

MORTMAIN LAWS OF QUEBEC.

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Considerable doubt and uncertainty exists at the present time with regard to the Mortmain Laws of the Province of Quebec, especially since the passing in 1918 of the Act 8 Geo. V., c. 77, and a short survey of the statutes and jurisprudence may not be out of place.

Articles 366 and 366*a* of the Civil Code, dealing with the disabilities of corporations, read as follows:—

“366. The disabilities arising from the law are:

“1. Those which are imposed on each corporation by its title, or by any law applicable to the class to which such corporation belongs;

“2. Those comprised in the general laws of the country respecting mortmains and bodies corporate, prohibiting them from acquiring immoveable property or property so reputed, without the permission of the Crown, except for certain purposes only, and to a fixed amount and value;

“3. Those which result from the same general laws imposing, for the alienation or hypothecation of immoveable property held in mortmain or belonging to corporate bodies, particular formalities, not required by the common law.

“366*a*. All corporations which, under the provisions of their charters or of the law, cannot acquire real estate, except to a limited amount, have the right, whenever they dispose of or alienate any real estate belonging to them, to apply the price thereof to the acquisition of other real estate, and also to receive the revenues thereof and to employ the same for the objects for which they were constituted.”

Article 366 implies that there already existed, at the time the Civil Code came into force (August 1st, 1866), among “the general laws of the country” a mortmain law prohibiting corporations from acquiring immoveable property without the permission of the

Crown, except for certain purposes. The civil law of the Province before the Code was the Custom of Paris, together with various laws, edicts and ordinances promulgated in France under the French regime. By the edict of 1663, creating the Superior Council of New France, the Council was directed to judge "according to the laws and ordinances of the kingdom and to proceed as far as possible in the form and manner of the code of the Parlement de Paris." Certain of the edicts and ordinances promulgated in France were duly registered in Quebec and others were not, and it has long been a disputed question as to whether the edicts and ordinances which were not so registered in Quebec were ever in force in Quebec.

The Royal edict of November 25th, 1743, with regard to mortmain was, however, registered with the Council at Quebec, on the 5th October, 1744, so there can be no doubt that this edict was in force in Lower Canada and formed part of the law of that province.

Article 10 of this edict reads as follows:—

"Faisons défense a toutes les communautés religieuses et autres gens de main-morte, établis dans nos dites colonies, d'acquérir ni posséder aucuns biens immeubles, maisons, habitations ou héritages situés aux dites colonies ou dans notre royaume de quelque nature et qualité qu'ils puissent être si ce n'est en vertu de notre permission expresse, portée par nos lettres patentes enregistrées en forme prescrite."

(See Royal Edicts and Ordinances, Vol. 1, p. 537, Que. 1803). Freely translated, this reads as follows:

"We forbid all religious communities and other persons in mortmain established in our said colonies to acquire or possess any immoveable properties, houses, habitations or heritages situated in the said colonies or in our kingdom, of any nature or kind whatsoever, except by virtue of our express permission granted by letters patent duly enregistered."

Thus the law remained from 1743 until the coming

into force of the Civil Code in 1866, when these provisions were confirmed by Article 366 of the Code.

In 1873 the Privy Council was called upon to interpret the mortmain laws of the Province in the case of *Chaudiere Gold Mining Company v. Desbarats*. The judgment of the Privy Council is reported in L. R. (1873), 5 P. C. 277. The company appellant was an American corporation, incorporated under the laws of the State of Massachusetts. It was carrying on part of its business in the Province of Quebec and had purchased certain immoveable properties there. The Quebec Courts had held that the Company did not have power to acquire the properties in question, not having a license from the Crown to do so, and this was confirmed by the Privy Council, whose judgment in substance held that a corporation, whether trading or not, and whether foreign or domestic, was incapacitated from acquiring or holding lands in Lower Canada without the permission of the Crown being first obtained. The judgment of the Privy Council is based upon the authority of the edict of 1743 already referred to. This edict (and a similar one promulgated in France in 1749), was interpreted in this manner: "These edicts incapacitate corporate bodies from acquiring, as well as holding, lands." (See page 295). The judgment cited in this sense Pothier "*Traité des Personnes*," title 7, article 1. Their Lordships were of the opinion, and accordingly held, that these edicts applied as well to trading corporations as to religious communities, with regard to which they seem to have been specially promulgated. Their Lordships were apparently aided in coming to this conclusion by Article 366 of the Civil Code already cited, which makes no distinction between religious communities and trading or commercial corporations, but applies the mortmain disability to all corporations and bodies corporate alike.

