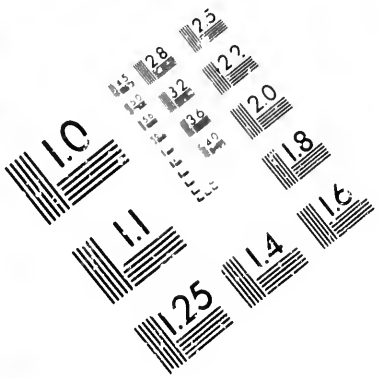

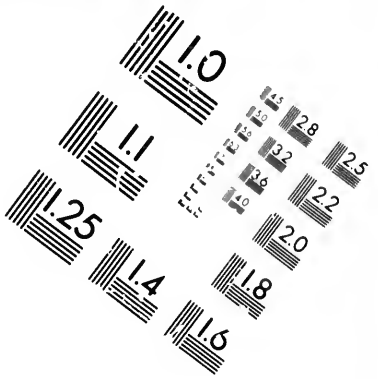

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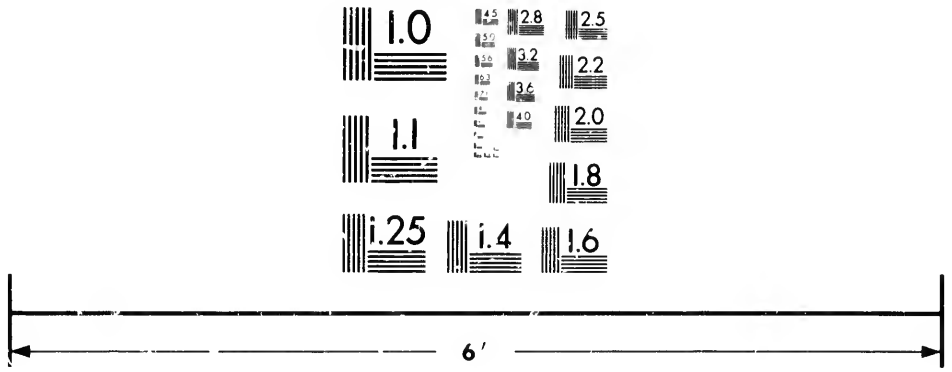

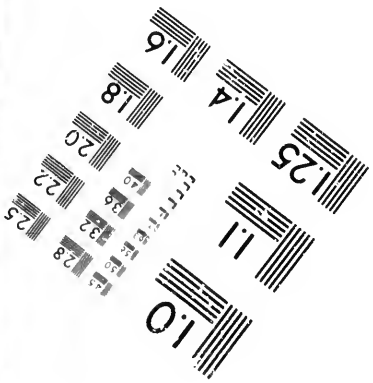

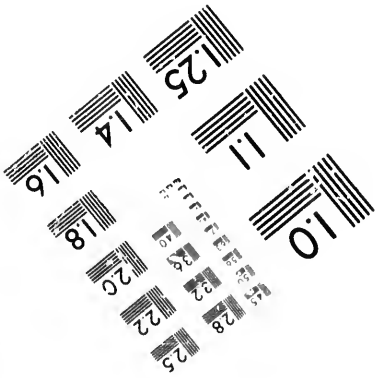

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ODE

I

THE

ODE OF CIVIL PROCEDURE

OF THE

PROVINCE OF QUEBEC.

AMENDMENTS

TO

CODE OF CIVIL PROCEDURE

63 VICT. 1900, TO 6 EDWARD VII., 1906, INCLUSIVE.

7. *Article 7 of the Code of Civil Procedure is amended by adding after the word*: "as," *in the third line of paragraph 6, the words*: "a public holiday or as."—2 *Edw. VII., chap.* 40.

8. *Article 8 of the Code of Civil Procedure is amended by adding thereto the following clause*:

"If the day on which any proceeding should be served or produced is a Saturday, the proceeding may be served or produced with a like effect on the following juridical day." —4 *Edw. VII., chap.* 45.

29. *Article 29 of the Code of Civil Procedure is amended by adding thereto the following clause*:

"The mayor of every municipality in the province is authorized to administer the same oath as a commissioner of the Superior Court."—4 *Edw. VII., chap.* 46.

47. *Article 47 of the Code of Civil Procedure is amended by adding thereto the following clause*:

"Nevertheless, appeals from judgments rendered by the Circuit Court in and for the county of Lake Megantic are brought, heard and determined in the city of Quebec." — 3 *Edw. VII., chap. 50, sec.* 1.

53. *Article 53 of the said Code is amended by inserting therein, after the first clause, the following*:

"Nevertheless, the review of judgments rendered by the Circuit Court in and for the county of Lake Megantic takes place in the city of Quebec." —3 *Edw. VII., chap. 50, sec.* 2.

59. *Paragraph 1 of article 59 of the Code of Civil Procedure is amended by replacing the words*: "twenty-five dollars," *in the second line, by the words*: "thirty-nine dollars."

59. *Paragraph* 2 *of the said article is amended by replacing the words*: "twenty-five dollars," *in the fourth line, by the words*: "thirty-nine dollars. — 4 *Edw. VII., chap.* 47.

316. *Article* 316 *of the Code of Civil Procedure is amended by adding thereto the following clause*:

"A party when examined as a witness, either on his own behalf or by the adverse party, may, in the discretion of the court or judge, be taxed as any other witness.—4 *Edw. VII., chap.* 48.

61. *Article* 61 *of the Code of Civil Procedure is amended by adding, after the word*: "Islands," *in the fifth line of paragraph* 1, *the words*: in the county of Bonaventure." — 3 *Edw. VII., chap.* 51.

61. *Article* 61 *of the Code of Civil Procedure is amended by adding, after the word*: "Pontiac," *in the third line of paragraph* 1, *the word*: "in the county of Ottawa." —3 *Edw. VII., chap.* 52.

61. *Article* 61 *of the Code of Civil Procedure, as amended by the acts* 3 *Edward VII., chapters* 51 *and* 52, *is further amended by striking out the words*: "in the county of Lake St. John, in the third and fourth lines of paragraph 1 thereof." — 6 *Edw. VII., chap.* 42, *sec.* 1.

86. *Article* 86 *of the said Code is amended by adding thereto the following clause*:

"No service upon an attorney of a party can be made after one o'clock on Saturday afternoon, either at his office or at the prothonotary's office."—4 *Edw. VII., chap.* 45.

94. *Article* 94 *of the Code of Civil Procedure is amended by inserting, after paragraph* 4, *the following*:

"5. Before the court of the place where the contract was made."—63 *Vict., chap.* 41.

94. *Article* 94 *of the Code of Civil Procedure, as amended by the act* 63 *Victoria, chapter* 41, *section* 1, *is further amended by adding the following words* at *the end of paragraph* 3: "or if it concerns a suit for libel published in a newspaper, before the court of any district in which such paper is circulated, and in which the plaintiff resides."—1 *Edw. VII., chap.* 33.

121. *Article* 121 *of the Code of Civil Procedure is amended by adding thereto the following paragraph*:

"The judge or prothonotary may, upon verbal application and without costs, authorize the service of such writ or of any other proceeding, except in municipalities in which a bailiff resides, to be made by any literate person, who is over twenty-one years of age.

The return of such service shall be made in the manner indicated in article 153, *mutatis mutandis*, and be sworn to before a justice of the peace or a commissioner of the Superior Court. That made by a secretary-treasurer of a municipal corporation shall be made under his oath of office. Such authorization must appear on the writ.''—2 *Edw. VII., chap.* 41.

135. *The following article is inserted in the Code of Civil Procedure, after article* 135:

135*a*. When the succession of a person opens outside of the Province, any real action relating to his estate may be taken against the heirs collectively who have not registered, within the three months, the conveyance by will or transmission by succession of such property, as required by article 2098 of the Civil Code. Service is made upon the order of a judge of the district in which the property is situated, ordering such heirs to appear within one month from the last publication of a synopsis thereof in French and English in a newspaper in such district.

If the heirs do not appear, proceedings are continued as in cases by default, and no service of the judgment is necessary.'' — 6 *Edw. VII., chap.* 43.

165. *Article* 165 *of the Code of Civil Procedure is amended by adding the two following clauses thereto*:

''The deposit is not required except upon motions made under articles 170, 173, 174, 177, 183 and 190, which are considered as preliminary pleas to the action.

The deposit is not required upon motions for particulars, for production of documents, to reject some of the allegations of the declaration and other like motions.''—1 *Edw. VII., chap.* 34.

237. *Article* 237 *of the Code of Civil Procedure is amended by adding thereto the following paragraph*:

''8. If he is related or allied to the attorney or counsel, or to the partner of the attorney or counsel of one of the parties to the suit, either in the direct line or to the second degree in the collateral line.''—1 *Edw. VII., chap.* 35.

314. *Paragraph* 4 *of article* 314 *of the Code of Civil Procedure is replaced by the following*:

''4. Husband or wife against each other. Nevertheless, if consorts are separate as to property and one of them as agent has administered property belonging to the other, the consort who has

so administered may be examined as a witness against the other in relation to any fact connected with such administration; provided the court is of opinion, in view of the circumstances of the case, that it is just and advisable to order such examination. The default of a party to examine his consort in his favor, cannot be invoked against him.''—3 *Edw. VII., chap.* 53.

437. *Article* 437 *of the Code of Civil Procedure is amended by replacing the word*: ''fifty,'' *in the fifth line, by the word*: ''eighty.'' — 3 *Edw. VII., chap.* 54, *sec.* 1.

Article 439 *of the said Code is replaced by the following articles*:

''**439.** The prothonotary then strikes from the list prepared by him the names of all persons entered thereon, whom he, personally or by public notoriety, knows to be dead or absent from the district, as well as the names of those who, by affidavit or written proof, appear to be so dead or absent from the district.

If there then remain upon the list fifty-two names or over, the parties proceed alternatively to strike from the list the name of one of the persons therein designated, to the number of twelve each, paraphing each name struck out. The first twenty-eight names then remaining form the panel from which the twelve jurors who are to serve in the case are taken.

Whenever, in the cases provided for by Articles 435 and 436, the jurors are under the judge's order to be specially qualified, the names of the first fourteen traders and of the first fourteen non-traders or of the first fourteen persons speaking the French language and of the first fourteen persons speaking the English language then remaining, form such panel.

''**439***a*. If there do not remain upon such special list fifty-two names, after the prothonotary has so struck the names of the persons who are dead or absent from the district, he shall, at once, add thereto the first ten names on the list of jurors in civil matters, after the last name already taken, of the persons who are specially qualified if it has been so required by the order of the judge, and he shall, as before, strike from such list the names of those persons who are dead or absent from the district, and, if there are still less than fifty-two names on the special list, he shall add ten other names from the list of jurors in civil matters and strike therefrom such as are dead or absent

from the district and so on until fifty-two names remain on the special list, after which the parties proceed as provided by the previous Article.

"439*b*. Upon application by one of the parties, supported by affidavit setting forth that any person whose name is entered on the special list is subject to any disqualification or disability, or is exempt from serving as a juror, the prothonotary may with the consent of both parties, strike off such name from such list.

If, however, any party applies for the striking by the prothonotary of any name on the list, and the other party objects, the prothonotary shall thereupon prepare a supplementary list containing a number of jurors equal to those objected to, which names shall be added to the panel, but such jurors shall not be called upon to serve unless in place of those who have been objected to.

If, at the time of the trial, the objections taken to the jurors are not sustained, the additional costs, occasioned thereby, shall be taxed against the party taking the same.—3 *Edw. VII., chap.* 54, *sec.* 2.

441. *Article* 441 *of the said Code is amended by inserting therein, after the words*: "prothonotary may," *in the second line, the words* "proceed under the provisions or Article 439 to stike the names of those who are dead or absent from the district, and may".—3 *Edw. VII., chap.* 54, *sec.* 3.

443. *Article* 443 *of the said Code is amended by replacing the word*: "twenty-six persons whose names compose the panel" *in the fourth line, by the words*: "twenty-eight persons whose names compose the panel, together with those persons whose names are added under Article 439*b*."—3 *Edw. VII., chap.* 54, *sec.* 4.

Article 530 *of the Code of Civil Procedure is replaced by the following*:

"**530.** If the confession of judgment is not accepted, the plaintiff must, within a delay of thirty days after the service upon him by the defendant of a copy of the confession of judgment, give notice to the defendant that the confession of judgment is not accepted.

After such notice, the case is proceeded with in the ordinary manner; and, if the plaintiff does not obtain more from the court than he would have had upon the confession, he is not entitled to more costs than if the confession of judgment had been accepted.

In default of the plaintiff giving the notice, the confes-

sion of judgment is deemed to be accepted, and the defendant may also inscribe the case forthwith for judgment in the manner prescribed by the preceding article.'' — 1 *Edw. VII., chap.* 36.

599. *Paragraph* 10 *of Article* 599 *of the Code of Civil Procedure, is replaced by the following*:

''10. Salaries of city or town clerks, and of other municipal officers and employees and of city or town assessors in incorporated cities or towns, except as to the proportions mentioned in paragraph 9;''—3 *Edw. VII., chap.* 55.

599. *Article* 599 *of the Code of Civil Procedure, as amended by the act* 62 *Victoria, chapter* 53, *section* 1, *is further amended by adding thereto the following paragraph*:

''14. Four-fifths of the salary, remuneration or earnings of members of the Corporation of Pilots for and below the harbour of Quebec, for the pilotage of vessels.''—3 *Edw. VII., chap.* 56.

639. *The first paragraph of article* 639 *of the said Code is replaced by the following*:

639. The sale of moveable property under seizure is advertised, in the Island of Montreal, by a notice stating summarily the names of the parties, the nature of the effects, and the place, day and hour of sale, inserted in French in a newspaper published in that language in the city of Montréal and in English in a newspaper published in the English language in the City of Montreal; and in any of the cities of Quebec, Three Rivers, Sherbrooke, St. Hyacinthe or Sorel or in the town of St. John's, the notice is inserted in French in a newspaper published in that language therein and in English in a newspaper published in the English language therein; and if there should be put one paper in the place, or if all the papers are published in but one of such languages in one languages, then the notice must be inserted in both languages in one paper.'' — 6 *Edw. VII., chap.* 42, *sec.* 2.

683. *Article* 683 *of the Code of Civil Procedure is amended by adding the following after the second clause*:

''The garnishee, upon being tendered his travelling expenses, must make his declaration at the office of the court whence the writ issued. The paragraph shall not apply to corporations.'' — 2 *Edw. VII., cap.* 42.

717. *Paragraph* 1 *of article* 717 *of the said Code is replaced by the following*:

''1. When seizures are made in the Island of Montreal, in

the cities of Quebec, Three Rivers, Sherbrooke, St. Hyacinthe or Sorel or in the town of St. John's, to publish, at the latest fifteen days before the sale, a notice briefly detailing the particulars of the sale in a newspaper published, if it concerns a sale in the Island of Montreal, in French in a newspaper published in that language in the city of Montreal, and in English published in that language in the city of Montreal, and if it concerns a sale in any of the cities of Quebec, Three Rivers, Sherbrooke, St. Hyacinthe, or Sorel or in the wn of St. John's, to publish the notice in a newspaper published in French and in one published in English in the locality, and, if, there is only one newspaper in the locality or all are published in the same language, to publish the notice in both languages in the same newspaper and to post a copy of the notice in his office after the publication."—6 *Edw. VII., chap.* 42, *sec.* 3.

Article 816 *of the Code of Civil Procedure is replaced by the following*:

"**816.** If the contestation of the report, or of the rank of the collocations, or of any collocation, is maintained without being opposed by any party, the court, in its discretion, awards costs against one of the parties in the case or against the mass.

The contesting party has, however, in all cases, the right to be collocated for his costs out of the moneys levied, or, if the contestation benefits some creditors only, out of the moneys coming to such creditors, saving to the creditor, who is prejudiced by such collocation, his right to demand subrogation against the party condemned to pay them."—63 *Viet., chap.* 42.

1029. *Article* 1029 *of the said Code is amended by replacing the second clause thereof by the following*:

"Except in the Island of Montreal, and in the cities of Quebec, Three Rivers, Sherbrooke, St. Hyacinthe and Sorel, and in the town of St. John's it must moreover be read and posted in both languages, at the door of the church of the parish in which the immoveable is situated, on a Sunday immediately after morning service; if there is no such service, it is sufficient to merely post the notice."—6 *Edw. VII., chap.* 42, *sec.* 4.

1041. *Article* 1041 *of the said Code is replaced by the following*:

1041. The experts are three in number, and are agreed upon by the parties; never-

theless if the parties consent or if the judge thinks proper by reason of the nature or situation of the property to be divided, only one need be named.''—6 *Edw. VII., chap.* 42, *sec.* 5.

1048. *Article* 1048 *of the said Code is amended by replacing paragraph* 2 *thereof by the following*:

''2. Moreover, if the immoveables are situated in the Island of Montreal, by being inserted in French in a newspaper published in that language in the city of Montreal, and in English in a newspaper published in that language in the city of Montreal; if the immoveables are situated in the city of Quebec, Three Rivers, Sherbrooke, St. Hyacinthe, or Sorel, or in the town of St. John's, by being inserted in a newspaper published in French and in one published in English in the locality, and, if there is only one newspaper in the locality or all are published in the same anguage, in both languages in the same newspape; and, if the immoveable are situated in a parish other than those contained in the above-mentioned localities, by being read aloud and posted on the third Sunday before the day on which the licitation is to take place, at the door of the church of the parish in which the immoveables are situated, immediately after morning service, or, if there is no church at the most public place in the locality. If there is no service it is sufficient to merely post the notice.''—6 *Edw. VII., chap.* 42, *sec.* 6.

1049. *The following article is inserted in the Code of Civil Procedure after article* 1049:

1049*a.* As soon as the notice prescribed by Article 1047 has been published, the party publishing such notice must send a printed copy thereof in a registered letter to the registrar of the registration division in which the immoveable affected by the order in licitation is situated; and the registrar must give notice thereof to the parties interested in the manner prescribed by the Civil Code.

''The omission to give such notice does not invalidate the procedings, but the person in default is responsible for all damages which may result therefrom.'' — 5 *Edw. VII, chap.* 30, *sec.* 8.

1069. *Article* 1069 *of the said Code is amended by replacing all the words preceding the word*: ''newspaper'' *in the seventh and eight lines of paragraph* 2 *by the following*:

2. Moreover, if the immoveable is situated in the Island of Montreal, by being inserted in French in a newspaper published in that language in the city of Montreal, and in English in a newspaper published in that language in the city of Montreal; if the immoveable is situated in the city of Quebec, Three Rivers, Sherbrooke, St. Hyacinthe or Sorel, or in the town of St. John's by being inserted in a newspaper published in French, and in one published in English, in the locality, and, if there is only one newspaper in the locality or all are published in the same language, in both languages, in the same,''—6 *Edw. VII., chap.* 42, *sec.* 7.

1069. *The following article is inserted in the Code of Civil Procedure after article* 1069:

1069a. As soon as the notice prescribed by Article 1069 has been published, the applicant for confirmation of title must send a printed copy thereof in a registered letter to the registrar of the registration division in which the immoveable affected by the proceedings in confirmation of title is situated, and the registrar must give notice thereof to the parties interested in the manner prescribed by the Civil Code.

''The omission to give such notice not invalidate the proceedings, but the person in default is responsible for all damages which may result therefrom.'' — 5 *Edw. VII., chap.* 30, *sec.* 9.

1126. *Article* 1126 *of the Code of Civil Procedure is amended by replacing the words*: ''except, however, the judicial powers conferred upon the prothonotary in the absence of a judge,'' *in the fourth, fifth and sixth lines of the second paragraph, by the words*: ''however, the judicial powers conferred upon the prothonotary in the absence of the judge can not be exercised by the clerk of the circuit court, except by the clerk of the circuit court of the district.''—63 *Vict., chap.* 43.

The following article is inserted in the Code of Civil Procedure, after article 1147:

''**1147***a*. If, within seven days of the judgment, or at any time before the execution, the defendant deposits with the clerk of the court the portion of his salary or wages liable to seizure under paragraph 11 of article 599, and, at the same time, produces a declaration under oath setting forth the amount of such salary or wages, as well as the name, occupation and place of business of the person who

pays the same and the time when the same are payable, and continues to deposit such portion so seizable at each term of payment until full payment of the judgment, no seizure by garnishment can be issued against such defendant to seize such salary or wages. A similar procedure shall be followed by the defendant whenever he changes his employer or the conditions of his engagement. This declaration may be contested in the same manner, and within the same delay as the declaration of a garnishee.

Eight days after any such deposit, the clerk of the court pays the amount thereof to the plaintiff if there are no other claims. The clerk of the court must keep an alphabetical list of the defendants who have made such declarations.

The other creditors may, within eight days of such deposit, fyle there claims duly sworn to in the record of the case, and must give notice to the parties interested.

The clerk of the court, after collocating the plaintiff for his costs in the suit, distributes rateably amongst the creditors the sum to be divided and determines, in a summary manner and without cost, the amount coming to each, which he pays to them.'' —3 *Edw. VII., chap.* 57.

1313. *Article* 1313 *of the Code of Civil Procedure is amended by inserting after the word*: ''made'', *in the fifth line, the words*: ''as are also secretary - treasurers of municipalities and clerks of cities with whom are registered declarations of birth under the provisions of article 53*a* of the Civil Code.''— 6 *Edw. VII., chap.* 39, *sec.* 2.

1342. *Article* 1342 *of the Code of Civil Procedure is amended by adding the following paragraph thereto*:

''In the event of the refusal or inability to act owing to absence or otherwise of the subrogate tutor, established by the tutor's affidavit, the second expert is appointed by a judge of the Superior Court on the advice of the family council to which the subrogate tutor must have been summoned in the manner prescribed by article 1381.'' — 1 *Edw. VII., chap.* 37.

Article 1351 *of the Civil Code is replaced by the following*:

''**1351.** The sale must be made judicially in presence of the tutor and subrogate tutor or in the absence of the latter if he has been summoned in accordance with article 1381, or in presence of the curator, as the case may be,

to the highest bidder, by public auction, by the judge or prothonotary, or by another person appointed for the purpose.''—1 *Edw. VII., chap.* 38.

1352. *Paragraph* 1 *of article* 1352 *of the said Code is replaced by the following*:

''1. When the immoveables are situated in the Island of Montreal by inserting such notice in French at the latest fifteen days before the sale in a newspaper published in that language in the City of Montreal, and in English in a newspaper published in that language in the City of Montreal; and, when the immoveables are situated in the city of Quebec, Three Rivers, Sherbrooke, St. Hyacinthe or Sorel or in the town of St. Johns, by inserting such notice, at the latest fifteen days before the sale, in a newspaper published in French, and in one published in English, in the locality; and, if there is only one newspaper in the locality or both are published in the same language, by inserting it in both languages in the same newspaper; or'' — 6 *Edw. VII., chap.* 42, *sec.* 8.

''**1357.** *Article* 1357 *of the said Code is amended by adding the following thereto*:

''In the event of the refusal or inability to act through absence or otherwise of the subrogate tutor, established by the tutor's affidavit, it shall suffice that the petition be presented by the tutor alone, provided a duplicate thereof has been served upon the subrogate tutor with a notice of the place, day and hour at which it will be presented.

The day of the notice is one clear day when the tutor resides at a distance of less than fifteen miles from the place where the petition is to be presented with a further delay of one day for every additional fifteen miles.'' — 1 *Edw. VII., chap.* 39.

1361. *Article* 1361 *of the Code of Civil Procedure is amended by adding thereto the following clause*:

''A duplicate of such report and the proceedings connected therewith must be annexed to the original minute of the deed of sale, and in the case of several contracts of sale to the original minute of one of them.'' — 3 *Edw VII., chap.* 58.

COD

WITH A C

AUTHOR OF
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THE

CODE OF CIVIL PROCEDURE

OF THE

PROVINCE OF QUEBEC

WITH A CONCORDANCE OF ITS ARTICLES, USEFUL REFERENCES TO THE CIVIL CODE, AND THE RULES OF PRACTICE NOW IN FORCE—THE WHOLE CAREFULLY VERIFIED AND EDITED.

BY

R. STANLEY WEIR, D.C.L.,

RECORDER OF MONTREAL

AUTHOR OF "AN INSOLVENCY MANUAL," "THE BILLS OF EXCHANGE ACT, 1890," "THE CIVIL CODE," "THE ADMINISTRATION OF THE OLD REGIME," "THE EDUCATION ACT," ETC,. ETC.

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TO

The Honourable Horace Archambeault, Q.C.

ATTORNEY-GENERAL
OF THE
PROVINCE OF QUEBEC

THIS BOOK IS RESPECTFULLY DEDICATED.

PREFACE

The flattering reception accorded to my edition of Civil Code was accompanied by a very general uest for a companion edition of the Code of Civil cedure. Such an edition I have now great pleasure lacing before the Bar.

The only merits claimed for it are an accurate text eeably printed and arranged, with judicious re- ences, under each article, to other revelant rules of cedure and to cognate articles in the Civil Code.

The Rules of Practice and a general Concordance the old and new codes should also be found useful.

This task was begun while yet I was a practising vocate. In completing it I have had in constant nd those confrères in an arduous profession with om I was associated for eighteen years, and my ations with whom are among the most pleasant venirs of the past.

R. STANLEY WEIR.

CORDER'S CHAMBERS,
ontreal, May, 1900.

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ABBREVIATIONS.

A. R. O.....General Rules and Orders regulating the Practice and Procedure in Admiralty cases in the Exchequer Court of Canada. Ottawa, 1893.

BELLOT.....Procédure Civil de Genève, par P. F. Bellot.

B. R. Q .....Rapports Judiciaires Officiels de Quebec, Cour du Banc de la Reine.

CAL.....Code of Civil Procedure of California.

C. C. .....Civil Code of Lower Canada.

C. I. C. F.....Code d'Instruction Criminelle Français.

C. P.....Code of Civil Procedure (*the new Code*).

C. P. C. F.....Code de Procédure Civile Français.

C. P. G..... .....Loi sur la Procédure Civile de Genève.

C. P. L..... ...Code of Civile Procedure of Louisiana.

CAN. S. C. R....Reports of the Supreme Court of Canada.

C. S. N. B.....Consolidated Statutes of New Brunswick.

C. S. Q.....Rapports Judiciaires Officiels de Quebec. Cour Supérieure et Cour de Révision.

D. C. A..... ....Decisions of the Court of Appeal.

ENG. J, A., 1873..English Judicature Act, 1873.

ENG. R.....English "Rules of the Supreme Court, 1883," as consolidated in the "Annual Practice, 1889," pp. 213.

H. & L.....Holmsted & Langton, Ontario Judicature Act and Rules of Practice.

H. L. C..... ....House of Lords' Cases.

J. A. .....Bill relating to Judicial Re-organization, 1893.

L. C. J .....Lower Canada Jurist.

L. N.... ... .Legal News.

LORANGER.....Commentaires sur le Code Civil.

M. L. R.....Montreal Law Reports.

DOUTRE.....Gonzalve Doutre, Les Lois de la Procédure Civile dans la Province de Quebec.

N. S. R. O.....Nova Scotia Rules of the Supreme Court, Order.

N. Y. C.....Code of Civil Procedure of New York.

ONT. J. A.....Ontario Judicature Act (R. S. O., c. 44).

ORD. 1667.....Ordonnance de 1667.

O. C.....Former Code of Civil Procedure of Lower Canada.

PROCL., 22nd June, 1867—Proclamation of that date, bringing the Code of Civil Procedure of Lower Canada in force.

Q. L. D.....Quebec Law Digest (Stephens).

Q. L. R.....Quebec Law Reports.

R.....Rule.

R. C. C. S.....Report of the Commission for the Codification of the Statutes of Quebec, 1882.

R. L.....Revue Légale.

R. P. C. S.....Rules of Practice of the Superior Court for Lower Canada.

R. P. O.....Consolidated Rules of Practice of the Supreme Court of Judicature for Ontario.

R. S. N. S.....Revised Statutes of Nova Scotia.

R. S.....Revised Statutes of Quebec.

R. S. B. C.....Revised Statutes of Lower Canada.

R. S. C.....Revised Statutes of Canada.

V. c. s.....Statutes of Quebec—Victoria, chapter, section.

V. (C.).....Statutes of Canada—Victoria.

ss.....And following (*articles, sections or pages, as the case may be*).

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AMENDMENT.

