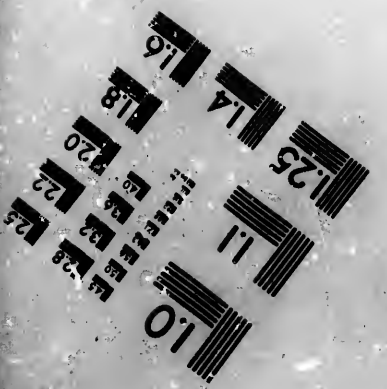

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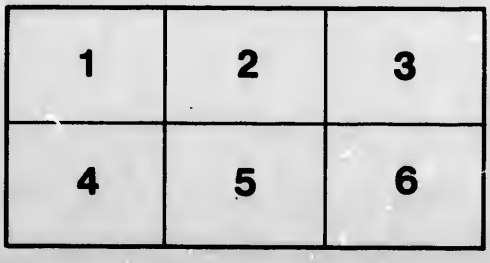

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REPORT

OF

J. CREMAZIE, ESQUIRE,

APPOINTED BY VIRTUE

OF THE ACT OF THE FOURTH VICTORIA, CAP. 30.

TO VISIT

THE REGISTRY OFFICES

IN THE

DISTRICTS OF QUEBEC AND GASPÉ.

To His Excellency The Right Honourable CHARLES MURRAY, EARL CATHCART, of Cathcart, in the County of Renfrew, Knight Grand Cross of the Order of the Bath, Administrator of the Government of the Province of Canada, &c. &c. &c.

THE Undersigned, Visitor of the Registry Offices of the Districts of Quebec and Gaspé, in conformity with the provisions of an Ordinance of the late Special Council of the Province of Lower Canada, passed in the fourth year of the Reign of Her Majesty, Chapter 30, humbly reports to Your Excellency:

That he has visited the different Registry Offices in the said Districts of Quebec and Gaspé, and inquired if the different provisions of the Law respecting the said Offices, have been executed by the Registrars of the Counties comprised in the limits of the said Districts.

The Undersigned has the satisfaction to inform Your Excellency, that the different Registrars of the Districts of Quebec and Gaspé have discharged the important duties confided to them by the Law with an intelligence and exactness that reflects honor upon them: and this testimony the Undersigned renders with the more pleasure in consideration of the very serious obstacles these Public Officers have had to encounter in carrying out a new system in this Country, obstacles enhanced by the defective and obscure composition characterising the Law by which this system was introduced.

As to the operation of this Law in the Districts of Quebec and Gaspé, the Undersigned takes the liberty of referring Your Excellency to the subjoined Report, made by the Undersigned conformably to instructions received by him from the Executive of this Province.

The whole nevertheless humbly submitted.

(Signed) J. CRÉMAZIE,
Visitor R. O. D. Q. & G.

QUEBEC, JANUARY, 1846.

REPORT.

FIRST PART.

CANADA, colonized by France, remained until 1663 without civil Government, without a Judiciary Establishment. Lewis XIV, having by the edict of 1664 ordained that the Custom of Paris and the Common Law of France should govern New France, this edict transplanted into this Country all the laws in force at that epoch within the jurisdiction of the Provost of Paris. The hypothecary system of France was thus established in Canada with all its advantages and defects.

At a later date, in order to remedy the defects of this system in France, the edicts for controlling Notarial Acts, &c., and establishing guardians of mortgages were promulgated. These two edicts were never re-

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 VIIth 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 soccage, 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 skilful 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. 30, *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

question. We shall not undertake to examine and to comment on each of the fifty-nine clauses more or less unintelligible, but all equally obscure, as much on account of the continual redundance of expressions not clear in themselves, as on account of the want of method and connexion between each of the clauses. This fault, so dangerous in the drawing up of laws in general, is still more dangerous in a law establishing an unknown system, the operation of which depends upon its perspicuity, its precision, in a new law and one so important in its object and effects as the Ordinance in question.

Let us examine if this Ordinance has attained its object, that of the publicity of incumbrances, the security of the buyer and of the creditor, whether with reference to Instruments executed before the operation of this law, or to those executed since.

First, let us direct our attention to the Acts passed before the Ordinance came into operation.

Here, we commence our labours by noticing an inconceivable omission in the drawing up of the fourth Section of the Ordinance which prescribes the registration of Instruments made before the operation of this Law. This section is in the following terms:

" And be it further ordained and enacted, that a *memorial of all notarial obligations, contracts, instruments in writing, judgments, judicial acts and proceedings, recognizances, privileged and hypothecary rights and claims*, now in force, or which shall be in force on the day on which this Ordinance shall come into force and effect, whereby *any debt or debts, sum or sums of money, goods or chattels*, have been contracted, stipulated or secured, or have been recovered or made, and are payable or deliverable; and whereby any lands, tenements or hereditaments, real or immoveable estates, have been and are hypothecated, charged or incumbered, for the payment, satisfaction, or delivery thereof, shall be registered in such manner as is hereinafter prescribed, within twelve calendar months, from and after the day on which this Ordinance shall come into force and effect; and such registration, when so made within the period last aforesaid, shall have the effect of preserving such hypothecs, privileged and hypothecary rights and claims, according to their respective rank and priority, in the same manner as if this Ordinance had not been made."

In reading this clause, the words *all contracts, instruments in writing*, would seem to comprehend all the contracts or instruments in writing of whatever nature they be, and to whatever species they belong but the author desiring to explain to us of what contracts or instruments he wishes to speak, adds: " *whereby any debt or debts, sum or sums of money, goods or chattels, have been contracted, stipulated or secured, or have been recovered or made, and are payable or deliverable, and whereby any lands, tenements or hereditaments, real or immoveable estates, have been and are hypothecated, charged or incumbered, for the payment, satisfaction, or delivery thereof.*"

Thus, according to the terms of this clause and the explanation which it contains, the Ordinance requires only the registration of Acts or bargains having for their object things of a moveable nature, or the delivery of effects or merchandize, or the payment of a certain sum of money, for the payment or delivery of which the security of a hypothec has been added. It follows then, from it, that this clause, containing nothing which affects or which can be reasonably made to apply to Deeds or Titles securing immoveable property, it follows therefrom, we say, that Acts of sale, of donation, wills, contracts of marriage, in a word, all Instruments conveying property of a date anterior to the commencement of the operation of the Ordinance do not fall under the control of the Ordinance, any more than do the Acts relating to tutors and curators (of *tutelle* and *curatelle*) which were passed previously to this period.

Here there is an omission very fatal to the publicity of hypothecs and to the operation of the system introduced by the Ordinance, a singular remedy applied to *secret and fraudulent conveyances and sales of real estates* of which the Ordinance speaks in its preamble. And how ascertain if the vendor is really the proprietor of the immoveable property sold, if he is in possession of this immoveable property only as usufructuary, or conditionally, &c. &c. But this is not all: admitting that the omission we have observed upon does not exist, let us see if the formalities required by the Ordinance are calculated to give publicity to hypothecs.

Let us suppose that Peter wishes to purchase Lewis's farm. He goes to the Registry office of the County in which the land is situate; he asks the Registrar if there is any hypothec in his Registers against Lewis's property. The Registrar, after having made a search, tells him there is none, and hands him a certificate declaratory of this fact. On this information Peter purchases. For greater security Peter applies for letters of Ratification of his deed of purchase according to the provisions of the Statute of Lower Canada, 9 Geo. IV c. 20; no opposition being filed to the demand of Peter, he obtains the ratification or confirmation of title which he asked for and pays Lewis the purchase money. It would appear that, after having observed all these formalities, Peter, under the guarantee of two laws enacted expressly with the object of protecting the purchaser, ought never after to be ousted from the immoveable property acquired from Lewis. Nevertheless, some years after, Peter, to his great surprise, receives notice to surrender to Charles half of the property purchased from Lewis, Charles pretending that he is the proprietor of half this property, because his father, at his marriage in 1810, was the proprietor of this property—That not having made a contract of marriage, the half of this property was applicable to the customary dower, and that by the death of his father and mother, he Charles, finds himself the proprietor of half of Peter's property.

To this Peter replies: but your title to the dower which you claim was not registered at the time of my purchase of the property from Lewis, and moreover my property is freed from the dower. Not at all, replies Charles, the Ordinance to which you appeal, section IV, does not require the registration of titles to real property; and though it did require it, the dower which I claim does not fall under its control, because this section only requires the registration of Acts, Contracts or Instruments in writing; now the dower in question does not issue from an Act in writing, since none such exists, and my title to the property accrues from the mere operation of the law. This section seems to assume that no other means exists whereby to create a right or a hypothec, but by an Act or Instrument in writing. This law which you invoke cannot militate against me. But, Peter will say, I have obtained a judgment

of confirmation of my purchase, you filed no opposition to secure your claim; you are, by virtue of the Statute which regulates the process to be followed in such cases, foreclosed of the right which you pretend to have.

No, says Charles again: when you presented your demand for ratification, the dower which I claim was not yet open; my father did not die until after you obtained your judgment; and the Statute to which you appeal contains an express provision in favour of my right. What answer can Peter make? None—except to deliver up amicably the half of the property which Charles demands, or to wait until it be forcibly taken from him by law. The case which I have just supposed is not hypothetical; on the contrary, it will occur, unfortunately but too often, and is equally applicable to the purchaser and to the creditor.

Another important consideration is this, that it may happen that a property may be encumbered with a right of usufruct, of power of re-emption created before the 31st December, 1841, which the seller carefully conceals from the purchaser. How can this purchaser guard against the fraud of the seller, how can he become aware of it? If the Ordinance had required the registration of titles to immoveable properties bearing date anterior to the 31st December, 1841, the purchaser would have had the means of securing himself against fraud. This, then, is the publicity required by the Ordinance as regards the Acts done before it came into operation. There would still be numerous and weighty observations to make on the omission which this fourth section of the Ordinance contains, but the limits of this Report do not permit us to enter upon them.

We are now going to shew that the mode of publicity prescribed by the Ordinance works no better in regard to the Acts passed subsequently to its coming into force, that is to say since the 31st December, 1841.

The author of the Ordinance, after the preamble which we have cited above, enters abruptly on his subject matter, enacting that all Acts, Contracts or Instruments in writing, &c., done or executed from the day on which the Ordinance shall have force and effect, shall be registered, under penalty of nullity against a third party.

