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The Civil Law in Quebec and Louisiana*

E. FABRE-SURVEYER†

The position of the civil law in Quebec might well have been very different had not the Code of Louisiana been a successful experiment. In Louisiana the civil law was codified in 1808; the Civil Code of Quebec did not come into existence until 1866. Hence the experience of Louisiana in codifying and applying French civil law in America, extending over half a century, was of inestimable benefit to the framers of the Quebec Code. It is true that during the first half of the nineteenth century other countries had modelled their law on the Civil Code of France; but distance and difference of language made their work less valuable to Quebec than the experience of Louisiana.

In 1857, the law decreeing the preparation of a civil code for Quebec stated that "the great advantages which have resulted from Codification, as well in France as in the State of Louisiana, and other places, render it manifestly expedient to provide for the Codification of the Civil Laws of Lower Canada."¹ The Civil Code of Quebec may, therefore, be said to be a younger brother of the Louisiana Code—at least of the Louisiana Civil Code of 1825.

It is interesting to recall that nearly fifty years elapsed between the first codification in Louisiana and the attempt of Quebec (then called Lower Canada) to imitate the example. In part, this delay may be explained by the fact that after 1840, a legislative union with Upper Canada was forced upon Lower Canada and the latter had not thought fit to assert its legislative independence. The Civil Code of Lower Canada (Quebec), begun in 1857, became law in 1866.

* This article is based on a paper which was read at a Symposium on "The Position of the Civil Law in America" held on April 8, 1938, at the Dedication of Leche Hall, Law Building of the Louisiana State University Law School.

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1. "An Act Respecting the Codification of the Laws of Lower Canada relative to Civil Matters and Procedure." June 10, 1857, 20 Vict., c. 43, preamble (Consolidated Statutes for Lower Canada, c. 2).

I. CODIFICATION

Striking similarities as well as important differences exist between the codifications of Quebec and Louisiana, and some of these are indicated in the following pages.

A. SIMILARITIES

In the first place, both Codes purport to be, not pure innovations, but, in the main, a reduction into code form of pre-existing laws. In Louisiana, the juriconsults appointed by the Legislature in June, 1806, were instructed to "make the civil law by which this territory is now governed, the ground work of said code."² In July, 1817, the Louisiana Supreme Court stated: "It must not be lost sight of that our civil code is a digest of the civil laws, which were in force in this country, when it was adopted; that laws must be considered as untouched, whenever the alterations and amendments, introduced in the digest, do not reach them. . . ."³

Likewise, the Resolution of the Louisiana Legislature, passed on March 14, 1822, provides for the appointment of juriconsults "to revise the civil code by amending the same in such a manner as they will deem it advisable, and by adding under each book, title, and chapter of said work, such of the laws as are still in force and not included therein. . . ."⁴

In Quebec, the preamble of the Act passed in 1857 ordering the drafting of a Code refers specially to the experience of Louisiana, and the Act further stated: "The said Commissioners shall reduce into one Code, to be called the *Civil Code of Lower Canada*, those provisions of the Laws of Lower Canada which relate to Civil Matters and are of a general and permanent character. . . ."⁵

Another point of resemblance between the Louisiana and Quebec codifications is that in both instances those who undertook the drafting of the respective codes found themselves under an obligation to make order out of chaos. An Act of the Louisiana Legislature, approved March 31, 1808, refers to "the confused state in which the civil laws of this territory were plunged by

2. La. Acts of 1806, p. 214; Tucker, *Source Books of Louisiana Law* (1932) 6 Tulane L. Rev. 280, 281.

3. *Cottin v. Cottin*, 5 Mart. (O.S.) 93, 94 (La. 1817).

4. La. Acts of 1822, p. 108; Tucker, *supra* note 2, at 286.

5. "An Act Respecting the Codification of the Laws of Lower Canada Relative to Civil Matters and Procedure." June 10, 1857, 20 Vict., c. 43, § 4 (*Consolidated Statutes for Lower Canada*, c. 2).

the effect of the changes which happened in its government," and seeks to collect the laws "in a single work, which might serve as a guide for the decisions of the court and juries without recurring to a multiplicity of books. . . ."⁶

On the state of the texts of laws in Quebec, M. Désiré Girouard (afterwards a member of the Supreme Court of Canada, and a historian of Cavalier de LaSalle), in 1859, while the Code was being prepared, said:

