

of these accessories by peremptory exception; and article 149 Art. 149. declares that such omissions can only be grounds of demurrer in cases where by law the right of action depends upon the accomplishment of the accessory conditions.

Article 124 suggests a uniform delay for actions in warranty. Art. 124.

Article 131, founded upon a judicial decision, authorizes the Art. 131. dismissal of the action when the plaintiff fails to give the security required of persons residing out of Lower Canada.

This chapter contains provisions which relate to certain incidental proceedings by which the suit at different stages may be suspended, such as incidental demands, interventions, impropriations, recusations, disavowal, and change of attorneys, and which form the subject of six sections. Four articles only call for any observations. Ch. 4. Of incidents. Arts. 151 to 209.

The right of a party to attack a sheriff's return by impropriation has been made the subject of doubt (*Doré and Rogers* in appeal, 1848); the Commissioners considering the acts of this officer to be like any other authentic acts propose an amendment to article 161 in order to bring them under the same rule. Art. 161.

In order to prevent frivolous impropriations the Commissioners Art. 165. in article 165 suggest, as an analogous provision to one contained in the ordinance of 1667, that the plaintiff in impropriation should be obliged to deposit a sum fixed by the court as security for the costs which he may be condemned to pay.

Article 177 extends to the direct action in impropriation the provisions of this section in so far as they are applicable. Art. 177.

Article 205 proposes to declare that the death of one or more Art. 205. of the joint attorneys of a party necessitates change of attorneys.

The articulation of facts being an intermediate proceeding between the contestation and the proof, the Commissioners have made it the subject of a separate chapter, containing the statutory provisions on the matter; two others, articles 221 and 222, have been added in order to complete the subject and are intended to regulate the means to be adopted by the party who desires to recover the costs incurred in consequence of the unjust denegation of facts which he has articulated. Ch. 5. Of articulation of facts. Arts. 210 to 222. Arts. 221, 222.

Under this title of Trial (*De l'Instruction*) the Commissioners have comprised, in conformity to the meaning of the word adopted by Pothier as cited in the margin, that part of procedure which consists in examining into and establishing the facts alleged on either side, and which takes place either before the court alone or before a jury. Ch. 6. Of trial. Pothier, *Pro. civ.*, part. 1, ch. 3, sec. 2.

This chapter is divided into five sections; the first of which announces the division of the subject just referred to. The second section relates to interrogatories upon articulated facts; the third concerns the taking of evidence and is subdivided into nine paragraphs; the fourth relates to experts, arbitrators, practitioners, and viewers, and the fifth to trials by jury.

The Commissioners have no remarks to make upon the first section. Sec. 1. Preliminary provisions. Art. 223.

An amendment is suggested, with respect to the form of summons to answer interrogatories upon articulated facts, in order to shorten this proceeding and to remove the inconvenience of being obliged to date the rule from a sitting of court at which it was not applied for. Sec. 2. Articulated facts. Art. 225.

Upon this matter it should be observed that the mode of taking parol evidence has been the subject of lengthy and contradictory dissertations. Some have contended that the evidence should be altogether oral; such is the practice in Geneva. In France the examining judge takes notes of the evidence in Sec. 3. Proofs. Arts. 237 to 243.