By the XXVIIIth Section, it declares that the general conventional hypothec is abolished for the future, leaving only the special conventional hypothec; and as a means of facilitating the knowledge or publicity of this hypothec, as far, it is said, *as may be practicable*, the XXth Section obliges the Registrar to keep an Index of the names, and another of the immoveable properties.

Let us endeavour, with the assistance of these Indexes to discover if the property of Peter situated at St. John is burthened with hypothecs or *bonâ fide* incumbrances created since the commencement of the operation of the Ordinance. We repair to the Office of the Registrar of the County in which the property is situated. In answer to the demand made to him, the Registrar says to us: I see by the Index to real properties that Peter possesses several properties in the Parish of St. John, of which two are encumbered with several hypothecs, the others have only two hypothecs on them; but for more ample information I shall examine in the register the entry of memorials registered for the preservation of these hypothecs.... The searching of the register concluded, he finds that these properties are described as situate, generally, in the parish of St. John, and are of the same extent; but let us suppose that Peter has only one property. Since the 31st December, 1841, he has become a party to obligations to different creditors severally charging and hypothecating this property—all these obligations have been registered. But, singularly, each of these obligations varies in the description of this property, whether in being of a greater or a smaller extent, or in the bounds or abuttals, or finally in the point of the compass, in such a manner that each obligation shall appear to contain the description of a different property. To those who are in the habit of examining the titles to property and the Acts executed in the country parts, this difference of description of one and the same property offers nothing to cause surprise. How can the Registrar in such a case certify the number of hypothecs with which the properties of Peter are encumbered? What satisfactory information can be derived from the examination of the Registers?

But if we cannot with certainty succeed in arriving at the discovery of special hypothecs, how penetrate the chaos of general hypothecs anterior to the 31st December, 1841, of which the Ordinance requires the registration? Those who have had occasion to search for these mortgages in the Registry Offices, know what is the value of the pretended publicity which the Ordinance undertakes to give to them.

Accordingly, the Registrars in the Districts of Quebec and Gaspé, persuaded of the impossibility of discovering with what hypothecs a property is encumbered, give to those who demand it a certificate declaring, not that a property is encumbered with an ascertained number of hypothecs, but that their Registers only contain such entries against such a one, personally. And they are right; for otherwise they would expose themselves to actions for damages.

Enough has been said to show that the mode of publicity adopted by the Ordinance is faulty, and can only create confusion on confusion.

III.—Defects of the Ordinance.

It would be impossible for us in this report to point out all the defects of this Ordinance, and all the difficulties to which its repugnance to the common law of the country gives rise. The limits of this report do not permit us to engage in this task as extensive as difficult; we shall confine ourselves to saying a word on each of its provisions which appear to be the most faulty. Moreover, the system which it has introduced being entirely new to this country, its operation not having had its complete and entire effect for scarcely so much as a year, it would be difficult to define all the contrarieties which time and circumstances can alone develope, and which the tribunals will have to decide.

One of the radical defects of this Ordinance is the want of unity, of harmony which pervades its provisions borrowed as they are from the laws of other countries, the compiler of this law not having apparently reflected on the mournful consequences of the strange amalgamation to which he has given the name of Law, and which fully justifies the character of *a law made piecemeal by the scissors* which the Honorable L. H. Lafontaine has given it in his excellent analysis of this Ordinance, which he regards with

reason, as *a law to be studied in its incongruities and omissions much more than in its written provisions.*

We have spoken above of the mode of publicity adopted by this Ordinance, we have exposed its defects and inutility.

Another fault in this law, is its exceptional character. "In short," says Mr. Lafontaine, "this Ordi- "nance has all the inconveniences of exceptional "laws. Indeed, it does not promulgate a new hypo- "thecary system properly so called, it only modifies "the existing laws, and consequently we ought to "consider these laws as maintaining all their force, in "every case where they are not expressly repealed or "amended by new provisions clear and explicit. This "results from the very title and preamble of the Ordi- "nance." What seeks the Legislator ?.....

"To prevent fraudulent sales and secret hypothecs; "and he says: that by establishing a mode of publica- "tion by *registration*, by making *some alteration* "in the existing laws, he will remove the incon- "veniences to which he refers."

"In all this, there is nothing to show that he means "to abolish the old laws and establish a system alto- "gether new."

"Thus, without defining the hypothec, without "speaking at all of its character and its effects, of the property subject to it, he enters at once into the details "his project of registration for the publication of "hypothecs."

In fact, this law leaves untouched all the imperfections of a system already vicious, and renders it still more vicious by a partial modification of the system, creating serious difficulties, which our old hypothecary system did not present, bad as it was.

Does it introduce a new law, a new hypothecary system ? Such, doubtless, was not the intention of its author; but that is a strange law which goes on cutting and paring away right and left existing laws without method and without order.

By the preamble of this Ordinance, it is easy to see that the object of its author was to ameliorate our hypothecary system by the means of that which he calls *some alteration.* But where are these ameliorations to be found ? Is it by restoring, in its vigour, the law of Stellionat in the case only of sale, and leaving, in all other transactions, the door open to dishonesty and fraud ? Is it by rendering relations and friends responsible in default of the registration of Acts of guardianship and trusteeship, (*Actes de tutelle et curatelle*) Is it by abrogating the law of the country as regards voluntary dower, and leaving entire the customary dower still more injurious and harassing ? Is it by depriving the children of their claim of the customary dower, and by giving the wife the right to free from that dower by selling them, the immoveables which are subject to it, and by reserving in favour of the said children the property of the voluntary dower Is it by forgetting that the voluntary dower is not less than the customary dower subject to the inconveniences which, for such a long time past, have caused the ruin of so many purchasers, and become the subject of universal complaints ? Is it in the case of the alienation of the properties of wives under marital power by prescribing that examination at once ridiculous in itself, and injurious to the morals of the country, that a wife must undergo before the Judge of a Court that has never existed, to prove the free consent of the wife to this alienation ? Is it by preserving the general hypothec in favour of minors and interdicts on the property of their tutors and curators, and by refusing this right against other administrators, such as those of Fabriques, &c. ? Is it by granting to the married woman this general hypothec on the property of her husband for the restitution of her dowry, and the payment of every claim or demand that she may have against her husband in consequence of estates or inheritances fallen to her, or come to her in the way of donation during marriage, and in denying to her this right for the advantages stipulated by the husband in favour of the wife by the contract of marriage ? Is it, in fine, by amalgamating the provisions of some Statutes of Upper Canada with mutilated and scattered texts from the Civil Code of France, and in composing a legal hotchpotch (*pot-pourri*) which has been presented to the people of this country under the title of an Ordinance to *prescribe and regulate the registering of titles to lands, tenements and hereditaments, real or immoveable estates, and of charges and incumbrances on the same; and for the alteration and improvement of the law, in certain particulars, in relation to the alienation and hypothecation of real estates, and the rights and interest acquired therein.*

But let us examine more in detail the provisions of the Ordinance.

Sec. I. The author enters abruptly on the subject matter by enacting the registration of all Deeds, Contracts, Instruments in writing, &c. &c., which shall be passed, executed or made after the day on which the Ordinance shall come into force (31st December, 1841.) It would naturally seem fitting that he should have commenced by developing the principles on which the system he wishes to introduce is based, and by making it coordinate with the existing laws.

Sec. II. Repealed by the Statute 6 Victoria ch. 15, sec. 2.

Sec. IV. We have spoken of it above.

Sec. V. VI. VII. VIII. IX. Reproduced from the Statute of Upper Canada 35 Geo. 3. ch. 5.

Sec. X. This clause regulates the manner in which the Registrars ought to enter Memorials in their Registers. It exacts that the Memorial be presented and acknowledged by the party himself, or presented and sworn by one of the witnesses present at the drawing up or signing of the Memorial by the party. This acknowledgment or attestation to be made before the Registrar. This section is reproduced almost *verbatim* from the Statute of Upper Canada cited above. The author of the Ordinance, who now and then lays the Civil Code of France under contribution, has passed over in it the manner of presenting the *Bordereaux* adopted by this Code which, contenting itself with exacting that the *Bordereau* (Memorial) shall be presented by the party himself or by a third person to the keeper of Hypothecs (Registrar) is much more simple and much easier.

The mode prescribed by the Ordinance, obliges the party or one of the witnesses to present himself at the office, whatever be the distance from their domiciles to the office, to register a Memorial. This formality, as useless as it is expensive and inconvenient, was followed until the 29th March 1845, the

period at which it was amended by the Statute 8 Victoria ch. 27, which authorises Justices of the Peace, Notaries, and Commissioners appointed to receive affidavits, to administer the oath required by the Ordinance.

Sec. XII. It prescribes the manner of attesting or making oath to Memorials made without the hypothecary district in which the immoveable property is situate respecting which an entry is desired to be made, as well as to those made in Great Britain, or Ireland or in Foreign parts. As to these last, we are at a loss to discover why the author has made them figure in the Ordinance. To what does this provision amount in regard to them? To make it evident that the Memorial has been made by the person named in this Memorial? But how are we to assure ourselves of the authenticity of the Deed or Instrument in writing on which this Memorial is founded? It does not say one word about the matter. What purpose can this entry serve, since by the common law of the country, Deeds, Contracts and Judgments made or rendered without the limits of Lower Canada cannot give to those in whose favour they have been made or pronounced, any hypothecary right whatever upon immoveable property situated in this country, a right which the formality of the entry required by the Ordinance could not procure for them? This clause is taken from the Statute of Upper Canada cited above.

Sec. XIV. Prescribing the registration of wills within a given time. Extracted from the same Statute of Upper Canada.

Sec. XVI. This section limits the privilege of entry for arrears of *interest* to two years. Does it include under the word *interest* arrears of constituted rent (*rente constituée*), of life annuities, of ground rent (*rente foncière*), of alimony? The text declares "that "no creditor shall be entitled, by reason of any regis- "tered memorial of a mortgage, hypothec or privilege, "to a preference or priority before others, for more "than two years arrears of interest on the debt or ca- "pital sum." In the common law of the country, we understand by interest the annual product, according to a tariff fixed by law of all capital which can be demanded at the will of the creditor or at a period agreed upon. It seems that the arrears of *rente constituée*, life annuity, alimony cannot be comprehended under the word *interest*. This provision seems to be taken from the Article 2151 of the Civil Code, which, in decreeing that "the *creditor* inscribed for a capital producing interest or *arrearage*," does not remove the difficulty which the provision of the Ordinance in this regard creates. Moreover, the Legislature of the country seems to have given to this section of the Ordinance the interpretation which we give to it, in amending this section by the Statute 7 Victoria chap. 22, sec. X, which declares that the arrears of *rente constituée*, of life annuity, of ground rent and alimony, shall not be considered as comprised under the word *interest* employed in the XVIth section of the Ordinance.