Apparently as a result of this judgment of the Privy Council a remedial act was passed, 36 Vict., c. 25. Section 2, of this Act reads as follows:—

"Any corporation incorporated and existing in

Great Britain or in the United States of America, shall hereafter have the right to acquire and hold any lands and real estate in this province, for their occupation or the prosecution of their business only, any law to the contrary notwithstanding; provided, that no such corporation formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the corporation or by the individual members thereof, shall, without the sanction of the Lieutenant-Governor in Council, hold more than ten acres of land; but the Lieutenant-Governor in Council may, by license under the hand of the Provincial-Secretary, empower any such corporation to hold lands in such quantity and subject to such conditions as he shall think fit."

This Act was amended by the Act 51-52 Vict., c. 51, which added after the words "United States of America," the words "or in Canada," thus making the Act apply to companies incorporated in Canada, whether under Dominion or Provincial authority. This remedial Act, as so amended, was reproduced in Articles 4762 and 4763 of the Revised Statutes of Quebec of 1888. By the Act, 62 Vict., c. 42, it was enacted that the words "Great Britain" in Article 4762 should be read and interpreted as comprising and as having always comprised the Channel Islands and the Isle of Man. These Articles 4762 and 4763, with this amendment, are now contained in Articles 6112 and 6113 of the Revised Statutes of Quebec, 1909, which are still in force, with the difference that in the Revised Statutes of 1909 the words "lands and immoveable properties" are found, instead of "lands and real estate" contained in the original Act and in the Revised Statutes of 1888.

Under the authority of this remedial law so incorporated into the Revised Statutes of the Province, it was long considered settled that any company duly incorporated in Great Britain or the United States of America or in Canada, had power and capacity to acquire and hold in the Province of Quebec lands and

immoveable properties for its occupation or for the prosecution of its business.

There was no change in the law from the passing of this remedial statute in 1872 apart from the amendments noted, until the enactment in 1918 of the Act, 8 Geo. V., c. 77. This Act, entitled "An Act respecting the acquisition and alienation of immoveable property by corporations and persons in mortmain," has caused no little uncertainty as to its purpose and effects. The Act reads as follows:—

"1. The Lieutenant-Governor in Council may, on petition:

"a. Grant to persons in mortmain and to corporations whose capacity in this respect is limited, authorization to acquire and hold immoveable property; and

"b. Grant to persons in mortmain authorization to alienate and hypothecate their immoveable property when such authorization is required.

"2. The authorization shall be granted by means of:

"a. A special permit issued on the application of a person in mortmain or of a corporation—conferring on the person in mortmain or the corporation holding the same, the capacity required with respect to one or more immoveable properties designated therein; or

"b. A general permit, issued only on the application of a joint stock corporation incorporated for commercial or other purposes—conferring upon the corporation holding it the same capacity respecting immoveable property as is possessed by a corporation incorporated by letters patent granted by the Lieutenant-Governor of the Province."

Articles 3 and 4 relate to the procedure to be adopted to obtain such a license, and Article 5 reads as follows:—

"Every acquisition and alienation of immoveable property, and every hypothec given before the coming into force of this Act, by persons in mort-

main or corporations without authorization in cases where authorization was required, shall be valid, provided they are otherwise legal, if a special permit relating thereto or if the general permit mentioned in paragraph *b* of section 2 of this Act is issued in virtue of the above provisions.”

The provision of Article 5 with regard to the effect of previous acquisitions of immoveable properties by corporations without authorization has been extended by subsequent acts. The Act, 11 Geo. V., c. 92, provides:—

“1. Any other provision to the contrary notwithstanding, every acquisition and alienation of immoveable property, and every hypothec given before or within twelve months after the coming into force of this Act by a person in mortmain or a corporation without authorization in cases where authorization is required, shall be valid, provided they are otherwise legal, if a special permit relating thereto as provided by the Act, 8 Geo. V., c. 77, or if the general permit mentioned in paragraph (*b*) of section 2 of the said Act is issued in virtue of the provisions thereof.

“2. Every permit, either special or general, issued after 9th February, 1918, but before the coming into force of this Act, in accordance with the provisions of the said Act, 8 Geo. V., c. 77, referred to in section 1 above, shall cover every acquisition or alienation of immoveable property, and every hypothec made or granted by a person in mortmain or by a corporation since 9th February, 1918, but before the issue of a permit, special or general, as the case may be.”

The Act, 12 Geo. V., c. 89, is similar to the last mentioned Act, and extended the time for a further 12 months.

