

judgment appealed from (9 B.C.R. 257) that the plaintiffs were bound to accept the lot which had been offered to and inspected by their agent in satisfaction of the debt and could not recover on the promissory note.

Pither v. Manley, 32 Can. S.C.R. 651.

ACCOUNT.

Action to account—Alternative condemnation to pay.]—The plaintiff in an action to account who prays that, in the alternative of failure by the defendant to account, he be condemned to pay a specified sum, is entitled, on establishing the accountability of the defendant, to a judgment accordingly. Hence, if the defendant, examined as a witness as to his accountability, produces an account and is permitted to offer explanations on it, the Court will not thereby be justified in reducing the alternative condemnation prayed for, to the balance shown in the account so produced. Such a power vests in the Court only after a regular contestation of an account filed. *McCallum v. Bangs*, 37 Que. S.C. 407.

Action for—Onus—Particulars.]—In an action in reddition de compte by a company against its president it is for the defendant who alleges that the board of directors of the plaintiff is not complete to prove it. The plaintiff, which demands that in default of rendering an account the defendant be condemned to pay a certain amount which it has been informed he has received under certain contracts, is not bound to state at what date and from what persons such sum was received.

Temiscouata Railway Co. v. Macdonald, 3 Que. P.R. 462 (S.C.).

—Reddition de compte—Omissions—Incidental demand—Arts. 516-522 C.C.P.]—Omissions made in an action en reddition de compte may, notwithstanding the provisions of Arts. 516 and 522 C.C.P., be the object of an incidental demand.

Roe v. Hood, 4 Que. P.R. 333 (Sup. Ct.).

—Reddition de compte—Delay—Death of accounting party—Suspension of delay—Acquiescence—Reprise d'instance—Arts. 267-71, 605 C.C.P.]—On Nov. 16th, 1901, a judgment condemned the defendant to render to the plaintiffs within thirty days an account of a quantity of wood he had disposed of for the latter, and in default that he be and remain condemned to pay to the plaintiff \$9,000 to compensate him for the balance, with interest and costs of all the proceedings. On Nov. 30th, 1901, defendant died, leaving his wife his universal legatee. The fact of his death was not entered on the record. On December 2nd, 1901, the universal legatee paid the cost of the ac-

tion. On January 13th, 1902, the plaintiff caused the judgment of Nov. 16th to be served on the universal legatee with a demand for payment of the sum of \$9,000 within eight days or otherwise the judgment would be executed against her. On Jan. 21st the universal legatee presented a petition, alleging the death of her husband, her status as universal legatee, and requesting permission to take up the instance and carry on the necessary proceedings of the original action. The plaintiff pleaded that, the thirty days having expired, the judgment as to the \$9,000 had become final and executory; that the petitioner had acquiesced in the judgment of Nov. 16th by paying the costs on Dec. 2nd, and that there was no instance to take up:—Held, (1) that the condemnation for the \$9,000 was not acquiesced by the plaintiff at the time of defendant's death since it could only come into existence at the end of the thirty days, and only on default to file the account within that delay. (2) That on the death of the defendant during the thirty days the cause was not pending as to the \$9,000. (3) That the death of defendant suspended the delay of thirty days, as a dead man cannot render an account, and this is not a case within Arts. 268 and 269 C.C.P., which provides that proceedings are valid up to the day of notice of the party's death, for there were no proceedings against the deceased after his death. (4) That the universal legatee, in paying the costs of the action on Dec. 2nd, acquiesced in the judgment of Nov. 16th, but did not acquiesce in the default in rendering an account and paying the \$9,000. (5) That she was in time to take up the instance where it stood on defendant's death. (6) *Quære*. What was the effect of the judgment of Nov. 16th? Could the defendant, had he lived, have demanded and obtained, after the thirty days expired, a new delay to render an account?

Girard v. Letellier, 21 Que. S.C. 192 (Sup. Ct.).

—Reddition de compte—Amendment—Art. 578 C.C.P.]—The plaintiff in an action en reddition de compte will not be allowed to allege in detail a former process between him and the defendant, and such allegations will be dismissed on a defence en droit. But, as he is entitled to allege these facts in a general way to justify himself for not having sooner brought his action, the Court will allow him *propeio moteo* to amend his declaration by alleging the former action and the judgment therein. *Cheval v. Senecal*, 4 Que. P.R. 241 (Sup. Ct.).

—Reddition de compte—Form—Reformation.]—A reddition de compte containing separate statements of receipts, disbursements and bills payable is only required by law for accounts prepared in conformity with a judgment ordering them. When an