63 VICTORIA, 1900.

94. *Article* **94** *of the Code of Civil Procedure is amended by inserting, after paragraph* 4, *the following:*

"5. Before the court of the place where the contract was made."

THE

CODE OF CIVIL PROCEDURE

OF THE

PROVINCE OF QUEBEC.

FIRST PART

GENERAL PROVISIONS

CHAPTER I

Declaratory and Interpretative Provisions

1. The laws concerning procedure and the rules of practice in force at the time of the coming into force of this Code are abrogated :—

1. In all cases in which this Code contains any provision having expressly or impliedly that effect ;

2. In all cases in which such laws or rules are contrary to or inconsistent with any provision of this Code, or in which express provision is made by this Code upon the particular matter to which such laws or rules relate.

Nevertheless as regards proceedings, matters and things pending at the coming into force of this Code, or rights of appeal and limitations as to substantive rights existing anterior to such coming into force, and to which its provisions could not apply without having a retroactive effect, the provisions of law which, without this Code, would apply to such proceedings, matters, things, rights and limitations, remain in force and apply to them ; and this Code applies to them only in so far as it coincides with such provisions.

The rules as to evidence contained in this Code apply to causes, matters and things done or pending at the time of its coming into force.—*New in part.* O. C. 1360; *Loranger*, C. C., p. 152 et s.; *Attorney-General* vs. *Sillem*, 10 H. L. C 704.

2. 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 the

French text, that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded. 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.—O. C. 1361.

3. Whenever this Code does not contain any provision for enforcing or maintaining any right or claim, any proceeding adopted which is not inconsistent with law or the provisions of this Code is received and held to be valid.—O. C. 21, *in part*, *amended*.

4. All rules and provisions concerning procedure are interpreted with reference to each other, and in such a manner as to give them all the effect intended.—O. C. 21 *amended*, *Civil Code*, arts. 11, 12, 14, 15.

5. The words, terms, expressions and enactments enumerated in the declaratory and interpretative provisions of Article 17 of the Civil Code and of Articles 12 to 36, inclusive, of the Revised Statutes, wherever used in this Code, are interpreted in the manner therein specified.

Whenever the following words, terms and expressions are used in this Code, or in any amendments thereto, they are construed in the manner hereinafter mentioned, unless the context otherwise requires :

1. The words : "Code of Civil Procedure," mean the present Code ;

2. The words : Revised Statutes," mean the Revised Statutes of the Province of Quebec ;

3. The words : "other Provinces of Canada," mean the Provinces of Canada other than the Province of Quebec, and include the Territories ;

4. The words : "Court of Review," mean the Superior Court sitting in review ;

5. The word: "judge," means the chief justice, judge or assistant-judge of the said Court ;

6. The word : "prothonotary," means the prothonotary of the Superior Court, or the clerk of any other court in which the provision is applicable ;

7. The words : "office of the Court," mean the office of the prothonotary, or of the clerk of any court to which the provision is applicable.—*New part*. O. C. 26 *in part*, 5 *part*.

6. The forms contained in the appendix to this Code, or others to the same effect, are valid and sufficient, when used in the cases to which they are intended to apply.—O. C. 13 *amended*.

7. The following days are non-juridical :

1. Sundays ;

2. New Year's Day ;

3. The Epiphany, Ash Wednesday, Good Friday, Easter Monday, the Ascension, All Saints' Day, The Conception and Christmas Day ;

4. The anniversary of the Birthday of the Sovereign, or the day fixed by proclamation for its celebration ;

5. The first day of July, or the second day of the month if the first is a Sunday ;

6. Any day appointed by royal proclamation or by proclam

ion of the Governor-General or of the Lieutenant-Governor as a day of general fast of thanksgiving, or as Labor Day.—C. C. 2, *amended* R. S. 5854; 56 V., c. 40; R. S. C., c. 1, s. 2, s. 7; 56 V. (C.), c. 30. *Civil Code*, arts. 17, s. 14.

8. If the day on which anything ought to be done is or becomes a non-juridical day, such thing may be done with like effect on the next following juridical day.

This rule applies also to the return of writs and to sales by authority of justice. — O. C. 3, *amended* R. S. 20.

9. Whenever a person is summoned to appear on a day fixed, neither the day of service nor the terminal day is counted in computing delays for summoning.

Delays continue to run upon Sundays and holidays; but if a delay expires on a Sunday or a holiday, it is of right extended to the next following juridical day.

The same rules apply to all other delays in procedure.—C. C. 24, *amended*.

10. In reckoning delays for pleading or trial, the first day of September is deemed to be the next day after the thirtieth day of June, and no party can be obliged to proceed between those two days, without a special order of the court or a judge, except in the matters enumerated in Article 15.

Any days between the thirtieth day of June and the first of September are, however, reckoned in the delay of eight days fixed by Articles 1196 and 1202. — O. C. 463, *amended*; §§ 6, 7; 317, § 3 R. S. 5898.

11. The place, time and duration of the sittings of the different courts are regulated by particular statutes.—O. C. 1, *in part* R. S. 5853.

12. The court may, according to circumstances, shorten the terms thus fixed, or it may prolong them by adjournment, either from day to day, or to any subsequent day or days before the following term; and at any sitting held in virtue of such adjournment the court may hear and determine all causes, matters or things brought before it, whether such causes were begun before or since such adjournment.—O. C. 1, *in part*, *amended*; R. S. 5853.

13. In the absence of the judge who should preside over the court, the prothonotary may adjourn the court to a subsequent day during the term, or, upon the order of the judge, to any day or days out of term.—O. C. 1, *in part*, *amended*; R. S. 5853.

14. The courts cannot sit on non-juridical days.—O. C. 1, *in part*, *amended*; R. S. 5853.

15. The courts cannot sit between the thirtieth day of June and the first day of September, and in addition they are not obliged to sit between the thirty-first day of August and the tenth day of September, or between the twentieth day of December and the tenth day of January, except, in either case, as regards:

1. Actions arising from the relation of lessor and lessee;

2. Trial and judgment by default to appear in ordinary and in summary matters;

3. Trial and judgment by default to plead in summary matters, unless the appearance is accompanied with an affidavit that it is filed in good faith, and

without intent to unjustly delay the proceedings;

4. Judgments upon confession of judgment;

5. Proceedings concerning corporations and public offices;

6. Oppositions to marriages;

7. Applications for writs of *Habeas Corpus* in civil matters;

8. The proceedings governed by Articles 713, 723, 749, 750, 761, 762, 763, 782, 792, 800, 849 to 977 inclusively;

9. District Magistrates' Courts;

10. Commissioners' Courts for the summary trial of small causes;

11. The Court of Queen's Bench; and

12. The District of Gaspé, of Saguenay, and of Chicoutimi.

The prothonotaries have, in respect of the matters hereinabove enumerated which are within their jurisdiction, the same powers during vacation as they have at any other time. O. C. 1, *in part;* 317, *in part, amended* R. S. 5853; *Nolan* vs. *Dastous*, 4 Q. L. R. 335.

Supra, art. 10.

16. The sittings of a court or of a judge are public.

Nevertheless, the judge may order in writing that they be held *in camerâ*, if a public hearing would be prejudicial to good morals or public order.—*New.* C. P. C. F. 87; O. C. 84; *Bellot* 611.

17. Persons present at sittings of the courts or of judges must remain uncovered and in silence.—O. C. 4, *amended.*

18. Any person who, during the sitting of the court or of the judge, or wherever judges are in the exercise of their functions, disturbs order, utters signs of approbation or disapprobation, or refuses to withdraw or to obey the orders of the court or judge or the admonitions of the officers acting under its or his authority, may be condemned at once to a fine or imprisonment, or both, according to the discretion of the court or the judge.—O. C. 5, 6, 7, *amended* C. C. 2273; R. C. C. S., art. 240; C. P. C. F. 88 ss.; *Cal.* 1209; N. Y. C. 8 ss.

Infra, art. 834.

19. If the disturbance is caused by a person discharging any function before the court, he may, in addition to the punishment imposed in the preceding Article, be suspended from such function.—O. C. 8.

20. Courts or judges may, in all cases brought before them, according to circumstances, even of their own motion, pronounce censures or reprimands, and suppress writings or declare them libellous.—O. C. 9, *amended.*

21.—The judge may appoint an interpreter and allow him a reasonable compensation, which forms part of the costs of the suit.—O. C. 10.

22. The judge may require an oath when it is deemed necessary.—O. C. 11, *in part.*

23. The judge, the prothonotary, or a commissioner authorized for that purpose, has a right to administer and receive the oath whenever it is required by law, by rules of practice, or by order of a court or judge, unless such right be restricted by some provision of law.—O. C. 30, *in part, amended.*

24. The court has the same powers as a judge upon matters assigned to the latter.—*New.*

25. The judge of the Superior Court may, in the district in which he discharges his functions, appoint, by one or

more commissions under the seal of the court, as many persons as he finds necessary, as commissioners to receive affidavits therein, to be used in any court in any district of the province.—O. C. 30, *in part*.

26. The chief justice and any other judge of the Superior Court, and, in the case of the death of the chief justice or of his absence from the Province, any two judges of the said Court may, by one or more commissions under the seal of the Court, appoint as many persons as they think necessary, within the limits of any of the other provinces of Canada, as commissioners to receive affidavits therein to be used in any court in the Province.—O. C. 30, *in part*.

27. The Lieutenant-Governor in Council may appoint competent persons, residing in any country outside the limits of Canada, as commissioners to receive affidavits for use in any court of the Province, or necessary for any deed or document to be carried into execution or to have its civil effect in the Province. —O. C. 30, 30*a*, *in part*, *amended* R. S. 5859.

28. Any commissioner named under the three preceding Articles is designated as "Commissioner of the Superior Court for the district of

, (*or* the Province of Quebec, *as the case may be.*)"—*New.* O. C. 30*a*, *in part*.

29. Affidavits received by such commissioners have the same force as if they had been received in open court.—O. C. 30, *in part*, 30*a*, *in part*, *amended*.

Infra, art. 1127.

30. Like force and effect are given to all affidavits received before a commissioner authorized by the Lord Chancellor to administer affidavits in England; or before a notary public, under his hand and official seal; or before the mayor or chief magistrate of any city, borough or incorporated town in Great Britain or Ireland, in any of Her Majesty's colonies, or in any foreign country, under the common seal of such city, borough or town; or before any judge of a superior court, in any of Her Majesty's colonies or dependencies; or before any consul, vice-consul, temporary consul, pro-consul or consular agent of Her Majesty, exercising his functions in a foreign country.—O. C. 30, 26 Vic., c. 41.

31. Whenever a record or document is required by law to be transmitted from one court to another, or to a different place, the transmission must be effected through the post office or by express by the prothonotary, and the party requiring it is bound to advance the charges.

For any delay caused by the neglect of such party to pay such charges, he is deemed to be in fault.

With the consent of all the parties the record may be transmitted by any other means, but by the same officer.—O. C. 25, *amended*.

32. Two or more judges of the Superior Court, or of the Circuit Court, discharging their duties in the same circuit or district, may, and must, whenever the despatch of business requires it, sit at the same time and at the same place in separate apartments in or out of term; and each of such judges has jurisdiction for hearing and determining all causes and mat-

ters submitted to him, and has the same powers as if he were the only judge sitting in such place.—O. C. 464, *amended*; R.S. 5899.

33. Whenever there is not at the chief place of a district any judge who has jurisdiction in a matter, or whenever the judge is unable to discharge his duties for any reason whatsoever, the prothonotary may perform his duties in cases of evident necessity, *or* where by delay a right might otherwise be lost or a wrong sustained.

Any order or judgment rendered by the prothonotary may be revised by the court at its next sitting, or by any judge subsequently present in the district, provided that the party complaining files within three days at the office of the court an exception stating the grounds upon which the revision is demanded, accompanied with a deposit fixed by the rules of practice.

The decision of the court or judge, setting aside the order or judgment of the prothonotary, causes things to be placed in the same state in which they would have been if the order or judgment had not been rendered. — *New, in part.* O. C. 465, R. S. 5900.

Infra art. 1126.

34. In the absence of special provisions, the delay of service of any written proceeding is at least one clear day.—*New.*

35. Whenever the sheriff is interested or personally concerned in any suit or action, any writ or other proceeding which ought to be executed or served by him must be addressed to and served or executed by the coroner of the district.—O. C. 466, *amended.*

36. If the sheriff is also coroner, the prothonotary, or his deputy, acts in the place and stead of the sheriff, as though the writ or proceeding had been addressed to him personally.—O. C. 467, *amended.*

37. The Lieutenant-Governor in Council may make, modify, revoke or amend the tariffs of fees payable to prothonotaries, clerks, sheriffs, coroners and criers, in accordance with the provisions of Articles 2710, 2711 and 2712 of the Revised Statutes.

Any officer or other person receiving any other or greater fees or emoluments than are specified in such tariffs for the discharge of the duties and services therein mentioned, is liable, except where it is otherwise provided, to a penalty of eighty dollars for each offence, recoverable by civil action before the Circuit Court, and payable one half to the Crown, and the other half to the party prosecuting.—O. C. 29, *in part*, R. S. 5858.

38. The judges of the Superior Court, or any ten or more of them, may make any tariffs of fees for examiners and other officers appointed by the Superior Court, whose salaries are not by law fixed by the Lieutenant-Governor in Council; and all such tariffs must be promulgated in the manner prescribed for rules of practice.—O. C. 29.

Infra, art. 75.

39. Exceptional provisions concerning certain matters and proceedings in the districts of Saguenay, Chicoutimi, Gaspé, and the Magdalen Islands are contained in the Revised Statutes. — O.C. 27; R. S. 2333, 2342, 2368 to 2405, and 5714, 5715.

CHAPTER II

Powers and Jurisdiction of the Courts.

I. GENERAL PROVISIONS **40.**
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III. SUPERIOR COURT AN COURT OF REVIEW **48.**
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VII. JUSTICES OF THE PEACE, RECORDER'S COURT AND OTHER INFERIOR JURISDICTIONS **63.**
VIII. SUPREME COURT OF CANADA, AND EXCHEQUER COURT OF CANADA **67.**
IX. HER MAJESTY IN HER PRIVY COUNCIL **68.**

SECTION I.

General Provisions.

40. The courts which have jurisdiction in civil matters in the Province are :

1. The Court of Queen's Bench, sitting in appeal ;
2. The Superior Court ;
3. The Circuit Court ;
4. The Commissioners' Court;
5. The District Magistrates' Court ;
6. The Court of Justices of the Peace ;
7. The Recorder's Court ;
8. The Exchequer Court of Canada, which is a court of federal constitution.

The jurisdiction of the Court of Queen's Bench, of the Superior Court, of the Circuit Court, and of the Court of Justices of the Peace is general and covers the whole Province ; the jurisdiction of the Commissioners' Court and of the Recorder's Court is limited to certain localities.—*New.* R. S. 2289.

41. The following tribunals also exercise jurisdiction by way of appeal from the civil courts of the Province :

1. The Supreme Court of Canada ;
2. Her Majesty in Her Privy Council.—*New.*

SECTION II.

Court of Queen's Bench, sitting in Appeal.

42. The Court of Queen's Bench, sitting in appeal, and the judges thereof have an appellate civil jurisdiction throughout the Province over all causes, matters or things appealed from all courts and jurisdictions wherefrom an appeal by law lies, unless such appeal is expressly directed to be to some other court.—*New.* R. S. 2295.

Supra, art. 15, § 11 ; *Infra*, arts. 1125, 1209 et s.

43. Unless where otherwise provided by statute, an appeal lies to the Court of Queen's Bench, sitting in appeal, from any final judgment rendered by the Superior Court, except :

1. In matters of *certiorari ;*
2. In matters concerning municipal corporations or offices, as provided in Article 1006 ;
3. In matters in which the sum claimed or value of the thing demanded is less than two hundred dollars, and in which judgment has been rendered by the Court of Review ;
4. At the instance of any party who has inscribed in review any cause other than those

mentioned in the preceding paragraph, and has proceeded to judgment on such inscription, when such judgment confirms that rendered in first instance.—O. C. 1115 *am.*; R. S. 2313, 6005; 54 Vic., c. 48, s. 2.

Infra, arts. 52, 72, 492, 495, 890, 923, 924, 1306.

44. An appeal also lies to the Court of Queen's Bench, sitting in appeal, from judgments of the Circuit Court in the following cases:

1. When the sum claimed or the value of the thing demanded amounts to or exceeds one hundred dollars, except in suits for the recovery of assessments for schools or school-houses, or for monthly contributions for schools, and in suits for the building or repairing of churches, parsonages and churchyards;

2. When the demand is less than one hundred dollars, but relates to fees of office, duties, rents, revenues, or sums of money payable to Her Majesty;

3. When the demand, although less than one hundred dollars, relates to titles to lands or tenements, annual rents or other matters in which the rights in future of the parties may be affected;

4. In all actions in recognition of hypothecs.

Nevertheless, no appeal lies to the Court of Queen's Bench in causes of the Circuit Court susceptible of appeal in which judgment has been rendered by the Court of Review.—O.C. 1142, 1142*a am.*; R. S. 6008; 54 Vic., c. 48, s. 3.

Infra, arts. 52, 54, 55.

45. Special provisions regulate appeals from judgments rendered in the Magdalen Islands.—O. C. 1142; 58 Vic. c. 48, s. 3.

Supra, art. 39.

46. An appeal also lies from interlocutory judgments in matters susceptible of appeal in the following cases:

1. When they in part decide the issues;

2. When they order the doing of anything which cannot be remedied by the final judgment;

3. When they unnecessarily delay the trial of the suit.—O. C. 1116; 54 Vic., c. 48, ss. 2, 4.

Infra, arts. 1211, 1212, 1225.

47. Appeals from judgments rendered in the districts of Montreal, Ottawa, Pontiac, Terrebonne, Jollette, Richelieu, St. Francis, Bedford, St. Hyacinthe, Iberville and Beauharnois are brought, heard and determined in the City of Montreal; and appeals from judgments rendered in the districts of Quebec, Three Rivers, Saguenay, Chicoutimi, Gaspé, Rimouski, Kamouraska, Montmagny, Beauce and Arthabaska are brought, heard and determined in the City of Quebec.—O. C. 1117; 54 Vic., c. 48, s. 3.

SECTION III

Superior Court and Court of Review.

48. The Superior Court has original jurisdiction in all suits or actions which are not exclusively within the jurisdiction of the Circuit Court or of the Exchequer Court of Canada, and in the district of Quebec it has exclusive original jurisdiction in cases of petition of right.—O. C. 28, *am.*; R. S. 5858; 54-55 Vic. (C.), c. 29.

Supra, art. 45, *infra*, arts. 55, 57, 894, 1011, et s., 1336.

49. The Superior Court has original jurisdiction by means of evocation in all suits and actions instituted in the Circuit Court, relating to :

1. Fees of office ;

2. Duties, rents, revenues or sums of money payable to the Crown ;

3. Titles to lands or tenements ;

4. Annual rents or other matters by which rights in future may be affected.—O. C. 1058.

Infra, art. 1130

50. Excepting the Court of Queen's Bench, all courts, circuit judges and magistrates, and all other persons and bodies politic and corporate, within the Province, are subject to the superintending and reforming power, order and control of the Superior Court and of the judges thereof in such manner and form as by law provided.—R. S. 2329, *am.*

Infra, art. 1307.

51. The Court of Review has exclusive original jurisdiction to determine cases reserved for its consideration by the presiding judge at a jury trial.—*New.*

Infra arts. 491, 494, 495.

52. An appeal lies to the Court of Review :

1. From any final judgment of the Superior Court or of the Circuit Court, susceptible of appeal to the Court of Queen's Bench ;

Supra, arts. 43, 44 ; *infra*, arts. 72, 492, 890, 923, 1189 et s. 1306.

2. From any judgment or order rendered by a judge in non-contentious matters under the provisions contained in the Tenth Part of this Code ;

3. From any judgment rendered on any motion or petition to set aside or quash an attachment before judgment or a *capias ad respondendum ;*

4. From any judgment in matters concerning municipal corporations and municipal offices, on proceedings taken in virtue of Chapter Fortieth of this Code.—O. C. 494, *amended ;* R. S. 5906 ; 54 Vic., c. 48, s. 1.

53. The review of judgments rendered in the districts of Montreal, Ottawa, Pontiac, Terrebonne, Joliette, Richelieu, St. Francis, Bedford, St. Hyacinthe, Iberville and Beauharnois takes place at the City of Montreal ; that of judgments rendered in the districts of Quebec, Three Rivers, Saguenay, Chicoutimi, Gaspé, Rimouski, Kamouraska, Montmagny, Beauce and Arthabaska at the City of Quebec.

This Article applies also to cases reserved for the consideration of the Court of Review by the judge presiding at a trial by jury.—*New in part.* O. C. 496, *am.*

SECTION IV

Circuit Court

54. The Circuit Court has ultimate jurisdiction to the exclusion of the Superior Court :

1. In all suits wherein the sum claimed or the value of the thing demanded is less than one hundred dollars, saving the exceptions contained in the following Articles, such cases as fall exclusively within the jurisdiction of the Exchequer Court of Canada, and matters of petition of right ;

2. In all suits for school-taxes or school-fees, and all suits concerning assessments for the building and repairing of

churches, parsonages, and churchyards, whatever may be the amount of such suits.—O. C. 1053, 886*a*; R. S. 5993; 54-55 Vic. (C.), c. 26.

Infra, arts. 894, 1131, 1336.

55. Except at the chief place of each district, the Circuit Court has original jurisdiction, to the exclusion of the Superior, Court, but subject to appeal :

1. In all suits wherein the sum claimed or value of the thing demanded amounts to or exceeds one hundred dollars, but does not exceed two hundred dollars, saving the exception contained in the second paragraph of the preceding Article ;

2. In all suits for fees of office, duties, rents, revenues or sums of money payable to the Crown, or which relate to any immovable rights, to annual rents or such like matters whereby rights in future may be bound ; even though the amount claimed be under one hundred dollars.—O. C. 1054; R. S. 5994.

Supra, arts. 44, 49; *infra*, art. 1135.

56. The Circuit Court may take cognizance, upon evocation, of any suits brought before the Commissioners' Court for the summary trial of small causes, in the cases secondly enumerated in the preceding Article.—O. C. 1055.

Infra, art. 1268 et s.

57. The Circuit Court has jurisdiction in the same manner as the Superior Court, over judgments rendered within the limits of the district or circuit for which it is held, by the Commissioners' Court mentioned in Article 56, or by Justices of the Peace, by means of *certiorari* wherever it lies.—O. C. 1056, *am.*

Infra, art. 1297.

58. The Circuit Court has also an appellate jurisdiction over judgments rendered by the Commissioners' Court or by Justices of the Peace, for taxes, assessments or penalties, imposed under the Municipal Code.—O. C. 1057 ; R. S. 5995.

SECTION V

Commissioners' Court

59. The Commissioners Court exercises an ultimate jurisdiction :

1. In suits for the recovery of assessments, not exceeding twenty-five dollars, imposed for the building and repairing of churches, parsonages and churchyards ;

2. In all suits purely personal or relating to movable property, which arise from contracts or quasi-contracts, wherein the sum or value demanded does not exceed twenty-five dollars, and the defendant resides :

(a). In the locality of the court ;

(b). In another locality, but within a distance of fifteen miles if the debt has been contracted in the locality for which the court is established ; or

(c). In a neighbouring locality in which there are no commissioners, or in which the commissioners cannot sit by reason of illness, absence, or other inability to act, provided such locality is in the same district within a distance of thirty miles. It has no jurisdiction in the cities of Quebec, Montreal, Three Rivers and St. Hyacinthe, if there are other courts having jurisdiction to take cogniz-

ance of the matter in issue.—O. C. 1188, 1190; R. S. 6011; 53 Vic., c. 62, s. 1.

Infra, art. 1253 et s.

60. It has no jurisdiction in suits for slander, or for assault or battery, or relating to civil status, paternity or seduction, or lying-in expenses; or in suits for the recovery of any fine or penalty whatever.—O. C. 1189, *English version, amended.*

SECTION VI

District Magistrate's Court.

61. The Magistrate's Court has ultimate civil jurisdiction to hear and determine:

1. All suits, whether personal or real, wherein the sum claimed or value of the thing demanded does not exceed ninety-nine dollars in the County of Pontiac, in the County of Lake St. John, in the County of Gaspé, including the Magdalen Islands, and also in the County of Saguenay for that part of it extending to the East as far as the Jeremy Islands, and fifty dollars in the rest of the Province;

2. All suits for the recovery of school-rates, taxes, assessments or contributions, or of rates, taxes, assessments, penalties, damages or sums of money whatever, due or payable in virtue of the Municipal Code, or in virtue of any special municipal act of incorporation, or in virtue of any by-laws or regulations made under the authority of such acts, or under the laws respecting abuses prejudicial to agriculture;

3. All suits for the recovery of penalties incurred, and of sums due to the treasury of the Province under the license law.

In all such suits, however, the defendant must reside within the county, city or town for which the court is held, or the debt must have been contracted therein and the defendant be resident in the Province.—O. C. 1215*a*; R. S. 6013; 59 Vic., c. 45, s. 1.

Infra, art. 1284 et s.

62. When the amount of rent claimed or the amount of damages alleged does not exceed fifty dollars, the Magistrate's Court has jurisdiction in actions to annul or to rescind a lease, or to recover damages resulting from the contravention of any of the stipulations of the lease, or the non-fulfillment of any of the obligations which the law attaches to it, or which result from the relation of lessor and lessee.—O. C. 1215*b*; R. S. 6013.

SECTION VII

Justices of the Peace, Recorder's Court and other Inferior Jurisdictions.

63. Justices of the Peace have jurisdiction in certain civil matters, such as the recovery of school-taxes, of assessments for the building or repairing of churches, parsonages or church-yards, damages caused by animals, and other matters relating to agriculture, disputes between masters and servants in certain localities, seaman's wages, claims of pawners against pawnbrokers, and other matters.—O. C. 1216.

Infra, art. 1292 et s.

64. In certain localities the Recorder's Court has also jurisdiction for the recovery of certain municipal claims, and in matters of dispute between

lessors and lessees, and masters and servants. (1) O. C. 1217, *am.*

Infra, art. 1292 et s.

65. The Harbor Commissioners also exercise a civil jurisdiction in matters relating to the shores of the River St. Lawrence and of the rivers flowing into it, and also with regard to the wages and indemnities due to pilots.—O. C. 1218, *am.*

Infra, art. 1292 et s.

66. The extent of the jurisdiction of these special courts and the manner of proceeding before them are regulated by the statutes creating or relating to them, and in certain respects by the practice therein followed.—O. C. 1219, *am.*

SECTION VIII

Supreme Court of Canada, and Exchequer Court of Canada.

67. The extent of the jurisdiction of the Supreme Court of Canada, and of the Exchequer Court of Canada, and the procedure therein are regulated by special statutes.—R. S. C., c. 135, s. 2; 54-55 Vic. (C.), cc. 25, 26, 29.

SECTION IX

Her Majesty in Her Privy Council.

68. An appeal lies to Her Majesty in Her Privy Council from final judgments rendered in appeal by the Court of Queen's Bench:

1. In all cases where the matter in dispute relates to any fee of office, duty, rent, revenue, or any sum of money payable to Her Majesty;

2. In cases concerning titles to lands or tenements, annual rents or other matters in which the rights in future of the parties may be affected;

3. In all other cases wherein the matter in dispute exceeds the sum or value of five hundred pounds sterling.—O. C. 1178, *am.*; Civil Code 17.

Infra, art. 1249 et s.

69. Causes adjudicated upon in review, which are susceptible of appeal to Her Majesty in Her Privy Council, but the appeal whereof to the Court of Queen's Bench is taken away by Articles 43 and 44, may nevertheless be appealed to Her Majesty.—O. C. 1178*a*; R. S. 6009.

CHAPTER III

Jurisdiction of Judges in Chambers

70. The judge in chambers has jurisdiction over such matters as are assigned to him by law or by the Rules of Practice. —*New, in part.*

71. The court may, of its own motion, or at the instance of one of the parties, and upon such conditions as it deems proper, adjourn to chambers any matter which can thus be more conveniently tried and determined; and the judge may, for the same reason, adjourn any matter in chambers to open court.—*New.* R. P. Q. 548.

72. Decisions rendered by the judge in chambers upon matters within the jurisdiction assigned to him have the same force and effect as judgments of the court, and are in like manner subject to review, appeal, and other remedies against judgments.—*New.* R. P. Q. 549.