We think that it would be more just and more uniform to grant also to creditors of *interest* the privilege of being preferred by reason of the entry of their claims for five years, to count from the date of the contract establishing these claims. By this means they would be on a footing of equality with the creditors of *rentes constituées* and others of whom the Statute speaks.

Sec. XVIII. This section nullifies entries made within the ten days preceding the insolvency or bankruptcy of the debtor. It omits, nevertheless, to say when and how a debtor shall be reputed or considered to be a bankrupt. The Statute 7 Victoria chap. 10, has supplied this omission.

We think it right to introduce here what Mr. Troplong says in the preface to the treatise on *privileges and hypothecs*, upon the 2146 Article of the Code. "This Article" says he "forbids the entry of hypo- "thecs within ten days of the insolvency, although "the cause of the hypothecs be anterior; this, accord- "to our view, is a revolting injustice. Here, in "truth, all idea of fraud, of collusion, ought to be "banished. The source of the hypothec is pure. Why "then should we forbid its completion?.....Would we "place ourselves in the true position and equitably re- "concile the rights of the mass with the rights of pre- "ference acquired by third parties? It would be neces- "sary to take as a guide the declaration of 1702, and "limit ourselves to removing their hypothecary effect "from stipulated obligations and judgments rendered "during the ten days of the insolvency becoming pub- "licly known."

Sec. XXI. enacts that, from the day on which the Ordinance shall have force and effect, husbands, tutors and curators register *without delay* a summary of all the hypothecs and charges to which their properties are subject in favour of married women, minors and interdicts. Is this provision to be understood as applying only to hypothecs posterior to the 31st December 1841, or to those created before that date? We have seen above that the 4th clause, which enacts generally the registration of certain hypothecs created before this period, does not speak of hypothecs of the nature of those mentioned in the XXIst section. The terms of the XXIst clause seem to refer to a *future* period, for it speaks of hypothecs to which immoveable properties *shall be* subject, and not to which they *are* subject. It follows, then, from this that contracts of marriage, acts of tutorship and curatorship done before the 31st Decembre 1841, are not required to be registered by the very terms of the Ordinance. So much again for the publicity of hypothecs introduced by this law.

Sec. XXII. This section, in default of the registration of Acts of tutorship and curatorship, holds responsible not only the Tutors, subrogate Tutors and Curators, but even *the relations and friends who shall have taken part in the assembly, and council of relations* required in such cases. This enactment of revolting injustice has naturally had the effect of rendering the holding of these *assemblies* very difficult. It has been borrowed, we believe, from the Neapolitan Code, or from some other Code derived from it. It is not necessary for us to undertake to demonstrate all the injustice and iniquity which it contains.

Sec. XXIV. It ordains the dismissal of every action founded on a Contract of Marriage, an Act of Tutorship or Curatorship which has not been registered. Surely, here is a singular idea, the punishing by the loss of their rights, married women, minors and interdicts on account of the negligence or bad faith of those whose duty it is to see to the registration of these rights. The Ordinance, it is true, renders responsible the husbands, tutors, subrogate tutors, curators, parents and friends for any damages that shall result from this negligence. But if, as almost always happens, these persons possess no property, or, which may occur, that their properties are encumbered with mortgages beyond or equal to their value, where will be the recourse of those whom the author of the Ordinance deprives so

lightly of their rights? In the case of married women, when and how shall they make available this recourse against their husbands? Is it during marriage or after the death of the husband, or a separation between the husband and wife? And if the husband possess no property of his own, or if he become or die insolvent? The author, when on this track, ought to have gone a step farther and said that no person could be named Tutor, Subrogate Tutor or Curator, or member of an *assemblée de parens* and friends without having previously proved his solvency; and that a man should not contract marriage unless he proved that he had, and gave security that he would always possess sufficient property to be answerable for any damages which might result from his neglect to register his contract of marriage? It is true that by a following section the Ordinance allows that this registration may be made, in default of the persons above named, by the wives, by the minors themselves. Why has he not also added by Lunatics; for, indeed, if their curators or relations and friends neglect to conform to the provision of the Ordinance, who will protect the interests of these unfortunate beings? An omission again; doubtless this last provision would be absurd, but it results, nevertheless, from the principle laid down by the author. This section is still less rational than the preceding one. Who will tell the married woman or the minor that this registration must be made without delay? Who will tell them that the law allows them to do it themselves? Who? It will not be the husbands, the tutors and the curators, who have an interest in this registration not being made; it will not be the relations and friends ignorant of the existence of this law; but who then shall inform them of this provision so important to them? The Ordinance doubtless. The author has imagined that every wife in her *boudoir*, every minor among his playthings, would have a copy of his Ordinance, or that it would find its place among the wedding presents of the bride, in the whiptop of the young boy, or should be part of the doll's wardrobe of every little girl.

The Civil Code of France permits the relations and friends to make the entry on the property of the tutor or curator; and if they will not make it, this entry is required to be made by the Attorney General. And in all cases the married woman, minors and interdicts are not punished by the loss of their rights from a negligence which they could not reasonably either foresee or prevent.

Sec. XXV. On the recourse allowed by this clause against the tutor, subrogate tutor, fathers and mothers of minors contracting marriage, we may make the same remark as we have made on the preceding clause.

Sec. XXIX. This clause enacts that the legal hypothec shall, for the future, only take place and subsist, 1st. in favor of married women on the property of their husbands; 2nd. in favor of minors and interdicts on the property of their tutors and curators; 3rd. in favor of the Crown. By the Civil Code from which this provision, although garbled, has been borrowed, this legal hypothec of women and minors exists independently of all entry. By the Ordinance, on the contrary, if this entry has not been made, the hypothec ceases to exist in regard to third parties, and cannot in any case become the subject of an action; or, in other terms, the Ordinance destroys in one section the privilege which it grants in another. But let us examine a little more in detail the effect of the legal hypothec granted to the wife by the Ordinance. The 2135 Article of the Code from which this section is extracted, says,

"As to the interests of women by reason of their "dowries and *marriage settlements* in the immoveable property of their husbands, and counting from "the day of the marriage, the wife has no hypothec for "the dotal sums which issue from successions fallen in "to her or from donations made to her during the "marriage, except in counting from the opening of the "successions or from the day on which the donations "have taken effect. She has no hypothec for the repayment of debts which she has contracted with her "husband, and for the replacing of her own individual "ones, except in counting from the day of the obligation or the sale."

Let us see how the author of this Ordinance has garbled this article of the Code.

"From the day on which this Ordinance shall have "force and effect, the married woman shall only have "a legal hypothec on the property of her husband, to "secure the recovery or payment of *all dowery, claim "and demand* she may be entitled to prefer against "her husband, arising from succession or inheritance "which may become due or accrue to such married "woman, and of all donations to her made during her "marriage; which hypothec shall date from the *respective periods* at which the said succession shall "occur, or from the execution of such donation."

As it is easy to see, these two texts differ immensely in their effect. By the first, the wife has a legal and privileged hypothec on the property of her husband, not only for the *recovery of her dowry*, but even for the execution of *the marriage settlements* made in her favour by the husband, for *the repayment of the debts to which she has become a party and for the replacing of her own individual ones.*

The Ordinance, on the contrary, limits this hypothec to the *restitution of the dowry and of the claims of the wife against her husband on account of succession or donation accrued during the marriage.* By the Civil Law of the country, the wife has all the rights upon the property of her husband allowed to her by the 2135 Article of the Civil Code, which is only a repetition, on this head, of the old French Law which governs us. This Ordinance as we have already remarked, is only an exception to the Civil Law of Lower Canada.

A woman has contracted marriage since 31st December 1841, the period when the Ordinance came into operation; the contract of marriage contains certain rights by the husband conferred on the wife, the clauses of indemnity from debts, restitution of her own, &c. &c. According to the common law of the country, will this wife have a legal hypothec on the property of her husband for her *marriage settlement, indemnity from debts and the restitution of her own?* or, will this hypothec be restricted to cases particularised and defined by the Ordinance? In a word will the exceptional Ordinance have the effect of annulling on this head, the common law; or, the exception making no mention of marriage settlements, of indemnity from debts and the restitution of the individual property of the wife, will the common law be the only rule for decision in this case? This is a question which interests in the highest degree wives and mothers. The courts of justice will decide it.

We shall read, doubtless with pleasure, the opinion of Mr. Troplong on the effect of the legal hypothec preserved by the Civil Code to married women and

minors. "The opponents of this hypothec" says he, "will look only to one side of the question, the facility of hypothecary loans; to this they demand, that "all shall be sacrificed. But there is another point "of view involving higher considerations, the interest "of the Family and of the State, which would be "shaken, if the dowries of women and the patrimony "of minors were not secured against profligate waste "and plunder. This is the interest so strenuously "maintained in the Council of State. The question "was thus put:—Shall the borrowers, who can dictate "the terms of the contract be more favoured than "women and minors who cannot defend themselves? "Always brought back to this consideration by the "vigorous logic of the first Consul the solution of the "problem could not be doubtful, and it was decided "*that the security of the wife and minor ought "to be preferred to that of purchasers and lenders*; "nothing can shake this conclusion, so conformable to "the rules of justice."

"See the inconsistency of the advocates of registration. *They think public order interested in "women and minors having a legal hypothec, and "nevertheless they desire to make this hypothec "depend on a supplementary Act, the omission of "which would render it no effect.* This is evidently "to create with one hand what one destroys with the "other. If the wife and the minor are incapable of "creating a hypothec for their profit, the same incapacity applies to their making an entry which should "complete it.

