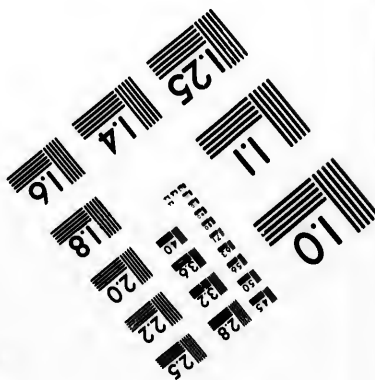
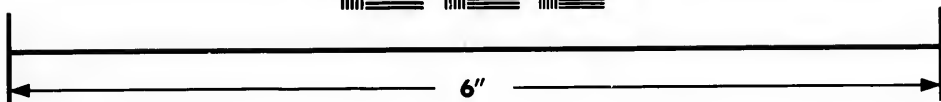
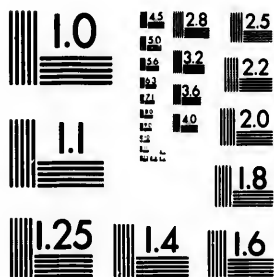


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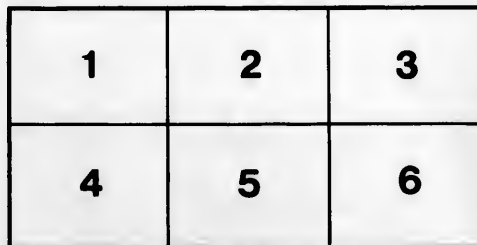
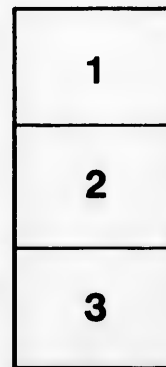
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PHASES

... OF ...

QUEBEC

LAW

... BY ...

"VIGTIM."



" Nothing extenuate nor set down aught in malice."

—*Othello*.

PREFACE.

The following little sketch is presented to the public as an attempt to show, in narrative form, some of the features of our Civil Law imperatively calling for amendment. Many cases similar to those delineated have occurred within the writer's own personal experience, and *no case is described which might not occur at any time.*

PHASES OF QUEBEC LAW.

By "VICTIM."

"Why, surely, that's Fitzherbert!" exclaimed Edward Markham, as he hailed one of the passengers disembarking from an Atlantic steamer at the Liverpool wharf one bright spring morning. "What brings you back? I thought you left us with the intention of remaining in Canada for the rest of your days, or at any rate until you had made your fortune, but somehow you don't exactly look as if you had succeeded in doing that."

"Well, it's a long story and a dismal one, Ned, and I have a good many things to attend to just now. Come and look me up at the Adelphi this evening and we can have a good talk."

"I will with pleasure," replied the other; "good-bye for the present."

On joining his friend again in the evening, Markham observed a care-worn and dejected air about him which confirmed his impression that Fitzherbert had not met with the success to which he had looked forward when he left England in the hope of improving his position.

"Well, old fellow," exclaimed Markham, after a little chat about old times and old friends, "now tell me your history since you left us, some eleven or twelve years ago, I think. I shall be greatly interested in hearing all about it, as I have had serious thoughts of following your example."

"*Infandum regina jubes renovare dolorem,*" returned Fitzherbert. "Excuse my quoting Latin. I know it's snobbish, but Aeneas' lament so exactly expresses my feelings that I couldn't help it. However, my stock of Latin is small, and I won't repeat the offence. Well, I will tell you all my adventures, or rather mis-adventures, if you care to hear them. I went to settle, as I think you know, in the Province of Quebec. The country is picturesque, and there is a great deal of excellent land there, and if one does not mind a somewhat long and severe winter, it is a pleasant enough place to live in, but the trouble with me is that I have been robbed and ruined by the law.