Infra, art. 537.

(1) For special jurisdiction of the Recorder's Court for the city of Montreal, see 62 V. c. 58.

CHAPTER IV

Rules of Practice.

73. Rules of Practice applicable in one or more circuits or districts, and necessary for the effectual execution of the provisions of this code, may be made:

1. For the Court of Queen's Bench, by the majority of the judges thereof present at any meeting convened for that purpose by the Chief Justice of the Court;

2. For the Superior Court and the Circuit Court, by at least two-thirds of the judges of the Superior Court, in meeting assembled for that purpose by the Chief Justice of the Superior Court.

Nevertheless, in districts in which there are circuit judges, they may make rules of practice, only for the Circuit Court of the district for which they are appointed.—*New, in part.* O. C. 29; C. C. 1177; R. S. 5858, *in part.*

74. The Rules of Practice must not be incompatible with the provisions of this Code.—O. C. 29; 1177, *in part.* R. S. 5858, *in part.*

75. The Rules of Practice come into force ten days after their publication in the *Quebec Official Gazette.*

They must, immediately after publication, be copied by the clerk of appeals, the prothonotary or the clerk, as the case may be, into the register of each court, respectively, in the circuits or districts for which they were made.

The clerk of appeals, the prothonotary, or the clerk, must, moreover, post in the office of the court a notice stating that new rules of practice have been copied into the registers, and mentioning when they will come into force.—*New in part;* O. C. 29; R. S. 5858.

SECOND PART.

RULES APPLICABLE TO ALL ACTIONS.

CHAPTER V

Actions and Parties to Actions.

76. Whoever seeks to obtain a thing or a right which is denied him must sue for it before the proper court.—O. C. 12.

77. No person can bring an action at law unless he has an interest therein.

Such interest, except where it is otherwise provided, may be merely eventual.—*New in part.* O. C. 13; R. C. C. S., art. 288.

78. No person can be a party to an action, either as claimant or defendant, in any form whatever, unless he has the free exercise of his rights, saving where special provisions apply.

Those who have not the free exercise of their rights must be represented, assisted or authorized in the manner prescribed

by the laws which regulate their particular status or capacity.—O. C. 14, §§ 1, 2.

Infra, arts. 81 174. 1090, 1101, 1263; *Civil Code*, arts. 6, 36, 176, 178, 180, 210, 304, 320, 323, 334, 343, 351.

79. All foreign corporations or persons, duly authorized under any foreign law to appear in judicial proceedings, may do so before any court in the Province.—O. C. 14, § 3.

Infra art. 179; *Civil Code* 27, 28.

80. Any person who, according to the laws of a foreign country, is authorized to represent a person who has died or made his will therein, leaving property in the Province, may also appear as such in judicial proceedings before any court in the Province.—O. C. 14, § 4,

Civil Code, arts. 25, 609.

81. A person cannot use the name of another to plead, except the Crown through its recognized officers.

Tutors, curators and others representing persons who have not the free exercise of their rights, plead in their own name in their respective qualities.

Corporations plead in their corporate name.—O. C. 19.

Supra, art. 78; *Infra*, art. 552; *Civil Code*, art. 357.

82. No judicial demand can be adjudicated upon unless the party against whom it is made has been heard or duly summoned.—O. C. 16.

CHAPTER VI

Mode of Appearance of the Parties and Election of Domicile.

83. Any party to an action or to any other judicial proceedings can only appear and plead in person or through the ministry of an advocate.

Notaries may prepare the proceedings specified in the Tenth Part of this Code, and submit the same to the judge or to the prothonotary, and may even sign in the name of the petitioners all petitions necessary for such proceedings.—O. C. 23; R. S. 5887.

Infra, art. 1273.

84. Every party appearing in person is held to have elected domicile in the office of the court in which the appearance is filed.—O. C. 84; R. S. 5868.

85. Whenever one of the parties has, since the commencement of the action, left the Province, or has no domicile therein, all orders, rules, notices or other proceedings may be served upon him at the office of the court, provided the sheriff or bailiff alleges in his return that he has made fruitless endeavors to find him, and that, to the best of his belief, he is not within the limits of the province.—O. C. 84; R. S. 5868.

86. Advocates and attorneys are bound to elect domicile within a distance of one mile from the building in which the court is held, and to have the same, as well as any subsequent change thereof, registered in the office of the court, in the register kept for that purpose.

In default of making such election of domicile, or of registering the same or any change thereof, or in case the domicile is found closed, such advocates and attorneys are held to have elected domicile at the office of the court, where all services upon them may be validly

made.—O. C. 85, *am.*; *Lemay* vs. *Gingras*, 12 Q. L. R. 17.

CHAPTER VII

Joinder of Causes of Action

87. Several causes of action may be joined in the same suit, provided they are not incompatible or contradictory, that they seek condemnations of a like nature, that their joinder is not prohibited by some express provision, and that they are susceptible of the same mode of trial.

A creditor cannot divide his debt for the purpose of suing for the several portions of it by different actions.—O. C. 15.

Infra, arts. 99, 177, § 6, 1066.

CHAPTER VIII

Actions Against Public Officers

88. No public officer or other person fulfilling any public function or duty can be sued for damages by reason of any act done by him in the exercise of his functions, nor can any verdict or judgment be rendered against him, unless notice of such action has been given him at least one month before the issue of the writ of summons.

Such notice must be in writing; it must state the grounds of the action and the name of the plaintiff's attorney or agent, and indicate his office; and must be served upon him personally or at his domicile.—O. C. 22, *am.*

Infra, arts. 97, 429.

CHAPTER IX

Proceedings in Forma Pauperis

89. Except in actions for penalties or for damages caused by slander or libel, the judge may permit a party to plead *in formâ pauperis*, and order the officers of the court to afford him their services without any remuneration.

Such permission, nevertheless, does not exempt the party from paying the government tax or the costs of bailiffs.

Such party, if he fails in the action, is not exempt from condemnation to pay costs to the other party; but no advocate or attorney who represents any such party may receive from him any fee or other compensation for his services, without rendering himself guilty of contempt of court.—O. C. 31, *am.*; R. S. 5860; R. C. C. S., art. 167.

Civil Code, art. 16.

90. Permission to plead *in formâ pauperis* is granted upon a petition, supported by affidavit, establishing that the petitioner has a good ground of action or a good defence, and that he has not the means necessary to make the disbursements.

The judge may allow the production of adverse affidavits, the cross-examination of persons who have already made affidavits, and the oral examination of new witnesses.—O. C. 31, 32, *am.*

91. Such leave may be revoked by the judge upon proof that the party has since become able to make the necessary disbursements, or that he is guilty of improper conduct or of wil-

ful and unnecessary delay.—*New in part.* O. C. 32, *am.*; N. Y. C. 462.

92. If the party against whom proceedings are taken *in formâ pauperis* incurs costs upon any incident in the suit, he cannot be compelled to pay the same before final judgment, and such costs may then be compensated with those incurred by the opposite party.—*New.*

93. If a party proceeding *in formâ pauperis* obtains judgment in his favor, the other party may be condemned to pay costs, including those of the officers of the court who are, then entitled to an execution to obtain payment thereof from such party, by means of distraction.

No more than one execution can, however, be issued for all the taxed costs remaining unpaid; it is issued at the instance of the prothonotary, or of any party interested, and the moneys are returned into the office of the court, and are paid, free of charge, to the parties thereto entitled.—O. C. 33, *am.*

CHAPTER X

Place of Instituting Actions

94. In matters purely personal, other than those mentioned in Articles 96, 97, 98, 103 and 104, the defendant may be summoned:

1. Before the court of his domicile; and in the case of election of domicile for the execution of an act, before the court of the domicile so elected;

2. Before the court of the place where the action is personally served upon him;

3. Before the court of the place where the whole cause of action has arisen;

4. Before the court of the place where the whole or part of his property is situated, when he has left his domicile in the Province, or has never had such domicile, but has property therein, and the cause of action has not arisen therein.—*New in part.* O. C. 34; R. S. 5861; Civil Code 85; 52 Vic., c. 48; C. S. L. C., c. 83, s. 61.

Infra, arts. 170, 1105; *Civil Code*, arts. 27, 79 et s.

95. A fire or life insurance company may be summoned by the insured, his heirs and assigns, for rights arising out of a fire insurance policy, before the court of the place in which the insured movables or immovables were, and for rights arising out of a life policy, before the court of the place in which the insured had or has his domicile.—O. C. 34, § 2; R. S. 5861.

96. In an action for separation from bed and board, or for separation of property only, the defendant must be summoned either before the court of the domicile of the husband, or, if he has left his domicile, before that of the last common domicile of the consorts.—O. C. 35, *am.*

Infra, arts. 1091, 1099.

97. Any action in damages against a public officer by reason of an act done by him in the exercise of his functions must be brought before the court of the place where such act was committed.—O. C. 36.

Infra, art. 429.

98. In actions in warranty

and in continuance of suit, the defendants are summoned at the place where the principal action was brought, wheresoever their domicile may be.—O. C. 40.

Infra, arts. 183 et s. 271, 273.

99. When a personal action is founded upon several causes of action arising in different districts, it may be brought before any court which has jurisdiction by reason of one of such causes of action.—*New.*

Supra, art. 87.

100. In every real or mixed action the defendant may be summoned before the court of his domicile or before that of the place where the object in dispute is situated.—O. C. 37.

101. When a real action has for its object an immovable or immovables, situated partly in one district or circuit, and partly in another, the suit may be brought in either, or in the district or circuit where the defendant has his domicile.—O. C. 41, *am.*

Infra, arts. 1058, 1068.

102. In matters of succession, the parties are summoned before the court of the place where the succession devolves, if it opens in the Province; otherwise, before that of the place where the property is situated, or of the domicile of the defendant or of any one of the defendants.—O. C. 39.

Civil Code, arts. 600 et s. 694.

103. In matters purely personal, if there are several defendants in the same action residing in different districts, they may all be brought before the court of the district in which one of them has been summoned, provided that such summons be not made with the intention of withdrawing the real parties from the courts which would otherwise have jurisdiction.

In real actions, they must be summoned before the court of the place where the object in dispute is situated.

In mixed actions, before the court of the place where the object in dispute is situated, or before the court of the domicile of one of the defendants.—O. C. 38, *am.*

104. If the sole judge administering justice in any district is liable to be recused, or if he must be a party to the suit, the action may be brought in one of the adjoining districts, the grounds of recusation or disability being alleged in the demand; and if these grounds are insufficient or not proved, the court may order the case to be sent back to the court before which it would have been brought in the ordinary course.—O. C. 42.

Infra, arts. 237, 238.

CHAPTER XI

General Rules of Pleading.

105. In any proceeding it is sufficient that the facts and conclusions be concisely, distinctly and fairly stated, without any special form being necessary, and without entering into argument.

Such statements are interpreted according to the meaning of words in ordinary language. *New, in part.* O. C. 20; R. P. O. 399.

106. Dates, numbers and quantities may be denoted by figures.—*New*; *Eng. R.* 200.

107. Any form of reference to an act or part of an act is

sufficient if it is intelligible.—O. C. 26; R. S. 15.

108. The allegations are divided into paragraphs, numbered consecutively; and each paragraph must contain, as nearly as may be, only one allegation. *New*; *Eng. R.* 200.

109. Admissions and denials are made, and explanations given, in so far as practicable, by referring to the paragraph containing the fact admitted, denied or explained.

Repetition of an allegation in subsequent pleadings is made by a simple reference to the paragraph of the former pleading containing the allegation repeated. *New.* R. P. O. 401.

110. Every fact which, if not alleged, is of a nature to take the opposite party by surprise or to raise an issue not arising from the pleadings, must be expressly pleaded.—*New*; *Eng. R.* 211.

Infra, art. 139.

111. Every fact alleged by the opposite party, the existence or truth of which is not expressly denied or declared to be unknown, is held to be admitted.—O. C. 144, *am.*

112. Every affidavit must be divided into paragraphs, numbered consecutively, and be in the first person.

The names, occupation and domicile of the person making the affidavit must be inserted therein.

The date when and the place where it was sworn must be inserted in the jurat.—*New.* A. R. O. 95, 96, 97.

113. The court cannot adjudicate beyond the conclusions, but it may reduce them and grant them only in part.—O. C. 17.

Infra, art. 522.

114. The unconstitutionality of any statute of the Province or of Canada cannot be pleaded before the courts of original jurisdiction or of appeal unless the party pleading the same has, at least eight days before the day fixed for the hearing, given to the Attorney-General notice of the question which he intends to raise, with sufficient information to enable him to understand the nature of his pretensions.

Upon such notice, the Attorney-General may intervene in the case on behalf of the Crown and take issue in writing on such questions.

The judgment of the court must mention such intervention and such conclusions, on which it renders judgment as if the Attorney-General were a party to the suit.

A copy of such judgment is forwarded without delay to the said Attorney-General.—O. C. 20*a*; R. S. 5856.

115. Except where it is otherwise provided, every proceeding of the contestation must be served upon the opposite party; otherwise it is not deemed to be regularly filed.—*New in part*, O. C. 462, s. 1.

Supra, arts. 84, 86.

116. When any writ or paper whatever requires to be served out of the district, the service may, in the absence of any provision to the contrary, be made either by the sheriff or a bailiff of the district in which the court is held, or by the sheriff or a bailiff of the district in which such service is to be made; but no more costs can be allowed in the former case than in the latter, unless the

judge otherwise orders if he deems proper.

This provision applies also to executions against movable property and to attachments before or seizures after judgment.—O. C. 461; R. S. 5897.

Infra, arts. 1137, 1259.

THIRD PART.

PROCEDURE IN THE SUPERIOR COURT.

CHAPTER XII

Summons

117. Every action before the Superior Court is instituted by means of a writ of summons, in the name of the Sovereign, saving the exceptions contained in this Code, and other cases provided for by special laws.—O. C. 43.

118. This writ of summons is drawn up either in French or in English, is signed and attested by the prothonotary, and is issued by the latter upon the written requisition of the plaintiff.—O. C. 44, 45, 46, *am.*

119. In cases of urgency, the writ may be issued outside office hours, and even on a Sunday or holiday, without judicial stamps thereon, provided the amount of such stamps be deposited with the officer issuing the writ, who must affix the stamps upon the fiat as soon as possible.—O. C. 467*a*, *am.*; R. S. 5901.

120. The writ of summons remains in force, while unserved, during six months from its date; but the judge or prothonotary may, before the expiry of such delay, upon its being established by affidavit or bailiff's return that service was impossible, continue it for another period of six months, and so on from time to time until service is made.—*New.* R. P. Q. 238.

Infra, art. 150.

121. Saving the particular exceptions hereinafter mentioned, writs of summons may be directed to the sheriff or to any bailiff of the district in which such writ issues, and may be by him served in such district, or in any other district, or they may be directed to the sheriff or to any bailiff of the district in which such writ is to be served, commanding him to summon the defendant to appear before the court within the delay and at the place therein mentioned.

If there are several defendants residing in different districts several writs may issue, directed in the same manner.—O. C. 48, R. S. 5863.

Supra, art. 116.

122. The writ must state the names, the occupation or quality and the domicile of the plaintiff, and the names and the present or last known residence of the defendant.

The Attorney-General for Canada, or for the Province, is sufficiently designated by the

name of his office whenever he pleads on behalf of the Crown.

Married women and widows may be described as defendants under the surname of their husband, or of their deceased husband, adding the words: "wife of" or "widow of," respectively, and the names or a sufficient designation of the husband or of the deceased husband.

In actions upon bills of exchange, promissory notes or other private writings, whether negotiable or not, it is sufficient to give the initials of the Christian or first names of the defendant, such as they are written upon such bills, notes or instruments.

If the defendant has no domicile, residence or place of business in the Province, and his names are uncertain or unknown, it is sufficient to describe him so that he may be clearly identified, provided that the writ is served upon him personally.

When a corporate body is a party to the suit, it is sufficient to insert its corporate name and to indicate its principal place of business.

If a commercial partnership, having its principal place of business outside the district, is not registered therein, it may be summoned by its firm name, with mention of the place where such principal place of business is situated; but the judgment rendered against it is then executory only against partnership property.—*New in part.* O. C. 49; R. S. 5864; R. P. O. 317.

Infra, arts. 135, 174, 513 et s. 1162.

123. The causes of action must be stated in the writ or in a declaration annexed to it.

In actions upon deeds of sale or notarial obligations, bills of exchange, promissory notes, private writings, or for accounts, it is sufficient to insert in or annex to the writ a declaration drawn up in accordance with the forms contained in Schedule A in the Appendix to this Code.

Such declaration must be signed by the attorney for the plaintiff, or by the plaintiff himself if he has no attorney.—*New in part* O. C. 50.

See Forms in Appendix.

Supra, arts. 105 et s; *infra*, arts. 174, 513 et s.

124. If the object of the demand is a thing certain, it must be described in such a manner as to clearly establish its identity.

If the demand relates to the whole or part of a corporeal immovable situated in a division where the official plan and book of reference are in force, it must be described in accordance with the provisions of Article 2168 of the Civil Code.

If it relates to a lot or part of lot situated in a locality where the official plan and book of reference are not in force, it must be described with certainty and precision, by mentioning its nature, the city, town, village, parish or township, street, range or concession wherein it is situated, and also the lands conterminous to it; and, if it is a piece of land known under a particular name, it is sufficient to give its name and its situation.

If the demand relates to rents constituted for the redemption of seignorial rights, or to rights relating to any seigniory, they must be described according to the provisions of Articles 5720

to 5727 of the Revised Statutes. —O. C. 52, *am.*; C. C. 2168; N. Y. C. 1511.

Infra, arts. 174, 513 et s.

125. No summons can be served on a Sunday or a holiday without the leave of the judge or prothonotary.—O. C. 54, *am.*

Supra, arts. 7, 119.

126. No summons can be served before seven o'clock in the morning, or after seven o'clock in the afternoon, without the leave of the judge or prothonotary.

This provision does not apply to cases of *capias ad respondendum*.—O. C. 55 *am.*

Supra, art. 119.

127. Service is effected by leaving with the defendant a copy of the writ of summons, and of the declaration, if there is one.

The copy must be certified either by the prothonotary or by the attorney for the plaintiff, or by the plaintiff himself, if he has no attorney; and it must be indorsed with a statement, signed by the officer who makes the service, of the date of service.

Such indorsement is not required whenever a writ specifies the day upon which the party summoned must appear. —O. C. 56, *am.*

Infra, arts. 146, 174.

128. Service must be made either upon the defendant in person, or at his domicile or at the place of his ordinary residence, speaking to a reasonable person belonging to the family.

In the absence of a regular domicile or ordinary residence, service may be made upon the defendant at his office or place of business, if he has one. — *New in part.* O. C. 57.

Civil Code, arts. 79 et s.

129. Service of the summons may be made at the domicile elected, or upon the person indicated for that purpose by the party.—O. C. 72, *am.*

Civil Code, art. 85.

130. In all cases in which the defendant resides in the same domicile with the plaintiff, he must be served personally, except upon leave granted by the judge or the prothonotary.—O. C. 58, *am.*

131. If there are several defendants, they are served in the manner above mentioned, separately and distinctly, and a copy of the summons is left with each of them, except in the cases hereinafter provided. —O. C. 59.

132. Service upon masters or captains of ships, or other mariners, who have no domicile in the Province, may be made on board the ship they belong to, speaking to a person in the ship's employ.—O. C. 66.

133. A wife separated from bed and board must be served separately from her husband.

A wife not separated from bed and board is sufficiently summoned by service made upon her husband.—O. C. 67.

Civil Code, arts. 83, 207

134. Persons imprisoned may be summoned by personal service between the wickets.— O. C. 70.

135. Any service upon the heirs of a person deceased within the previous six months may be made upon them collectively, without mentioning their names or residences, at the former domicile of deceased; if, however, there was no such domicile in the Province, or if it is closed or is no longer occupied by any member of the deceased's family, the service may be made

upon one or more of the heirs in the manner prescribed for ordinary summons.—*New.* C.P.G. 41.

Infra, arts. 605, 606.

136. When a defendant who is absent from the Province has no domicile, ordinary residence, or place of business therein ; or

When a consort, sued for separation from bed and board, is absent from the Province ;

The judge, or prothonotary, upon a return to that effect, may order the defendant to appear within one month from the last publication, in the manner hereinafter prescribed, of the order thus rendered.

A synopsis of the order, drawn up in accordance with the form contained in Schedule B in the Appendix to this Code, is twice inserted in French and in English in a newspaper published in each language, respectively, in the district where the court sits. If there is no such newspaper in the district, it is inserted in a similar newspaper in the nearest locality. Such newspapers are mentioned in the order.—O. C. 62, 67, 68, *am.;* R. S. 5866 ; 53 Vic., c. 55, s. 2.

See Form Sched. B. in Appendix.

Infra, art. 145.

137. In the cases mentioned in the preceding Article and without prejudice to the mode of summons therein prescribed, the judge, or the prothonotary, upon proof by affidavit or otherwise that the defendant has his domicile or ordinary residence in another Province of Canada, may grant leave to serve the writ at such domicile or residence.

This leave is indorsed in writing upon the writ, which may then be served by any literate person, who makes an affidavit of service, sworn to before any Justice of the Peace having jurisdiction in the place where the service was made, or before a Commissioner of the Superior Court for this Province, or by any bailiff of the said Court. —O. C. 69, *am.;* R. S. 5867; 53 Vic., c. 55, s. 3.

See Form Sched. C. in Appendix.

Infra, art. 558.

138. Church *fabriques* and vestries are served by leaving copies of the summons separately with the *curé* or rector, or person performing his functions in the parish, and with the then acting churchwarden.—O. C. 65.

Civil Code, art. 1838.

139. Service upon a general partnership may be made at its place of business, or, if it has none, upon one of the partners. —O. C. 60.

Civil Code, art. 1838.

140. Service upon an unincorporated joint-stock company may be made at its office, by speaking to a person employed in such office, or elsewhere upon its president, secretary or agent.—O. C. 61, *am.*

141. If the company has no known office or place of business, and no known president, secretary or agent, the judge, upon a return to that effect, may order that it be summoned by advertisement to be inserted twice during one month in at least one newspaper.—O. C. 62, *am.*

Infra, art. 145.

142. Service upon a body corporate is made in the manner provided by its charter, and, in the absence of such provision, in the manner prescribed in the two preceding articles.— O. C. 63.

143. Foreign companies or corporations, and all executors of wills, administrators, or representatives of the successions of persons having had property in the Province, may, if they have an office or an agent in the Province or carry on business therein, be summoned there, in the manner provided in Article 140, and, if they have no such office, in the manner prescribed in Article 141.

If such companies, corporations or persons are domiciled or have their principal place of business in any other Province of Canada, they may be summoned in the manner prescribed in Article 137.—O. C. 64, *am.*; R. S. 5865.

Infra, art. 145.

144. Foreign companies which control, either as owners or lessees, any line of railway, of telegraph, or of telephones, extending to or passing through the Province, and which have no office, president, secretary, or agent therein, are sufficiently summoned by service made upon any person in charge of a station, or of a telegraph or telephone office respectively, belonging to such companies or under their control.—O. C. 64. *am.*; P. O. 268.

Infra art. 145.

145. The judge may, if circumstances require it, shorten or extend the delay mentioned in Articles 136 and 141, or order a mode of service other than that prescribed in those Articles and in Articles 143 and 144.—*New.* C. P. G. 54.

146. If the defendant fraudulently evades service of the summons, the judge may, upon a return to that effect, prescribe whatever mode of service he deems proper.—*New.*

147. A summons cannot be served in church, or in court, or upon a member of the Legislature upon the floor of the House.—O. C. 71, *am.*

148. Bailiffs cannot make services in matters in which they are interested, or in matters which concern their relations by blood or by affinity, to the degree of cousin-german, inclusively.—O. C. 74, *am.*

149. In ordinary cases the defendant is summoned to appear within a delay of six days from the date of the service upon him of the writ, when the distance from the place of service to the place where the court is held does not exceed fifty miles.

When the distance exceeds fifty miles, the delay is increased one day for each additional fifty miles; provided always that the delay need never exceed twenty days, whatever the distance.—*New.* O. C. 75; *Smith vs. Donovan*, 19 L. C. J. 336.

Supra, art. 127; *infra*, art. 1153.

150. At any time after the issue, but before the service of the writ of summons, the defendant may obtain from the judge an order commanding the plaintiff, under penalty of the summons being discharged, to serve upon him a copy of the writ and of the declaration within a specified delay.—*New.*

Supra, art. 120.

CHAPTER XIII

Return of Actions

151. The writ of summons must be filed in the office of the court, during office hours, on or before the last day of the delay allowed for appearance.—O. C. 76, 81 *am.*

Supra, arts. 8, 9, 149.

152. The writ must be accompanied with a certificate of service.—O. C. 77.

153. Such certificate of service, if made by a bailiff, must state:

1. His name, his residence, and the district for which he is appointed;
2. The day and hour of service;
3. The place where, and the person with whom a copy of the writ was left;
4. The distance from the bailiff's residence to the place of service;
5. The distance from the Court House to the place of service;
6. The amount of the costs of service.

If the certificate is made by the sheriff, it must contain the same statements, with the exception of what is mentioned in the first paragraph.—O.C. 78, *am.*

Infra, arts. 174, 236, 519.

154. If the writ is not returned, the defendant may, upon giving notice to the plaintiff within three days from the expiry of the delay for appearance, and depositing the copy of the writ served upon him, obtain from the judge an entry of default against the plaintiff, and be discharged from the suit with costs.

The judge may, nevertheless, allow the return of the action upon such conditions as are thought proper, if application is made within the same delay of three days.

The plaintiff cannot institute a new suit for the same cause of action until he pays the costs to which he has been condemned by reason of such default.—O.C. 82, *am.*

CHAPTER XIV

Filing of Exhibits

155. The plaintiff, must, at the time that he returns the writ, file in the office of the court the written proofs which he has alleged in support of his demand, together with a list or inventory of such exhibits.

If he fails to do so, he cannot afterwards file them without giving notice to the opposite party.—O. C. 99, 106, *am.*

156. An exhibit in blank, or a list of exhibits in which the designation of any exhibit is not filled up, cannot be received.—O. C. 105.

157. Until the exhibits have been filed in the manner hereinabove prescribed, the plaintiff cannot proceed with his demand.—O. C. 103.

Infra, art. 206.

158. Every exhibit filed becomes common to all the parties to the suit, who may obtain copies thereof from the prothonotary so long as it remains in his hands.—O. C. 104.

159. Exhibits filed cannot be taken out of the office, unless the opposite party consents and a receipt is given.—O. C. 101.

160. A person who is in possession of a document filed and forming part of a record, or who has taken or received it, may, upon motion, be coerced by imprisonment to return the same, without prejudice to his liability for damages.—O. C. 102.

CHAPTER XV

Appearance and Default to Appear

161. The defendant, when

duly summoned, must file a written appearance in the office of the court on or before the last day of the delay allowed for appearance.

If the defendant does not so appear and the plaintiff does not take any proceeding in the case, the defendant may appear, but he is not entitled, unless the judge otherwise orders, to any longer delay for pleading to the action than if he had appeared within the delay prescribed.—*New, in part.* O. C. 83.

Supra, arts. 9, 83, 84, 149; *infra*, 153.

162. If the defendant does not appear within the delays prescribed, the plaintiff may obtain from the prothonotary an entry of default against him, and, upon obtaining a certificate of such entry, may proceed to judgment.—O. C. 86, *am.*

Infra art. 418 et s.; 532 et s.

163. Notwithstanding any proceeding on the part of the plaintiff, the defendant may, at any time before judgment, upon sufficient cause shown, obtain from the judge leave to appear, upon such conditions as are deemed proper.—O. C. 87, *am.*

CHAPTER XVI

Contestation of the Action

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SECTION I

Preliminary Exceptions

§ 1.—RULES COMMON TO ALL PRELIMINARY EXCEPTIONS

164. Preliminary exceptions must be urged by way of motion, of which notice must be given to the opposite party within three days from the return of the action or the filing of the pleading to which they relate, saving the cases mentioned in Articles 177, Paragraph 6, 178 and 181.

Such motion must be presented to the court as soon as it is possible to do so after the expiry of the delay to which the opposite party is entitled.