"To answer this insurmountable objection it was "proposed to put in motion *numerous agents* to make "the entry. But is it not a crying injustice to abandon the preservation of rights so precious to the care "of proxies, whose official zeal may slumber, and to "make their negligence fall upon the wife and the "minor. Whether we saddle with the burthen of the "entry Justices of the Peace, the Officers of the Registration, Notaries, *relations, friends, subrogate "tutors*, &c., we shall never arrive at a satisfactory "system. How often do persons marry without a contract of marriage. The tutorship of fathers and "mothers takes effect without public forms. Whom "then are we to charge with the duty of registration? In all cases, privileged persons, whom the "law environs with its special favour, will only have "derived from the *necessity of registration*, sources "of apprehension and causes of disasters. Their representatives, however vigilant we may suppose "them, are most commonly ignorant of the position of "the immoveable property which it is proposed to "encumber with registration. The husband and the "tutor have an interest in keeping them in the dark; "the greater part of the immoveable property pledged "to the wife and the minor will be freed from their "hypothec. Better would it have been to do nothing "for them than make them so fatal a gift.

"If registration were prescribed only to inform the "public that such and such immoveable property be"longs to such a married man or guardian, it must "be confessed that its advocates impose much trouble, "and peril many interests, to make evident a fact "which most commonly is not unknown to those who "wish to buy or to lend, and which, moreover, they "have always the means of ascertaining. The important point which registration ought to attain, is the "ascertaining the quota of the sums for which the "hypothec is acquired. Without this, there exists "only a bastard hypothec; the scale of fortunes remains unknown, and public confidence is not satis"fied. The German legislators were well aware of "this. For they decreed that registration should be "of no effect, if it did not contain the valuation of all "undetermined claims whatever.

"But if we had not, *à priori*, conspired the ruin of "wives and minors, how could we exact, in the face "of the contract of marriage such as the Civil Code "has organized it in France, in the face of our system "of guardianship, an irrevocable declaration of the "amount of the rights of these persons, when these "rights depend upon a multitude of events, on the unforseen opening of a succession, on calculations of revenues to accrue, on the reinvestment of properties which "shall be alienated, on indemnities for debts which "shall be contracted, &c. &c. With these disastrous "and irremediable inconveniences attaching to regis"tration, shall we dare to put in opposition those "which result from the absence of registration?

"Marriage and guardianship constitute in society a "public estate. Notoriety attaches to their existence. "Third parties are inexcusable for being ignorant of "it. It is a rule of elementary prudence that we ought "always to verify and ascertain the position of him *with "whom we enter into a contract*. This research may "be sometimes difficult, but it presents nothing impracticable, and we must not forget that in the matter "of the registration of legal hypothecs we are wrestling with impossibilities."

"The borrower has other means of warding off the "inconveniences which are attached to the undetermined nature of the claims of women and minors. "He can exact that the wife renounce her legal hypothec on the immoveable property offered as guarantee for the money which is required; the restriction "of the minor to hypothec obtained conformably with "Article 2143 of the Civil Code, is also a security "which the law places at his disposal. Finally, there "is no obligation on him to lend. It is less necessary "that loans should exist than marriages or tutorships."

"It is pretended that the exemption from registration which the wife enjoys under the existing system "is often the cause of the disorder of these matters, "because the creditors only lend to the husband upon "obliging her to bind herself jointly and severally "with him. But this difficulty, says Mr. Bigot, is to "be met with in all systems. Whatever may be said, "and here we borrow the idea of the First Consul, "*the hypothecs of the wife will be more safe, if, "in order to preserve, it is sufficient that she "does not renounce them, than if it was necessary "for her, in order to give effect to them, to be an "active party and to register.* Many wives refuse "with firmness to sign every Act which may compromise their dowry. Very few are able to engage in "such matters or conduct their own affairs."

"Up to the present period, Jurisprudence has presented only a limited number of cases in which lenders of money have been shown to have been taken "by surprise by the legal hypothecs of women and "minors. On the contrary the appearance of the law "of the year VII (*exacting the registration of these "hypothecs*) excited general remonstrances in favour "of the married women; and experience proves that "this class, forming one half of society, *had been in "a great measure deprived* of their property, without remedy."

" In the main, I cannot deny that the dispensing with " registration may be the occasion of many evils. But " all this discussion should be governed by these two " truths which are an answer to every thing advanced: " the one, *that the lender, in possession of all his ci-* " *vil capacity, cannot deserve the same protection* " *as women and minors, who are incapable; the* " *other, that the lender by his prudence and the* " *means which the law places at his disposal, can* " *obviate the disadvantages of his position, whilst on* " *the contrary the necessity of registration would* " *only cause to the wives and minors irremediable* " *errors and irreparable calamities.*"

Sec. XXX. By this clause a hypothec in virtue of a judgment can only be acquired on the immoveable property of which the debtor is in possession on the day on which the judgment is rendered. If the debtor possesses no immoveable property, the creditor finds himself without any legal hypothec whatever. In France, the legal hypothec resulting from a judgment embraces equally present and future property, saving the restriction which can be made to this hypothec when the registration is effected on a greater amount of immoveable property than is necessary for the assurance of the claim. By the common law of the country, the judiciary hypothec embraces present and future property; the Ordinance expressly destroys the lien on the future.

Sec. XXXI. This clause and the following one are taken from the Articles 2103, 2109, 2110, 2111, 2113 of the Civil Code.

Sec. XXXIII. This section enacts that the registration of gifts *inter vivos* which shall be made from and after the day on which the Ordinance shall come into force and effect, shall take the place of the registration exacted by the Civil Law of Lower Canada which required the registration of these deeds at full length. As we have had occasion to remark, the deeds of gift *inter vivos* passed before the day on which the Ordinance came into force and effect, are not included in the class of deeds of which the fourth clause exacts the registration.

Sec. XXXIV. This section after a "whereas" in which it is said that "the alienation of the real estates " of married women, held in free and common soccage " is governed by different rules from those which " govern the alienation of real estates held under other " and different tenures," permits the married woman possessing property under whatever tenure, to alienate this property, provided that before such alienation the married woman has been examined before a Judge of the Court of Queen's Bench or of Common Pleas, or of a District, apart from the presence of her husband, in order to be assured of the free consent of the wife to this alienation. We cannot do better in regard to this singular provision than republish the reflections which suggested themselves to the Honble. L. H. Lafontaine in the work which we have already cited. " This provision," says he, " is taken from English " Law. But what are its effects in practice? You " wish to protect the wife from force on the part " of her husband, or as the English Law expresses it " from *coercion*, and even from the fear of *coercion* " on the part of her husband? Very well. To attain " this object, you oblige her to appear before the " Judge, apart from the presence of her husband, to " declare whether she gives freely and voluntarily or " not, her consent to the sale!!!

" You suppose then (which may very well occur) " that her husband may force her in spite of herself, to " consent to the sale. And if she acknowledges this " fact before the Judge, the sale will not take place " on *that* day. And you may suppose by this means " that you have protected the wife from the force of " *coercion* on the part of her husband! Undeceive " yourselves. The wife will return on the morrow to " tell the Judge that she consents to the sale freely " and voluntarily; the Judge will be obliged to give " his certificate; the deed of sale will be passed, and " you will not know what took place between the " husband and wife between her refusal one day and " consent on the next. You will suspect it perhaps, " for in all probability it will have been new acts of " violence, new acts of coercion, which, in fact, will " be the result of her first declaration before the Judge. " Behold the moral action of this law."

The author of the Ordinance adds, that when the wife shall reside out of the limits of Lower Canada, the alienation shall be made without the previous examination of the wife. "The Legislator," remarks again the Honorable L. H. Lafontaine, "has then " acted under the impression that women in foreign " countries were better treated by their husbands than " in Lower Canada. The morals of the country furnish " no apology for this injurious impression. It is true " that the Ordinance is a law of the Special Council. " And what has not this Council done?"

But apart from its character of insult, this provision is impracticable in the great majority of cases. It authorises a Judge of the Court of Queen's Bench, or a Judge of Common Pleas, or of a District Court within a District, to make this examination of the wife and to grant her, according to the case, a certificate of free consent. Of all the Judges enumerated in this section there have existed only the Judges of the Queen's Bench, and even their jurisdiction is not that which the author of the Ordinance contemplated. As to the others, they have happily only existed in the collection of the laws of the Special Council; and even that is too much.

Thus, according to the terms of the Ordinance, a married woman living ten, twenty, thirty leagues and more from the seat of the jurisdiction of the Court of Queen's Bench, will be obliged to make a long journey to undergo this examination, if she wishes to alienate her property. This is a method of facilitating the alienation of the real estate of married women as ingenious as it is becoming.

Sec. XXXV. This clause permits the married woman to release from her legal or customary dower the immoveable property charged with it. The author has forgotten the conventional dower, (*le douaire préfix,*) which is quite as embarrassing and obstructive to the alienation of real estate as the customary dower. This omission, however, has been supplied by the Statute 8 Victoria, chap. 27, sec. 4. And to avoid every difficulty which could arise in consequence of this omission, this Statute declares, Section 3, that the words "*legal or customary dower,*" used in the Ordinance, *have signified, do signify, and shall signify also the stipulated dower* (*le douaire préfix*) *or conventional!!!*

Sec. XXXVII. This Section enacts that, for the future, the legal or customary dower of infants shall only be charged on the property of which the husband shall be seized and in possession at the day of his

demise, and which shall not have been released by the wife. The conventional dower (*le douaire préfix*) is also omitted in this Section; the Statute 8 Victoria has amended this provision by including within it the stipulated dower (*le douaire préfix*) as we have just seen in the preceding clause. These two provisions derogate from the formal texts of the Articles 249 and 254 of the Custom of Paris. This exception will have the effect of creating numerous difficulties, which the Ordinance and the Statute before us have not foreseen, by abrogating only one part of the title of the customary dower, and maintaining the rest.

Sec. XXXVIII. This Section permits the alienation by deed under sign manual of property held in free and common soccage. This provision, by the Statute 7 Victoria, chap. 22, sec. 11, has been extended to the alienation of property subject to every other tenure. We think it right to remark that this provision is very dangerous in a country where education is so little advanced. It opens a wide door for fraud, for deception, for numerous difficulties, and those of a very weighty kind, by permitting persons having no official and recognised character, possessing no requisite qualification, to execute deeds as important as those which concern the alienation of immoveable property.

Sec. XXXIX The Ordinance limits itself in this section to exacting, that the transcription of Acts under sign manual, mentioned in the preceding section, shall be made in a book bound in leather, without enacting that this book shall be authenticated in the manner provided for the registers in which the registration of authentic Acts is performed. Yet, it would seem that the authenticity of these books is still more necessary than that of the other registers.