"One must admit that nothing is more difficult than the study of law in Canada. At the sight of the enormous folios which make the shelves of our libraries groan, in the presence of this mass of reports from the courts, and of these compilations of amended laws, one recoils at first in fright and discouragement; but if, recovering courage, one casts one's eye over all these volumes, what does one see? Here, a veteran French author, or 'arrétiste,' whose doctrine or decision is often based on laws then in force in France, but without application in Canada; there, long commentaries on some French Ordonnances, unregistered, or abrogated, by our statutes, and having, in consequence, no application in our courts. On one side the mass of authorities of the courts of England and of the United States, on another the Code Napoleon surrounded by its brilliant cortège of treatises, reviews, repertories and journals of jurisprudence. Farther off, the edicts, ordinances, judgments of the Superior Council of Quebec, the decisions of our courts, and, over and above all that, the complete collection of the acts and statutes of Lower Canada and of Canada. And it is to these diverse sources, it is in the middle of this confusion, that the Canadian legist must go to search for one solution of the problem which he pursues:—the rule which governs Lower Canada. Besides, there are differences in even the clearest conclusions, divergence in the opinions, and opposition in the doctrines on the most important and essential points of law.

"There is nothing more uncertain than the actual law of Lower Canada, nothing more confused than the state of Canadian law."

Both in Louisiana and in Quebec, therefore, the Civil Code put an end to a state of confusion.

6. La. Acts of 1808, pp. 120-128, cited in Tucker, *supra* note 2, at 282.

To point out more specific resemblances, or borrowings by Quebec from Louisiana, the following illustrations are given:⁷

1. *Prohibitive Laws.* The provision of the Code of Louisiana, regarding the nullity arising from a prohibitive law,⁸ has been embodied in the Quebec Code.⁹

2. *Absentees.* On this subject, the framers of the Quebec Code make the following remarks: "[The commissioners] submit the present title, in preference to that of the Code Napoleon, from which it differs in several respects; but it has much analogy to the code of Louisiana, from which are borrowed several of the articles."¹⁰ They refused, however, to follow the innovation of the Louisiana Code, with respect to the remarriage of the absentee's consort.¹¹

3. *Paternal Authority.* Articles 242 to 245 of the Quebec Code on the subject differ vastly from the provisions of the French Code; but are closely analogous to Articles 215, 216 and 218 of the Civil Code of Louisiana.¹²

4. In *Tutorship*, the commissioners took advantage of the Louisiana provisions¹³ as well as of the French¹⁴ to reduce the number of tutorships one may be bound to accept.¹⁵

5. *Corporations.* In drafting the title "Of Corporations," the Quebec codifiers sided with the framers of the Louisiana Code, against their critics, such as Anthoine de Saint-Joseph, who did not think that such a subject was properly dealt with in a civil code.¹⁶

6. *Servitudes.* Article 543 of the Quebec Code, which reads as follows:

7. These are repeated from Surveyer, Husband and Wife in Louisiana and Quebec (1928) 28 La. Bar Ass'n Rep. 55, 57-59. This paper was read at the Annual Meeting of the Louisiana Bar Association in Shreveport, Louisiana, April 14, 1928.

8. Art. 12, La. Civil Code of 1870.

9. Art. 14, Quebec Civil Code.

10. Report of the Commissioners for the Codification of the Laws of Lower Canada relating to Civil Matters (1865) (hereinafter referred to as the Report of Commissioners), Second Report, vol. I, pp. 167-169.

11. Report of Commissioners, Second Report, vol. I, pp. 171-173. Art. 80, La. Civil Code of 1870 was repealed by Act 357 of 1938; see discussion by Herbert and Lazarus, Louisiana Legislation of 1938 (1938) 1 LOUISIANA LAW REVIEW 80, 83-84.

12. Report of Commissioners, Second Report, vol. I, p. 203.

13. Art. 298, La. Civil Code of 1870.

14. Art. 435, French Civil Code.

15. Art. 276, Quebec Civil Code. Report of Commissioners, Second Report, vol. I, p. 211.

16. Report of Commissioners, Second Report, vol. I, pp. 229, 231.

"If the land becomes so enclosed in consequence of a sale, or of a partition, or of a will, it is the vendor, the copartitioner, or the heir, and not the proprietor of the land which offers the shortest crossing, who is bound to furnish the way, which is in such case due, without indemnity."

is an abridgement of Articles 701 and 702 of the Louisiana Code. France legislated in the same sense in 1881.¹⁷