The court may, when the motion is presented, allow either party to answer in writing, and to adduce evidence, if necessary.—*New.* O. C. 107.

Supra, art. 9; *infra*, arts. 200, 1154.

165. The motion cannot be presented unless it is accompanied with a certificate from the prothonotary, of which notice must have been given to the opposite party at the same time as the motion, establishing the deposit in the office of the court of the sum fixed by the rules of practice.—*New.* O. C. 112.

166. All preliminary ex-

ceptions are urged at the same time, except in the case of Articles 177, Paragraph 6, 178 and 181; but the declinatory exception is first disposed of, and the other exceptions are then decided by the competent court.—*New.* O. C. 107.

167. At any time before judgment upon preliminary exceptions, saving the cases stated in Articles 177, Paragraph 6, 178 and 181, the plaintiff may, if he thinks the exception is filed solely in order to retard the suit, require the defendant, in writing, to plead to the merits, and may foreclose him if a defence is not filed within six days from the demand thereof; in which latter case the court takes cognizance of no other issues than those raised upon the preliminary exceptions.—O. C. 131, 128, 120, *am.*

168. If the defendant files his defence, proof takes place upon all the issues unless the court otherwise orders; and, if he succeeds upon the preliminary exception, he may recover from the plaintiff the costs incurred upon the contestation on the merits to which he was forced under the provisions of the preceding article.—O. C. 132, *am.*

169. When the defendant has pleaded a dilatory exception, which is afterwards maintained, the foreclosure from pleading to the merits, obtained against him under Article 167, is without effect; but he is bound to file his defence within six days after the expiry of the delays granted upon his exception, and, in default of his so doing, the foreclosure holds good.

If, upon being required to do so by the plaintiff, the defendant has pleaded to the merits, he may, within six days after the judgment maintaining his dilatory exception, amend his defence or plead anew, without thereby incurring any costs; in default of his doing so, he is presumed to abide by the defence filed.—O. C. 133, *am.*

§ 2.—DECLINATORY EXCEPTIONS

170. A party summoned before a court, other than that which should hear the issues, may ask that he be referred to the competent court, or that the action be dismissed if there is no such court.

But if the defendant, upon filing his declinatory exception, deposits the sum claimed, the judge must, instead of referring the case to the competent court, dismiss the action.—O. C. 113, *am.*; C. P. C. F. 168, 169; C. P. G. 65.

Supra, arts. 48, 54, et s.; 99 et s.

171. If, nevertheless, the court has no jurisdiction by reason of the subject-matter of the action, the reference may be demanded at any stage of the case, and, if the reference is not demanded, the court is obliged of its own motion to refer the case to the proper authority.—O. C. 114 *am.*

172. The court in declaring itself incompetent may award costs according to circumstances.—O. C. 115.

§ 3.—EXCEPTIONS OF *lis pendens*

173. The defendant may, in case of *lis pendens*, ask by a preliminary exception that the action be dismissed.—*New.* O. C. 136.

§ 4.—EXCEPTIONS TO THE FORM

174. The defendant may invoke any of the following grounds by exception to the form, whenever they cause a prejudice :

1. Irregularities in the writ, declaration or service ;

2. Incapacity of the plaintiff or of the defendant ;

3. Absence of quality in the plaintiff or in the defendant ;

4. The fact that a statement of the causes of action is not contained in the writ or in the declaration ;

5. Irregular description of the object of the demand.—O. C. 116.

Supra, arts. 74, 75, 76, et s., 100, 101, 103, 104, 105, 106, 108, 109, 110, 117, 118, 122 et s.

175. Irregularities in the writ or service or in the declaration, which cause a prejudice, entail nullity only when they are not remedied.—*New.*

Supra, arts. 513 et s.

176. Irregularities in the writ or service or in the declaration are waived by the appearance of the defendant and his failure to take advantage of them within the delays prescribed.—O. C. 119, *am.*

§ 5.—DILATORY EXCEPTIONS

177. The defendant may stay the suit by dilatory exception :

1. If the delays to which he is entitled for the purpose of making an inventory and deliberating, whether as heir or legatee, or in the case of community of property, have not expired ;

2. If the defendant has a right to demand security from the plaintiff, or the execution of some precedent obligation ;

3. If the plaintiff contravenes the rule that the parties must remain in their respective positions until these are changed by judicial authority ;

4. If the defendant has a right to exercise a recourse in warranty against a third party ;

5. If the defendant has a right to demand the discussion of the principal or original debtor ;

6. If the plaintiff has joined in his action several claims which are incompatible or contradictory, or which do not seek condemnations of a like nature, or the joinder of which is prohibited by some express provision, or which are susceptible of different modes of trial ; and in such cases the defendant cannot be bound to answer the action until the plaintiff has declared his option ;

7. If the plaintiff does not reside in the Province, and a power of attorney from him is not produced ;

8. If, in the case of an indivisible right or claim, all the parties interested and whose presence is necessary are not made parties to the suit.—O. C. 120.

Supra, art. 87; *infra*, arts. 521, 857. *Civil Code*, arts. 664 et s. ; 748, 874, 1130, 1342 et s., 1506 et s., 1520, 1554, 1576 et s., 1941 et s., 1964, 1965, 2062 et s.

178. If the dilatory exception is founded upon the legal delay for making an inventory and deliberating, the delays for pleading to the action and even for setting up preliminary exceptions do not begin to run against the defendant until after the time allowed him to make such inventory and to deliberate.—O. C. 121, *am.*

179. Any person not resident in the Province, who brings or institutes any action, suit or proceeding in its courts, is bound to give to the opposite party, whether a subject of Her Majesty or not, security for the costs which may be incurred in consequence of such proceeding.—*New.* Civil Code 29.

180. The defendant may require that the plaintiff be ordered to give security for the payment of the costs in popular or *qui tam* actions for the recovery of fines or penalties. *New.* O. C. 128; R. P. O. 1242 ss.; R. S. 5716.

Civil Code, art. 16.

181. Whenever a party is bound to give security, all proceedings in the case may, upon application by the opposite party, be stayed until such security has been given.

The delays for filing preliminary exceptions and the defence do not begin to run until after the date of the service upon the defendant's attorney of a notice informing him that such security has been given. —O. C. 128, *am.;* R. S. 5871; *Civil Code*, art. 29.

182. The application for security for costs may be made before the judge, or the prothonotary out of term, and may be adjudicated upon forthwith.

If the person bound to give security fails to do so within the delay fixed, the opposite party may obtain a judgment of non-suit.

Saving the foregoing provision, any person, from whom security may be demanded, may at any time, whether the same has been demanded or not, put in such security after one day's notice to the opposite party.—O. C. 129 *am.*

Infra, art. 559 et s.; *Civil Code*, 1962 et s.

183. If the defendant has warrantors to call in, he may, by means of a dilatory exception, obtain leave that his delays to plead to the action be not computed until the warrantors have been called in and held to plead to the merits.—O. C. 122.

Supra, art. 98.

184. The delay to call in warrantors is four days after the decision of the dilatory exception, exclusively of whatever time may be required to summon the warrantors, computed according to the ordinary rules, unless the court fixes other delays.—O. C. 123, *am.*

Supra, art. 149. *Civil Code*, art. 1520.

185. The demand in warranty must contain a summary statement of the grounds upon which it is made, with a copy of the principal demand and of the pleadings which require the the calling in of the warrantors. O. C. 124, *am.*

186. In cases of simple or personal warranty, the warrantor cannot take up the defence of the defendant, but can merely intervene and contest the principal demand, if he thinks proper.—O. C. 125.

187. In cases of real warranty, the purchaser who is disturbed or evicted is not bound to call in his immediate warrantor first, but may summon in warranty any more remote warrantor who may eventually be bound to intervene in the suit.—O. C. 126.

Civil Code, art. 2062.

188. In case of real warranty, the warrantor may take up the defence of the warrantee, who

is relieved from the contestation, if he requires it.

Nevertheless, although relieved from the contestation, he may remain in the suit and act in it for the protection of his rights.

Judgment rendered against the warrantor may, after being served on the warrantee, be executed against the latter.—O. C. 127, *am.*

189. When the object of the dilatory exception maintained is the calling in of warrantors, the defendant in the principal suit cannot be foreclosed from pleading until after the expiration of six days from the day on which the warrantor could himself have been foreclosed from pleading to the action in warranty.

The warrantor may, within the delays granted to the warrantee, plead to the action brought against the latter, whether the warrantee has already pleaded to it or not.—O. C. 134, *am.*

190. The exception of discussion, whenever it lies, is subject to the general rules contained in this Section, and to the special provisions contained in Articles 1941, 1942, 1943, 2066 and 2067 in the Civil Code.—O. C. 130.

SECTION II

Contestation on the Merits

§ 1.—INSCRIPTION IN LAW

191. An issue of law may be raised as to the whole or part of the demand whenever the facts alleged or some of them do not give rise to the right claimed.—O. C. 147, *am.*

Infra, art. 200.

192. An issue of law is raised by means of an inscription for a fixed day, which must be filed at the same time as the defence and contain all the grounds relied upon.

No ground which is not therein alleged can be urged at the hearing.—*New.* R. P. S. C. 35.

Infra, art. 1144.

193. Issue is joined upon the inscription in law by the filing thereof; and all its allegations are deemed to be denied by the opposite party.—*New.*

194. The hearing upon the inscription can only be had upon the expiry of three days after its service upon the opposite party.—*New.* O. C. 462, 2.

Infra, art. 1157.

195. No issue of fact can be inscribed before judgment on the inscription in law.—*New.*

Infra, arts. 1144, 1157.

§ 2.—DEFENCE.

196. The defendant may plead by defence:

1. The non-completion of the term, or the non-fulfilment of the condition upon which the right of action depends;

2. The extinction, in whole or in part, of the right claimed by the plaintiff;

3. The falsity, in whole or in part, of the allegations of the action.—*New in part.* O. C. 136.

Civil Code, arts. 1079 et s.; 1090 et s.; 1138.

197. The defence must be filed within six days after the expiry of the delay allowed for appearance.

Whenever preliminary exceptions have been filed, this delay runs from the time of judgment upon such exceptions, except where it is otherwise provided

in the preceding section.—*New in part.* O. C. 137.

Supra, arts. 9, 10; *infra*, arts. 204, 1155.

§ 3.—ANSWER AND REPLY.

198. Within a delay of six days the plaintiff must answer a defence containing new facts, and the defendant must reply to an answer of like nature.

If such pleadings are not sufficient to fully set forth the contentions of the parties, the judge may grant leave to file additional pleadings. *New.* O. C. 138, 139, 148.

Supra, art. 9; *infra*, arts. 204, 214, 1156.

199. The judge may allow either party, upon such conditions as are deemed proper, to plead, by way of supplementary defence or supplementary answer, material facts which have arisen since issue joined.—*New. Cal.* 464; *Boone*, § 83.

200. Grounds of law against any defence or other pleading are urged by way of inscription, in accordance with Articles 191 to 195; and grounds in the nature of preliminary exceptions are urged by motion, in conformity with Articles 164, 165 and 166. *New.* O. C. 138.

§ 4—FILING OF EXHIBITS

201. The provisions contained in Articles 155 to 160 govern in so far as may be, the filing of exhibits referred to in the defence and answers.

If such exhibits are not filed with such pleading, they cannot afterwards be filed without the consent of the opposite party or leave of the judge.

A judge may extend the delay for filing the exhibits or written proofs.—*New in part.* O. C. 141.

Infra, art. 206.

§ 5.—RULES APPLICABLE TO DEFENCES, ANSWERS AND REPLIES

202. Each party must reply specially and categorically to the allegations of the opposite party, either by admitting or denying them, or by declaring that he is ignorant of them.

The party may, nevertheless, deny generally all such allegations, but a general denial excludes any other defence, answer or reply upon the facts of the case.—*New.*

See Form, Sched. D. in Appendix.

Supra, art. 105 et s.

203. Any party who pleads payment, novation, release, compensation or prescription may draw up his plea in accordance with the forms contained in Schedule E in the Appendix to this Code. *New.*

204. When an amendment to any pleading has been allowed, the delay to answer such pleading is reckoned from the day on which the amendment is made and served, without any demand of answer being necessary.—O. C. 142.

Infra, art. 513, et s.

205. After the expiry of the delay for filing a pleading, the party in default is by law foreclosed from doing so, unless with the consent of the opposite party or leave of the judge. O. C. 140, *am.*

206. Such foreclosure does not, however, take place without an order from the judge if the opposite party has not filed with his pleadings, in the manner prescribed, the exhibits or

written proofs upon which they are founded.—O. C. 141, *am.*

Supra, arts. 157, 201.

207. When the defendant is foreclosed from pleading the plaintiff may proceed to judgment *ex parte*.—O. C. 143.

Supra, arts. 15 §3, 418 et s.; 532 et s.

208. The denial of a signature or of a material part of a bill of exchange, promissory note, or any other private writing or document, upon which any action is founded, or of the fulfilment of the formalities required by law to render the document valid, must be accompanied with an affidavit establishing the facts alleged.

In the above cases the declaration by the heir or legal representative of a signer, maker or indorser, that they do not know, the writing or the signature of the person represented, must also be under oath.

The defence founded upon failure to present a bill of exchange or promissory note at the place fixed must be supported by an affidavit establishing that a maturity provision has been made for payment at the appointed place, and, in default thereof, presentation at the appointed place is presumed against the maker and acceptor. —O. C. 145, *am.;*

Supra, art. 112. *Civil Code*, art. 1222, 1223, 1224.

209. The denial of any document specified in article 1220 of the Civil Code must be accompanied with the giving of security for the costs of the commission required to obtain the proof of such document.

In the cases of paragraphs 5 and 6 of the same article, the denial of the original deposited, must, moreover, be accompanied with an affidavit of the party making the denial, stating that he doubts and does not believe that the original in question has been signed by the person, or executed in the manner therein mentioned. The party wishing to make use of the copy filed is then bound to prove the original, and for this purpose the person who has charge of the original is bound, upon the order of a judge, to deposit it in the court in which its genuineness is contested ; and the prothonotary is bound to furnish him, at the expense of the contesting party, with a copy thereof certified by such prothonotary.

The original, the authenticity of which is thus denied, may be annexed to the commission required to obtain its proof.—O.C. 145, s. 3.

210. Any defence which was or might have been set up to the original action may be pleaded to an action brought upon a judgment rendered out of Canada.—O. C. 12*a*, *am.;* R. S. 5862.

211. Any defence which might have been set up to the original action may be pleaded to an action brought upon a judgment rendered in any other Province of Canada, provided that the defendant was not personally served with the action within such other Province, or did not appear in such action.—O.C.42*d*, *am.;* R. S. 5862.

212. Any such defence cannot be pleaded if the defendant was personally served in such Province, or appeared in the original action, except in any case involving the decision of a right affecting immovables in this Province, or the jurisdic-

tion of a foreign court concerning such right.—O. C. 42*b am.*; R. S. 5862; 54 Vic., c. 42, s. 1.

Civil Code, art. 6.

213. In any action against a corporation, any service made within another Province in conformity with the law thereof is considered as a personal service within the meaning of the two preceding Articles.—*New in part.* O. C. 42*c*; R. S. 5862.

SECTION III

Joinder of Issue

214. The issues are completed:

1. By the demand and the defence, when the latter does not contain new facts;

2. By the demand, the defence which contains new facts, and the answer which does not contain new facts;

3. By the demand, the defence and the answer which contain new facts, and the reply;

4. By the demand, the defence, the answer, the reply, and any other additional pleading allowed by the judge; or

5. By a foreclosure, or the failure to file an answer to a defence containing new facts, or to file a reply to an answer containing new facts. O. C. 148, *am.*

Supra, arts. 193, 198.

CHAPTER XVII

Incidental Proceedings

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SECTION I.

Incidental and Cross Demands

215. The plaintiff may, in the course of the suit, make an incidental demand:

1. In order to add to the principal suit something he has omitted to include in it, and which arises from the same cause of action;

2. In order to claim a right accrued since the service of the principal suit and connected with the right claimed by such suit;

3. In order to demand something which he requires for the purpose of defeating a ground set up by the defendant.—O. C. 18, 149, *am.*

Infra, art. 1197.

216. This demand is made by means of an ordinary declaration.—O. C. 150, *am.*

217. The defendant may set up by cross demand any claim arising out of the same causes as the principal demand, and which he cannot plead by defence.

When the principal demand is for the payment of a sum of money, the defendant may also make a cross demand for any claim for money arising out of other causes; but such cross de-

mand is distinct from and cannot retard the principal action.

The court, whenever it renders judgment upon both demands at the same time, may declare that there is compensation.—O. C. 151, 1110, *am.*

Infra, art. 1197. *Civil Code*, 1187, et. s.

218. A cross demand is in the same form as an incidental demand, and must be served with the defence unless for cause shown, the judge allows it to be filed afterwards.—*New in part.* O. C. 152.

219. Issue is joined upon the incidental or cross demand in the same manner as upon the principal demand, and the contestation is subject to the same rules and delays.—O. C. 153, *am.*

SECTION II

Interventions

220. Every person interested in an action between other parties may intervene therein at any time before judgment.—O. C. 154, *am.*; 156.

Infra, art; 237.

221. An intervention is made by a declaration, in ordinary form, containing all the grounds which justify the party in intervening.—*New.* O. C. 155.

222. It cannot stay the proceedings in the principal action unless it is allowed by the judge.—*New.* O. C. 156.

223. When the intervention is allowed by the judge, the action is suspended during three days; and, if the intervening party fails within that period to have it served upon the parties in the cause and to file a certificate of such service, it is held not to have been filed, and has no effect. The filing of the certificate of the prothontary as to such default is equivalent to a judgment dismissing the intervention.

Service is made at the office of the court upon parties not represented by attorney.—O. C. 157, *am.*

224. The proceedings are subject to the same rules as the action during which they are made, and the delays for pleading are computed from the date of the service of the intervention.—O. C. 158, *am.*

SECTION III

Improbation

225. Besides the action of improbation which may be brought as a principal action, a party in a suit may proceed by improbation against an authentic document produced by him, which he has asked to have declared null, or by the opposite party.—O. C. 159; 169, *am.*

Infra, arts. 235, 236, 1269. *Civil Code*, art. 1211.

226. Incidental improbation is begun by a petition, praying that the party be allowed to proceed by improbation against the document therein designated, and that the opposite party be held to declare whether he intends to make use of such document.

The petition must, under the pain of nullity, be signed by the party himself, or by his attorney under a special power filed with the petition.—O. C. 161.

227. The presentation of the petition must be preceded by a deposit in the office of the court of a sum fixed by the judge, to meet the costs to be incurred, in whole or in part, in the event

of the improbation being dismissed.—O. C. 163, *am.*

228. Improbation may be begun at any stage of the suit until the closing of the proof, and even afterwards before judgment, upon proof that the falsity was not ascertained until after the proof was closed.

All proceedings in the principal suit are suspended until the improbation is decided.—O. C. 164.

229. Within six days after the presentation of the petition, unless the delay is extended by the judge, the opposite party must serve upon the plaintiff in improbation and file in the office of the court a declaration, signed by himself or by his special attorney, as to whether he intends to avail himself of the document attacked.

If he fails to make such declaration within the delay fixed, or if he declares that he does not intend to avail himself of the document, the latter is struck from the record, and is also declared null if there are conclusions to that effect.—O.C. 165, 166, *am.*

230. If the defendant in improbation declares that he intends to make use of the document, the judge, upon the demand of either of the parties, orders that such document, and the original thereof if necessary, be deposited in the office of the court at the diligence of the party who relies upon it, and that the parties in charge thereof be compelled by all legal means to deposit it.—O. C. 167, *am.*

231. The parties take communication of the impugned document at the office of the court, without removing it.—O. C. 169, *am.*

232. Six days after the filing of the impugned document, or if it has been already filed along with the declaration required by Article 229, within six days from such declaration, the plaintiff must file his reasons of improbation.—O. C. 170, *am.*

233. In other respects the issues are joined and tried in the same way as in the action during which they are made, and are subject to the same rules and delays.—O. C. 172, *am.*

Infra, art. 318.

234. The judgment which decides upon the improbation likewise determines to whom of right the document shall be handed over.—O. C. 173.

235. The provisions of this Section, except those of article 227, are observed, in so far as they apply, with regard to direct actions of improbation.—O. C. 175.

SECTION IV

Contestation of Returns

236. The truth of any return by a sheriff, bailiff, or other judicial officer, or by any other person authorized to make a return is contested by motion. *New.* O. C. 159, 79.

Infra, art. 519.

SECTION V

Recusation

237. A judge may be recused:

1. If he is related or allied to one of the parties within the degree of cousin-german inclusively;

2. If he has an action involving a question similar to the one in dispute;

3. If he has given advice upon the matter in dispute, or has previously taken cognizance of it as an arbitrator; if he has acted as solicitor for either of the parties or has made known his opinion extrajudicially;

4. If an action is pending in his name before a court in which one of the parties will sit as judge;

5. If he has made verbal or written threats against one of the parties since the beginning of the action or within six months previous to the recusation; or if there has been mortal enmity between them without reconciliation;

6. If he is the manager or patron of any order, corporation, or community, which is a party to the suit, or the tutor, honorary tutor, subrogate-tutor, or curator, or heir presumptive, or donee of either of the parties;

7. If he has any interest in favoring any of the parties.—O. C. 176, *am.*

Supra, art. 104; *infra*, arts. 1228, 1255.

238. A judge is disqualified if he or his wife is interested in the action.—O. C. 177 *am.*

Supra, art. 104; *infra*, art. 1255.

239. A judge who is aware of a ground of recusation to which he is liable is bound, without waiting until it is invoked, to make a written declaration of it, to be filed in the record.—O. C. 179.

240. A party who is aware of a ground of recusation against a judge is bound to make it known as soon as it comes to his knowledge.—O. C. 180.

241. After the declaration of the judge or of one of the parties, the party desirous of recusing the judge is bound to do so within eight days from the service of such declaration; after which he cannot do so, unless the court, for sufficient reasons, has extended the delay.—O. C. 181.

242. If no declaration as above mentioned has been made, the judge may be recused at any stage of the case before judgment, upon the declaration of the party that the grounds of recusation have only recently come to his knowledge.—O. C. 182.

243. A recusation is proposed by means of a petition containing the grounds thereof, which must be signed by the party himself or by his attorney under a special power.

If the party is absent from the Province, his attorney *ad litem* may, without special power, sign the petition asking that the judge abstain from sitting.—O. C. 183, *am.*

Infra, art. 1230.

244. When the recusation is made before the judge has made his declaration, communication of it must be given to him, and he must declare in writing whether the grounds are true or not; another judge then proceeds to determine whether the recusation is well-founded, without the recused judge having a right to be present.—O. C. 184.

245. If the recusation is proposed against the sole judge residing in a district, it is carried to the chief place of a neighboring district designated by the judge who is recused, and the record is forthwith transmitted to such place by the prothonotary.—O. C. 185.

Supra, art. 31; *infra*, art. 1257.

246. If the recusing party has no written proof in support of his recusation, the judge's declaration is conclusive, and the recusing party cannot produce oral testimony, or even obtain delay to produce written evidence.—O. C. 186.

247. If the recusation is maintained, the judge cannot, for any cause or under any pretext whatever, be present in court during the hearing of the case or the rendering of the judgment.—O. C. 187.

248. If the recusation has been carried before a court of another district, and is maintained, such court remains seized of the case, and the record from that period forms part of its records.

But if the recusation is dismissed, the case is sent back to the former court.—O. C. 188, 189.

Infra, art. 1257.

249. A party who has a right to recuse a judge may renounce his right by filing a written consent that the judge hear and decide the case, except in the case mentioned in Article 238.—O. C. 190.

250. In such case, however, as also when the party fails to recuse, the judge is not bound to sit, unless the grounds of recusation have been declared insufficient.—O. C. 191.

SECTION VI

Disavowal

251. A party may disavow his attorney *ad litem* who has exceeded his powers.

He may also disavow an attorney whom he has not employed, without prejudice to his rights if he does not do so.—O. C. 192.

Civil Code, 1704, 1705, 1732, 1733.

252. A disavowal may take place during the suit or after judgment.

The former is treated in this Section.

The latter is subject to the rules of procedure in ordinary actions. It does not suspend the execution unless upon an order of the judge to that effect.—*New in part.* O. C. 193; 1 *Pigeau*, p. 555; 3, *Rousseau & Laisney*, p. 630; *Union Bank* vs. *Dawson*, 11, Q. L. R. 329.

Infra, arts. 1177, s. 6; 1180, 1238.

253. A disavowal can be made only by the party himself or by his attorney under a special power, and the party himself must declare that he did not authorize the proceeding which he repudiates.—O. C. 194.

254. Disavowal is made by filing in the office of the court, before which the case is pending, a declaration that the party disavows the act in question, as never having authorized the same.—O. C. 195.

255. The party disavowing is bound to proceed without delay to have the disavowal declared valid, and this is done by a petition served upon both the attorney disavowed or his heirs and the opposite party.—O. C. 196.

256. After notice of the disavowal has been given, all proceedings in the principal action are stayed.—O. C. 197.

257. The procedure upon the disavowal is the same as in ordinary actions.—O. C. 198.

258. If the disavowal is maintained, the acts disavowed are annulled, and the parties are placed in the same position

as they were in at the time when the acts were done.—O. C. 199.

SECTION VII

Change of Attorneys

259. If the case has not been heard on the merits, all proceedings had or judgments rendered after the attorney of one of the parties has died, or when such attorney can no longer act or has withdrawn, are null, unless such party has appeared in person, or appointed another attorney, or, after being called upon to do so, has made default.—O. C. 200, *am.*

Infra, arts. 539, 1237.

260. An attorney who desires of his own accord to cease representing a party must give notice to such party and to the opposite party.—O. C. 201.

Infra, art. 280; *Civil Code*, art. 1759.

261. If the attorney of one of the parties ceases to act as such, either in consequence of being appointed to a public office incompatible with his profession, or of suspension or death, the opposite party, when represented by an attorney *ad litem* is deemed to be sufficiently informed without further notice.—O. C. 202, *am.*

Infra, art. 280.

262. When one of the parties ceases to be represented before the case is submitted to the consideration of the court, the opposite party must notify him to appoint another attorney.—O. C. 203.

263. If the defendant fails to appoint another attorney or to appear in person, the plaintiff may proceed with the suit *ex parte*.

If the plaintiff is the party thus in default he may be nonsuited.—O. C. 204.

264. A party's revocation of the powers of his attorney is not valid unless he pays him his fees and disbursements, taxed after hearing or notice given.—O. C. 205, *am.*

Civil Code, art. 1756 et s.

265. A party who revokes the powers of his attorney must immediately appoint another, without being notified to that effect by the opposite party; and in default of his doing so the case is proceeded with as provided in Article 263.—O. C. 206.

SECTION VIII

Continuance of Suits

266. When a cause is ready for judgment, it cannot be retarded either by change of the civil status of the parties or by cessation of the functions within which they were acting.—O. C. 434, *am.*

Infra, art. 539.

267. The case is ready for judgment when the trial is completed and the case is under advisement.—O. C. 435.

268. The attorney who is aware of the death or change of civil status of his party, or of the cessation of the functions within which such party was acting, is bound to notify the opposite party.

All proceedings had up to the day when such notice is given are valid.—O. C. 436, *am.*

269. In causes which are not ready for judgment, all proceedings had subsequently to notice given of the death or change of status of one of the parties, or of the cessation of

the functions within which he was acting, are null; and the suit is suspended until its continuance by those interested, or until the latter have been called in to continue.—O. C. 437.

Supra, art. 78, *infra*, art. 280.

270. A suit may be continued:

1. By the heirs or representatives of a deceased party;

2. By a minor who has obtained full age;

3. By the husband who has married a party in the action;

4. By a wife who has obtained separation of property from her husband, when the suit affects her private property;

5. By a person who replaces a party whose functions have ceased.—O. C. 438, *am.*

Infra, arts. 1193 et s. 1226.

271. The continuance is affected upon petition, filed in the office of the court.

The contestation of the petition is governed by the same rules and delays as apply to the action during which it is made.—O. C. 439, *am.*

Infra art. 1237.

272. If the continuance is not contested within the delays prescribed, it is held to be admitted,—O. C. 440, *in part.*

273. If the parties interested do not continue the suit, the party remaining in it may compel them to do so by a demand in the usual form, which is joined to the original suit and is subject to the same rules and delays as such suit.—O. C. 441, *am.*

Supra, art. 98.