Sec. XLV. This section permits the Registrar, on presentation made to him of a certificate signed by the creditor admitting payment or satisfaction of the debt of the debtor, to enter in the margin of the registry made of this debt, the erasure of the hypothec registered against the property of the debtor. Unhappily, this erasure can only be for the whole of the debt; according to this section, the erasure can not be partial. The debtor who has a hypothec of £1000 on his property, and on account of which he has paid £750, will see his property still encumbered with a hypothec for the payment of the sum total of £1000. And even if the creditor, in the case of payment of the whole, will not grant to the debtor the certificate demanded by him, who shall compel him to give it? And where is the recourse of this debtor, thus handedover to the malice or bad faith of the Creditor? Again an omission. Has not the author, who has consulted and arranged, in his own way, certain Articles from the Civil Code, from which he has borrowed the erasure of hypothecs, comprehended the necessity of making this provision be followed by others analogous to Articles 2157, 2158, 2159, of the same Code? Happily for the debtor, the Statute 8 Victoria, chap. 22, sec. 8, has come to his aid.

Sec. XLIX. The Office hours of the Registrar are fixed by this section at from nine o'clock in the morning to three o'clock in the afternoon. A difficulty has arisen in the interpretation of this section. Some maintain that it was only made for the interest of the Registrar, who can, of his own accord, keep his office open after the hour specified. Others, on the contrary, say, that the effect of this clause is to prevent the Registrars from receiving registrations after three o'clock in the afternoon, and that registrations made after that hour are null and void. We have met with, in our visitation of the offices, some registrations made after three o'clock in the afternoon, which may give rise to difficulties on the subject of priority between the creditor, whose title shall have been registered after three o'clock, and him whose title shall not have been registered until the following morning at nine o'clock. This difficulty presented itself in France, where the law enacts that the offices shall be open four hours in the morning and four hours in the afternoon; the hours of attendance being marked on the door of the offices. The tribunals of Apt, of Savenay, of Avesnes, and of Parthenay, by judgments of the 21st March, 1823, 26th August, 1824, 17th October, 1835, 8th February, 1837, have decided that registrations could be legally made after the fixed hour. The judgment of the tribunal of Avesnes has been overruled by decree of 28th February, 1838.—(*Championière et Rigaud, Traité des Droits d'enregistrement, Vol. 4, page 788, No. 3799.*)

We have exposed, as briefly as possible, the most prominent defects of the Ordinance; and these defects will henceforth become a fruitful source of contests and difficulties, and to many the cause of ruin.

IV.—OF THE WORKING OR OPERATION OF THE ORDINANCE

We are now about to examine the action or operation of the Ordinance since it came into force. We shall occupy ourselves first with the working of this Law with regard to instruments executed or made before the 31st December 1841, which we shall call *old instruments;* we shall then consider its working as regards instruments posterior to that date, and which we shall designate by the appellation of *new instruments.*

1st.—*Working of the law as regards old Instruments.*

In order to be assured to what point the working of the Ordinance is extended as regards old instruments it suffices to consider the Table No. I annexed to the present Report, drawn up after an extract made from the registers of the different Registry Offices in the Districts of Quebec and Gaspé. Another Table, No. II, serves to show how many of these instruments have been registered and how many ought to have been and have not been, on the supposition that each proprietor in each County, according to the result of the last Census, had, when the Ordinance came into force, three old instruments to enregister. Not having in our possession the Census of the other Districts of Lower Canada, and being ignorant of what has been the working of the Ordinance in these Districts, it is impossible for us to say any thing positive regarding the general working of it in Lower Canada. But in taking as the basis of a general calculation the number of proprietors in Lower Canada and continuing the supposition that each proprietor at the time of the Ordinance coming into operation had at least three old instruments requiring registration, we shall have the total of these instruments, and by subtracting from this number the total of those which have been registered, we shall have that of the instruments which have not and which ought to have been registered, and this sum must be enormous to judge of it by the number of these instruments which have not been registered in the Districts of Quebec and Gaspé. It will be remarked that in our

Tables we only include the proprietors and not the heads of families, of whom a large number are not proprietors, and who, nevertheless, must have instruments requiring registration. We think that the sum total of these instruments must exceed 100,000.

2nd.—Working of the law in regard to new Instruments.

If the Ordinance has not performed its functions for the past, its working has not been more happy in regard to new instruments passed since 31st December 1841. The Table No. III, annexed to the present Report, furnishes a convincing proof of it, and the supposition on which it is based is rather under than over the reality. It only comprehends the Districts of Quebec and Gaspé.

In order to ascertain what would have been the working of the law in regard to the new instruments during the period which has elapsed since the 31st December 1841, until the respective times at which the different offices have been visited, let us take the sum total of the Notaries in each County, and supposing that each of them executes 100 instruments in a year, of which one half have required the formality of registration, (see the Table No. III,) let us multiply the sum total of the Notaries by the number 100, and we shall have the total number of instruments passed every year in each county; by taking one half of this total we shall have the number of instruments executed each year requiring registered, and by substracting from this number that of the instruments which have been registered, we shall have a difference of at least 8945.

This number, of course, is only approximative, but, nevertheless, sufficiently correct to demonstrate how insignificant has been the working of the Ordinance in regard to instruments passed since it came into operation and of which it imperiously requires the registration.

V.—CAUSES OF THE INOPERATIVENESS OF THE ORDINANCE.

These numerous and varying causes may be reduced to the following :

The first is the unpopularity of the Special Council which passed this law. This legislative body, opposed as it was to all constitutional ideas and to the Representative system, possessed in no wise the confidence of the country. It was looked upon as a passive tool in the hands of the Governors of Lower Canada, who, at their will, gave it impulse and motion up to a certain limit, beyond which this body never ventured. The laws passed by the Special Council, dictated, some to satisfy a party seeking domination, others to establish exceptions and violate the most sacred and dearest rights, were all received with a just dissatisfaction. It would be hardly possible to cite a small number of the laws of this unpopular body, which are not stained by one of the vices to which we have alluded, and which marked its legislative existence until when at the moment of its dissolution for ever, it imposed upon the country the system of registration which governs us this day. On the appearance of the Ordinance establishing this system, great was the public clamour. It was maintained, and with reason, that this Ordinance apart from its other faults, contained a radical error which made it illegal and null, in imposing on the people a tax under the form of fees granted to the Registrar, a measure which the Special Council, in the very terms of the Imperial Statute which created it, had not the power to enact; a proposition admitted by the project of a registry law introduced into the Special Council by Lord Durham. Again, the people relied on the illegality, if not real, at least apparently so, of the proclamation which put this Ordinance in operation. Lastly, the Union of the Canadas, decreed by the Imperial Parliament, proclaimed in the country, and the assembling of the Legislature of the United Province, created a hope that one of the first measures of the mandataries of the people would be to repeal all the odious laws imposed by the Special Council, and above all, the Registration Ordinance which had only been in operation some months.

The second cause results from the first. The people, convinced of the illegality of the Ordinance, took no trouble to obey it. On the contrary, every where it was asserted and reasserted that this law would be repealed by the new Legislature of Canada. The most conspicuous and influential individuals in each section of the country partaking of this opinion, confirmed their fellow subjects in their resistance to this law. The Parliament having been convoked in June, 1841, nothing was done in this first Session in regard to the Ordinance. In the Session of 1842, the delay for the registration of the old instruments was prolonged to 31st December, 1843; and lastly, the Session of 1843, prolonged this same delay to the first day of November, 1844. This delay thus prolonged from year to year gave weight to the belief that the law of registration would be definitively repealed, as had the Ordinances upon the system of Judicature, which, suspended in their operation by the Parliament, had finished by being repealed.

Persons possessing the confidence of the people, publicly gave utterance to this opinion and declared the Ordinance illegal; but they did not say that the Legislature of the country having modified this Ordinance, having prolonged the delay fixed for its full and entire operation, had by this very Act adopted the principle of it, and affixed to it the seal of legality. The people gave implicit credence to their assertions; and when the period finally fixed for the registration of the old instruments approached, these very individuals took no pains to dispel the error which they had sanctioned, and the people rested in security. The traders and speculators alone made haste to register their instruments; and these instruments occupy two-thirds of the registers of the Offices of the Districts of Quebec and Gaspé; but the mass of the population, with very few exceptions, allowed the fatal day to pass without registering their deeds.

Some men, who turn everything to account profited by this ignorance so as to acquire rights which they would not otherwise have obtained. They cried out, " dont register, this law will be repealed and your money will be lost." And, while saying all this, these men carried to the Registry Offices all their instruments and Contracts, and procured for themselves by this means a priority of hypothec over the first mortgagees (*bailleurs de fonds*) donators and other privileged or prior creditors, dupes of these interested declamations.

A third cause of the limited operation of the Ordinance is the want of sufficient promulgation being given to this law and the Acts of Parliament which modify

it. This Ordinance and these Acts were, it is true, published in the Official Gazettes in French and in English. But these Gazettes, received by a very limited number of persons in business and certain public functionaries, did not reach the hands of the people. A law which changed, which over-turned an hypothecary system established for more than a century, should have been put into the hands of all, in order that all might have cognizance of it and appreciate its importance and operation; an abstract of it ought to have been affixed to and published at the door of the churches; it should have contained a provision in which it should have declared, that after a sufficient delay to effect its due promulgation, it would have force and effect. This promulgation has not taken place, and the people, ignorant of the provisions of this new law, or who only had cognizance of them under the influence of impressions which the spirit of party or personal interest had left on their minds, have suffered perhaps the ruin of their fortune by reason of a want of information with which they do not merit reproach.

Another cause of the limited operation of the Ordinance, is the extent of the Districts or Counties in which the Registry Offices are established, and the distance of the different localities from the place where these Offices are situated. By the division fixed by the proclamation erecting the Hypothecary Districts, it was necessary to travel from fifteen to twenty leagues and more, to reach the Office. The new division created by the Statute 7 Victoria has diminished this distance, but in each of the Counties of the Districts of Quebec and Gaspé there are localities which are yet 8, 10, 12 leagues, and even more distant from the County Office.

A fifth cause is the enormous tax for the generality of the people, of the fees allowed to the Registrars. In every case, this fee can hardly be less than five shillings for each deed submitted for Registration. How many individuals cannot secure their rights because they have not the means of conforming to the law which, in this respect, seems made for the profit of the rich man, who can advance the necessary monies for the preservation of these rights, whilst the poor man finds himself ruined by the too costly exactions of a law which he cannot obey. We pretend not to assert that the Registrars are over paid, we know the contrary; but we think that if their fees were made to agree with every man's fortune, every one would be a gainer, and the Registrars also, because they would receive into their offices four deeds for one under the actual tariff.