"I carried with me my small capital of two thousand pounds or ten thousand dollars, as I will call it, my investments having, of course, been all made in that currency; and now I will give you a categorical account of what those investments were and what has become of them. I had a great idea that real estate securities were the most desirable, and I did not wish to have too many eggs in one basket, so I disposed of my money in this way.

"My first investment was in a mortgage on farm property, valued at \$3,000, and on this I advanced \$1,500. The title to the property was approved by a lawyer and my mortgage deed duly registered. The owner of the property subsequently gave a second mortgage to another person to secure a debt due to him in open account. The second mortgagee shortly afterwards sued for the recovery of his debt and obtained judgment. The property mortgaged to me was seized by the sheriff and advertised to be sold in two months, no reference whatever being made to my mortgage. I knew nothing of these proceedings and received no notice of any kind, although the Register shewed me to be first incumbrancer. The property was put up to auction by the sheriff and knocked down to the plaintiff in the suit for \$150. The parties present at the sale knowing that there were mortgages covering nearly if not quite the full value, and supposing that the object of the sale was to get a title, there was no bidding against him. The \$150 was applied (according to law) first, in payment of the sheriff's costs, and secondly in payment of the attorney's costs. The two together absorbed the whole of the purchase money; the judgment creditor got the property and I lost every cent of my investment. In answer to my indignant protest at this legalized robbery I was told that it was my own fault for not having appeared at the sale to protect my interests; that I should have studied the *Quebec Official Gazette*, in which the intended sale was advertised. 'Why,' it was said, 'every one ought to know that you cannot with any safety hold real estate or real estate securities in the Province of Quebec without examining the notices in the *Official Gazette*.' The paper is published weekly, and notice of a sheriff's sale must be published for two months previously. 'Well, but—' I replied, 'why does not the sheriff sell what the defendant really owns, which is the property, *subject to the mortgages*, or what is called in English law the "equity of redemption," instead of selling the property itself which practically belongs to another person?'

"'Oh,' replied my informant, with a shrug, 'that may suit your fastidious notions, but we like these sharp proceedings, and a sheriff's deed is considered the best possible foundation for a title. In this province our sympathies are all with the debtor and against the creditor.'

“I presume, then,” said I, ‘that is the reason why your French law refuses to allow a mortgagee to make use of a power of sale, although inserted with the express consent of the borrower, and that consequently before a security can be realized it is necessary to apply to the courts and obtain a judgment for the debt with all the heavy expenses consequent upon a suit. You are aware that where English law prevails a power of sale is inserted in every well drawn mortgage, whereby if the borrower fails to pay according to the stipulations of the deed, the mortgagee, after a certain delay, is empowered to sell the property and to pay himself what is due under the mortgage, and is then to hand the balance, if any, to the debtor. If the power is improperly used the mortgagee is liable in damages to the mortgagor. Under that system, as no legal proceedings are necessary, a man knows when he is lending money that nothing can come between him and his security, and as it enhances the value of the security it has a natural tendency to reduce the rate of interest, and therefore benefits the borrower as well as the lender.’

“I must admit,” returned he, ‘that that appears to be common sense, but our law is chiefly made by lawyers, and what would become of them if we were to dispense with suits?’

“My second investment was similar to the first, namely, a mortgage of \$1,000 upon property of ample value. Profiting by my previous experience, I now carefully studied the notices of sheriff’s sales in the *Official Gazette*, and about a year after I had made the investment I was startled to find that the property which I held as security was advertised to be sold at the suit of a creditor. I attended the sale, and finding that the sheriff’s fees and the attorney’s costs connected with the suit amounted to \$150, and that my debt with accumulated interest came to \$2,100, I bid the property up to \$2,250, which I supposed would make my claim perfectly secure. A person present, however, who had been persistently bidding against me, and whom I took to be a *bona fide* purchaser, overbid me and the property was knocked down to him for \$2,300. I was perfectly satisfied as I wanted my money and not the real estate. Under the advice of my attorney I filed a claim for the purchase money *afin de conserver*, as it is called, and thought myself safe. I then left home for a month to visit a sick friend, and not having given instructions that that interesting publication the *Official Gazette* should be sent after me, was thunderstruck on my return home to find nearly the whole of my second investment hopelessly gone. It was in this way. The creditor who had obtained the judgment got some one to attend the sale for him with instructions to *overbid* me. The sale by the sheriff was made subject to the usual conditions, one of which was that the