274. The continuance is effected by following up the last valid proceedings originally had in the suit.—O. C. 442, *am.*

SECTION IX

Discontinuance

275. A party may at any time before judgment discontinue his suit or proceeding on payment of costs.—O. C. 450.

Infra, art. 1238.

276. Discontinuance may be effected by a simple declaration, signed by the party or his attorney, and presented to the court or filed in the office thereof.

Except when it is made at the trial, in presence of the opposite party, it has no effect against him unless it has been served upon him.—O. C. 451, *am.*; *Exchange Bank* vs. *Gilman*, 17 *Jan.* S. C. R. 108.

277. Discontinuance replaces matters as of course in the state in which they would have been had the suit or proceeding not been commenced.—O. C. 452.

278. A party who has effected a discontinuance cannot begin again unless he previously pays the costs incurred by the opposite party upon the suit or proceeding discontinued. — O. C. 453.

SECTION X

Peremption of Suits

279. Suits are perempted when no proceeding has been had therein during two years.—O. C. 454, *am.*

Infra, arts. 1200, 1237, 1253. *Civil Code*, arts. 2236, 2265.

280. Peremption, however, does not take place:

1. When the party has ceased to be represented by attorney in the cases mentioned in articles 260 and 261;

2. When the party himself

dies or has changed his civil status;

3. When proceedings are compulsorily stayed by an incidental proceeding or by an interlocutory judgment.—O. C. 455.

Supra, art. 269.

281. Peremption takes place against corporations and against all individuals, even minors, when they are represented, saving their recourse against those who represent them.

It does not take place against the Crown. O. C. 456.

282. Peremption must be declared by the court, upon a motion of which notice is given to the attorney, or, if there is no attorney, to the party himself.—O. C. 457, *am.*

283. Peremption is covered by any useful proceeding taken after the lapse of two years and before the service of the motion to have it declared; but it cannot be prevented or affected by any proceeding taken subsequently to the service of such motion.—O. C. 458, *am.*

284. Peremption does not extinguish the right of action, but only the suit or proceeding. —O. C. 459.

285. The court, in declaring the peremption of the suit, may, according to circumstances, condemn the plaintiff to pay all costs.—O. C. 460.

SECTION XI

Discovery and Inspection of Documents

286. At any time before trial, but after defence filed, any party may summon any of the following persons to answer as a witness, before the judge or the prothonotary, upon all facts relating to the action or the defence:

1. The opposite party;

2. When the opposite party is a corporation, the president, manager, treasurer, or secretary of such corporation;

3. When the opposite party is a foreign firm or corporation doing business in this Province, the agent of such firm or corporation.—*New.* O. C. 251*a*; R.S. 5879; R. P. O. 488, ss., *Eng. R.* 343.

287. The rules governing the summoning, examination and punishment of witnesses and the taking of evidence apply, in so far as may be, to the cases mentioned in the preceding Article.

If any dispute arises during the examination before the prothonotary, the parties are sent before the judge to have it decided.—*New.* O. C. 225, *in part.*

288. The deposition taken by virtue of the preceding Articles shall be used as evidence in the cause; but if the party examined as a witness is still in the Province, and can be produced at the trial, he may be again examined. The deposition taken before the trial shall in any case form part of the record, and the costs thereof shall enter into taxation. *New.* 62 V., c. 52, s. 3.

Infra, art. 316.

289. Upon the application of any party, the judge may, at any time after defence filed and before trial, order the opposite party to exhibit any object, or to give communication or furnish a copy or allow a copy to be made of, any book or document in his control, relating to the action or the defence, at such times and places, under such conditions and in such

manner as are deemed proper. —*New.* O. C. 273; N. Y. C. 803, 804, 805; R. P. O. 507, ss.

290. The costs of such examination form part of the costs in the cause, unless the judge, in adjudicating upon costs, orders otherwise.—*New. Eng. R.* 345.

SECTION XII

Joinder of Actions

291. Two or more actions between the same parties, in which the questions at issue are substantially the same, or for matters which might properly be combined in one action, may be consolidated by order of the judge upon such terms as are deemed proper.—*New.* A. R. O. 33.

292. The judge may also order several actions to be tried at the same time and decided on the same evidence, or the evidence in one action to be used as evidence in another, or may order one of several actions to be tried and decided first and the other actions to be stayed until judgment in such action. *New.* A. R. O. 34.

CHAPTER XVIII

Trial

I. INSCRIPTION **293**.
II. SUMMONING WITNESSES **297**.
III. ORDER OF TRIAL AND ADJOURNMENT **304**.
IV. EXAMINATION OF WITNESSES **312**.
V. TAKING DOWN EVIDENCE **345**.

SECTION I

Inscription

293. When the case is not to be tried by a jury it may be inscribed by either party for proof and hearing after the expiry of three days from issue joined. —*New.* O. C. 220, 234, 243, *in part.*

Supra, arts. 9, 195, 214; *infra*, art. 1158.

294. For the purpose of such inscription, the prothonotary must keep a roll on which the cases are inscribed.—O. C. 237, *am.*

295. No case can be inscribed on the roll unless a copy of all pleadings necessary to join the issue, is filed in the office of the court for the use of the trial judge.

The prothonotary has the right, before the witnesses are heard, to require from each party a deposit of ten dollars to cover stenographer's fees, and further, if necessary, to require, during the trial, additional deposits.—*New.* O. C. 320*a*, §1; 320*b*; R. S. 5888; *Eng. R.* 454; N. Y. C. 981; 61 V., c. 47, s. 1.

Infra, art. 1140.

296. Notice must be given to the opposite party at least six days before that fixed for proof and hearing.—*New, in part.* O. C. 235.

Infra, art. 1159.

SECTION II

Summoning Witnesses

297. Witnesses and parties who do not appear voluntarily are summoned at the diligence of the party requiring their attendance by a writ of subpœna, a copy of which is served upon them at least twelve hours in advance, if the service is made upon them in the city, town or local municipality where the court sits, and, in other cases,

at least one day before that fixed for their examination.

When the distance exceeds fifty miles, the delay is increased one day for each fifty miles.—O. C. 244, *am.*

298. Witnesses may be summoned either to declare what they know, or merely to produce some document in their possession, or to do both.—O. C. 245, *am.*

299. Any person residing in the Province of Ontario may be compelled to appear as a witness, if the judge deems it necessary, provided an action for the same cause be not pending in the Province of Ontario.—O. C. 246, *am.*; C. S. C., c. 79, ss. 1, 5, 6.

Infra, art. 558.

300. The service in the case mentioned in the preceding article cannot be made without a special order granted by the judge if deemed necessary; and such order must be mentioned upon the writ of subpœna—O. C. 247, *am.*; C. S. C., c. 79, s. 7.

Infra, art. 1143.

301. Service of the writ of subpœna is made in the manner provided for service of writs of summons.

In the Province of Ontario the service is made by any person whatever who must make return thereof under oath. O. C. 248, *am.*; R. S. 5878.

302. If the person to be summoned as a witness is in prison, the party requiring him may obtain an order from the judge commanding the warden or gaoler to bring him before the court to give his evidence.—O. C. 253, *am.*

303. Any witness summoned who, without sufficient cause, fails to attend at the place, day and hour appointed, may, upon a rule personally served upon him, or, if he evades service, served in the manner prescribed by the judge, be condemned to a fine not exceeding forty dollars, to be recovered, for the use of the Crown, in the same manner as any other sum awarded by judgment, or to the payment of the costs incurred by his default, which may be levied by execution in the ordinary way; or to both, independently of any recourse the party who summoned him may have for damages caused by such default, and of imprisonment for contempt, if it lies; provided, always, that at the time he was served with the subpœna, a sufficient sum was tendered him for travelling expenses, at the rate usually allowed by the court of his domicile.

If the defaulting witness resides in the Province of Ontario, he can be punished for his default only by the court within whose jurisdiction he resides, upon a certificate, transmitted by the court, of his default to appear according to the foregoing provisions.—O. C. 249, *am.*; C. S. C., c. 79, s. 8.

Infra, art. 834.

SECTION III

Order of Trial and Adjournment

304. If, on the day fixed for the trial, one of the parties does not produce any witnesses nor give any valid reason for their absence, his proof may be declared closed.—O. C. 283, *am.*

305. If, on the day fixed for the trial, a witness of one of the parties is absent for any valid reason, the case may be ad-

journed to a future day, provided the party shows that he has been diligent, and makes oath that the absent witness is necessary and that such absence is not due to any contrivance on his part. *New.* C. P. L. 464.

306. When a party asks for an adjournment of the case on account of the absence of a witness, the opposite party may require him to declare on oath what facts he intends to prove by such witness; and, if such party admits their truth, or admits that the witness would have sworn to them, the trial is proceeded with as if such witness had been examined.—*New.* C. P. L. 465, 466.

Infra, art. 354.

307. When it is established under oath that a witness, by reason of illness or infirmity, cannot attend the trial, the court, instead of adjourning the case, may order the deposition to be taken in conformity with Article 356. *New.* C. P. L. 467.

308. The court may also grant an adjournment of a case to any party who applies therefor, for any other good cause shown.—*New.* C. P. L. 468.

309. In all the above cases, the court in granting the adjournment imposes such conditions as it deems proper.—*New.*

310. The party upon whom the burden of proof lies must proceed first to the examination of his witnesses.

The opposite party then proceeds to make his proof, after which the other party may adduce evidence in rebuttal.

The court may, in its discretion, allow the examination of other witnesses. *New.* O. C. 282; C. P. L. 476, 477; H. & L. 594.

Civil Code, art. 1203.

311. At the conclusion of the evidence, the party upon whom the burden of proof lies, addresses the court first; the opposite party follows, and the other party replies, and if in his reply he raises a new point of law, his opponent may answer.

No other address can be made unless with the permission of the court.—*New.* C. P. L. 485.

SECTION IV

Examination of Witnesses

312. The testimony of one witness is sufficient in all cases in which proof by testimony is admitted.—*New.* C. C. 1230.

Infra, art. 1278. *Civil C. L.* 232 et s.; 1233 et s.; 1690.

313. Any party may demand that during the examination of a witness the other witnesses retire from the room where the trial is held.—O. C. 251, *am.*

314. All persons are competent to render testimony except:

1. Persons deficient in understanding, whether from immaturity of age, insanity or other cause;

2. Those who are insensible to the religious obligation of an oath;

3. Those civilly dead;

4. Husband or wife, for or against each other. Nevertheless, if consorts are separated as to property, and one of them as agent has administered property belonging to the other, the consort who has so administered may be examined as a witness in relation to any fact connected with such administration; provided the court is of opinion, in view of the circumstances of the case, that it is just and advisable to order such examina-

tion.—*New.* C. C. 1231, *am.*; O. C. 260, 252.

Civil Code, art. 36.

315. Persons competent to give evidence are all subject to the same general rules.

Relationship, connection by marriage, and interest are objections only to the credibility of a witness.—O. C. 252, *am.*; R. S. 5880.

316. A party may be examined by the opposite party, and his evidence may be used as a commencement of proof in writing.

He may also give testimony in his own behalf.—*New.* O. C. 251; 54 Vic., c. 45, s. 2.

Supra, art. 288; *Civil Code*, arts. 1233, §7; 1243 et s.: 1669, 1677, 1816, 2260, § 7.

317. The fact that a party does not offer his testimony cannot be construed against him.—*New.* O. C. 251, *am.*; 54 Vic., c. 45 s. 2.

318. Upon the improbation of an authentic deed, the testimony of the notaries, attesting witnesses or other functionaries who witnessed the deed, may be received.—O. C. 252; R. S. 5880.

319. A person afflicted with an infirmity which renders him unable to speak, or to hear and speak, may be examined as a witness either by writing down his oath or affirmation and his answers, or by giving his evidence with the aid of signs through an interpreter.—O. C. 261 *am.*; 56 Vic. (C.), c. 31, s. 6; *Stephen Evid., Art.* 107.

320. The bailiff who served the writ of summons cannot testify to any facts or admissions which came to his knowledge after the issue of the writ of summons, except in relation to the service itself.—*New.* O. C. 262.

Infra, art. 1278.

321. Before a witness can be heard, he must swear before the judge, or the prothonotary, to tell the truth, or, in the case of a Quaker, the word, "swear" is replaced by the words: "solemnly, sincerely and truly declare and affirm."—O. C. 255, *am.*

Civil Code, arts. 17, § 15.

322. The form of oath and the manner of taking it may be changed according to the religious belief of the witness, in such a manner, however, as to bind him to declare nothing but the truth.—O. C. 256.

323. A witness refusing to take the oath or affirmation is deemed to refuse to give evidence.—O. C. 257.

324. Before the witness is admitted to be sworn, he may be examined by either of the parties as to his religious belief; and he cannot take the oath or the affirmation, or give evidence, if he does not believe in God, and in a state of rewards and punishments after death.—O. C. 259.

325. Any person who is present in the room in which the trial is being held may be examined as a witness, and is bound to answer as if he had been regularly summoned.—O. C. 250, *am.*

326. A witness who is present cannot refuse to give evidence under pretext that the necessary amount to defray his travelling expenses has not been paid to him.—O. C. 258.

327. The witness must first be asked and must declare his names, age, quality or occupation, and domicile.—O. C. 267.

328. The opposite party may

establish, by a preliminary examination of any witness produced, or in any other manner, whatever grounds he may have for objecting to such witness.—O. C. 268.

329. A party cannot impeach the credit of a witness produced by himself, but he may prove by others the contrary of what such witness has stated, or, by leave of the court, he may prove that at other times he has made statements inconsistent with his present testimony; provided, in the latter case, the witness be first questioned upon the subject.—O. C. 269.

330. A witness who, without valid reason, refuses to answer or to produce documents or other things connected with the suit and in his possession, may be held by coercive imprisonment to do so.—O. C. 277.

Infra, art. 834.

331. A witness is not bound to answer questions put to him if his answering would expose him to a criminal prosecution.

This objection can be made only by the witness himself.—O. C. 274.

332. He cannot be compelled to declare what has been revealed to him confidentially in his professional character as religious or legal adviser, or as an officer of state where public policy is concerned.—O. C. 275.

333. When witnesses are called to prove the identity of any object in the possession of one of the parties, the judge may order that the party shall, either in court or at any other convenient place or time, exhibit such object to the witnesses thus called to give evidence concerning it; and, in default of his so exhibiting the object, it will be held to have been identified.

The judge may likewise order any witness who is in possession of any object which is the subject of the litigation, to produce it, under the same penalties in case of default as for refusing to answer pertinent questions.—O. C. 273, *am.*

334. A witness is bound to produce any document in his possession touching the matter in issue, and to allow copies or extracts thereof to be taken if it is a private writing; and such copies or extracts, certified by the prothonotary, are entitled to the same credence as would be given to the originals.—O. C. 276.

Supra, art. 298.

335. It is the duty of the prothonotary to ask the witnesses if they require taxation, and, if they do, to tax their expenses with due regard to the nature of the voyage and the duration of their stay.—O. C. 280, *am.*

Infra, art. 557.

336. The taxation may be enforced by execution against the party who summoned the witness, in the manner and after the delay prescribed for any judgment.

A witness may sue out execution against the opposite party condemned to pay his expenses, provided that no execution has already been sued out by the party who obtained the judgment, or that the amount allowed the witness has not already been paid to such party or his attorney in virtue of a duly receipted bill of costs.—O. C. 281, *am.*

337. A party who has examined more than five witnesses on the same fact cannot recover

the costs of the other depositions without the permission of the judge.—*New.* C. P. C. F. 281; *Bullard*, No. 496.

Infra, art. 549.

338. A witness must not withdraw without the permission of the court.—O. C. 278, *am.*

339. Witnesses are examined by the party producing them or by his counsel, but only touching the facts in issue.

The question must not be leading, unless the witness evidently attempts to elude the question or to favor the other party.—O. C. 270.

Supra, art. 110.

340. When a party has ceased examining a witness he has produced, the opposite party may cross-examine such witness in every shape upon the facts referred to in the examination in chief; or he may require an entry to be made of his declining to cross-examine. —*New.* O.C. 271; *Stephen Evid.*, *Art.* 127.

341. A witness may be re-examined by the party producing him when new facts have been elicited on the cross-examination, or for the purpose of explaining his answers to the cross questions.—O. C. 272.

342. If the examination of a witness cannot be completed on the day he appears, he is bound to attend again on the next following juridical day, or on such other day as is assigned to him by the court and is entered upon the registers of the court. In default he is liable to the same penalties as for refusing to attend upon the subpœna.—O. C. 279, *am.*

Supra, art. 303.

343. A deposition, given at a former trial of the same action or of another action founded in whole or in part upon the same cause of action, may be given in evidence, if it is established that the witness who made it is dead, or is so ill as to be unable to travel, or is absent from the Province, and that the opposite party had a full chance to cross-examine the witness. *New. Crim. Code* 687; *Stephen Evid.* 32.

344. Unless where it is otherwise provided, the witnesses in any contested case are examined in open court, the opposite party being present or duly notified.

The judge may ask them any questions he deems necessary. —O. C. 263, *am.*; R. S. 5881.

Infra, art. 355, 356.

SECTION V

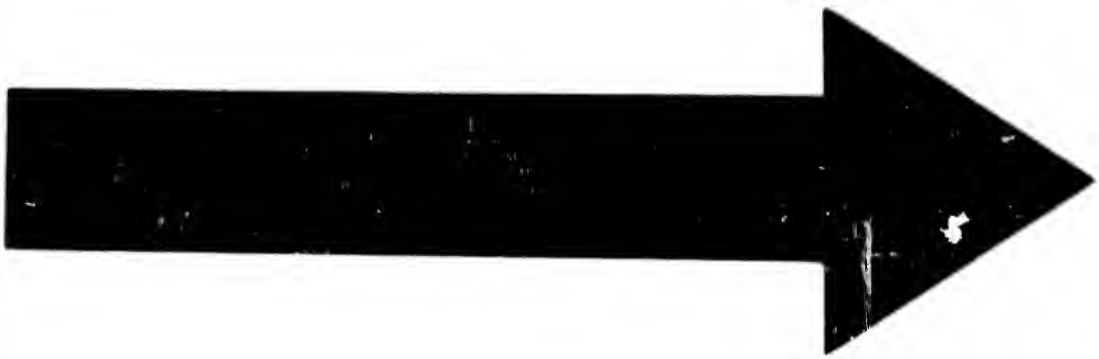
Taking Down Evidence

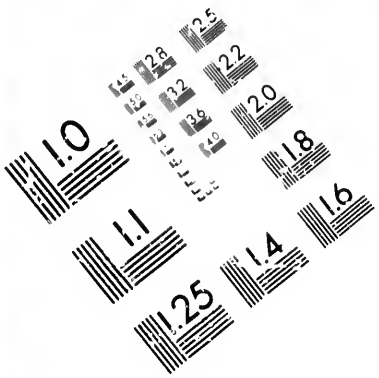
345. The evidence is taken down by means of stenography, under the direction of the court, unless it orders otherwise.— *New in part.* O. C. 320*a*, §5; R. S. 5888.

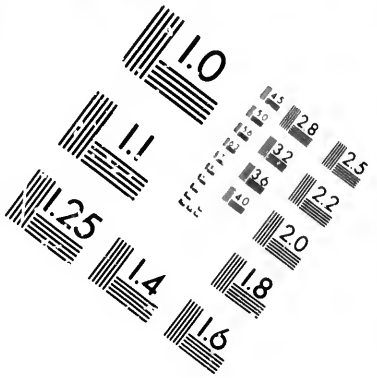
Supra, art. 295; *infra*, arts. 349, 1142.

346. The court may order that the stenographer's notes be read to the witness and corrected in open court.—O. C. 320*a*, s. 6, *am.*; R. S. 5888.

347. The stenographer's notes are transcribed only when the judge so orders, or in case of review or of appeal, or at the conclusion of a jury trial when there is a motion for a new trial, for a different judgment, or for judgment in a reserved case. Each party then pays the cost of transcribing his evidence, which is neverthe-







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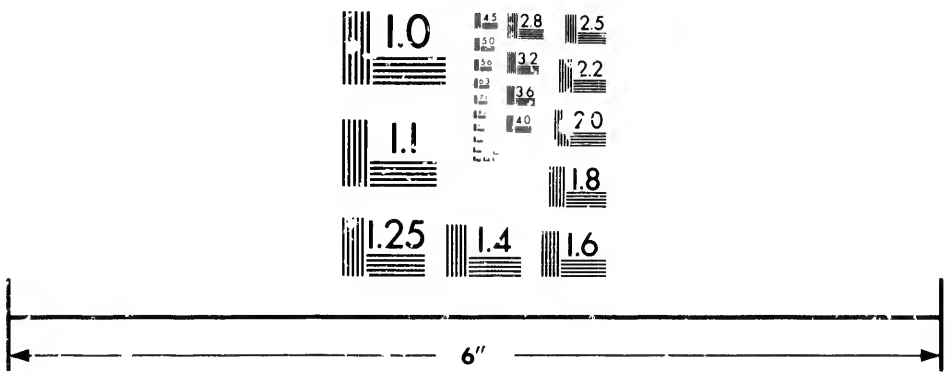

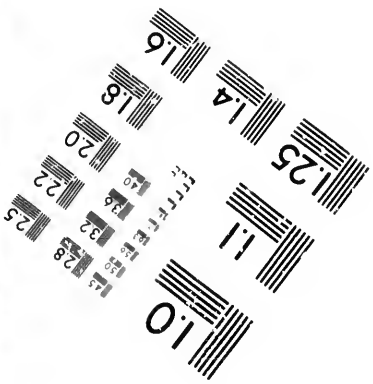

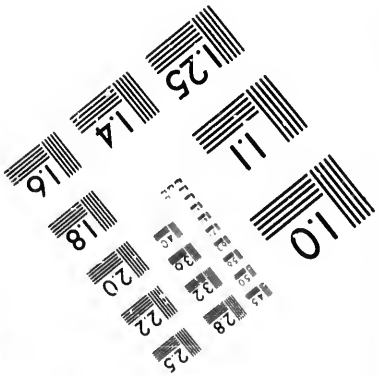

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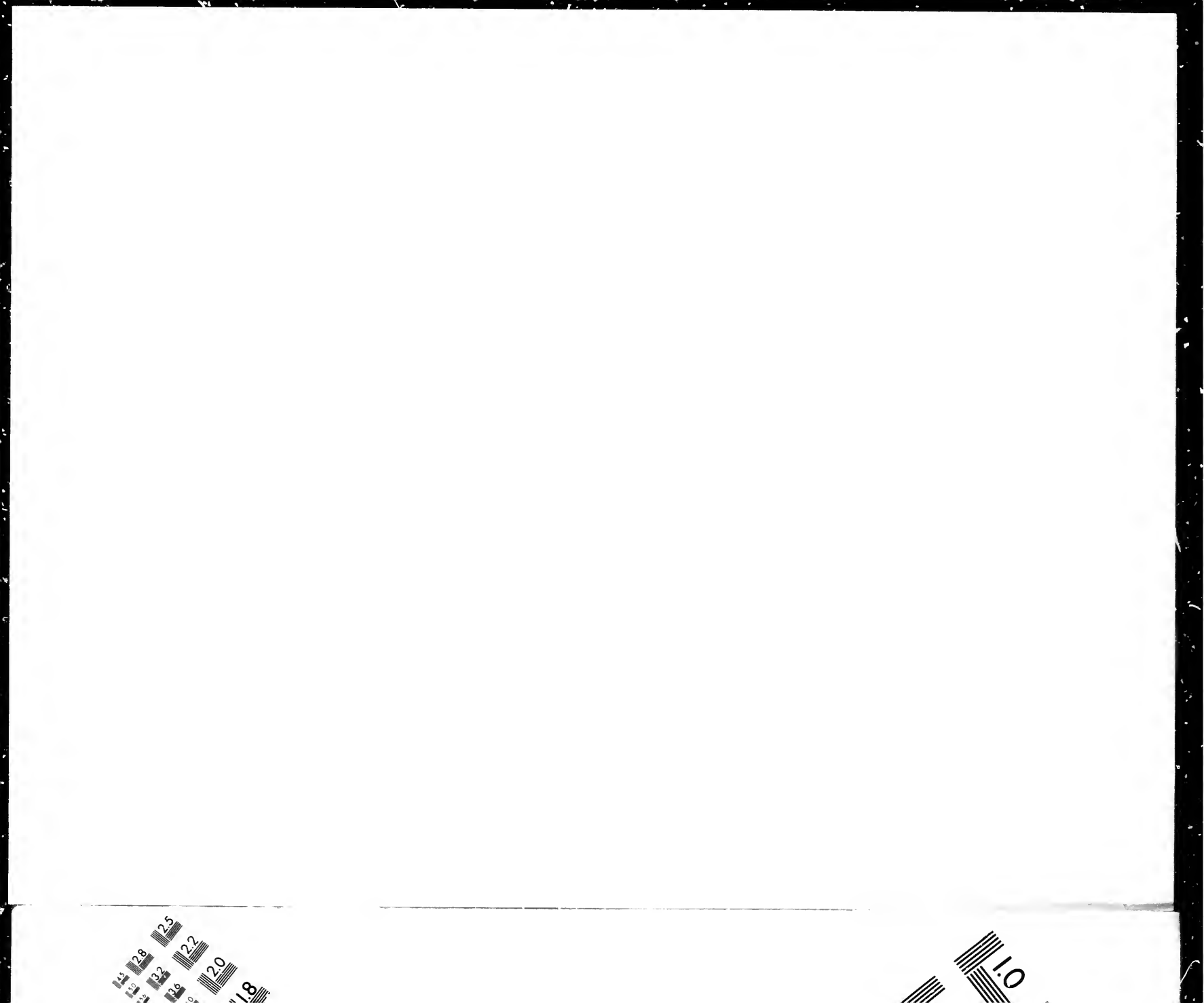

less considered as forming part of the costs in the cause.

Each party may obtain, upon payment of a fee fixed, which is not taxable, a transcription of the whole or of part of the notes.—*New.* O. C. 320*a* s. 6, ; R. S. 5888 ; N. Y. C. 82-88; *Ont.* J. A. 146; R. P. O. 205, 206, 802.

348. The stenographer certifies, under his oath of office, to the truth and correctness of the transcription of the notes.

Upon application by any party interested, the judge who heard the evidence may order the correction of any errors in the copy so transcribed. The costs of revision and correction must be paid by the party in default.

The stenographer must deposit the books containing his stenographic notes at the place and in the manner determined by the rules of practice.—*New in part*, O. C. 320*a* ; R. S. 5888.

349. Whenever the court orders that a deposition be not taken down by means of stenography, it takes down or causes to be taken down in writing under its direction, notes of the material parts of the evidence and of all objections insisted upon by either of the parties, with the decisions thereupon.—O. C. 263, *am.;* R. S. 5881.

350. When the deposition is thus taken down in writing, it is read to or by the witness as soon as he has finished it; he is then asked to declare whether it contains the truth ; whether he persists therein, and whether he knows anything further; and he must sign it.

If he cannot sign, mention is made thereof, as well as of the reading of the deposition.—O. C., 293, 264, *am.*

The notes of evidence, taken by the judge or under his direction, are afterwards signed by the judge or the prothonotary and they constitute, and shall be considered as the evidence of the witness ; 61 V., c. 47, s. 2.

351. If the witness adds to, strikes out, or alters any portion of his deposition, the changes must be inserted in the margin, or at the end, before the closing of the deposition.—O. C. 264, 294, *am.*

352. No credence is given to unauthenticated marginal notes, or to words written upon others, or to interlineations.

The number of words struck out and of marginal notes must be mentioned in the jurat.—O. C. 295.

353. At the commencement of the deposition must be mentioned the name of the judge presiding at the trial, the designation of the parties, the names, age, quality or occupation, domicile or residence of the witness ; and the fact of his having been sworn or having affirmed.—O. C. 288, *am.;* R. S. 5887.

354. The judge takes down, or causes the prothonotary to take down, notes of all admissions made orally by the parties; and such notes, signed by the judge, make proof in the same manner as if they were signed by the parties.—O. C. 266, *am.*

Supra, art. 306. *Civil Code*, arts. 1243, 1245.

CHAPTER XIX

Incidents of Trial and Evidence.

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SECTION I

Examination of Witnesses by Consent

355. The court may dispense with the attendance of a witness in open court or receive his disposition taken by consent.

All objections raised during the taking of any such deposition must be reserved for hearing at the trial. *New.* O. C. 239, 285, 290.