Finally, the last cause of the failure of operation of the Ordinance, is the striking faults and defects of this law, the delusive guarantee, the invalid security which it offers to the purchaser and lender who are not disposed to run the risk of dispossession or loss of their capital in the impossibility which exists of their ascertaining with certainty the state of the circumstances of those with whom they desire or are willing to transact business.

Such are the principal causes, we think, to which must be attributed the failure of the general working of the Registration Ordinance. Into these causes we have had occasion to inquire and to make examination, and it is because we are convinced of their existence that we designate them in our report.

SECOND PART.

Amendments which should be made in the hypothecary system introduced by the Ordinance.

" The matter of hypothecs, said M. Réal, (Troplong *loi. cit.*) is, without controversy, the most important of all those which should enter into the compilation of a Civil Code. It concerns the moveable and immoveable fortunes of all the citizens. It is that with which all social transactions are bound up. According to the manner in which it shall be treated, it will give life and motion to public or to private credit, or it will be their grave."

" We find (says M. Troplong) no exaggeration in these words, if we consider that it is the hypothec which secures to families the precious patrimony of the wife, which protects the property of those whose age or moral incapacity prevents them from superintending their own interests, which sustains or repairs the credit of the individual, favours the investment of foreign capital in commerce, brings money to the assistance of agriculture and of civil speculations, and which, in a word, like a powerful lever, sets in motion the most important transactions from this cause alone, that it surrounds them with most solid guarantees."

" This daily and immediate influence of the hypothec on property, and the circulation of capital, has often given rise to bitter complaints of the complication of the wheels which serve to set it in motion. I fully admit that our hypothecary system is susceptible of great improvements. But to expect that we shall ever be able to introduce into it the captivating simplicity of Government Scrip or a bank note, seems to me to be a desire entertained without due reflection, and an utopia impossible of realization. The hypothecary system will ever remain the most difficult part of the Civil Code. For it affects the most numerous and the gravest interests, bringing into conflict the most opposite although equally deserving of favour, and the legislator would fail in his commission if, from affection for a systematic simplicity, he reduced them tyrannically under an absolute yoke, rather than reconcile them by appropriate modifications, at the risk of sacrificing simplicity to civil justice. When civilization has developed among a people the germ of transactions and business, legislation is sufficiently simple when it is distinctly drawn up in forms, when the formalities which it employs are, although numerous, clear, and based upon utility, when their practical operation is qualified by an extensive principle of equity.... Napoleon uttered, respecting the hypothecary system, these profound words, which should be unceasingly called to the recollection of superficial men, whom difficulty terrifies and who only dream of the indefinite simplification of legislation in order to save themselves the trouble of thinking :—" *Since I have heard the Civil Code discussed, I have often perceived that too great simplicity in legislation is the enemy of right. We cannot render the laws extremely simple without cutting the knot rather than untying it, and without abandoning many things to the uncertainty of arbitrary power..... Let the law be less simple, provided it be conformable to the principles of Civil Justice.*"

" The question at this day, agitated among the Jurisconsults of France and Foreign countries, is to ascertain if the Civil Code gives to purchasers and creditors all the security that can be desired, or if there be

means of further increasing this security, by enlarging the principle of publicity and making it penetrate the legal hypothecs of women and minors."

"Two hypothecary Codes, that of Naples and of Piémont, have laboured to reproduce the principal bases of the Civil Code of France. On the contrary, in Bavaria, in Lombardy, in Belgium, Holland and in the Canton of Geneva, new paths have been opened or established and our hypothecary system has there fallen into greater or less discredit. This adoption on the one part, this rejection on the other, are weighty facts, the causes of which ought to be investigated".....

"The Neapolitan Code has nevertheless made some slight modifications in our Code; and I shall briefly here advert to those of the most importance, and which may administer to the perfecting of our Code."

"Whilst expressly providing that the neglect of registration cannot prejudice the wife or the minor, the Neapolitan Code has put in motion *a greater number of Agents* than the French Code for procuring the registration of legal hypothecs. It obliges Notaries, who receive deeds constituting dower, to register them for the wife, under penalty of deprivation, costs and damages. More than this, the Acts of tutorship can only be completed by the Clerk on proof made of a registration effected on the property of the tutor. When the marriage is dissolved or the minority has ceased, this Code wills that the wife and the minor have a delay of a year to make their registration, to count from the dissolution of marriage, or from the majority."

"According to the same Code, contracts passed in foreign countries are not deprived of all hypothecary effect; only the tribunals must take cognizance of them and order their registration, if there is opportunity."

"Bolder attempts are to be found in the hypothecary Code of Bavaria, in the Genevan, Milanese, Belgian and Dutch Codes."

"The Bavarian and Milanese Codes have not been restrained by any formality or any consideration, in order to establish credit between individuals on solid foundations."

"All the real rights which encumber the immoveable security given to the lender, or the property sold to the purchaser, must be exposed to the light of day. It was desired that the creditor should be completely certain that his hypothec could not deceive him; it was desired that the purchaser should not have, under any pretences, to dread unexpected dispossession. To arrive at this result, it has been decreed that when the proprietor alienated his property to two different proprietors, the property belonged the first registered, whatever might be the date of the deed."

"Every individual who pretends to exercise a realty right on an immoveable property possessed by a third party, whether by title of servitude, upon a contingency by possession, lease, usufruct, mortgage, right of redemption or reversion, conditional surrender or feoffment of trust, whether by title of conventional or legal hypothec, must verify the same by a registration existing at the moment of the alienation made against the third party in possession. In default of which he is at once debarred of his right, and has only a simple claim against him with whom he has contracted."

"Registration is necessary whether the right of proprietorship has been entirely or partially transferred by deed *inter vivos*, or whether it has been transferred by succession or testament. No one can lose his property, without the registration of the title of forfeiture."

"For better securing possessors against the rights of children subsequently born or against actions of rescission or nullity, the law prescribes on the one hand that the donor shall only have a personal action against the donee, on the other hand that actions of nullity or of revocation should be subject to a very short prescription."

"When a question of contested right arises, the assumed right can effect a provisional registration called prenotation; and if the claim be maintained, this prenotation becomes a definite registration, with retroactive effect from the day on which it is dated. Transfers of mortgages are also subject to registration, so that the transferees do not run the risk of being deceived by anterior conveyances of which they were ignorant."

The Registers are kept according to the following arrangements:

FIRST COLUMN.	SECOND COLUMN.	THIRD COLUMN.
Description of the property. Its estimated value. Real rights, such as titles, seigniorial dues,—servitudes, &c., with which the property is encumbered.	Designation of the owner. Description of his title—the restrictions which limit it or can make it void, such as reservation of alimentary nourishment—right of re-emption, &c.	Hypothecs with which the immoveable property is encumbered. Transfers of Mortgages, which show the progress of the hypothecary claim. The erasure of hypothecs.

The first column specifies the state of the property in regard to other parties (*tiers*); the second shows the state of the property in its bearings with its actual proprietor, and by it the creditor or the purchaser discovers with a glance of the eye the probabilities of dispossession which encumber those with whom they are contracting.

Two Tables specify, one the name of the registered properties, the other that of the proprietors.

" By this glance at the principal foundations of the Bavarian and Milanese Codes, we see that the Legislator has left very far behind him the Civil Code of France, whether it be in that which concerns the transfer of property, or in that which concerns legal hypothecs."

" So exclusive a respect for the most absolute publicity, so lively and energetic application of a principle which our legislators have never more than partially sanctioned, cannot be explained by the love of logic alone. If he who gives laws to a people was only a logician, he would soon drive his subjects into despair, and the men who have drawn up the Bavarian Code and the Edict of Milan had intelligence enough to know that the best legislation is not that which adheres most closely to the inflexible rules of the syllogism, but that which is best adapted to the customs of a nation."

" The Code of Holland decrees the abolition of legal hypothecs in favour of the Crown, of women and of minors, and only allows these hypothecs in as far as they are conventional and special. It proscribes the judiciary and legal hypothec. It wills that every hypothec should be stipulated, special and public. As to privileges, they cease to import a *jus in re;* they have no longer any right of mortgage, and have effect only between the creditors of a common debtor. Privileged creditors have only preference over creditors by note of hand, but they are anticipated by the hypothecary creditors. Registration secures the hypothec without renewal. The cession of an heritage is suppressed; the privileges of the vendor and the copartner are abolished. The mode of payment is subjected to important modifications which do not seem to me to have been in all cases happily conceived; for example, the right of overbidding (*la sur-enchère*) is not authorized, and the creditors remain almost disarmed against the fictions of value so frequent amongst us."

" All these reforms, realized or projected in a foreign country to a greater or a less extent, should be the more important to us, since there exists in France a very strong if not a general opinion, which holds our present hypothecary system in great distrust. To the enthusiasm which the Civil Code excited at its first appearance, reflexion and practical experience have succeeded, which have caused more than one error to arise. Criticism has raised its voice; and, when it has for its advocates such men as the unfortunate Jourdan, carried off too soon for the science of law which he lighted up by the vivid brilliancy of his philosophical and historical perception, it has made use of vehement and cutting, I should almost say, of criminatory language. The hypothecary labour of the legislator of 1804 has been pitilessly sacrificed to the more advanced theories of our German neighbours. The work of Napoleon, Portalis and Treilhard has been stigmatized as a jumble of *heterogeneous elements, of inexplicable provisions, and irreconcileable contradictions, producing only multiplied suits and difficulty on all sides.*"

" For my part, I purpose to constitute myself neither the absolute defender, nor the exclusive adversary of the hypothecary system, the object, as it is, of so many attacks. Great faults exist in the Code; grievous omissions are obvious. But, viewing it as a whole, its defects are not all so enormous, they are not so numerous as those think who reproach it with destroying the credit which landed property ought to enjoy."

" Perhaps under this last head, sufficient attention is not paid to the fact that we would render the hypothecary system responsible for a state of things, which belongs, in part, to the very nature of property."