7. *Obligations.* (a) The Quebec commissioners make the following remarks: "[Two articles,] not in the French code, have been added; the former relating to the effect of legal constraint, and the other to contracts for delivering persons constrained by third parties. They embody rules found in the Roman texts and in Pothier, and are also substantially in conformity with articles in the code of Louisiana."¹⁸

(b) With regard to the *actio pauliana*, they declare that they have tried to realize a happy medium between the French Code, which has only one article and the Code of Louisiana, which has no less than seventeen, and they devoted to the subject nine articles.¹⁹

8. *Sale.* Article 1525 of the Quebec Code:

"When several principal things are sold together as a whole, so that the buyer would not have bought one of them without the other, the latent defect in one entitles him to vacate the sale for the whole."

was inspired by Article 2518 of the Louisiana Civil Code of 1825.²⁰

9. *Mandate.* Article 1705 of the Quebec Code was likewise taken from Louisiana.²¹ It infers from the profession or calling of a mandatary, the extent of his powers.

10. *Suretyship.* Regarding the requisites of a surety, Article 3011 of the Louisiana Civil Code of 1825²² was adapted to the situation of Canada as it existed then, before Confederation.²³ Were

17. Art. 684, French Civil Code.

18. Arts. 998, 999, Quebec Civil Code. Report of Commissioners, First Report, vol. I, p. 12. The reference is to Arts. 1856-1858, La. Civil Code of 1870.

19. Report of Commissioners, First Report, vol. I, p. 14. The references are to: Art. 1167, French Civil Code; Arts. 1978-1994, La. Civil Code of 1870; Arts. 1032-1040, Quebec Civil Code.

20. Now Art. 2540, La. Civil Code of 1870. See Report of Commissioners, Fourth Report, vol. II, pp. 12-14.

21. Art. 2969, La. Civil Code of 1825; now Art. 3000, La. Civil Code of 1870. See Report of Commissioners, Sixth Report, vol. III, p. 10.

22. Now Art. 3042, par. 1, La. Civil Code of 1870.

23. Art. 1938, Quebec Civil Code. See Report of Commissioners, Sixth Report, vol. III, p. 42.

the Quebec text to be amended today, it would probably come still nearer to its Louisiana model.

11. *Expenses of Last Illness.* Following Louisiana,²⁴ Quebec limited the extent of this privilege. But here it copied Article 65 of the Code of the Roman States: "In case of chronic disease, the privilege applies only to the expenses during the last six months before the decease."²⁵

12. *Prescription.* Article 2183 of the Quebec Code, imitating Articles 3458 and 3459 of the present Louisiana Code, distinguishes acquisitive from extinctive prescription.²⁶

B. DIFFERENCES

Several important differences between the Quebec and Louisiana codifications should now be noted.

In the first place, Quebec did not borrow anything from the legislation of Spain—except perhaps what came through Louisiana from the Code of Practice. In the second place, neither did Quebec borrow from the law of those parts of France called "countries of written law." Hence, the Quebec Code contains no provisions regarding dowry, or marriage portion, of which Judge Saunders said: "In Louisiana, we imported the law on the subject of dowry almost bodily from France, with all of its minute provisions, and we have it today, although it is of no importance."²⁷ Strangely enough, however, in mistaken anticipation of legislation elsewhere in the Code, the word "dowry" appears four times²⁸ in sections which were drawn up before the preparation of the title "Of Marriage Covenants."

Quebec Sources

(a) In the main, Quebec followed the Custom of Paris which had been introduced in Canada in 1664; all other customs had been forbidden.²⁹ But, out of the 326 articles of the Custom of Paris, 125 were not law in Lower Canada when codification was ordered. The Custom of Paris had 16 titles. Titles 1 and 2, "*Des Fiefs*" and "*Des Censives et des Droits Seigneuriaux*," had been

24. Art. 3200, La. Civil Code of 1870.

25. Art. 2003, Quebec Civil Code. See Report of Commissioners, Sixth Report, vol. III, pp. 54, 164.

26. Report of Commissioners, Third Report, vol. I, p. 413.

27. Saunders, Lectures on the Civil Code (1925) 81.

28. Art. 208, Quebec Civil Code (separation from bed and board); Art. 830 (gifts); Art. 954 (substitutions); Art. 2234 (prescription).