purchase money must be paid within three days, in default of which the property would be again put up for sale, and the first purchaser would be personally liable for any diminution in the price obtained at the second sale. The purchase money was not paid (as had been previously concerted) and the property was again advertised to be sold at the *folle enchère* of the first purchaser. This time only two weekly insertions in the *Gazette* were necessary, and on the day of sale the only persons present were the creditor himself and two or three friends, and after some pretense of bidding against each other the property was knocked down to the creditor for \$400. After taking out the additional costs of the second sale, the balance of the \$400 was paid to me, which was all I ever got as the first purchaser who was probably a man of straw was nowhere to be found.

"My third investment was a mortgage for \$1,000 on a large tract of forest land or "wild" land as it is termed, supposed to be worth about \$2,000. About 3 years after making the investment, as my interest was very much in arrear, I instructed my attorney to take the necessary proceedings for recovering my debt when I found to my dismay that my security was gone, the entire property having been sold by the municipal authorities to pay the taxes which had fallen into arrear. It seems that all real estate, whether productive or not, is liable to municipal taxation for the purpose of raising a revenue wherewith to construct and maintain roads, bridges, &c., and to build and sustain schools. The law provides that if these taxes are not paid, the Secretary-Treasurer of the municipality in which the lands are situated may advertise in the *Official Gazette* that they will be sold on a certain day in the month of March. The advertisement must appear two months before the day appointed for the sale. The man who gave me the mortgage failed to pay his taxes, and the lands were advertised soon after I had made the loan. As my examination of the *Official Gazette* had hitherto been confined to a scrutiny of the notices of sheriff's sales, I did not see the advertisement, and although I was the registered mortgagee I received no notice of the intended sale. These sales are conducted in a peculiar manner. The auctioneer asks if any one present will pay the arrears of taxes and costs on the lands being adjudicated to him. Some one present offers to do so. The auctioneer then asks if any one will pay them on a portion only of the lands being adjudicated. If he finds a second bidder he continues the process until he finds the person who will pay the taxes for the minimum amount of land, which is then adjudicated to him. Sometimes there is a spirited bidding, but usually there is none, the taxes being paid by some one who is either the real owner or an incumbrancer, the taxes having been charged to a

mere occupant who has very little real interest in the property. It is generally assumed that parties bidding are protecting their interests and there is seldom any inquiry to ascertain whether this is really the case or whether the bidder is a speculator. In my case the bidder *was* a speculator, but as no one bid against him, the entire property on which I had a mortgage for \$1,000 was knocked down to him for \$35, the amount of taxes and costs. The law, however, provides that the original owner shall have the privilege of redeeming the property within two years on repaying to the purchaser at the auction his purchase money with a high rate of interest, but if not redeemed within two years the purchaser's title becomes absolute. The two years elapsed without my knowing anything of the proceedings, and the following day the man sold the property which had cost him \$35 for \$1,400. It appeared that the lands were not worth nearly as much as I had supposed, and the owner despairing of being able to pay off the mortgage, had abandoned the property and left the country.

"My fourth investment was another mortgage on a farm valued at \$10,000, on which I advanced \$4,000. The property was situated at a considerable distance from where I lived, but as I got an excellent report of it and the title was perfect, I felt perfectly secure. My mortgage deed was of course duly registered. The interest was remitted to me punctually every half year for 10 years, when the payments suddenly ceased. On inquiring into the matter I found that I had again been victimized and had lost the whole of my investment notwithstanding that I had diligently studied the *Official Gazette*. It appeared that almost immediately after I had taken the mortgage the owner of the property sold it to another party, received the purchase money and put him in possession. The law declares that ten years' possession with a shew of title, however worthless, confers an absolute title. The man to whom I lent my money paid the interest to me to avoid inquiry and discovery, and after the ten years disappeared and was supposed to have left the country. I was unable to prove fraud against the purchaser and lost my money."