" Let us not demand of hypothecary legislation effects which it can never produce. Let us forbear from seeking through it to engender a rapidity in business, convenience in the recovery of debts incompatible with the complicated forms which protect real property; let us discontinue to exact that it should impart to the person, who has only his immoveable property to offer as security, and who is ordinarily suspected of suffering from pecuniary embarrassments from the very fact that he is contracting debts, that confidence, which is the attribute of him, who, by his commercial relations, his good conduct, his industry and reputation, stands high in public credit and commands capital. We must not strive against impossibilities."

" A good hypothecary system cannot be conceived which should not conform to the law which determines the transfer of real property."

We have thought that, the principal provisions of the Registration Ordinance being partly extracted from the hypothecary Code of France, the observations which Mr. Troplong has made on the hypothecary system of France would be perused with interest and their reproduction approved. Other nations of Europe having also organized their hypothecary Code, differing more or less from the Code of France, we have thought it our duty to bring to view their principal provisions, in order that they may be compared, and the importance and utility of introducing them or not into our hypothecary system be duly considered.

We shall now occupy ourselves with the amendments which we think necessary in the hypothecary system introduced by the Ordinance.

It is a self evident fact, and one admitted by all, that the hypothecary law of the Special Council is bad, as much in its exceptional principle as in its details, and that the country should be rid of it as soon as possible. But it is equally evident that it is impossible, without manifest injustice, to return to the former plan by repealing this law and the very system itself of the publicity of hypothecs, the principle of which it has introduced. Once entered on this path, it is impossible for legislation to go backwards or stop. It becomes necessary, then, to substitute another general law and one which harmonizes in every particular with the law of the country in regard to the system established by the Ordinance. This law should be formed upon or borrowed from the Civil Codes of other countries. In the first case, it might, perhaps, be more proper to confide this important task to a Commission composed of the most eminent Jurisconsults of the country. In the second case, the Civil Code of France, with some modifications which our Civil Law and our particular usages require, would appear to be that which would suit us the best, being more in harmony with the old French Law which governs us. The Neapolitan Code and the German Codes which recognize tithes and seigniorial rights, might also be consulted with advantage.

There is a suggestion of importance, which we think ought to occupy the first place, and it is the publicity of future hypothecs, and the means of accomplishing the certainty of this publication. The different seig-

niors of Lower Canada possess plans of their seigniories: would it not be adviseable to oblige them to number each lot of land conceded and to be conceded in their domains, and in the different concessions or ranges? This labour is easily accomplished, and would cost but little, since every seignior having a plan of his seigniory, on which the properties are divided into lots and ranges, the only trouble would be to give a number to each lot and to inscribe on it the name of the actual possessor, as in the following table:

Plan of the Seigniory of *Parish of*

Lot No. 1. Owned by A. B.	No. 2. By C. D.	No. 3. By E. F.	No. 4. By F. G.	No. 5. By H. I.	No. 6. By K. L.	No. 7. By M. N.	No. 8. By O. P.	No. 9. By Q. R.	No. 10. By S. T.	No. 11. By U. V.	No. 12. By X. Y.	And so on.

First Range.

This plan thus made, the Registrar of each county would take a copy of it, for the perfecting of which a reasonable salary should be allowed him, paid out of the public funds. By this means the Registrar would have in his office all the plans of the seigniories in his county. The Province should pay the cost of a number of these plans to be distributed in each seigniory to the Notaries who practise there. And by making it imperative on the Notaries, under a penalty, to state in every Act affecting immoveable property, the number of the property, sold or hypothecated, we should obtain easily and certainly the publicity of hypothecs for the future. A Notary, with the plan of the seigniory before him, will easily be able to find the number of the lot in question, upon learning the name of the person who possessed it at the time of the numbering of the lots of the seigniory. In order to make this plan answer the end proposed, it would be necessary that Acts affecting immoveable property should be passed by the Notaries who reside in the seigniory in which the property to be affected by the Acts is situate.

Having in his possession a plan of each seigniory of his county, the Registrar should have a book for each seigniory in which each number should occupy a leaf, and on which he should enter all the registrations which have been made in his office concerning the property, the number of which shall be found to be therein enrolled. By this means, the Registrar could at all times know and certify the number, the specification and amount of the hypothecs, charges and rights with which each lot might be encumbered. We are only speaking of future hypothecs; for as to the general or special hypothecs gone, it is, we believe, impossible ever to succeed in tracing them with the smallest hope of certainty or success.....We submit the utility which would be the result of giving to these books the form of the Bavarian registers, of which we have spoken above. In the townships, where all the lots are numbered, nothing is more easy than to accomplish the publicity of hypothecs; and it is from the want of a similar arrangement that the publicity of hypothecs in the seigniories has been to this day a perfect chaos, an inextricable labyrinth from which we shall never escape, we believe, except by the numbering of the lots.

Another suggestion which we take the liberty of making, in order to assure more completely the publicity of hypothecs and charges, and to increase the operation of the system of registration, would be to declare, that an Act would bear a hypothec only from the day on which it shall have been deposited in the office of the Registrar. This provision would have the effect of ensuring the regular and general operation of the law, and at the same time of overcoming that antipathy which the country people have for every thing, good or bad, to which they have not been accustomed and of which they do not understand the effects. This important provision for imparting strength to the operation of the system of the publicity of hypothecs, is to be found in the Civil Codes of France, Bavaria, Naples, &c. It is the surest guarantee for the operation of the system of publicity of hypothecs, and the adoption of it is essential to this system.

We think it our duty to suggest that the extent of the Counties of Rimouski and Dorchester, and above all, the numerous population of this latter county, make the establishment of two Registry Offices in each of these counties necessary, either by establishing two distinct and separate offices, or, which would perhaps be better, by placing in them two offices under the control and responsibility of the actual Registrars of these counties, who might have the power to have under them the necessary officers for the due management of these offices. Some parishes in the county of Rimouski have already addressed a request to the Executive, in which they ask that the office should be fixed in a locality more in the centre of the county than the one where the office is actually placed; but, supposing that this office was fixed in the centre of the county, the people of the establishments and parishes towards the limits of the county, would always have a distance of more than twenty leagues to travel to the office.

At the time of our visitation of the Office of the county of Dorchester, an intention was manifested of addressing the Legislature in order to obtain two offices, one for that part of the county of Dorchester which was formerly the county of Beauce, and the other for that part which formed the old county of Dorchester.

A considerable number of individuals have expressed to us the desire which they had of seeing, in each county, offices fixed so near that the journey from the different parishes of a county to these offices might be rendered easy by its limited extent. Many have even given it as their opinion that the establishment of an office in each parish would be more favourable to the operation of the registration law, by doing away with the expensive and long journeys which are involved in the present system. We confess that this system would be more convenient for the country people, but it would have the effect of multiplying the number of the Registrars, who, already too few, do not receive enough from their offices to live moderately, and of complicating the system of registration.

Since the operation of the Ordinance has been, for the reasons which we have enumerated in the first part of this Report, almost null as regards old Acts, and because this failure of operation may and must necessarily have very grievous effects on the fortunes of the country people, we take the liberty of suggesting, whether or not it would not be equitable to grant another delay for the registration of these Acts, and to give to those which may be registered during this delay, according to their respective dates, priority over posterior Acts registered before the 1st November 1844, the last period fixed for the registration of old Acts. Nobody could complain of this provision, for the creditors or purchasers posterior to these Acts, who have caused

their titles to be registered before the 1st November 1844, could not complain, since they have only been able to calculate on the efficaciousness of the registration of their titles in order to the acquiring of a priority of claim or for contracting, so long as the fixed delay for the registration of old Acts had not expired, and because they should be prepared to wait for anterior creditors or purchasers, whose Acts although registered posterior to the prescribed delay, would have priority over them. This delay, of course, could not prejudice creditors or purchasers posterior to the 1st November 1844, who themselves, have made contracts or purchases under the guarantee of the law, which, as far as they are concerned, declares to be null all anterior Acts which are not clothed with the formality of registration.

Another subject to which we beg to call the attention of the Legislature, is the abolition of the dower, or at least of the customary dower created by the sole operation of the Civil Law of the country. The existence of this dower is incompatible with every system of publicity of hypothecs. The omission of a similar provision in the Ordinance of the Special Council will, in future, be a source of grave difficulties, and the cause of a great number of dispossessions. We think that the prefix (*douaire préfix*) or conventional dower should also be subjected to the same fate; for it is a serious obstacle in the alienation of property. It is true that the actual law allows the sale of property affected by it, but then the object which it had in view in establishing this dower has completely failed.

How shall we effect the publicity of hypothecs? Is it by registration by means of memorial (summary) or by transcription? The Ordinance of the Special Council has introduced the first method, and the Provincial Statute 7 Victoria, chapter XXII has allowed the use of the second.

Hear what Mr. Troplong says on both the modes of publication. "The Bavarian, Milanese and Genevan Codes have adopted registration by memorial. This method has appeared to be more in unison with the instrument of publicity in use for the hypothec; it has been found to be as simple as it possibly can be, without taking away at all from its clearness. It has been thought to give greater regularity in the writings, because it facilitates the means of placing opposite to each other, in the same Register, the alienations of real rights and the constitutions of the hypothecs. On the contrary the law of Brumaire, VIIth year, had given the preference to transcription; and on many accounts, I think, deservedly so. Registration by memorial is a delicate proceeding, which might be vitiated by an omission or an act of negligence; it consists of an attentive summary of the principal circumstances, the enunciation of which ought to be at once brief and faithful. But this summary may easily fall into a mistake from inaccuracy, and at once the most precious rights are compromised. This danger is not to be feared in transcription, which consists of a literal and material copy of the Act which it is desired to render public."

We also prefer transcription. We have had the opportunity of seeing many memorials in the offices which we have visited. We believe that more than a third of these are informal and incomplete. In some of them the forms specified in the Ordinance have been copied *verbatim*, without making such changes in them as the nature of the Acts or other circumstances might require. We have also seen registrations of many judgments rendered in 1843, the memorials of which were as follows: "Memorial to be registered of a judgment rendered in Her Majesty's Court of Common Pleas, within this division, being the division contained in the territorial division of Quebec, in the term, &c." And this, because the formula No. 7 of the Ordinance for the registration of judgments commences thus.