Supra, art. 344; *infra*, art. 419.

SECTION II

Examination of Witnesses who are ill, or about to leave the Province

356. In any case wherein it is established upon oath that a witness is about to depart from the Province, or is prevented by illness or infirmity from attending before the court, the judge, the prothonotary or a commissioner of the Superior Court, upon the order of the judge, may, at any stage of the proceedings after service of summons, receive the depositions of such witness, in presence of, or after due notice to, the parties; and such deposition has the same effect as if it were taken at the trial.

If the witness can be produced at the trial, he must be examined anew in the ordinary manner, if it is required by either party.—O. C. 240 *am.*

Supra, art. 344.

SECTION III

Examination of Witnesses elsewhere than where the case is pending.

357. The judge may, in his discretion, and without any commission or other formality, order the proof to be taken, or any person, even if he is a party, to be examined, either upon articulated facts, or otherwise, at any place where sittings of the Superior Court or of the Circuit Court are held, before any judge at such place.

In such cases, after the record has been four days in the hands of the prothonotary or clerk at the place to which it has been sent, the parties may

proceed as if the case were there pending.—O. C. 241.

Infra, art. 1145.

358. A copy of such order is transmitted to the prothonotary or clerk of the court at the place mentioned, together with such part of the record as may be necessary; and the prothonotary or clerk may thereupon take the necessary proceedings to compel the witness or the parties to appear at the place named on any day fixed by the judge, on which a judge will be present at such place.

In the case of this and of the preceding Article, the rules contained in Articles 301, 303 and 557 apply.—O. C. 242, *am.*

Supra, art. 31.

SECTION IV

Interrogatories upon Articulated Facts

359. The parties may be examined upon articulated facts as soon as the defence is filed, upon the facts in issue as then joined, and without retarding the trial or the judgment.

If the defendant is in default to appear or to plead to the action, he may be examined on articulated facts as soon as he is so in default.—*New, in part.* O. C. 221, *am.*; R. S. 5873.

Infra, arts. 378, 468. *Civil Code*, arts. 1243, 1245.

360. Parties are summoned to answer interrogatories upon articulated facts by means of a process issued by the prothonotary, in the name of the Sovereign, upon a written requisition to that effect, and ordering the party to appear before the court, the judge, or the prothonotary, to answer the interrogatories to be put to him, which are annexed to the process and are served upon him.—*New, in part.* O. C. 222, 226, *am.*

361. The order to answer upon articulated facts is served upon the party personally or at his domicile, and not upon his attorney, unless such party is absent or absconding; and a copy both of the order and of the interrogatories must be left with him.

If the party is absent, the attorney who has been served may apply to have delay given him to appear; or, if he declares the place where such party then is, the opposite party may require that he be examined under a commission.—O. C. 223, *am.*

Infra, art. 380.

362. A party summoned to answer interrogatories upon articulated facts must appear personally to give his answers, under oath.—O. C. 224, *am.*; R. S. 5874.

363. When the service is made upon a corporation or legally recognized body or community, the answers may be given under oath by the president, manager, secretary, treasurer or other officer or employee, if he holds a general or special authorization for that purpose; or the answers which he must give and swear to as being those which the party summoned intends to give may be specified by special resolution.

When such service is made upon a foreign corporation carrying on business in this Province, the answers may also be given under oath by the person who is at the time intrusted with carrying on the affairs of the corporation, whatever be his designation or official title; but such answers may also be given by any person previously auth-

orized by a resolution of the board of directors of such foreign corporation to appear and answer in its behalf the interrogatories that may be served upon it.—O. C. 224 *am.;* R. S. 5874.

Infra, art. 684.

364. If the party served with the rule fails to attend or to answer the questions put to him, a default is recorded against him, and the facts may be held to be admitted.

The judge may, nevertheless, for cause shown, and upon such conditions as he thinks fit, allow the party so in default to answer the interrogatories afterwards, before the conclusion of the evidence of the party who summoned him.—O. C. 225, *am.*

365. The interrogatories must be drawn up in a clear and precise form, in such a manner that the absence of an answer shall be an admission of the fact sought to be proved.—O. C. 227.

366. The answers are taken down in writing and signed by the party.

The court or the person before whom the party is summoned to answer may put any other interrogatories he may deem necessary and pertinent.

If the party refuses to answer such interrogatories, the court, the judge or the prothonotary, as the case may be, causes them to be written out and placed in the record, and they are held to be admitted.—O. C. 226, *am.*

367. The answers must be direct to the question, categorical and precise.

If any dispute arises during the examination, the parties are sent before the judge to have it decided.—O. C. 225, 228, *am.*

368. Every answer which is not direct, categorical and precise may be rejected, and the facts mentioned in the interrogatory declared and held to be proved.—O. C. 229.

369. The expense of interrogatories upon articulated facts forms part of the costs in the cause.—O.C. 232, *am.;* R. S 5875.

370. Any party, on being served with a rule to answer interrogatories upon articulated facts, may demand the necessary funds to pay his travelling expenses; but when he is before the court, the judge or the prothonotary, he cannot refuse to be sworn or to answer unless he is paid.

He has a right to have his expenses taxed, and such taxation may be enforced by execution against the opposite party,—O. C. 233.

Supra, arts. 326, 335.

SECTION V

Oaths Put by the Court

371. When some proof has been made of the demand or defence, the court may, in its discretion, order either or both of the parties to appear and answer on oath, in order to complete the proof necessary for the decision of the cause, or for determining the amount for which judgment ought to be given.—O. C. 448; C. C. 1254, *am.*

372. The oath upon the value of the thing demanded can only be put by the court to the party claiming when it is impossible to establish such value otherwise.—C. C. 1256.

Civil Code, arts. 1677, 1816.

SECTION VI

Proofs Before Examiners

373. The judge may appoint a competent person as an examiner to take the proof, when, by reason of the nature of the dispute, or the number and distance of the witnesses to be examined, it is shown by any of the parties concerned that the ends of justice will be better attained by the appointment of such examiners.—C. C. 300, *am.*

Supra, art. 38.

374. The rule appointing an examiner must specify the place where the proof shall be taken, and the delay within which it must be concluded.

This delay may be extended by the judge upon sufficient cause shown.—O. C. 301, *am.*

375. The examiner, before entering upon his functions, must be sworn before a judge or a commissioner of the Superior Court to fulfil his duties faithfully and impartially, and such oath must be in writing and be annexed to his return.—O. C. 302, *am.*

376. He must give the parties at least six days' notice of the time and place at which he will begin the examination.—O. C. 303, *am.*

377. The witnesses are summoned to appear before the examiner by means of a writ of subpœna issuing from the court before which the suit is pending.

The examiner may administer the oath to them, may receive any documentary evidence produced by the parties, and has all the powers, in respect of the taking of evidence, of a judge presiding at a trial.—O. C. 304, *am.*

378. Any party may also be summoned to answer interrogatories upon articulated facts before the examiner, who has the same powers as a judge in respect of conducting the examination and entering default.

Such articulated facts are subject to the provisions of articles 359 to 370, in so far as they are applicable.—O. C. 305, *am.*

379. After completing the proof the examiner must make a return of his proceedings on or before the day fixed by the judge.—O. C. 306, *am.*

SECTION VII

Commissions for the Examination of Witnesses.

380. When any of the witnesses or of the parties reside outside of the Province, or even within the Province at a distance of more than one hundred miles from the place where the court is held, the party who requires to examine them may obtain a commission appointing one or more persons to receive the answers of such witnesses or parties.—O. C. 307, *am.*

Supra, arts. 209, 361, *infra*, art. 468.

381. Application for that purpose must be made within four days after issue joined, except under particular circumstances left to the decision of the judge; and it is granted upon the necessity for such commission being shown by affidavit.—O. C. 308, *am.*

Infra, art. 414.

382. The commissioners are chosen as follows:

If the parties join in the com-

mission, each furnishes four names.

From the list thus formed, each party alternately strikes out two names, in the presence of the court or judge, who, out of the four remaining names, chooses three, to whom the commission is addressed.

If the parties do not join in the commission, it is addressed to the persons chosen by the party who applies for it.—O. C. 309, *am.*

383. If the parties consent, the commission may be addressed to one person only, chosen by them, or, in default of such choice, appointed by the judge.—*New.*

384. The judge fixes the number of commissioners who must be present in order to execute the commission, and gives directions and authority for swearing witnesses.—O. C. 310, *am.*

385. Annexed to the commission are the interrogatories and cross-interrogatories of each party which have been allowed by the judge after notice to the other party.—O. C. 311, *am.*

386. The commission must also be accompanied with instructions addressed to the commissioners, under the signature of the judge, to guide them in its execution.—O. C. 312.

387. The return consists of a certificate of the commissioners who acted, indorsed upon the commission, and stating that the execution appears by the schedules thereto annexed.

The return must be sealed and be indorsed with an indication of its contents and the name of the cause.

It cannot be opened and published without an order from the judge.—O. C. 313, *am.*

388. The party who applies for a commission must, at his own diligence, cause it to be transmitted and executed.—O. C. 314, *am.*

389. If the parties have joined in the commission they are equally bound to have it transmitted and executed.—O. C. 315, *am.*

390. A failure to return the commission cannot prevent the court from proceeding with the hearing in the following cases:

1. If it appears that the party applied for the commission solely in order to retard the judgment;

2. If the return has been delayed longer than justice and equity required.—O. C. 316.

SECTION VIII

Experts, Viewers, References in Matters of Account and Arbitrators

391. Before deciding upon the merits of the case, the judge may, if necessary, order an extraordinary investigation in the cases hereinafter mentioned, either before, during or after the trial.—O. C. 321, *am.*

§ 1.—VIEWERS AND EXPERTS.

392. Whenever the facts in contestation between the parties can be verified only by view of the object or premises, or the evidence produced by the parties is contradictory, or the nature of the contest requires it, the court, of its own accord, or upon the application of either party, or the judge, upon the application of either party, may order the facts to be verified by

experts and persons skilled in the matter.

The order for experts must specify clearly and distinctly the matters to be verified.—O. C. 322, *am.*

Infra, arts. 543, 806, 950, 1040, 1081, 1096; *Civil Code*, art. 696 et. s.

393. The experts are three in number, and are agreed upon by the parties, nevertheless, if the parties consent, or if the judge thinks proper by reason of the nature of the object in dispute, only one need be named.—O. C. 323, *am.;* C. P. C. F. 303; C. P. G. 216.

394. If, at the time of the order for experts, their appointment has been agreed upon by the parties, the order records such appointment.—O. C. 324.

395. If the experts are not agreed upon by the parties, the judge fixes a day on which the latter must attend before the court or judge in order to appoint them; and, in default of an order to that effect, either party may summon the other to attend as aforesaid within a reasonable delay for the purpose of such appointment. — O. C. 325, *am.*

396. The parties are bound to attend on the day appointed and, if they then fail to agree upon the experts, the judge makes the appointment in their stead.

In the case of a recusation being maintained against any of the experts, others are appointed in their stead in the manner above described.—O.C. 326 *am.*

397. The grounds for recusing an expert are:

1. Relationship by blood or affinity, to the degree of cousin-german inclusively;
2. Intimacy;
3. Enmity;
4. Subornation;
5. Interest;
6. Being in the domestic service or other employ of one of the parties;
7. Being a party in a similar suit, or the attorney or agent of a party in the cause;
8. And, generally, the grounds of exclusion applicable to witnesses.—O. C. 327, *am.*

398. As soon as the experts are named, either party may have the order served upon them, together with a requisition calling upon them to be sworn.—O. C. 328.

399. If any one of the experts neglects or refuses to be sworn or to act, either of the parties may summon the other to attend before a judge, in order that another person may be named to replace such expert.—O. C. 329, *am.*

400. The experts, before taking any proceedings in the investigation, must, on pain of nullity, be sworn to perform their functions with impartiality and to the best of their ability.

The oath must be in writing and be certified by the person who administers it.—O. C. 330. *See Forms F.G. in Appendix.*

401. The oath must be taken before a judge or the prothonotary, before a commissioner of the Superior Court, before an expert already duly sworn, or before any other person indicated in the order for experts.—O. C. 331, *am.*

402. A copy of the order for experts, together with the necessary papers, must be handed to them by the prothonotary, who takes a receipt therefor.—O. C. 332.

403. The experts are bound to fix the time and place at which they will proceed with the investigation, and to notify the parties, allowing a delay of at least three days when the distance from the domicile of the parties to the place indicated does not exceed fifty miles, and one day more for every additional fifty miles.—O. C. 333, *am.*

404. The experts must hear the parties and the witnesses in accordance with the terms of the order naming them; and each of them is authorized to administer the oath to the witnesses or the parties, as the case may be, and the witnesses are summoned to attend before the experts, whatever may be the distance.—O. C. 334. *See Forms F.H. in Appendix.*

405. The evidence must be taken down in writing, certified, and annexed to the report of the experts; and it must mention whether the witnesses are related or allied to the parties, and in what degree, and whether they are in the employ of either party, or interested in the suit.—O. C. 335, *am.*

406. If all the experts agree, they make one and the same report; if not, each of them makes a separate report, if he thinks proper.—O. C. 336, *am.*

407. The report of the experts must be made on or before the day fixed by the judge. It must contain reasons and details, so as to enable the court to appreciate the facts, and must also be signed by the experts or be in the form of a notarial original.—O.C. 337, *am.*

408. If the experts delay or refuse to file their report, they may be summoned, with the same delays as in ordinary procedure, by a rule of court, to show cause why they should not be condemned, and even held by coercive imprisonment, to do so.—O. C. 338.

Infra, art. 834.

409. The court is not bound to adopt the opinion of the experts or that of a majority of them.—O. C. 339.

Infra 416.

§2.—REFERENCES IN MATTERS OF ACCOUNT TO ACCOUNTANTS AND PRACTITIONERS

410. In matters where accounts have to be rendered or adjusted, or which require calculations to be made, and in matters of separation of property, or partition of community or succession, the judge may refer the case to one or more persons skilled in such matters; and such persons are subject to the rules above prescribed concerning experts.

Such accountants and practitioners have the powers given to experts by the foregoing Articles, and are bound to follow the directions of the judge; and their reports are adopted, homologated or rejected in the same manner as reports of experts.—O. C. 340, *am.*

Infra, arts. 414, 415, 416, 543, 576, 1044, 1096; *Civil Code*, art. 699 et s.

§ 3.—ARBITRATORS

411. The court, of its own motion or upon the application of either party, or the judge, upon the application of either party, may refer to the decision of arbitrators any case of dispute between relations, concerning partitions or other matters of fact which it is diffi-

cult for the court to appreciate, and also any other case if the parties consent to it.—O. C. 341, *am.*

Infra, arts. 576, 1276, 1431, et s.

412. The preceding provisions relating to experts apply to arbitrators, in so far as they are compatible with those of the present paragraph; nevertheless, arbitrators need not be sworn unless the order appointing them requires it.—O. C. 342.

413. Arbitrators can only adjudicate upon the matters submitted to them.

They are bound to observe the same formalities as experts in the investigation of facts, according to Articles 404 and 405, unless they are at the same time appointed mediators, but they are not bound to give the reasons of their decision.

They cannot award costs, unless the court has empowered them to do so.—O. C. 343.

§ 4.—GENERAL PROVISIONS APPLICABLE TO THE THREE PRECEDING PARAGRAPHS

414. Experts, accountants, practitioners and arbitrators may demand that the amount of their remuneration, costs and disbursements be paid into court previously to the opening of their report and subject to the order of the court.

If they do not demand this deposit, they have a recourse against all the parties to the suit, jointly and severally.—O. C. 344.

415. The party who intends to avail himself of a report of experts, accountants or practitioners must make application to have it received; and, if the opposite party desires to take advantage of any irregularities or causes of nullity therein, he must do so by a counter-application.—O. C. 345.

416. If a report of experts, accountants or practitioners is free from irregularities or causes of nullity, it forms, together with the depositions and documents annexed, part of the evidence in the case.—O. C. 346.

417. In the case of an award of arbitrators, the party intending to avail himself of it may apply for its homologation and for judgment in conformity with it.

The other party cannot oppose it except by an application to have the report declared inadmissible on the ground of irregularity or of some other cause of nullity.—O. C. 347.

CHAPTER XX

Proof and Hearing, and Proof in cases by Default and ex parte.

418. Notwithstanding the provisions of Article 532, when the defendant fails to appear or to plead to the action, the plaintiff may in all cases inscribe the cause:

1. For proof in term or out of term, if any is necessary; and such proof is then proceeded with before the judge, or before the prothonotary who must swear the witnesses, have notes of their evidence taken by stenography or otherwise, in the same manner as in contested cases, and do such other things in regard to the evidence as it would be the duty of the judge to do; or

2. For proof and hearing at the same time.

One day's notice of inscription must be given to a defendant foreclosed from pleading.

The latter may cross-examine the witnesses, and make whatever objections he thinks proper, of which notes must be taken; but he is not entitled to produce witnesses.—O. C. 317, *am.*

Supra, arts. 15, 162, 207; *infra*, arts. 1138, 1163.

419. In cases by default, and in *ex parte* cases with the consent of the parties or their attorneys, the evidence of witnesses may be taken at any stage of the case by means of stenography, or otherwise, in the manner prescribed in Article 355, at any place whatever, on any juridical day in or out of term.—O. C. 239, *am.*; 54 Vic., c. 44, s. 1.

420. When the evidence offered by the plaintiff is taken out of the presence of the judge it is filed and remains of record.—*New.* O. C. 318.

CHAPTER XXI

Trial by Jury

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SECTION I

Preliminary Provisions

421. A trial by jury may be had in all actions founded on debts, promises or agreements of a commercial nature, either between traders or between traders and non-traders; and also in all actions for the recovery of damages resulting from personal wrongs or from offences or quasi-offences against movable property.—O. C. 348, *am.*

Infra, art. 1018.

422. It is had at the option of either of the parties when the amount claimed by the action exceeds four hundred dollars.—O. C. 349, *am.*

423. The option is made either in the declaration or in the defence, or by a special application to the judge within three days after issue joined.—O. C. 350 *am.*

Supra, arts. 9, 214.

424. The trial is not fixed until the judge has decided all issues raised respecting the right to trial by jury, and, upon the motion of either party, has assigned the fact or facts to be inquired into by the jury.—O. C., 352, *am.*

Infra, arts. 483, 499, 506.

425. Each party must furnish the judge with a state-

ment of the facts, which he considers ought to be submitted to the jury.—O. C. 353.

426. The assignment of facts may be dispensed with by the consent in writing of all the parties to the suit.—O. C. 354 *am.*

Infra, art. 484.

427. The judge presiding at the trial may, at any time before verdict, of his own motion or on the application of either party, strike out, add to, or amend any of the facts so assigned, if he considers that by doing so a more perfect trial of the issues will be secured — *New.*

428. The trial must be had at the place where the action is brought, unless for sufficient cause the judge orders that it shall be had in another district; and in such case the verdict is returned with the record to the place where the suit was commenced.—O. C. 355, *am.*

429. In any action for damages brought against a public officer by reason of any illegal act done by him in the performance of his functions, the judge may order that the trial shall be held in another district if it is shown that the case cannot be tried impartially in the district in which the suit is brought.—O. C. 356, *am.*

Supra, art. 97.

SECTION II.

The Jury

430. The prothonotary of the Superior Court in each district is bound to make a list of the persons qualified to serve as jurors in civil cases, by taking from the list of persons qualified to serve as grand jurors in criminal cases, which is deposited in his office, the names of all persons residing within a distance of fifteen miles from the court, in the order in which such names appear.—O. C. 357, *am.*

If the court is held in any place other than the cities of Quebec, Montreal, Three Rivers, Sherbrooke, or St. Hyacinthe, or the town of St. Johns, the names of all persons appearing on the list of grand jurors must be entered by the prothonotary upon the list of persons qualified to serve as jurors in civil cases.—61 Vic., c. 47, s. 3.

431. Immediately after receipt of the notice given by the sheriff that he has completed the revision of the grand jury lists, the prothonotary is bound to forthwith correct the copy in his possession so as to make it conform to the jury-lists so revised; and such corrections are certified by the sheriff.

The list of jurors for civil cases is revised by the prothonotary according to the list of grand jurors for criminal cases so revised, by striking out the names of deceased, absent or disqualified persons, and adding the names of new persons qualified to serve as jurors.

The prothonotary is also bound to strike out from time to time the names of all persons whom the sheriff, in any pending case, returns as dead, absent or disqualified, or who are declared by the court to be so. —O. C. 361, *am.;* R. S. 2636, 2641, 5893.

432. The grounds of exemption from serving as jurors are the same as in criminal matters. —O. C. 360, *am.;* R. S. 5892, 2621; 59 Vic., c. 43, s. 2.

SECTION III

Formation of the Special List and Striking the Panel

433. The judge, upon motion of either of the parties, may fix a day for striking the panel, and another day for the trial, either in term or in vacation, and order the summoning of a jury to try the issues, either at the place where the court is held or in any other district, according to circumstances, and, in the latter case, order the record to be sent to the prothonotary of the court at the appointed place. O. C. 362, *am.*

434. The motion for the fixing of a day for trial must be accompanied with a deposit in the office of the court of the amount fixed by the rules of practice.—O. C. 365, *am.*; R. P. S. C. 65.

435. If the action is of a commercial nature, the jurors to be summoned are taken and selected only from amongst the persons, speaking the required language, who are designated in the jury-list as merchants or traders, in the order in which they stand upon the list; and in cases where one of the parties is not a trader, and objects to a jury composed wholly of traders, the judge may order that one half only of the jury be composed of traders.

If there are not upon the jury list the number of merchants or traders that should be summoned to form the jury, the special list is completed by taking other names from the jury-list in the order hereinbefore prescribed.—O. C. 363, *am.*

436. Upon the application of either party, if the opposite party does not object, the judge may order the jury to be composed exclusively of persons speaking the French language or of persons speaking the English language.

If the parties are of different origin, and one of them demands a jury *de medietate linguæ*, or if such application is made by a corporation which is a party to the suit, the judge orders the jury to be composed of equal numbers of persons speaking the French language and of persons speaking the English language.—O. C. 364, *am.*

437. Upon the order being granted, the prothonotary takes from the list of jurors for civil matters, commencing with the name of the first juror following that of the last juror included in the special list previously made, the names of fifty jurors, whose names are next on the list, having, in the special cases, the qualifications required according to the order of the judge, and makes a special list thereof to form part of the record in the case.—O. C. 366, *am.*

438. Upon the day and at the hour fixed for striking the panel, the parties must attend for that purpose at the office of the court.—O. C. 367, *am.*

439. Each party strikes alternately, from the special list prepared by the prothonotary, the name of one of the persons therein designated, to the number of twelve, paraphing each name struck out, and the twenty-six names then remaining form the panel from which the twelve jurors who are to serve in the case are taken.—O. C. 368, *am.*

440. In the case of articles 435 and 436, neither party can strike out the names of more than six persons speaking the

French language or of more than six persons speaking the English language, or the names of more than six traders or non-traders, as the case may be.—O. C. 369.

441. If either of the parties fails to attend for the purpose of striking the panel, the prothonotary may strike twelve names from the special list on his behalf, observing the rules prescribed in the preceding article.—O. C. 370.

442. When any party who has demanded a trial by jury allows a delay of thirty days to elapse from any date at which the case stands ready for trial or for a new trial, without proceeding to bring on the trial, he is thereupon by the sole operation of law deprived of his right to a jury trial; but the judge may, upon application made within the delay, extend it for cause shown.

The other party may, within fifteen days from the expiry of the said delay, proceed to a trial by jury.

If the delay elapses, in either case, without such proceedings being taken, the case may be inscribed for proof and hearing in the ordinary manner.—*New.* O. C. 371.

SECTION IV

Summoning of Jurors

443. As soon as the panel is formed, the prothonotary delivers to the party who applies for it a writ of *Venire Facias*, in the name of the Sovereign, signed and attested by the prothonotary, ordering the sheriff to summon the twenty-six persons whose names compose the panel. A copy of such panel is annexed to the writ.—O. C. 372, *am.*

444. The jurors must be summoned at least four days before the day fixed for the trial.—O. C. 373.

445. The sheriff is not bound to leave a copy of the writ of *Venire Facias* with each person, but merely a notice under his signature, summoning him in virtue of such writ to appear upon the day, at the hour, and at the place fixed for the trial.

This notice must give the names of the parties to the case, the names, occupation and residence of the person summoned as a juror, and the day, hour and place, fixed for the trial, the summons to appear as juror, the date of the writ of *Venire Facias*, the date of the notice, and the signature of the officer to whom the writ is addressed.—O. C. 374.

SECTION V

Formation of the Jury and Challenges.

446. As soon as the case is called on the appointed day, the sheriff must return before the court the writ of *Venire Facias*, to which is annexed the copy of the panel of jurors, and must also report his proceedings, including the certificates of service upon, or attempts to serve, those persons whose names appear in the panel. *New.* O. C. 375, 377; R. S. 2667.

447. On the day fixed for the trial, the persons summoned as jurors must appear at the appointed hour, at the place where the court is held, under a penalty not exceeding twenty-five dollars, which may

be immediately imposed by the court.

Such penalty is levied by the sheriff on the goods and chattels of the person so fined; and, in default of sufficient goods and chattels such person may be imprisoned for a period not exceeding fifteen days.

The court may, however, for good cause shown, reduce or remit such penalty or imprisonment.

Any juror duly summoned, who without sufficient cause fails to attend at the time and place appointed, is furthermore liable to the parties for all damages caused by his default.—O. C. 376, *am.*; R. S. 5894.

448. After the jurors summoned have been called and a sufficient number to form the jury are in attendance, either party may challenge the array on the ground of partiality, or of fraud, or of wilful misconduct on the part of the officer by whom the panel was returned, or on the ground of such causes of nullity as may be found in the summoning of the jurors or in the making up of the lists or panel.—C. C. 377, *am.*; *Crim. Code*, 666, § 1.

449. The challenge must be in writing, stating the causes of nullity relied upon, and must conclude by demanding that the panel be quashed.—O. C. 378.

See *Form, Sched. I. in appendix.*

450. The presiding judge decides the challenge, and may, if necessary, order the facts upon which it is based to be substantiated on oath.—O. C, 379.

451. If the challenge is pronounced valid, the party who applied for a trial by jury must obtain the issue of another *Venire Facias.*—O. C. 380.

452. If there is no challenge to the array, or if the challenge is overruled, the prothonotary, in order to form the jury, proceeds to call and swear in twelve of the persons summoned, following the order in which they appear on the panel, saving the cases in which the selection is to be made with reference to special qualifications.—O. C. 381, *am.*; C. S. L. C., c. 84, s. 43.

453. In cases of a commercial nature, the names of the merchants or traders summoned as jurors must be called first, and if they are not in sufficient number, the jury is completed from among the other persons summoned.—O. C. 390, *am.*

454. Either of the parties may challenge for cause any person called to form part of the jury, before such person is sworn; but where there are several parties on the same side they must join in making a challenge.—*New in part.* O. C. 382; *Cal.* 601.

455. The grounds of challenges to the polls are:

1. That any juror is subject to any disqualification or disability, as provided by law;

2. That any juror is related to or connected by affinity with any party to the suit, within the degree of cousin-german, inclusively;

3. That any juror is interested in the suit, or is not indifferent between the parties.—*New.* O. C. 384; R. S. 2620; 58 Vic., c. 31, s. 6; *Crim. Code*, 668, §§ 4, 5.

Civil Code, arts. 26, 36, 365.

456. The court may, in its discretion, require the challenge to be reduced to writing by the party making it. *New. Crim. Code* 668, *s. 6. See Form, Sched. J. in Appendix.*

457. The challenge is summarily decided by the two jurors last sworn; or, if two jurors have not yet been sworn, by any two persons present who are appointed by the court, and who must be sworn to try the challenge impartially.

If, after what the court considers a reasonable time, the triers are unable to agree, the court may discharge them from giving a decision, and may direct other persons to be sworn in their place.—O. C. 386, 387; *Crim. Code*, 668, s. 8, *in fine*.

458. The juror himself may be examined on oath as to the matter of the challenge.—O. C. 388, *am.*

459. A challenge founded upon a judicial condemnation must be accompanied with an authentic certificate of such condemnation.—O. C. 389.