"But," exclaimed Markham, "surely if a man buys a property on which you have a registered mortgage, which is ignored by the vendor, it is in itself evidence of fraud."

"Unfortunately," returned Fitzherbert, "the law does not regard it in that light. The law establishes a register and declares that unless you record your deed, a subsequent purchaser or incumbrancer who *does* register will take precedence of you. Notwithstanding this the law does not require an intending purchaser to consult the register and does not consider it any evidence of bad faith that he buys and pays for a property which the register shews the vendor has no right

to sell. It is notorious that a large proportion of purchasers and mortgagees, especially in country places, never examine titles at all, especially if they are dealing with persons of apparent respectability.

"My fifth investment," continued Fitzherbert, "was a small one of \$500, secured (?) by a mortgage on a farm property valued at \$800. Soon after the mortgage was executed, the mortgagor, who was a poor man, was taken ill and failed to pay his interest, which accumulated for upwards of two years, when he died, leaving scarcely any personal estate. A creditor sued his representatives for recovery of a debt contracted by him, and for reasons best known to themselves they chose to resist the claim. Judgment was given against them, from which they appealed, but the original judgment was confirmed. The real estate held by me as security was seized and advertised to be sold by the sheriff. I saw the advertisement, as I now carried the *Official Gazette* about with me wherever I went. I attended the sale and bid the property up to \$800, (its full value) at which price it was knocked down to me. I then filed my claim as first incumbrancer on the property expecting to get back the purchase money. The prothonotary subsequently made his "report of distribution," and my \$800 was "distributed" as follows, all the claims detailed being "privileged" by law and held to be entitled to precedence over my mortgage:—

| | |
|------------------------------------------------------------------------------------------------------|----------|
| 1st—Sheriff's Fees..... | \$78.00 |
| 2nd—Costs of suit, including Costs of Appeal..... | 280.00 |
| 3rd—Doctor's Fees for attending the Mortgagor in his last illness (he was six months in dying)... | 210.00 |
| Nurses Fees..... | 40.00 |
| Undertaker's Charges..... | 25.00 |
| Mourning for the Widow..... | 30.00 |
| Arrears of Municipal Taxes..... | 36.00 |
| Arrears of Dues owing to the Church (the Mort- gagor having been a Roman Catholic)..... | 40.25 |
| Arrears of Assessments due to Mutual Insurance Company..... | 20.00 |
| The Tenant's Expenses of Tilling and Sowing the Spring Crop on the Farm..... | 40.00 |
| Balance awarded to the Mortgagee..... | .75 |
| | <hr/> |
| | \$800.00 |

"My last investment was on personal security as my confidence in the *Official Gazette* was gone. I called on my solicitor one day to consult him as to an investment for \$1,200 which would give me no trouble.

“ ‘Well,’ he said, ‘there is nothing better than a promissory note if the amount is not very large and you get a good man, and I think I can find you one.’ A trader was here this morning asking for a loan of about that amount. He is not an educated man—in fact cannot write his name—but he is doing a good business and is reputed to be worth at least \$20,000. He will make a cross for his signature to the note, and I will witness it, which will make it just as good as a written signature.’

“I was satisfied, and the next day lent the money, taking a promissory note executed in the manner indicated. When the note became due, the maker repudiated his signature and refused to pay. I consulted my solicitor, who advised me to commence legal proceedings immediately, as he could, of course, prove the signature, adding that as he was the witness in the case I had better employ another lawyer.

“I should here tell you that my solicitor was an elderly man of unblemished character, known to every one in the town (where he had spent the whole of his life) and universally beloved and respected for his philanthropy and high moral tone. He, however, belonged to the school of thought of which Mr. Herbert Spencer, Professor Huxley, and many other eminent men of the present day are such well known members, and was unable to accept what are generally considered the evidences of revelation.