29. Lemieux, *Les Origines du Droit Franco-Canadien* (1900) 311. This may even have been in 1637: Neatby, *The Administration of Justice under the Quebec Act* (1837) 9, n. 13.

abolished by the Seigniorial Act of 1854; title 7, "*Du Retrait Lignager*" had been repealed in 1855; and title 12, "*De Garde Noble et Bourgeoise*," applying specially to Paris, had never been in force in Canada. The first Canadian edition of the Custom of Paris, "*Extrait des Messieurs*," omitted sixteen articles, two of which were reinstated in T. K. Ramsay's *Notes on the Custom of Paris*, published in 1863. Twenty-five other articles, scattered through the twelve remaining titles of the Custom, were omitted by Mr. Ramsay (afterwards Mr. Justice Ramsay) as having been inserted by mistake in the first Canadian edition of the Custom, or as having been abolished by subsequent legislation. If we bear in mind that Mr. Ramsay was for more than two years one of the secretaries of the commission charged with the preparation of the Civil Code of Quebec, we may attach some importance to his statements.

(b) Another source of the Canadian law was found in several of the Ordinances of the Kings of France. Some of these ordinances had been registered with the Sovereign Council, or Superior Council of Canada, and consequently may be resorted to as part of unrepealed legislation. Some ordinances, such as the "Ordonnance de la Marine," were followed in Canada without having been registered there.³⁰ Other ordinances, although never having had the force of law in the country, were consulted by the framers of the Quebec Code; one of these was the "Ordonnance des Donations."

(c) From England, Canada had taken the unlimited freedom of disposing by will;³¹ also a certain number of other provisions, mostly relating to commercial law or to practice.

(d) As to the innovations introduced by the Code, they are best explained by a text writer who practiced both before and under the Code:³²

"Four main objects stand out in the new legislation, reflect its spirit and summarize its general design.

30. The question of the necessity of the registration of ordinance is stated, pro and con, by J. Delalande, *Le Conseil Souverain de la Nouvelle France* (1927) 273-330.

31. The absolute freedom of willing was introduced by the Quebec Act (14 Geo. III, [1774] c. 83, art. 10) and reasserted in provincial legislation in 1801 (41 Geo. III, [1801] c. 4). This did away with the legitime or forced heirship (provided for in Arts. 1493 et seq., La. Civil Code of 1870). The provisions of the "Edit des secondes nocés," limiting the capacity of disposition in the event of a second marriage, were wiped away by the Code.

32. 1 Loranger, *Commentaire sur le Code Civil du Bas-Canada* (1873) 79-80. (Translation supplied.)

"The drafters of the Code have based their reforms upon four fundamental principles which are the very foundation of their work. These principles are:

"1. Unlimited liberty of contracting, within the bounds of morality and public order, and, as sanction, the irrevocability of contracts except in accordance with the stipulations of the original agreement; the absolute right of the owner to deal with moveable property, the conveyance of immoveable property and the perfecting of the contract by consent alone.

"2. The introduction of uniformity into the law by the coordination of its different branches; the application of the same principle to analogous cases, a strict deduction of principles in cases where the law is silent or contradictory, and the substitution of an absolute legislation for an arbitrary one; in other words, the substitution of a positive jurisdiction for the discretionary power of the Courts.

"3. The simplifying of the rules which give rise to rights created by law, and which govern the legal transmission of property in the absence of any formal disposition thereof, the forms of contracts, and the creation as well as the exercise of legal rights.

"4. Finally, provision for giving publicity to charges which, if concealed, might cause prejudice both to third persons and to the contracting parties.

"Each of the amendments which we have enumerated will be found to fall, by a natural affinity, into one of these four classes."

By way of illustration, it may be indicated that, as a result of the first class of changes: lesion ceased to be a cause of nullity of contracts between persons of full age;³³ gifts are no longer subject to revocation by reason of the subsequent birth of children to the donor;³⁴ presumptions of undue influence and want of will, arising from the relation of priest or minister, physician, advocate or attorney, have disappeared as regards both gifts³⁵ and wills.³⁶

33. Art. 1012, Quebec Civil Code. See Report of Commissioners, First Report, vol. I, pp. 12, 47.

34. Art. 812, Quebec Civil Code. See Report of Commissioners, Fifth Report, vol. II, pp. 165, 333.

35. Art. 769, Quebec Civil Code. See Report of Commissioners, Fifth Report, vol. II, pp. 155, 315.

36. Art. 839, Quebec Civil Code. See Report of Commissioners, Fifth Report, vol. II, pp. 171, 343.

C. RELATION TO CODE NAPOLEON

It goes without saying that both Louisiana and Quebec owe a great deal to the Code Napoleon. Whether or not the Code of Louisiana was based on the first draft of the French Code,³⁷ there is no doubt that the Louisiana work differs from the French in a great many respects, due to the incorporation of Spanish law. It is also different in form, since it comprises over a thousand more articles,³⁸ a great many of which contain definitions and explanations which in France are found in text books.