It is difficult to find in the Act, 8 Geo. V., c. 77, anything changing the substantive law of the Province as regards mortmain. The Act merely provides that licenses in mortmain may be issued to corporations whose capacity in that respect is limited, and provides

the necessary machinery previously lacking by which the Lieutenant-Governor in Council may grant such licenses. Provision is made for the issue of either a *special permit* authorizing the holding of one or more immoveable properties specially designated therein, or a *general permit* conferring upon the corporation obtaining it the same capacity respecting immoveable property as is possessed by a corporation incorporated by letters patent granted by the Lieutenant-Governor of the Province. If we look at the Companies Act (10 Geo. V., c. 72), we find that Article 5975 reads as follows:—

“5975. The Company may acquire and hold moveable and immoveable property requisite for the carrying on of its undertaking, may sell and alienate such property, both moveable and immoveable, and hypothecate the latter, and shall forthwith become and be vested with all property and rights, moveable and immoveable, held for it up to the date of the letters patent, under any trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite or incidental to the carrying on of its undertaking.”

Article 6047 is a similar article applying to companies incorporated by special act of the Quebec Legislature.

What are the effects of the statutes and jurisprudence above cited? It is suggested that the following conclusions may be drawn:—

1. A company incorporated under the laws of Quebec may acquire and hold immoveable property *requisite for the carrying on of its undertaking or authorized by its charter*, and may sell, alienate and hypothecate the same. (Articles 5975 and 6047, Companies Act, above cited.)

2. Any corporation incorporated and existing in Great Britain, in the United States of America or in Canada, may acquire and hold any lands and immoveable property in the province for its occupation or the prosecution of its business only. (Article 6112, R. S. Q.,

1909, above cited). As regards Canadian companies, this would apply to companies whether incorporated under Dominion or Provincial legislation.

3. Any corporation incorporated and existing in Great Britain, in the United States or in Canada, which desires, and which has the capacity to acquire or hold immoveable property in the province otherwise than for its occupation or the prosecution of its business, must obtain a special license.

4. Any corporation incorporated elsewhere than in Great Britain, Canada or the United States, which desires to acquire and hold immoveable property in this province, must obtain a mortmain license, either general or special.

The question of what properties may be considered as requisite for the carrying on of the company's undertaking at once becomes a most important one. In this connection there is to be noted the case of *Hôpital du Sacre Coeur v. Lefebvre*, 17 Q. L. R. 35, Andrews, J., 1891, in which it was held:—

“A body corporate empowered by its charter to acquire property ‘for the use and objects of its incorporation’ is not limited in making a purchase of an immoveable by the nature of the latter or the use which has hitherto been made of it, and it is sufficient that such immoveable is susceptible of yielding revenue or value applicable to the use and objects of the corporation, to bring the purchase within the charter power.”

The words “requisite for the carrying on of its undertaking” and “for the prosecution of its business” are very similar and appear to have about the same meaning as the words “for the use and objects of its incorporation” which have been so interpreted.

It is beyond the scope of this article to deal fully with licenses to do business in the Province which are required of extra-provincial corporations by Article 6098 of the Revised Statutes of 1909. In substance, this article and the following articles provide that any company, except a Quebec or Dominion com-

pany, in order to do business in the province of Quebec, must obtain a license authorizing it to do so. An exception is made in the case of a company incorporated in any province which exempts Quebec companies from the necessity of obtaining such a license. Having obtained such a license, the company may "subject to the limitations and conditions of the license and the laws of this Province, and also subject to the provisions of its charter, acquire, hold, mortgage, alienate and otherwise dispose of immoveable property in the province, to the same extent as if incorporated by letters patent of the Lieutenant-Governor." (Article 6104.) This would seem to confer on the extra-provincial company power to hold lands requisite for the carrying on of its undertaking. But as British, American and Canadian companies already seem to possess this power, it would appear that only in the case of foreign corporations other than those mentioned, would this authorization confer any power which the corporation did not already possess under Article 6112.

The uncertainty which now exists as to the purport and effects of the Act of 1918, will no doubt be removed in time by a new mortmain Act which, if the trend of legislation elsewhere can be taken as a guide will probably revoke the exceptional privileges conferred on foreign companies by the Act of 1872. The power of the Quebec Legislature to require all companies, even Dominion companies, to take out a mortmain license can hardly be questioned, since the decision of the Privy Council in the case of the *Great West Saddlery Company v. The King* (58 D. L. R. 1).