“The suit was taken, and on the day appointed for the hearing, my case was called and my solicitor went into the witness box to give his evidence. To the amazement of every one, the attorney for the defendant—a disreputable practitioner—rose and informed the judge that before the witness was sworn, he wished to put two or three questions to him. He, then, addressing the witness, asked:

“ ‘Do you believe in God?’

“ ‘Most certainly I do,’ was the reply.

“The next question was: ‘Do you believe in a future state of rewards and punishments?’

“ ‘I know nothing of what the future may have in store for us,’ answered the witness, ‘and a man cannot be said to “believe” in any theory without having reasonable grounds for his belief. In that sense I must answer your question in the negative.’

“ ‘Well, then, your Honor,’ exclaimed the attorney, ‘I object to this witness being sworn.’

“At this a murmur of indignation ran through the Court. The judge, addressing the attorney, protested against the course he was pursuing, and said it was an outrage to refuse to allow the witness to be sworn, nevertheless he was powerless to insist upon it as the law

was on the attorney's side. The fellow persisted, and as there was no other evidence, and the defendant swore positively that he had never received the money or affixed his mark to the note, my case was dismissed."

"Well," exclaimed Markham, "I am surprised that the people of the Province of Quebec are so much behind the age. The law you refer to was formerly in force in England, but was altered many years ago. It seems perfectly outrageous that any blaspheming scoundrel may be taken out of the penitentiary and admitted to give evidence, whilst a man of irreproachable life and character can be rejected because he is too honest to profess what he does not conscientiously believe. It is not the province of the law to uphold or discountenance any special views of religion, but simply to do all in its power to insure the truthfulness of the witnesses. It is preposterous that the law should persist in the theory that a witness is necessarily unworthy of belief because his religious views are not orthodox."

"I now come," said Fitzherbert, "to the last of my troubles. I was, as you may imagine, thoroughly disheartened by my repeated losses and was thinking of applying for a situation as my means had all melted away, and I had recently married, when a relation died, leaving me a legacy of \$5,000, which was promptly remitted to me. Shortly afterwards, and before we had been married three months, I grieve to say my wife died.

Having now no ties and no investments in the country, I determined to return to England and take my \$5,000 with me. I engaged my passage in the Parisian, which sailed last month. I had packed my trunks and was on the point of starting, when a bailiff stepped up to me and having ascertained my name, served a notice upon me by which I found that a man, of whose existence I had never heard, claimed one-half of my \$5,000 and of any other property which I might have acquired during my married life. I was informed by him that unless I gave security for payment of what should appear to be due to this man I should not be allowed to sail, and that he was armed with a writ of 'capias' to arrest me. I telegraphed to a lawyer in the city to come to me immediately, and on hearing my story he said I could not possibly leave without having the claim disposed of, and that any judge would maintain the 'capias.' The end of it was that the Parisian sailed without me, and my lawyer proceeded to investigate the claim.

"It appeared that the claimant was a very distant relative of my wife's. He lived in one of the Western States and had never been in Canada in his life. My wife had always told me she had no relations.

By the merest accident this man seeing the notice of my wife's death in the newspaper, and attracted by the name (her maiden name having been given) and knowing something of the eccentricities of French law, had instructed an attorney to ascertain whether there was anything to be got out of me.

"To make a long story short, the law maintained the claim on the ground that as I had no marriage settlement, one-half of all the property I acquired during my wife's life vested in her, and at her death (as she left no will) devolved upon her relations, however remote."

"Why you fairly astonish me," exclaimed Markham. "Your narrative sounds like a romance of the most improbable character. Surely if such laws exist, the people must wish to have them reformed?"

"You are mistaken," replied his friend. "It is true no such laws could exist in an English community, but in the Province of Quebec the population is mainly French. The civil law is based upon the old French laws and customs, and I imagine the French community would regard any attempt at reform as an encroachment on their guaranteed rights and privileges."