In Quebec, on the other hand, the framers of the Code were instructed to adhere closely to the form of the Code Napoleon, and the law provided: "The said Code(s) shall be framed upon the same general plan, and shall contain, as nearly as may be found convenient, the like amount of detail upon each subject, as the French Code(s). . . ."³⁹ That this object was accomplished appears from the fact that where the Code Napoleon has 2281 articles, the Quebec Code has 2277 (exclusive of articles dealing with Commercial Laws).

Practically all editions of the Quebec Civil Code contain a table of concordance between the Quebec and French Codes, and no Quebec commentary is complete without a comparison with the latter.

II. FRENCH COMMENTARIES AND DECISIONS

It may be interesting to examine what part French text writers and decisions play in the interpretation of the Louisiana and Quebec Codes.

In 1871, Honorable E. T. Merrick, late Chief Justice of the Supreme Court of Louisiana, said:

"... although the French laws are esteemed foreign laws which require to be proven when brought in controversy in our courts, yet the similarity of the French text of our late codes to the Napoleon code has been so great, that commentators on the French code, as well as the decisions of the court of cassation, have exercised great influence on controversies arising under our own code. Perhaps one reason has been that we

37. Tucker, *supra* note 2, at 283.

38. The Louisiana Civil Code has 3556 articles; the French Civil Code has 2281 articles.

39. "An Act Respecting the Codification of the Laws of Lower Canada relative to Civil Matters and Procedure." June 10, 1857, 20 Vict., c. 43, § 7 (Consolidated Statutes for Lower Canada, c. 2).

have no commentaries of our own further than some annotated codes, and a work on criminal law and digests of the decisions of the courts, owing to the limited sale which has followed all similar publications. Hence French authors are an essential part of a lawyer's library."⁴⁰

Whether this is equally true in Louisiana today is for Louisiana lawyers to decide. I venture to say, however, that no French court or text writer would countenance the decision given in *Moulin v. Monteleone*.⁴¹

Modern French text-writers have probably played, and are still playing, a more important part in the legal life of Quebec than in Louisiana. When the Louisiana Civil Code of 1808 was being prepared, there were practically no commentators of the Code Napoleon. Even when the Code of 1825 was promulgated, there were only three commentators:⁴² (1) Maleville,⁴³ soon to be eclipsed by (2) Toullier,⁴⁴ who stopped at Article 1851 of the French Code (later completed by Duvergier), and (3) Delvincourt,⁴⁵ whose work is somewhat elementary. Thirty-two years elapsed between the promulgation of the Louisiana Civil Code of 1825 and the appointment of the Quebec codifiers. In the meantime such works as those of Troplong⁴⁶ and Demolombe,⁴⁷ not to speak of special treatises, had appeared, and the Quebec codifiers often took advantage of the criticisms made by these writers of the text of the Code Napoleon. A monumental work, *La Bibliothèque du Code Civil*, by the late Mr. Justice Charles C. de Lorimier and Charles A. Vilbon,⁴⁸ contains the text of our Code in French and in English, the official reports of the codifiers, the citation, at length, of the authorities to which the latter refer as well as a good many other authorities. It also contains tables of

40. Merrick, *The Laws of Louisiana and their Sources* (1871) 1 *Revue Critique* 152, 157; also in (1871) 3 *Albany L. J.* 268, and in (1890) 29 *Am. L. Reg.* 1, 6 (a paper read on January 23, 1871, before the New Academy of Sciences, New Orleans).

41. 165 *La.* 169, 115 *So.* 447 (1928); see Comment (1938) 1 *LOUISIANA LAW REVIEW* 204.

42. Tucker, *supra* note 2, at 290.

43. Maleville, *Analyse raisonnée de la Discussion du Code civil au Conseil d'État* (1805), 4 v. (As the title indicates, this was merely an analysis of legislative discussions.)

44. Toullier, *Le Droit Civil Français* (1 ed. 1812), 14 v.

45. Delvincourt, *Cours de Droit Civil* (1 ed. 1813), 2 v.

46. Troplong, *Le Droit Civil Expliqué*. The different treatises total 27 volumes and were published in several separate editions between 1833 and 1872.

47. Demolombe, *Cours de Code Napoléon* (1 ed. 1845), 31 v.

48. De Lorimier and Vilbon, *La Bibliothèque du Code Civil* (1871-1890), 21 v.

concordance between our Civil Code and the codes of France and Louisiana.