460. If several of the jurors summoned are challenged or fail to attend, or are exempt or incapable, so that the number of twelve duly qualified jurors cannot be completed, the court or sitting judge may with the consent of the parties, but not otherwise, give an order in writing to the sheriff or the officer acting in his stead, to make up the number by taking forthwith from among the persons present in court the requisite number of individuals qualified to serve as jurors: but the jury cannot be wholly composed of *tales;* and if all the jurors summoned fail to attend, or are lawfully challenged, the trial cannot then proceed.—O. C. 391, *am.*

461. If a juror called is not challenged, or if the challenge is overruled, he is sworn to try the matter at issue and to give his verdict in a just and impartial manner according to the evidence.—O. C. 392.

SECTION VI

Proceedings before the Jury

462. Three days at least before that fixed for the trial, each party must deliver to the prothonotary, for the use of the judge who is to preside at the trial, a copy of the pleadings necessary to join the issue, together with a *factum* or case, inclosed within a sealed cover, containing a statement of the facts of the case and of the authorities upon which he relies. O. C. 393, *am.*

463. After the return of the *Venire Facias* on the day fixed for the trial, if neither party appears, the jurors are discharged; if the plaintiff appears and the defendant makes default, such default is recorded and the plaintiff may proceed *ex parte;* if the plaintiff alone fails to appear, his default is recorded, and judgment of non-suit is entered against him, with costs to the defendant.—O. C. 394.

464. The plaintiff may also, at any time before verdict, withdraw from court or abandon his suit, and a like judgment of non-suit, with costs, is rendered against him.—O. C., 395, *am.*

465. No paper can be read to the jury without leave from the judge, and, if it is not authentic, it must first be proved.—O. C., 396.

466. The prothonotary keeps, under the direction of the judge, full minutes of the proceedings at the trial, including all admissions and all exceptions taken, or objections

made, orally in court.—O. C. 397, *am.*

Infra, art. 506.

467. A copy of such minutes is made out by the prothonotary, and, after being certified by the judge, is filed of record, and is held to be the true record of all proceedings mentioned therein, and stands in lieu of any bill of exceptions by either party against the evidence or the trial.—O. C. 398, *am.*

Infra, art. 506.

468. The witnesses give their evidence orally in the presence of the jury, saving the provisions of articles 343, 356, 359 to 370, and 380 to 390.—O. C. 397, 399, 402, *am.*

469. Whenever the judge is of opinion that the plaintiff has given no evidence upon which a jury could find a verdict, he may dismiss the action.—*New.*

Infra, art. 474.

470. The ordinary rules as to the conduct of cases inscribed for proof and hearing apply, so far as may be, to jury trials.—*New.* O. C. 399*a*; R. S. 5895.

471. The party upon whom the burden of proof lies opens the case and adduces his evidence.

The opposite party in turn opens his case and adduces his evidence; and upon the conclusion of any evidence in rebuttal, or if there is no evidence in rebuttal upon the conclusion of his evidence, addresses the jury upon the case.

The party who began is thereupon entitled to reply.

If his opponent does not adduce evidence, the party who began addresses the jury at the close of his case, and the opposite party then replies.—O. C. 403, *am.*; R. P. Q. 675.

Civil Code, art. 1203.

472. When each party has stated his case and adduced his evidence, the judge, if he deems it necessary, sums up the evidence to the jury.—O. C. 404.

Infra, arts. 500, 506.

473. If either party objects to the judge's charge, the judge must, either immediately or as soon as he conveniently can, reduce to writing the portion of his charge which is objected to, mentioning the objection made.

What is thus written is signed by the judge and forms part of the record in the case.—O. C. 405, *am.*

SECTION VII

Provinces of Judge and Jury

474. It is the province of the judge to declare whether there is any evidence and whether that evidence is legal. O. C. 406, *am.*

Supra, art. 469.

475. The jury find the facts, but must be guided by the directions of the judge as regards the law.—O. C. 407.

SECTION VIII

Verdict

476. When the case is finally submitted to the jury, they may render a verdict immediately or retire for deliberation.

If they retire, they must remain together in some convenient place, under charge of an officer appointed by the court, until they agree upon a verdict.

The officer so acting must not suffer them to communicate with any person, except by order of the court; and he

must not, before their verdict is rendered, communicate to any person their deliberations or the verdict agreed upon.—*New in part.* O. C. 408; *Cal.* 613.

477. The judge may, nevertheless, during the trial or while the case is under deliberation, permit them to separate, and order that they attend again at a specified time.

If the jurors fail so to attend, they are liable to the penalties attached to contempt of court, without prejudice to the recourse of the parties against them for damages.—O. C. 408, s. 2, 409.

Infra, art. 834.

478. If the jury are permitted to separate, they must be admonished by the judge not to converse with or suffer themselves to be addressed by any other persons in reference to the case.—*New. Cal* 611.

479. The jury may at any time, even after the summing up by the judge, but in his presence and with his permission, in open court, examine again the witnesses already heard.

They may also ask the opinion of the judge upon any questions of law which present themselves, and may, with his permission, take communication of any document of record. —O. C. 410, *am.*

480. The agreement of nine of the twelve jurors is sufficient to return a verdict.—O. C. 411.

481. If nine of the jurors cannot agree upon the verdict to be returned, the jury may, in the discretion of the court, be discharged, and another jury may be summoned.—O. C. 412.

482. The prothonotary, after ascertaining that all the jurors are present, receives their verdict and enters it in the registers of the court, inserting their names, and stating the number of those who concur in the verdict if it is not unanimous.—O. C. 413.

483. When there is an assignment of facts, the verdict must be special, explicit and articulated upon each fact submitted.—O. C. 414, *am.*

Supra, art. 424 et s.

484. When the parties have agreed to dispense with an assignment of facts, the verdict is general, either in favor of the plaintiff for a specific sum, or in favour of the defendant.—O. C. 415.

Supra, art. 426.

485. The jurors are not bound to render their verdict until the party demanding the trial by jury has paid the sum of one dollar for each of them for each day that the trial has lasted.

In default of payment by either party, the jury are discharged without rendering a verdict, with costs against the party who demanded a trial by jury.

Such costs include the costs incurred upon the trial and the allowance for the jurors; and such allowance is paid them as soon as it is recovered by the prothonotary.

The defaulting party is thereupon deprived, by the operation of law, of his right to a trial by jury.—O. C. 416, *am.*

486. The prothonotary, in the case of such default to pay, must immediately issue, against the party condemned to costs, a writ of execution, to be enforced by the sheriff, for the recovery

of the allowance due the jurors. —O. C. 417.

487. The verdict must be given upon all the issues submitted to the jury.—O. C. 418.

488. The verdict cannot in any manner pronounce upon the costs.—O. C. 419.

489. The presiding judge may order the amendment of any clerical errors that have occurred in any proceeding in the case before the jury or in the verdict.—O. C. 420, § 1.

Infra, art. 518.

490. If at any time before verdict a juror becomes, through illness or any other cause, unable or in default to perform his duty, the judge may adjourn the case, or order him to be discharged; and, in the latter case, the trial may proceed with the remaining jurors, or another juror may be sworn and the trial be begun anew, or the jury may be discharged and a new jury be impanelled to try the case.—*New.* O. C. 420, §§ 2, 3; *Cal.* 615; C. I. C. F. 394; *Dalloz Rep. vo.* "*Instruction Criminelle*," *Nos.* 1846, 1804, *ss.*

SECTION IX

Judgment after Verdict

491. The trial judge must, either at once or after a delay for further consideration, render judgment for the party in whose favour the verdict has been given, unless for special causes stated in a certificate filed of record, he reserves the case for the consideration of the Court of Review.—*New*, R.P.O. 682.

Supra, art. 51.

SECTION X

Remedies against Judgments, and Proceedings in Reserved Cases

§ 1.—GENERAL PROVISIONS

492. An appeal lies from the final judgment rendered by the trial judge, in the same manner as from any final judgment of the Superior Court.—*New.*

493. The appellant must annex to his inscription in review or appeal a statement in concise language of the grounds upon which he relies, with conclusions for a new trial, or for a different judgment, or alternately for any of these remedies.—*New.*

494. When the trial judge has reserved the case for the consideration of the Court of Review, a party may move before that court for judgment in accordance with the verdict.

A motion may also be made for a new trial or for a judgment different from the verdict, or, alternately, for any of these remedies. A statement of reasons similar to that mentioned in the preceding Article must then be annexed to the motion.

The motions must be made before the Court of Review on the first or second day of its next term beginning at least ten days after the day on which the case was reserved.—*New.*

Supra, art. 51; *infra*, art. 1191.

495. The judgment of the Court of Review, rendered in the exercise of its original jurisdiction in reserved cases, is executory and subject to appeal in the same manner as any final judgment of the Superior Court.—*New.*

496. The Court may, in all cases where the judgment of the trial judge, or the verdict in a reserved case, is attacked, apply any remedy by which it considers that the ends of justice will be attained, even if such remedy has not been specifically demanded by any of the parties.—*New.* R. P. O. 755.

497. Affidavits are not admissible for the purpose of showing the reasons and motives which influenced the jurors, or of establishing that the verdict rendered is not that which the jurors intended to give.—O. C. 428, 429, *am.*

§ 2—NEW TRIALS

498. Subject to the qualifications stated in the next following articles, a new trial may be granted in any of the following cases:

1. When the assignment of facts is insufficient or defective;

2. When the judge has improperly admitted or rejected evidence;

3. When the judge has misdirected the jury or refused to instruct them on a matter of law, and the party complaining has duly excepted to such misdirection or refusal;

4. When the verdict is contrary to law, or clearly against the weight of evidence;

5. When the amount awarded is either excessive or insufficient;

6. When the party has been taken by surprise, or when new evidence of a conclusive nature has been discovered since the trial;

7. When there has been, on the part of the jury or of any juror, such misconduct as prevented a fair and judicial consideration and decision of the case;

8. When a material witness was absent at the time of the trial without any fault attributable to the party who had summoned him, and his evidence is still obtainable:

9. When a challenge to the array or to the polls has been erroneously maintained or overruled.—O. C. 426, *am.*

Supra, arts. 493, 494, 496.

499. The defects in the assignment of facts must be such as to prevent a trial of the material issues, and it must be shown that an objection stating the necessary amendment was made and overruled before verdict rendered.—O. C. 426, s 1, *am.; Cannon* vs. *Huot.* 1 Q. L. R. 139.

Infra, art. 506.

500. A new trial is not granted on the ground of misdirection, or of the improper admission or rejection of evidence, unless some substantial prejudice has been thereby occasioned; and, if it appears that such prejudice affects a part only of the matter in controversy, the court may direct a new trial as to such issues only.—*New.* O. C. 426, ss. 2, 3, 4; *Eng. R.* 556; R. P. O. 791.

Infra, art. 506.

501. A verdict is not considered against the weight of evidence unless it is one which the jury, viewing the whole of the evidence, could not reasonably find.—*New.* O. C., 426, § 13; *Metropolitan Ry. Co.* vs. *Wright*, 11 App. Cas. 152.

502. A new trial is granted whenever the amount awarded is so grossly excessive or insufficient that it is evident that the jurors have been influenced

by improper motives or led into error.—O. C. 426, s. 11, *am.*

503. If the amount awarded by the verdict is grossly excessive, the court may refuse a new trial, provided that the plaintiff agrees that it be reduced to an amount which the court considers not excessive. *New.* O. C. 426; *Belt* vs. *Lawes*, 12 Q. B. D. 356; *Mail Printing Co.* vs. *Laflamme*, 12 L. N. 33; *Taylor* vs. *Northern Assur. Co.*, 35, L. C. J. 6.

504. If the amount awarded by the jury is grossly insufficient, the court may also refuse a new trial, provided that the defendant agrees to its being increased to an amount which the court considers not insufficient.—*New. Belt* vs. *Lawes*, 12, Q. B. D. 358.

505. The discovery of new evidence since the verdict is ground for a new trial only when the party applying therefor shows:

1. That the evidence is such that, if it had been brought forward in time, it would probably have changed the result;

2. That at the time he might so have used it, neither he nor his attorney or agent had knowledge of it;

3. That it could not, with reasonable diligence, have been discovered in time to be so used;

4. That reasonable diligence was used after the discovery of the new evidence. *New.* O. C. 426, § 16; H. & L. pp. 595, 596.

506. The causes mentioned in paragraphs 1, 2, 3 and 9 of article 498 can be ascertained only by means of the minutes of trial, and when the party has caused his objections to be entered therein.—O. C. 427, *am.*

Supra, arts. 466, 467, 473.

507. If the judgment upon the verdict has been set aside, and no further order has been given, a new trial must be had. O. C. 430, *am.*

§ 3.—DIFFERENT JUDGMENT.

508. A judgment different, in whole or in part, from that rendered by the trial judge, or from the verdict in a reserved case, may be rendered in any of the following cases:

1. When the facts as found by the jury require a judgment in favour of the party moving or inscribing, or the judge has erred as to the real effect of the verdict;

2. When the allegations of the party in whose favour the verdict or the judgment has been rendered are not sufficient in law to maintain his pretensions;

3. When it is absolutely clear from all the evidence that no jury would be justified in finding any verdict other than one in favour of the party moving or inscribing. *New.* O. C. 431, 432, 433; R. P. O. 798, 749, 755; *Eng. R.* 568; H. & L., pp. 640, 641.

Supra, arts. 493, 494, 496.

CHAPTER XXII

Decision of Questions of Law upon facts admitted

509. Except in cases relating to nullity of marriage, separation from bed and board, separation as to property, dissolution of corporations, or suits for the annulment of letters-patent, persons of full age and capacity who are at variance upon a question of law capable of being the subject of an action between them, but who are in agree-

ment as to the facts, may submit it for the decision of the court, upon filing in the office of the court a joint factum or case containing a statement of the question of law involved, and of the facts which give rise to it, and the conclusions of each party, accompanied with the affidavit of each party establishing that the facts are true, that the controversy is real, and that neither party is merely seeking to obtain an opinion.—*New. Eng. R.* 389 ss.; N. Y. C. 1279 ss.; *Cal.* 1138 ss.; R. P. O. 554.

510. Immediately after the filing of the joint case, either party may inscribe the issue for hearing in accordance with the ordinary rules.—*New. Ibid.*

Supra, art. 194.

511. The decision rendered by the court has the same force and effect as a judgment in an action.—*New. Ibid.*

512. The parties to action may, at any stage of the case, submit for the decision of the court any questions of law resulting from the action, by means of a joint case, upon conforming to the requirements of article 509.—*New.* R. P. O. 554.

CHAPTER XXIII

Amendments

513. The writ of summons and the declaration served upon the defendant may be once amended or changed, without costs, without leave of the judge, at any time before the service of a preliminary exception or of the defence. *New.* O.C 53; R. P. O. 424; N. Y. C. 542.

Supra, art. 175.

514. The defence may be once amended or changed, without costs, without leave of the judge, at any time before the plaintiff has served his answers.

When no answer is necessary, the amendments or changes must be made before service of the inscription.—*New.* O. C. 53; R. P. O. 425; N. Y. C. 542.

515. Any other pleading may likewise be once amended or changed, without costs, without leave of the judge, at any time before the service of an answer to such pleading by the opposite party; and, when an answer is not necessary, before service of the inscription.—*New. Ibid.*

516. In all cases not provided for by the preceding articles, the parties may, at any time before judgment, with the leave of the judge, upon such conditions as are deemed proper, amend the writ of summons, the declaration, the defence or any other pleading. — *New*, O. C. 117; R. P. O. 390, 429, 444; N. Y. O. 497.

517. If any copy of a pleading is incorrect or different from the original, the party who served it, may, before the service of an answer to the same, furnish a correct copy thereof to the other party, without leave of the judge, and with such leave after the service of the answer, upon such conditions as are deemed proper.—O. C. 118, *am.*

518. The judge may, without being thereto moved, at any time before judgment and upon such conditions as are deemed proper, order the immediate amendment in any pleading of errors of expression, calculation or writing, and of any other irregularities of form which do not cause a prejudice.

—*New.* R. C. C. S. 249; R. P. O. 446.

519. The judge may grant leave to amend any error appearing in a return made by a sheriff, bailiff or other authorized person.—O. C. 80, 159. *am.*

Supra, art. 175.

520. The judge may, at any time before judgment, upon such conditions as he considers just, allow a pleading to be amended so as to agree with the facts proved; and a pleading is sufficiently sustained if the facts alleged agree sufficiently with the facts proved, and if, in the opinion of the judge, the opposite party has not been led into error as to the real nature of the facts intended to be alleged and proved.—O. C. 320, *am.*

Supra, art. 110.

521. Non-joinder in the suit of a person whose presence is necessary does not entail nullity if by amendment he is made a party to the action.—*New.* R. C. C. S. 176½; R. P. O. 324; N. Y. C. 723.

Supra, arts. 177, s. 8; *infra*, 525.

522. No amendment can be made or allowed if it changes the nature of the demand.

The court may, nevertheless, at any time before judgment, allow the conclusions to be corrected, modified or even enlarged, provided that the facts alleged give rise to the new relief demanded.—*New, in part.* O. C. 53; *Eng. R.* 309 ss.; *Russell vs. Lefrançois.* 7 L. N. 57, 8 Can. S. C. R. 335.

Supra, art. 113.

523. The party making an amendment must serve it forthwith.

If the amendment is made in pursuance of leave granted, the party must serve and file it within the delay fixed in the order, and if no delay is fixed, within three days from the date of the order, in default of which the leave becomes inoperative.

When the amendment is made in open court during the trial, in presence of the opposite party, it need not be served upon him unless the court so orders.—*New.* R. P. O. 430, 433.

Supra, art. 115.

524. Whenever an amendment can only be made with leave, the proposed amendment and notice of the day upon which the application therefor will be made must be served upon the opposite party at least one day in advance.

Nevertheless, when the amendment is applied for in open court, during the trial, in the presence of the opposite party, notice thereof need not be given in the manner abovementioned, unless the court so orders.—*New.*

525. When a new defendant is joined in an action, he must be served with a copy of the writ of summons and of the declaration in the ordinary manner; and the action, in so far as he is concerned, is considered to have commenced only with such service.—*New.* R. P. O. 324, 324.

Supra, art. 521.

526. The judge may at any time, upon such conditions as are deemed proper, allow the plaintiff to serve anew the writ of summons and declaration, when the service is irregular.—*New.*

CHAPTER XXIV

Judgment

I. Confession of Judgment **527**.

II. Judgment in Cases by Default and Ex-parte **532**.

III. General Rules as to Judgment **536**.

SECTION I

Confession of Judgment

527. The defendant may, at any stage of the proceedings, file or cause to be taken down in writing, at the office of the court, a confession of judgment for the whole or any part of the demand.

The confession must be signed by the defendant, or be made by his special attorney, whose power of attorney in authentic form must be filed with the confession.—O. C. 94, *am.*

Civil Code, art. 1245.

528. If the person who appears as defendant in order to confess judgment is unknown to the prothonotary, the latter must require him to produce the copy of the summons or to procure the counter-signature of his attorney *ad litem*.—O. C. 95.

529. If the plaintiff accepts such confession, he may inscribe the case forthwith for judgment, and the prothonotary draws up in conformity with such confession a judgment which is held to be the judgment of the court.—O. C. 96, *am.*

Supra, art. 15, §4; *infra*. art. 537.

530. If the confession of judgment is not accepted, the plaintiff must give notice to the defendant or his attorney.

After such notice, the case is proceeded with in the ordinary manner; and, if the plaintiff does not obtain more from the court than he would have had upon the confession, he is not entitled to more costs than if the confession had been accepted.—O. C. 97, *am.*

531. If there are several defendants in the same suit, some only of whom confess judgment, the plaintiff may proceed upon such confession against those who have acknowledged their indebtedness, without prejudice to his right to proceed against the others.—O. C. 98.

SECTION II

Judgment in Cases by Default and Ex Parte

532. If the defendant fails to appear or to plead, the judge or the prothonotary, in the name of the court, may, in term or out of term, render judgment in the actions enumerated in the following paragraphs, according to the manner therein prescribed:

1. Without proof after inscription for judgment, upon examining the document upon which the action is founded, in any action brought upon an authentic deed, bill of exchange, promissory note, schedule, cheque, act, or private writing;

2. Upon the filing, with the inscription for judgment, of an affidavit of the plaintiff or one of the plaintiffs, or of any other credible person, establishing that the amount claimed is

due, to the knowledge of the deponent, by the defendant to the plaintiff, in any action founded upon verbal agreements to pay specific sums of money, or upon detailed accounts, or for goods or effects sold and delivered, or for money lent, or for professional or other services.—O. C. 89, 90, 91, 92, *am.*

See Form sched. K in appendix.

Supra, arts. 15, 162, 207: *infra*, art. 537, 1163.

533. In all cases by default, service of inscription is not necessary.—*New.*

534. In all *ex parte* cases, notice of inscription must be given to the defendant at least one clear day before that fixed for judgment.—*New in part.* O. C. 317; 462.

Infra, art. 1138.

535. If some of several defendants appear and plead, and others make default to appear or plead, the plaintiff may proceed to judgment and execution against the latter, without prejudice to his right to proceed against the former. *New.*—C. P. C. F. 153; C. P. G. 135; R. P. O. 706.

SECTION III

General Rules as to Judgment

536. Judgment may be rendered on any juridical day in cases taken under advisement. O. C. art. 469, 470, *am.*

537. Judgment must be rendered in open court, except in matters within the jurisdiction of a judge in chambers, and in the cases stated in articles 529 and 532.—O. C. 469, *am.*

Supra, art. 70.

538. Whenever a judge who has heard a cause is unable, on account of illness, absence or other cause, to render judgment in person he may transmit the draft of the judgment certified by him, to the prothonotary, with instructions to record such judgment, and to read it or to give communication of it on demand, to the parties or to their attorneys, on the day which he fixes for that purpose.

The prothonotary, on receiving the draft of judgment and the instructions accompanying it, is obliged to conform to such instructions; and the judgment so enregistered has the same effect as if it had been rendered by the judge during the sitting of the court.—O. C. art. 469*a*, *am.*; *R. S.*, 5902.

539. Judgment in a suit which is under advisement cannot be stayed by reason of the death of the parties or of their attorneys.—O. C. 468.

Supra, arts. 259, 266, 267.

540. If a judge or assistant judge before whom a case has been heard is appointed chief justice or judge of the same court, or chief justice or judge of another court, or obtains leave of absence, he may render judgment as if no change had taken place.—O. C. 468.

541. Every judgment must mention the cause of action, and must be susceptible of execution.

In contested cases it must moreover contain a summary statement of the issues of law and of fact raised and decided, the reasons upon which the decision is founded, and the name of the judge by whom it was rendered.—O. C. 472.

542. Every judgment for

damages must contain a liquidation thereof.—O. C. 471.

543. Every judgment condemning a party to the restitution of rents, issues and profits must order the liquidation thereof; and this is done by experts, if the case requires it: and the party condemned is bound for that purpose to produce all accounts and documents showing the receipts, all leases of immovables, and a statement of the cost of tilling, sowing and harvesting incurred by him.—O. C. 475.

Supra, art. 392 et s., *Civil Code*, art. 410 et s., 417, 612, 1540, 2076.

544. The judgment must be entered without delay in the register of the court, in conformity with the draft paraphed by the judge.—O. C. 473.

545. In the case of difference between the draft and the entry thereof in the register, the draft is to be followed; and the court may, without any formality, order the rectification of the register.—C. C. 474.

546. The judge may, at any time, at the instance of one of the parties, correct any clerical error affecting a judgment.—*New.*

547. Unless where it is expressly ordered, or where there is a provision of the law, or in the case of judgments in recognition of hypothecs rendered against defendants having a known domicile in the Province, it is not necessary to have the judgment served on the party condemned.—O. C. art. 476, *am.*

Supra, art. 188; *infra*, arts. 689, 968, 1031.

548. A party may, on giving notice to the opposite party, renounce either a part only or the whole of any judgment rendered in his favor, and have such renunciation recorded by the prothonotary; and, in the latter case, the cause is placed in the same state as it was in before the judgment.—O. C. art. 477, 93, *am.*

CHAPTER XXV

Costs

549. The losing party must pay all costs, unless for special reasons the court reduces or compensates them, or orders otherwise.—O. C. 478, *am.*

Supra, arts. 89, 92, 337, 488, 530; *infra*, arts. 573, 787, 798, 1021, 1113, 1128, 1174, 1184, 1280, 1281.

550. In actions of damages for personal wrongs, if the damages awarded do not exceed eight dollars, no greater sum can be allowed for costs than the amount of such damages.—O. C. 478, *am.*

551. In suits for alimentary allowances, no more costs can be allowed to the plaintiff than in an action for the monthly allowance granted.—*New.*

552. Tutors, curators and other administrators, who abuse their quality by carrying on proceedings which are clearly unfounded, may be condemned personally to costs without being entitled to reimbursement.—*New.* 1 *Pigeau* 418; C. P. C. F. 132; C. P. G. 119; *Cal.* 1031.

553. Every condemnation to costs involves, by the operation of law, distraction in favor of the attorney of the party to whom they are awarded.—*New.*

554. Costs are taxed after one day's notice to the opposite party by the prothonotary upon

production of a bill thereof, according to the tariffs in force.

For the purposes of taxation, the class of the action is determined by the amount or the nature of the judgment, unless the court has otherwise ordered.

The prothonotary may, for such purposes, receive affidavits, and, when necessary, summon and hear witnesses.

The taxation may, within six months, be submitted to a judge for revision, after the opposite party has received such notice as the judge deems sufficient.

Neither the application for revision, however, nor the delay allowed for such revision, can suspend the execution of the judgment, saving the debtor's recourse in the event of the amount being levied or paid before such revision.—O. C. 479, *am.*

Infra, arts. 595, 676.

555. Any party, whose attorney has a judgment of distraction for his costs, may execute such judgment in his own name, with the consent of his attorneys, provided no prejudice is caused to any rights which the debtor is entitled to set up against such attorney.

The consent of the attorney must appear on the fiat for the issue of the writ of execution.

556. Costs bear interest from the date of the judgment granting them.—O. C. 478*a*, R. S. 5904.

557. Whenever witnesses are summoned from beyond the jurisdiction, their expenses cannot be taxed against the opposite party for more than it would have cost to examine them by means of a commission, unless the judge otherwise orders.—O. C. 480.

558. In the cases of articles 137 and 299, no greater costs of service can be allowed than if such service had been made by a bailiff residing in the county. —O. C. 481.

CHAPTER XXVI

Voluntary Execution of Judgments

I. Putting in Security **559.**

II. Accounting **566.**

III. Surrender **579.**

IV. Tender and Payment into Court **583.**

SECTION I

Putting in Security

559. Every judgment ordering security to be given must fix the time within which sureties shall be offered.

The security-bond is entered into at the office of the court.—O. C. 514, *am.*; 515.

Civil Code, art. 1962 et s.

560. Sureties are offered after notice served upon the opposite party.—O. C. 515, *am.*

Supra, art. 182; *infra*, art. 915.

561. Except in cases where the law requires only personal justification, a surety may, if he is objected to, be required to give in a declaration of his real property, together with his titles thereto.

Sureties may in all cases be required to justify their sufficiency on oath.—O. C. 516, *am.*

Infra, arts. 833, s. 3; 1215, 1249; *Civil Code* art. 1939.

562. A surety may be objected to:

1. If he has not the qualifications required according to the

title *Of Suretyship* in the Civil Code;

2. If he is not sufficient.—O. C. 517.

Civil Code 1938 et s.; 1962 et s.

563. The sufficiency of a surety is decided upon the documents and affidavits produced, without proof being ordered.—O. C. 518.

564. If the surety is accepted, the bond is drawn up and entered into in conformity with the judgment, and remains in the office of the court as part of the record in the case.—O. C. 519.

565. The acceptance of sureties is decided upon summarily, without any petition or writings, and the bond is entered into notwithstanding oppositions or appeals, and without prejudice thereto.—O. C. 520.

SECTION II

Accounting

566. Every judgment ordering an account must fix a delay for rendering it.—O. C. 521.

Infra. art. 594, s. 6.

567. The account must be rendered nominately to the party entitled to it; it must be sworn to and be filed in the office of the court within the delay fixed, together with the vouchers in support of it.