There are so few persons in the country parts who are able to draw up a Memorial. This duty requires legal knowledge and habits of analysis and concentration which it is not possible to find among the people. How many Memorials are there drawn up by Notaries, the sufficiency of which may be contested? The method of transcription, since the passing of the Statute cited above has been almost exclusively followed, as may be seen by Table No. I, of which we have already spoken. This method, besides the security which it obtains for the party registering, has moreover the advantage of being less expensive. Thus for an Act containing four hundred words, the certificate of registration will cost four shillings, according to the method of transcription; and by Memorial, the registration will cost six shillings and six pence, that is to say, two shillings and six pence for drawing up the Memorial, two shillings and six pence for the registration of it, and one shilling and six pence for the certificate. The Notaries usually draw up these Memorials; and moreover, when the registration was made by Memorial only, the Registrars, we have been informed, received many more Acts in their Offices; the reason is easily guessed. For the rest, these two methods of registration may be left to the option of those interested.

There is an important point on which we think that we ought to make some remarks, and that is the salary of the Registrars. It will be seen by the Table No. III, annexed to this Report, how small has been the remuneration received by the officers for the registration of instruments passed since the Ordinance came into operation. This remuneration is so low that it scarcely covers the expenses of the Deputies and the offices. All the Registrars, without exception, complain of it, and with reason. They have an immense responsibility, the working of the hypothecary system requires much labour, care and attention; and nevertheless, the majority of these Officers do not receive the daily wages of a mechanic. Under such a state of things, it is impossible that the actual Registrars should continue to hold office, and it will come to pass that the offices, if the Registrars are not sufficiently remunerated to enable them to live honourably out of the revenue of their office, will fall into the hands of persons disqualified in every particular. We have no interest, direct or indirect, in the emoluments of the Registrars, but we think that, in justice to those Officers who have all discharged with honour to themselves and advantage to the public, the important duties which have been confided to them, and who, above all, have had the merit of bringing into operation a system so surrounded with difficulties as that introduced by the Ordinance, we think, we repeat it, that it is our duty to call attention to this subject. We may be permitted to suggest that, by reducing the actual tariff, and giving the force of law to the provision of which we have spoken above, which would decree the existence of the hypothec only from the day of its registration, a reasonable salary would doubtless be obtained for the Registrars. By this means registration would become obligatory on all, and would be within the means of every fortune; which is not the case under the actual system.

In France, the Exchequer collects the dues for registration according to a tariff fixed by law, and pays their salaries to the Registrars. We believe that the same rule prevails in the other countries where the publicity of hypothecs exists. But how far this system would be admissible in our country, is a question, the solution of which presents very great difficulties.

For the present, we think that the suggestion which we have just made might be put in practice, and if not successful, we might adopt another mode of remunerating the Registrars.

We conclude our report by a final observation. We have had an opportunity of seeing a very considerable number of Notarial Acts bearing as a heading that they have been passed before "Notaries Public for the Province of Canada." Since no Notaries commissioned for the Province of Canada exist, the legality of these Acts will be doubtless called in question. Already the newspapers have reported a decision of one of the Courts of the District of Montreal which has declared null an Act excepted against as null on this point. Would it not be proper that the Legislature in its next session pass a law to assure the legality of these Acts? We cannot refrain from pointing out an unpardonable ignorance on the part of several Notaries, who, since the Registration Ordinance came into force, have passed obligations containing simply a general hypothec on the part of debtors in favour of creditors who, believing their claims to be well secured, have made haste to register them in order to preserve a hypothec which no longer exists, and acquire over other creditors a delusive priority. And unfortunately, the number of these creditors who find themselves without any guarantee on real property, is very considerable. We cannot conceal the fact that the ignorance of these Notaries will be the cause of the loss of these claims; we say it with pain, but the body of Notaries requires a severe reformation, a reformation which will eject from that profession all those whose want of intelligence, of civil and legal knowledge, and whose morals ought to exclude them from a profession as honourable as it is important, and on the due exercise of which depends the prosperity or the ruin of families. Besides, this reform is necessary, is essential to the perfect working of the system of publicity of hypothecs. The body of Notaries of the District of Quebec has itself perceived this need of reform, since in the absence of a law regulating the qualifications for the exercise of this profession, it has adopted regulations tending to prevent the crying abuses which have been passed over so long in the admission of candidates into the Notariate. This also is a subject to which we beg to call the attention of the Legislators of the country.

An Ordinance, 25 Geo. 3. ch. 4, is in existence, which authorizes the examination and visitation of the Offices of Notaries, and which provides for the punishment of those who shall not conform themselves to its provisions; but this part of the Ordinance has never been put into execution on account of, we suppose, the important omissions which it contains in regard to the authority which ought to appoint the Visitors and in regard to the tribunal which shall degrade from the profession the Notary who shall have been guilty of infringing the provisions of the Law.

J. CRÉMAZIE,
Visitor R. O. D. Q. & G.

Quebec, January 1846.

TABLE No. I

SHEWING the total number of old and new Acts registered in the Districts of Quebec and Gaspé.

NAMES OF THE COUNTIES.	Total registered in each County.	Old Acts. — General hypotheces up to 1st Nov. 1844.	Old Acts. — Special hypotheces up to 1st Nov. 1844.	New Acts or those passed since 31st Dec. 1841 and registered.	By Memorials. From 31st Dec. 1841 to 1st March, 1844.	By Memorials. Since 1st March, 1841.	By transcription or at length since March, 1844.	Hypotheces erased.	Acts under Sign Manual.	REMARKS.
Rimouski. From 1st January, 1842 to 20th June, 1845....	2723	1927	491	570	1119	....	1614	....	27	(A) In the County of Islet the Acts are kept which were registered in the former Office of the Hypothecary District of St. Thomas, which was formed of the Counties of Islet and Bellechasse.
Kamouraska. From 1st January, 1842 to 24th June, 1845....	3216	1085	1817	1076	1438	110	1668	3	15	
Islet. (A) From 1st January, 1842 to 9th July, 1845.....	5077	1508	1066	630	3697	262	1118	6	1	(B) The registrations filed in the Office of the former Hypothecary District of Chandière, which comprised the Counties of Beauce and Megantic, are included in those of the County of Megantic.
Bellechase. From 1st March, 1841 to 23rd July, 1845.....	2589	1858	455	731	....	328	2261	9	1	
Gaspé. From 1st January, 1842 to 23rd August, 1845..	431	231	156	77	....	183	248	4	123	
Bonaventure. From 1st January, 1842 to 1st September, 1845	859	435	308	280	495	....	454	12	297	(C) The registrations received in the Office of the former Hypothecary District of Dorchester which comprised the Counties of Dorchester and Lotbinière, are included in those of the County of Dorchester.
Saguenay. From 1st January, 1842 to 1st September, 1845	1588	675	177	506	584	....	1001	5	4	
Megantic. (B) From 1st January, 1842 to 1st September, 1845	1001	250	892	111	720	7	271	10	22	(D) This County, until 1st March, 1844, was part of the Hypothecary District of Quebec.
Dorchester. (C) From 1st January, 1842 to 1st September, 1845	4380	2408	478	1972	1298	127	2855	106	5	(E) This island was detached from the County of Montmorency by the Provincial Statute 8 Vict. ch. 28.
Montmorency. (D) From 1st March, 1844 to 1st September, 1845..	1171	824	353	347	....	149	1022	....	....	(F) In the County of Quebec are comprised the registrations made in the Office of the former Office of the Hypothecary District of Quebec, which was formed of the Counties of Quebec and Montmorency.
Orleans. (E) From 19th July, 1845 to 21st November, 1845..	43	9	6	33	....	7	36	....	....	
Portneuf. From 1st January, 1842 to 1st September, 1845	1877	1217	940	586	1192	39	646	4	....	(G) Until 1st March, 1844, was part of the District of Dorchester.
Quebec. (F) From 1st January, 1842 to 1st September, 1845	10,881	6828	4550	4053	5648	37	5106	800	....	
Lotbinière (G) From 1st March, 1841 to 1st September, 1845..	1360	874	565	486	....	189	1171	13	....	
Totals.....	37,206	20,129	12,287	11,488	16,101	1,418	19,477	972	495	

TABLE No. II

SHEWING the operation of the Ordinance in regard to the old Acts in the Districts of Quebec and Gaspé.

COUNTIES.	Total of old Acts registered since 31st December, 1841.	Total of proprietors in each County according to the last Census.	Sum total of proprietors in each County multiplied by 3.	Difference.
Gaspé	351	1122	3366	3012
Bonaventure	579	1086	3258	2679
Rimouski	2163	1856	5568	3195
Kamouraska	2140	1871	5613	3505
Islet	4447	1922	5766	1319
Bellechasse	1858	1991	5973	4015
Dorchester	2408	4845	14535	12127
Mégantic	860	816	2448	1588
Portneuf	1291	2331	6993	5702
Montmorency	824	1112	3336	2512
Saguenay	1082	1324	3972	2890
Quebec	6828	3445	10335	3507
Lotbinière	874	1933	5799	4825
Totals	25708	25654	57062	51176

TABLE No. III

SHEWING the operation of the Ordinance in regard to the new Acts in the Districts of Quebec and Gaspé.

COUNTIES.	New Acts registered during the last three years.	Number each year.	Number of Notaries in each County.	Each Notary supposed to pass, yearly, 100 Acts.	One half of these Acts requiring registration.	Total of Acts which should have been registered each year.	Total during the last three years.	Difference.	REMARKS.
Gaspé	77	25	(*a*) 0	100	50	50	150	73	(*a*) There is no Notary in this County, the Acts are passed there by the Justices of the Peace and Missionaries.
Bonaventure	280	93	2	200	100	100	300	20	
Rimouski	570	190	10	1000	500	500	1500	930	
Kamouraska	1076	338	15	1500	750	750	2100	924	
Islet	630	210	20	2000	1000	1000	3000	2370	
Bellechasse	731	....	(*b*) 12	1200	600	600	....	....	(*b*) This Office has been in existence since the 1st March, 1841.
Dorchester	1972	657	20	2000	1000	1000	3000	1128	
Portneuf	586	194	9	900	450	450	1350	764	
Saguenay	506	168	8	800	400	400	1200	694	
Mégantic	141	....	(*c*) 3	300	150	150	450	....	(*c*) Do do
Montmorency	317	....	(*d*) 6	600	300	300	900	....	(*d*) Do do
Quebec	4053	1351	31	3100	1700	1700	5100	3719	
Lotbinière	486	....	(*e*) 9	900	450	450	1350	....	(*e*) Do do
Totals	11455	3226	118	14000	7150	7150	20400	10652	

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