As a matter of fact, the modern tendency in Quebec is to keep more and more in touch with French authors and decisions. In 1934, a Congress of French speaking jurists was held in Montreal to which the Government of France sent as official representatives Messrs. Henri Capitant, René Demogue (both of whom have passed away very recently) and Louis Josserand, then Dean of the Law Faculty of Lyons and now a Judge of the Cour de Cassation.⁴⁹ The late Mr. Demogue—who, with Mr. Pierre Lepaulle, had been analyzing Quebec decisions in the *Revue Trimestrielle* of Paris since 1924—came again to Montreal and Quebec in 1937 to deliver a series of lectures on the civil law. In the fall of 1938, Mr. Olivier Martin, member of the Paris Law Faculty and author of a *History of the Custom of Paris*, also delivered a series of lectures. Moreover, the "Henri Capitant Association for French Juridical Culture," an offshoot of the Montreal meeting of 1934, will hold its second annual meeting at Quebec and Montreal in August 1939—a meeting which would not be complete without the presence and assistance of Louisiana jurists.

III. POST-CODIFICATION DEVELOPMENTS

Now, in what sense has the civil law of Louisiana and Quebec evolved since the respective laws were codified?

A. COMMON LAW INFLUENCES

In a recent article, Mr. Gordon Ireland pointed out a considerable number of common law influences which had manifested themselves in the legislation of Louisiana, particularly since 1904, in several ways:⁵⁰

(a) by adopting 26 of the so-called Uniform Acts⁵¹ which are prepared and proposed by a Board of Commissioners from all the States with a view to better interstate relations and increased uniformity among the laws of the various States;

49. The proceedings of the Congress, together with contributions from sixteen civil law countries, have been published: *Le Droit Civil Français, Livre-Souvenir des Journées du Droit Civil Français* (1936).

50. Ireland, *Louisiana's Legal System Reappraised* (1937) 11 *Tulane L. Rev.* 585, 593. But see the reply in Symposium, *A Reappraisal Appraised: A Brief for the Civil Law of Louisiana* (1937) 12 *Tulane L. Rev.* 12.

51. Ireland, *supra* note 50, at 593, notes 57-63. These include: Bills of Lading, Business Corporations, Fiduciaries, Motor Vehicles, Stock Transfer, Warehouse Receipts, and Foreign Wills.

(b) by enacting some statutes "based on laws previously enacted in other states, and . . . for the most part founded on common law concepts and methods;"⁵²

(c) by recurrently considering legislation on certain "subjects already affected with a common tinge."⁵³

With regard to these subjects, Quebec has always been on the defensive. Ever since the Canadian Bar Association was formed in 1913, with objects similar to those of the American Bar Association, one of its objectives has been to secure uniform legislation, especially in commercial matters, in so far as the same is consistent with the fundamental laws of each province. Quebec has always refused to be represented in the Conference of Commissioners appointed to submit uniform laws to the Association, for acceptance by the various provinces. In spite of the Quebec aloofness, the commissioners have submitted at least two laws which agree with the principles of the civil law: one on the legitimation of children by subsequent marriage, and one dividing damages in cases of common fault. These laws are now in force in several provinces of the Dominion. How many more civil law provisions would have been adopted elsewhere in Canada, had Quebec adopted a different attitude, can only be surmised.

B. MODIFICATIONS

Amendments to the Civil Code of Quebec have been few in number, especially as compared with the Code of Practice, or with the Criminal Code which is a subject of federal legislation. From 1866 to 1879, only eleven articles had been modified, that is an average of less than one a year; seven of these articles dealt with the cadastre and the registration of real rights, one with servants' wages, one with pawning, one with separation from bed and board, and one with the appointment of curators to substitutions, an institution preserved in Quebec⁵⁴ although prohibited in France⁵⁵ and in Louisiana.⁵⁶

In 1879, an act respecting trusts, different in some respects from the English law, but manifestly inspired by it, was adopted;

52. *Id.* at 593, notes 64-66. E.g., Chattel Mortgage, Public Service Commission and Workmen's Compensation Acts.

53. *Id.* at 593, notes 67-69. E.g., Partnership Act, an Oil, Gas, and Mineral Code and the Uniform Sales Act.

54. Arts. 925 et seq., Quebec Civil Code. See Marcel Faribault, *De la Fiducie* (1936) n° 38.

55. Art. 896, French Civil Code.

56. Art. 1520, La. Civil Code of 1870; Art. 1507, La. Civil Code of 1825.

this was incorporated in the Code in 1886.⁵⁷ Provisions regarding interdiction for drunkenness and for the abuse of narcotics were also inserted in the Code.⁵⁸ In 1897, continuation of community was abolished, and replaced by the legal usufruct of the surviving consort.⁵⁹ In 1904, a slight modification was made in Article 1301, regarding the married woman's incapacity to become surety for her husband.

In 1906, the abolition of civil death and its replacement by civil degradation necessitated the repeal of several provisions of the Code. The amending Act,⁶⁰ however, has not yet been incorporated into the Code. In 1911, the Legislature adopted a Bulk Sales' Act, an imitation of legislation passed in other provinces, and incorporated it in the Code.⁶¹ Workmen's privileges have been legislated upon at various periods with consequent amendments to the Code.⁶² A law passed in 1915 has modified the Code with regard to the rights of succession of the surviving consort, who is now a regular successor, instead of an irregular one.⁶³ This change was similar to the rule indicated in Article 724 of the French Code.⁶⁴ The share of the surviving consort varies according as the deceased is or is not survived by children, ascendants, brothers or sisters, nephews or nieces.

In 1931, legislation extended considerably the rights of the married woman, without, however, giving her full capacity.⁶⁵ She may now be a witness to a notarial will as well as to a will in the English form, and she may form part of family councils. She is eligible for tutorship, but may resign it *ad nutum*. Her husband can no longer dispose, by gratuitous title, of the real estate

57. Arts. 981a et seq., Quebec Civil Code. (42-43 Vict., [1879] c. 29.)

58. Arts. 336a et seq., 336r, Quebec Civil Code.

59. Arts. 1323 et seq., Quebec Civil Code, as re-enacted by 60 Vict., [1897] c. 52.

60. 60 Vict., [1897] c. 60, § 38.

61. Arts. 1569a et seq., Quebec Civil Code, as enacted by 1 Geo. V, [1911] c. 39, and 4 Geo. V, [1914] c. 63.

62. Arts. 2013 et seq., Quebec Civil Code, as enacted, replaced or amended by 57 Vict., [1894] c. 46; 59 Vict., [1895] c. 42; 4 Edw. VII, [1904] c. 43; and 7 Geo. V, [1916] c. 52.

63. Arts. 624a et seq., Quebec Civil Code, added by 5 Geo. V, [1915] c. 74.

64. Louis Antier, *Le Droit Civil du Bas Canada* (1923) 106, 107.

In Louisiana, Article 915 of the Civil Code of 1870, as amended by Act 408 of 1938, provides that a surviving spouse succeeds to the undisposed portion of the community property "as a legal heir by operation of law, and without the necessity of compliance with the forms of law provided in this chapter for the placing of irregular heirs in possession of the successions to which they are called." However, this applies only to community property and not to the separate property. See Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 *LOUISIANA LAW REVIEW* 80, 86.

65. 21 Geo. V, [1931] c. 101.

of the community, or of a substantial portion of the chattels of the community, except for the establishment of the common children. He cannot alienate the chattels while reserving for himself the enjoyment thereof. The married woman, even common as to property, may keep for herself her earnings, invest them, and sue without authorization to recover the proceeds thereof. She may also sue for slander in her own name, if the husband refuses to bring the suit. But suits for personal injuries are still brought by the husband if there is community of property.

In addition to these modifications of the Code, laws have been passed from time to time, dealing with subjects which may properly be inserted in a code, such as adoption, workmen's compensation, collective labor agreements, minimum wages, and other subjects which were grouped in the Revised Statutes of 1909 under the heading of "Matters relating to the Civil Code"⁶⁶ and now form a number of chapters at the end of the third volume of the Revised Statutes of 1925 (now being revised again).

C. ORIGINAL TEXTS—FRENCH AND ENGLISH

Finally, it may be of interest to say a few words about the relative importance of the French and English texts of the Louisiana and Quebec Codes.

The Code of Louisiana was originally written in French, and the Louisiana Supreme Court once said: "The definition relied on from the English side of one of the articles of the Code proves nothing but the ignorance of the person who translated it from the French."⁶⁷ And, in spite of the fact that the Louisiana Civil Code of 1870 was promulgated in English only, it has very recently been stated that "Today the French text prevails where there is a conflict between the two texts."⁶⁸

The position in Quebec is slightly different. While most of the work was done in French, some parts of the Code were originally drafted in English, namely, Book IV dealing with Commercial Law, and the following subjects in Book III, to-wit: Obligations, Sale, Exchange, Lease and Hire, Mandate, Loan, Deposit, Partnership, Transactions, Gaming Contracts and Debts, and Pledge.⁶⁹ The respective value of the two texts was settled by Article 2615:

66. Rev. Stat. Quebec (1909) §§ 7250 et seq.

67. *Egerton v. The Third Municipality of New Orleans*, 1 La. Ann. 435, 437 (1846).

68. Tucker, *supra* note 2, at 291.

69. McCord, *The Civil Code of Lower Canada* (1867), preface, pp. viii-ix.

"If in any article of this code founded on the laws existing at the time of its promulgation, there be a difference between the English and French texts, that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded; and if there be any such difference in an article changing the existing laws, that version shall prevail which is most consistent with the intention of the article, and the ordinary rules of legal interpretation shall apply in determining such intention."

In May, 1937, a law was passed giving prevalence to the French text, but that law was repealed in April 1938 and Article 2615 came to life again.

CONCLUSION

On the whole, the Civil Code of Quebec has given satisfaction. Mr. Thomas McCord, secretary of the Commission that drafted the code and afterwards a judge, wrote: "The English speaking residents of Lower Canada may now enjoy the satisfaction of at last possessing in their own language the laws by which they are governed, and the Province of Quebec will bring with her into the Confederation a system of laws of which she may justly be proud."⁷⁰

Commentaries on the Quebec Civil Code have been published by the Honorable Mr. Justice Mignault⁷¹ and Sir François Langelier.⁷² A commentary by the late Mr. Justice T. J. J. Loranger only reached its second volume.⁷³ Special treatises include Sirois' *Tutorships and Curatorships*,⁷⁴ Billette's *Gifts*,⁷⁵ and others; in addition there have been a number of theses for the doctor's degree. The second part of the *Livre-Souvenir des Journées du Droit Civil Français*, the result of the first meeting of the French speaking jurists at Montreal in 1934,⁷⁶ contains comparisons between the Code of Quebec and that of France on almost every subject. English speaking commentators are coming to the front. Three volumes on *Conflict of Laws* by W. S. Johnson, K.C. (1934),

70. Id. at ix.

71. Mignault, *Le Droit Civil Canadien* (1895-1916), 9 v.

72. Langelier, *Cours de Droit Civil de la Province de Québec* (1905-1911), 6 v.

73. Loranger, *Commentaire sur le Code Civil du Bas Canada* (1873, 1879), 2 v.

74. Sirois, *Tutelles et Curatelles* (1911), 1 v.

75. Billette, *Traité Théorique et Pratique de Droit Civil Canadien, Donations et Testaments* (1933), 1 v.

76. *Supra* note 51.

as well as the earlier work on the same subject by E. Lafleur (1898), two theses entitled *Of Offenses and Quasi-Offenses* by G. V. V. Nicholls (1938) and H. Carl Goldenberg (1935), a third edition of *Snow's Landlord and Tenant in the Province of Quebec* by Lovell C. Carroll (1934), and others, are valuable contributions to the legal bibliography of Quebec.

The Supreme Court of Canada, composed like that of the United States of judges from various parts of the country, has departed in recent years from its tendency of trying to assimilate the laws of the various provinces. Its present Chief Justice, Sir Lyman Duff, and his predecessor, the late Honorable F. A. Anglin, deserve the gratitude of the Quebec Bar for their attitude in that respect. The latter addressing the Junior Bar of Quebec, a few years ago, spoke as follows:

"In the civil code, you possess a precious heritage. Yours is indeed a great and noble responsibility: the thought of seeing to it that the administration of that code is worthy of its conception and shall reflect no discredit on the genius and ability of the great juriconsults who produced it. Would that this excellent and scientific body of law, so detailed and so logically complete, were better known throughout the other provinces of Canada!"⁷⁷

Quebec and Louisiana jurists have, or should have, a common object: to preserve jealously the laws which distinguish them from the other parts of their countries, and to take advantage of the great efforts made by civilians the world over in order to preserve and improve their laws. Affinities of origin and of language should bring them closer together, that they may unite their efforts towards their common end.

77. Anglin, *Stare Decisis* (1922) 31. Part of this address is incorporated in Anglin, *Some Differences between the Law of Quebec and the Law as Administered in the other Provinces of Canada* (1923) 1 *Can. B. Rev.* 33.