The judge may, however, upon motion, extend the delay for rendering the account.—O. C. 522, *am.*

568. The account must contain, under separate heads, the receipts and expenditure, and close with a recapitulation of such receipts and expenditure, establishing the balance; whatever remains to be recovered is reserved for a separate head.—O. C. 523, *am.*

569. Under the head of receipts must be placed all sums which the accounting party has received, and all those that he ought to have received during his management.—O. C. 524.

570. The accounting party cannot place under the head of expenditure the costs of the judgment ordering him to account, unless he is authorized to do so by the court; but he may charge under that head his travelling expenses, the attendances of the attorney who made up the account, the cost of preparing, presenting and verifying it, and of whatever copies thereof are required.—O. C. 525, *am.*

Civil Code art. 310.

571. If the account shows an excess of receipts over expenditure, the party to whom it is rendered may provisionally demand execution for the balance, saving his right to contest the remainder of the account.—O. C. 526.

572. The party accounted to is bound to take communication of the account and vouchers at the office of the court, and to file his contestations of the account, if he contests it, within a delay of fifteen days, which may be extended by the judge upon application. — O. C. 527, *am.*

Civil Code, art. 312.

573. Parties accounted to, whose interests are the same, must name the same attorney; if they do not agree in their choice, the attorney first in the case remains attorney of record, saving the right of the other parties accounted to, to employ attorneys of their own, upon pay-

ment of all costs occasioned thereby.—O. C. 528, *am.*

574. The accounting party has a delay of six days after the filing of the contestation to file his answers in support of his account, and the other party has a similar delay to file his replications.—O. C. 529, *am.*

575. In default of filing the contestations, answers or replications within the delay fixed, the party so in default is held to admit whatever is contained in the document he fails to contest.—O. C., art. 530.

576. After the issues are completed the parties proceed to trial in the ordinary manner; but the court may, at any time before judgment, refer the case to arbitrators, or to a practitioner or accountant, according to its nature.—O. C. 531, *am.*

Supra, arts. 410, 411.

577. The judgment upon the account must contain a computation of the receipts and expenditure, and establish the balance if there is any.—O. C. 532, *am.*

Infra, arts. 333, 836.

578. If the defendant fails to render an account, the plaintiff may proceed to have one made out in the manner mentioned in Article 568.—C. C. P. 533.

SECTION III

Surrender

579. The voluntary execution of any judgment ordering the restitution and delivery of any movable or immovable is effected, unless the judgment otherwise provides, by delivering the movable object or surrendering the possession of the immovable, in such a manner that the party entitled thereto may take possession of it; and this must be done in conformity with the judgment and the provisions contained in the title *Of Obligations* in the *Civil Code*.—O. C. 534.

Infra, arts. 610, 611: *Civil Code*, 1150 et. s. 1164, 1165, 1200, 1492, 1499.

580. The voluntary execution of a judgment ordering the surrender of an hypothecated immovable is effected by means of a declaration of the defendant, in the office of the court, to the effect that he makes such surrender in compliance with the judgment, and by his relinquishing his possession.—O. C. 535.

Civil Code, arts. 2075, 2077, 2079.

581. When an immovable is thus surrendered, the judge, upon application by the plaintiff, or by any other creditor if the plaintiff fails to so apply, appoints a curator to the surrender, against whom all ulterior proceedings are directed.—O. C. 536, *am.*

Civil Code, arts. 347, §5; 348.

582. The curator has a right to collect the rents, issues and profits due and accrued from the time of the surrender, and may even grant leases if the sale is prevented during any considerable time.

The rents, issues and profits of the immovable surrendered are treated as realty, and are distributed in the same manner as the price.—O. C. 537.

Civil Code, art. 2076.

SECTION IV.

Tender and Payment into Court

583. A tender or a putting in

default to accept must describe the object offered; and, if it be of money, it must contain an enumeration and description thereof.—O. C. 538.

Civil Code, art. 1162, et. s.

584. Tender may be made by an authentic document, or in any other manner which admits of its being legally proved.

Tender may be made in a suit by demanding record thereof, and must be accompanied with payment into court.—O. C. 539.

Supra, art. 170; *Civil Code*, 1168, 1233.

585. Tender may be made at the domicile elected in a contract.—O. C. 540.

Civil Code, art. 85.

586. The authentic document recording the tender, if there is one, must state the answer made by the creditor or by the person representing him, the fact of his being called upon to sign such answer, and of his having signed, or of his having refused or declared himself unable to sign.—O. C. 541, *am.*

Civil Code, art. 1209.

587. A debtor who has made a tender and is afterwards sued may renew it in his defence and pay the amount into court.

However, if the debtor has regularly deposited the sum in the general deposit office of the Province, the production of the receipt for such deposit avails in lieu of the renewal of the tender in the defence.—O. C. 542, *am.*; R. S. 5912.

Civil Code, arts. 1162, 1823.

588. Moneys paid into court cannot, without the authorization of the court, be withdrawn by the party who paid them in.

Unless the tender is conditional, the party to whom it is made is entitled to receive the moneys paid in, without prejudicing his claim to the remainder.—O. C. 543.

Civil Code, arts. 1166, 1167

589. The expense of the tender is borne by the debtor; but, if it is declared sufficient, the costs attending the payment into court are borne by the creditor.—O. C. 544.

Civil Code, art. 1143.

CHAPTER XXVII

Examination of Debtors After Judgment.

590. Upon the return of a writ of execution accompanied with a certificate of *nulla bona*, or a certificate that it has been satisfied in part only, the creditor at whose instance the execution issued may summon any of the following persons to appear before the judge or the prothonotary, to answer such questions as may be put to them concerning the debtor's property and assets:

1. The debtor:

2. When the debtor is a corporation, the president, manager, treasurer or secretary of such corporation:

3. When the debtor is a foreign firm or corporation doing business in this Province, the agent of such firm or corporation. *New.* R. P. C. 926, 928; *Eng. R.* 610; *Cal.* 714; N. Y. C. 1871, 1878.

591. The judge may, at the instance of the creditor, order the production of any books or documents relating to the matters mentioned in the preceding Article, as well as the examination before the judge or the prothonotary, of any persons whom he considers capable of giving information about such

matters.—*New. Eng. R.* 610, 611 : R. P. O. 927.

592. The rules governing the summoning, examination and punishment of witnesses, and the taking of evidence, also apply, in so far as may be, to the cases mentioned in the two preceding Articles.

If any dispute arises during the examination before the prothonotary, the parties are sent before the judge to have it decided.—*New.*

593. The costs of such examination form part of the costs of the execution, unless the judge orders otherwise.—*New. Eng. R.* 612.

CHAPTER XXVIII.

Provisional Execution

594. Provisional execution may be ordered, upon application of the party, notwithstanding any review or appeal, and with or without security being required, in any of the following matters:

1. Actions based upon authentic acts or private writings;
2. Possessory actions;
3. Affixing and removing seals, or making inventories;
4. Urgent repairs;
5. Ejectment, when there is no lease, or the lease has expired or has been cancelled or annulled;
6. Appointments of tutors, curators or other administrators, and rendering accounts;
7. Alimentary pensions or allowances;
8. Judgments of sequestration.—*New. Ord.* 1667, *Tit.* 17, *Arts.* 13, 15; C. P. C. F. 135 ss.; C. P. G. 315, 316. O. C. 885.

Supra 565, *infra* 1199, 1214.

595. Provisional execution cannot be ordered for costs, even when they are awarded in lieu of damages.—*New.* C. P. C. F. 157.

596. If the court omits to order provisional execution, it cannot thereafter be allowed except upon review or appeal. —*New.* C. P. C. F. 136.

597. The court before which the appeal is brought, whenever the application is made during term, or two judges of the Court of Queen's Bench or of the Superior Court, according as the appeal has been taken to the Court of Queen's Bench or the Court of Review, whenever the application is made out of term, is empowered:

1. To allow provisional execution, when it has not been allowed in any case wherein it lies;
2. To refuse provisional execution, when it has been allowed in any case wherein it does not lie by law; and, according to circumstances, to refuse or stay such execution in other cases;
3. To order that security be given by any party who was exempted from doing so by the court of original jurisdiction at the time when the judgment was rendered allowing provisional execution. *New.* C. P. C. F. 458, 459; C. P. G. 317, 318.

CHAPTER XXIX.

Exemptions from Seizure

598. The debtor may select and withdraw from seizure:

1. The bed, bedding and bedsteads in use by him and his family;
2. The ordinary and necessary wearing apparel of himself and his family;

3. Two stoves and their pipes, one pot-hook and its accessories, one pair of andirons, one pair of tongs and one shovel;

4. All the cooking utensils, knives, forks, spoons and crockery in use by the family, two tables, two cupboards or dressers, one lamp, one mirror, one washing-stand with its toilet accessories, two trunks or valises, the carpets or matting covering the floors, one clock, one sofa and twelve chairs: provided that the total value of such effects does not exceed the sum of fifty dollars;

5. All spinning wheels and weaving looms intended for domestic use, one axe, one saw, one gun, six traps, such fishing nets, lines and seines as are in common use, one tub, one washing machine, one wringer, one sewing machine, two pails, three flat-irons, one blacking brush, one scrubbing brush, one broom;

6. Fifty volumes of books, and all drawings and paintings executed by the debtor or the members of his family, for their use;

7. Fuel and food sufficient for the debtor and his family for three months;

8. One span of plough-horses or a yoke of oxen, one horse, one summer vehicle and one winter vehicle, and the harness used by a carter or driver for earning his livelihood, one cow, two pigs, four sheep, the wool from such sheep, the cloth manufactured from such wool, and the hay and other fodder intended for feeding the said animals; and, moreover, the following agricultural tools and implements: one plough, one harrow, one working sleigh, one tumbril, one hay-cart with its wheels, and all harness necessary and intended for farming purposes;

9. Books relating to the profession, art or trade of the debtor, to the value of two hundred dollars;

10. Tools and implements and other chattels ordinarily used in his profession, art or trade to the value of two hundred dollars;

11. Bees to the extent of fifteen hives;

12. The things mentioned in 1743 to 1748 of the Revised Statutes and their amendments.

Nevertheless, the things and effects mentioned in Paragraphs 4, 5, 6, 7, 8, 9 and 10 are not exempt from seizure and sale when the suit is to recover the amount of their purchase, or when they have been given in pawn.—O. C. 556, *am.;* R. S. 5917; 52 Vic. c. 50, s. 3; 53 Vic., c. 58, s. 1.

Infra, arts. 645, 861, 870; *Civil Code*, art. 1980.

599 The following are exempt from seizure:

1. Consecrated vessels and things used for religious worship;

2. Family portraits;

3. Immovables declared by a donor or testator, or by law, to be exempt from seizure, and sums of money or objects given or bequeathed upon the condition of their being exempt from seizure;

4. Alimentary allowances granted by a court, and sums of money or pensions given as alimony, even though the donor or testator has not expressly declared them to be exempt from seizure. This may, however, be seized for alimentary debts;

5. All vessels, boats, and other

fishing craft, tackle, nets, seines, lines or other fishing apparatus, and provisions belonging to any fisherman, and necessary for his subsistence and that of his family or for his fishing operations. Such effects may, however, be seized and sold for their purchase price, but not between the first day of May and the first day of November;

6. Pay and pensions of persons belonging to the Army or to the Navy;

7. Contingent emoluments and fees due to ecclesiastics and ministers of worship by reason of their current services and the income of their clerical endowment;

8. The salary of professors, tutors and school-teachers;

9. Salaries of public officers; with the exception of those of public officers and employees of the Province, whether permanent or not, which are seizable for:

(*a*) One-fifth of every monthly salary not exceeding one thousand dollars per annum;

(*b*) One-fourth of every monthly salary exceeding one thousand dollars per annum; and,

(*c*) One-third of every monthly salary exceeding two thousand dollars per annum;

10. Salaries of city or town clerks in incorporated cities or towns, except as to the proportions mentioned in paragraph 9;

11. All other salaries and wages, at whatever time and in whatever manner payable, for,

(*a*) Four-fifths, when they do not exceed three dollars per day:

(*b*) Three-quarters, when they exceed three dollars but do not exceed six dollars per day; and,

(*c*) Two-thirds when they exceed six dollars per day.

12. Books of account, titles of debt and other papers in the possession of the debtor, except as mentioned in Article 641.—*New, in part.* C. C. 558, *am.*, 556, s. 5, *in part;* R. S. 5918; 52 Vic., ch. 50, s. 4; 54 Vic., c. 12, s. 2; C. C. 628 *am.;* R. S. 5931; 54 Vic., c. 12, s. 3; C. C. 632, 557.

13. All pensions granted by financial or other institutions to their employees, by means of retiring funds or pension funds established among the said employees, as well as the instalments paid, or to be paid, to form such pension funds and to give a right to the benefits arising therefrom. 62 Vic., c. 53.

Civil Code, arts. 1190, §3, 1911, 1980,

Infra, arts. 645, 697, 722, 861, 870.

CHAPTER XXX

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SECTION I

General Provisions

600. The judgments of a court can be put into execution only by means of a writ issuing in the name of the Sovereign.—C. C. P. 545, *in part, am.;* R. S. 5913.

Infra, art. 1247.

601. Except where it is otherwise provided, the writ is addressed to the sheriff or a bailiff of the district in which it issues, who may execute it in such district or in any other district, or to the sheriff or bailiff of the district in which it is to be executed.

If the writ is addressed to the sheriff, he may have it executed by his officers.—C. C. P. 545, *in part, am.;* R. S. 5913.

602. It must mention the date of the judgment to be executed, be attested and signed by the prothonotary, and be issued by him upon the written requisition of the party prosecuting the execution.—O. C. 545, *am.;* R. S. 5913.

603. It remains in force while unsatisfied.—*New.*

604. Whenever a writ of execution is lost or destroyed, the creditor may, with the leave of the judge, obtain a new one.

If, however, it appears by the return of the officer charged with the writ so lost or destroyed, that property was seized thereunder but not sold, the creditor may, in like manner, obtain a writ of *Venditioni Exponas* commanding the competent officer to proceed to the sale of the property seized.—*New.* O. C. 579, *am.*

605. In the event of the death of the debtor, or of his change of status, the execution commenced upon his property is continued against him, his heirs, representatives, or assigns, as the case may be, without suspension or continuance of suit being thereby rendered necessary.

If execution has not been so commenced, judgments cannot, on pain of nullity, be executed against the debtor, his heirs, representatives, or assigns, until the expiry of eight days after they have been served upon such parties personally or at their domicile or ordinary residence.—*New.* O. C. 546; C. P. C. 399, 400; *Bellot* 153 ss.

Supra, art. 135.

Civil Code, art. 735, et. s.

606. The provisions of article 135, governing execution upon property left by a deceased debtor, do not apply to execution upon the private property of the heirs, representatives or assigns of the debtor.—*New.* C. P. G. 402; *Bellot*, p. 155.

607. If the judgment does not order a thing that is purely personal to the plaintiff, it may be executed in his name even after his death; but if any contestation arises upon the execution, the representatives of the deceased party must intervene in the contestation.—O. C. 547.

Civil Code, art. 1030.

608. When the judgment orders the performance of any physical act, the officer charged with its execution may use the force necessary for that purpose; observing, however, at the same time, all necessary formalities.—O. C. 548.

Civil Code, 1065, 1066.

609. The previous execution of a writ renders a demand of payment unnecessary under any subsequent execution in the same suit.—O. C. 548*a*, *am.;* R. S. 5914.

SECTION II

Execution in Real Actions

610. When a party condemned to surrender or restore an immovable refuses to do so within the delay prescribed, the plaintiff may obtain a writ of possession to eject him and to be placed in possession.—O. C. 549.

Supra, art. 579; *infra*, art. 1023, 1066.

611. The officer intrusted with the execution of such writ must be accompanied by one witness, and must draw up a minute of his proceedings.—O. C. 550, *am.*

Supra, art. 608.

SECTION III

Execution in Personal Actions

§ 1.—GENERAL PROVISIONS

612. Judgments for the payment of a sum of money cannot be executed before the expiry of fifteen days from their date.

Nevertheless, upon an application of the creditor accompanied with an affidavit establishing circumstances under which simple attachment might issue before judgment, the judge may allow execution to issue before the expiry of fifteen days, but the sale cannot take place any sooner than if the writ of execution had issued after the ordinary delay.—O. C. 551, *am.*

Supra, art. 92; *infra*, arts. 689, 931, 1160.

613. A creditor may seize in execution the movable or the immovable property of his debtor, in such debtor's possession, as well as any corporeal movables in the possession of the creditor or of third parties who consent thereto.—O. C. 553, *am.;* R. S. 5915.

Infra, arts. 641, 677.

614. A creditor may exercise at the same time the different means of execution allowed him by law.

He may cause the movable and immovable property to be seized under the same writ, but he cannot proceed to the sale of the immovables until after the movable property has been discussed, saving the special provisions concerning building societies, cases of pledge, and the case mentioned in article 1032,

judgments rendered for the recovery of rents constituted under the Seignorial Act of 1854, and judgments declaring hypothecs. Nevertheless, a subsequent writ may be noted as an opposition for payment without again discussing the movable property.—*New, in part;* O. C. 554, *am.*

615. When the creditor has received part of his judgment claim, he must make mention of it on the back of the writ of execution.—O. C. 555, § 3; R. S. 5916.

616. When the property to be seized is at a distance of more than nine miles from the place where the writ issues, or from the office or from the domicile of the officer to whom the writ is addressed, such officer is, upon the written demand of the creditor or his attorney, obliged to employ a bailiff designated by the creditor, and residing in the locality in which the movable or immovable property is situate, to make the seizure, publications and adjudication.

The seizing creditor may likewise, to save costs, undertake the transmission of the documents relating to the execution, and the bailiff must hand them over to him.—O. C. 555, 34, 835, *am.;* R. S, 5916.

§2—EXECUTION UPON MOVABLE PROPERTY.

I.—Seizure of Movable Property

617. In the seizure of movable property in execution, the writ is addressed to the sheriff or a bailiff of the district in which the writ issues, who may execute it in such district or in any other district, or is addressed to the sheriff or a bailiff of the district where the debtor's movable property is situated, or in which the debtor has his domicile, ordering him to levy the amount of the debt, the interest, and the costs both of the suit and of the execution.—O. C. 555, ss. 1, 2, *am.;* R. S. 5916.

618. The seizure cannot be made before seven o'clock in the morning, or after seven in the evening, without the leave of the judge or of the prothonotary, except in cases of fraudulent removal.

It may, if necessary, be continued on the following days, upon affixing seals or placing guards.—O. C. 574, *am.*

619. Seizures cannot be made on Sundays or holidays without the leave of the judge or of the prothonotary, except in cases of fraudulent removal, or where the property is found upon the highway.—O. C. 575, *am.*

620. If the debtor is absent, or if there is no person to open the doors of the house, cupboards, trunks, or other closed places, or in the case of refusal to open them, the seizing officer must draw up a minute of the fact; and thereupon the judge, or in his absence the prothonotary, may order the opening to be effected by all necessary means in the presence of two witnesses, and with such force as may be required, without prejudice to coercive imprisonment in case of refusal, violence or other physical impediment.—O. C., 569, *am.;* R. S. 5921.

Infra, art. 834.

621. The officer making the seizure is bound to accept a solvent depositary offered by the debtor, and in such case he is not answerable for the acts of the depositary, if he proves that

when he accepted him such depositary was solvent to the amount of the property intrusted to his care.—O. C. 560, § 7; R. S. 5920.

Civil Code, arts. 365, 1823, et s.

622. The seizing officer cannot take, as guardians or depositaries of the things seized, his relations or connections, to the degree of cousins-german, or the judgment debtor, or his wife or children, on pain of being liable for all costs and damages.

All other relations, by blood or affinity, of either party, may be appointed.—O. C. 560, ss. 8, 9, *am.*; R. S. 5920.

623. If the movable property has already been seized and the debtor dispossessed, any creditor making a second seizure is bound to name the same guardian, who is bound to accept, and can be discharged only by the sale of the property so seized, the consent of all the seizing parties, or the order of a judge. —O. C. 577, *am.*

624. The guardian or depositary has a right at the time of his appointment to remove the property under seizure in order to keep it in charge, and to place guards, if necessary, in the place where it is.—O. C. 562, § 1.

625. If the person appointed guardian or depositary becomes, while the seizure lasts or is suspended, insufficient to be responsible for the property seized, the judge may authorize the appointment of another person sufficiently solvent or reliable, and may order that the property seized be placed under his care or in his possession by the sheriff or a bailiff, after a verification and inventory of the whole has been made. —O.C. 562, § 3, *am.*

626. The seizing officer may demand in advance from the party suing out the writ, or his attorney, such sum as may be deemed sufficient by the judge or the prothonotary for the safekeeping of the effects seized.—O. C. 568, 847, *am.*

627. As often as the sum so advanced is expended, he may renew such demand; and, if the amount fixed by the judge or prothonotary is not paid within the delay prescribed, the seizure is discharged.—O. C. 568, 848, *am.*

628. If the seizing officer cannot find a responsible guardian or depositary, he may, after serving the minutes upon the debtor, have the things taken away and removed to a place of safety, until he obtains such a guardian or depositary.—O. C. 562, § 2, *am.*

629. The seizure of movable property is recorded by minutes made by the sheriff or his deputy, or by a bailiff authorized by him to that effect, or by the bailiff intrusted with the writ of execution.—O. C. 559; R. S. 5919.

630. The minutes must contain:

1. Mention of the present domicile of the creditor;

2. Mention of the writ of execution, its date and its purport;

3. A description of the things seized, their number, weight and measure, according to their nature; and, in addition, in the case of the seizure of a registered vessel, a copy of the certificate, of ownership of such vessel, or of the principal contents thereof;

4. The appointment of a guar-

dian, or the name of the depositary furnished by the debtor;

5. Mention of the day and hour when the seizure is made;

6. The signature of the guardian or depositary, and of the witnesses, in the case of article 620, or mention that they cannot sign, and the signature of the seizing officer.

The debtor must also, if he is present, be called upon to sign the minutes; and entry must be therein made as to his being so called upon, and as to his refusal or inability to do so or his absence.—O. C. 560, s.s. 1 to 6, 10, *am.*; R. S. 5920.

631. If current money is seized, mention of its kind and quantity must be made in the minutes, and it must be returned with the other moneys levied.—O. C. 564

Infra 670.

632. The minutes must be made and signed in triplicates, one of which must be given to the guardian or depositary, and another to the debtor.—O. C. 561, *am.*

633. If the debtor has no domicile, residence or place of business in the district in which the judgment is rendered, the triplicate of the minutes of seizure is left for him at the office of the court.—O. C. 570, *am.*; R. S. 5922.

634. If the things seized are of a perishable nature, or are liable to deteriorate, the judge may order them to be sold, and the proceeds of the sale to be deposited in the office of the court.—O. C. 872, *am.*

635. Immediate notice must be given to the debtor and to the guardian or depositary, of the place, day and hour at which the movable property will be offered for sale.

If the debtor has no domicile, residence or place of business in the district in which the judgment was rendered, the notice may be addressed to him and left at the office of the court.—O. C. 571, *am.*; R. S. 5923.

636. Sales of movable property cannot be commenced before ten o'clock in the morning, or continued after five in the afternoon.—*New*.

637. The judge may, upon the application of any interested party, allow the seizing officer to remove the property under seizure to any other specified place, so as to sell it there, if it can so be sold to greater advantage.—O. C. 563, *am.*

638. Saving the exception contained in the following article, the sale of movable property under seizure must be advertised by posting a notice and reading it in a loud and distinct manner at the door of the church of the parish where the seizure has been made, immediately after morning service on the Sunday next after the seizure; and, if such seizure is not made within a parish, the publication must be made at some public place in the municipality.

A certificate of such publication must be annexed to the record of the execution.

The sale cannot take place before the expiry of eight days, to be computed from the day of such publication.—O. C. 572, *am.*

Supra, art. 612.

639. In the cities of Quebec, Montreal, Three Rivers, Sherbrooke, St. Hyacinthe and Sorel and in the towns of St. Johns, the sale of movable property under seizure is advertised by

a notice stating summarily the names of the parties, the nature of the effects, and the place, day and hour of sale, inserted in French in a newspaper published in that language, and in English in a newspaper published in the English language, and if there should be but one paper in the place, or if all the papers are published in but one of such languages, then the notice must be inserted in both languages in one paper.

A duplicate of such notice must be posted in the sheriff's office from the time of such advertisement in a newspaper until the day of the sale.

The sale cannot take place until after the expiry of eight days from the day of such publication.—O. C. 573, *am.;* R. S. 5924.

640. If the movable property has been provisionally attached before judgment, it is not necessary to proceed to a verification, but it is sufficient to give notice to the debtor, and to the guardian or depositary, of the place, day and hour of sale, as prescribed in article 635, and to give the notice required by article 638 or article 639, as the case may be.—O. C. 576.

641. Debentures, promissory notes, whether negotiable or not, shares in corporations and other instruments payable to order or to bearer, bank-notes included, may be seized like all other movable effects belonging to the debtor.—O. C. 565, *am.*

Supra, arts. 599, § 12; *infra*, arts. 666, 677, 695. *Civil Code*, art. 1573.

642. The seizure of shares in any corporation is made by serving such corporation with a copy of the writ of execution, together with a notice that all the shares held by the debtor in such corporation are placed under execution.

A similar notice is served upon the debtor.—O. C. 566, *am.* *Infra*, art. 667.

643. If there is more than one place at which the corporation may be served, the service hereinabove mentioned, when made elsewhere than at the place where the transfer of shares and the payment of dividends may be validly made, has no effect against subsequent purchasers until a sufficient time has elapsed to allow notice of the service to be transmitted from the place where it was made to the place where transfers of shares should be entered, and the corporation is bound to effect such transmission.

The seizure of such shares includes all benefits and profits attached to them.—O. C. 567.

II.—Oppositions to the Seizure of Movable Property.

644. A seizure of movable property in execution may be contested by opposition, either by the debtor himself or by third parties.—O. C. 580.

645. The debtor may demand the nullity of a seizure of movable property in execution:

1. On the ground of irregularities in the seizure, whenever they cause a prejudice;

2. On the ground of any of the effects being exempt from seizure;

3. On the ground of the extinction of the debt;

4. On any other ground of a nature to affect the judgment sought to be executed.

Whenever the grounds relied upon by the debtor relate only to a part of the property under

seizure, or to a part of the amount claimed, the debtor can only demand the nullity of the seizure, for such part.—O. C. 581, *am.*

Supra, arts. 598, 599; *infra*, art. 722. *Civil Code*, art. 1138.

646. The execution may also be opposed by any party who has a right of ownership or of pledge in the property seized.

A lessor cannot, however, oppose the seizure and sale of the movable property subject to his privilege; he can exercise such privilege only upon the proceeds of the sale.—O. C. 582.

Civil Code, arts. 1619, et s. 1994, § 8, 2005.

647. Oppositions must be accompanied with an affidavit that the allegations contained in them are true, and that they are made without intent to unjustly retard the sale, and solely with the view of obtaining justice.—O. C. 583, *am.*

Supra, art. 112; *infra*, art. 727.

648. Oppositions are served upon the sheriff or the bailiff by leaving with him the original thereof.—O. C. 585, *am.*

649. The service of the opposition causes a stay of proceedings upon the seizure and sale; and the officer charged with the writ of execution must forthwith return into court the opposition and the writ with all proceedings thereon.

If, however, the opposition is founded on grounds which only go to reduce the amount claimed, or to withdraw from seizure a part of the effects seized, the officer charged with the writ is bound to return it forthwith with all his proceedings thereon, and to prepare and certify a copy of the writ and of the minutes of seizure, under which he proceeds to the sale in order to satisfy that part of the claim which is not contested, or proceeds to sell that part of the effects against which the opposition is not directed, in the same manner as if he were still charged with the original writ. The judge may, in any such case, at the instance of any interested party, order all proceedings to be stayed.—*New.* O. C. 583, 585; C. P. L. 642, § 4.

650. After the return of the opposition, the opposant may serve the seizing party or his attorney, and the other parties in the cause, with a notice that the opposition has been returned, and must be contested within twelve days from the service of such notice.—*New.* O. C. 586.

651. At any time after the return of the opposition, and before the expiry of four days from the service of the notice of such return, the judgment may, upon the motion of any party, dismiss the opposition if it is made with the intent of unjustly retarding the sale, or order the examination of the opposant, and dismiss it after such examination. —*New.*

652. If the parties do not file their contestations within twelve days from the service of the notice that the opposition is returned, or, when the motion mentioned in the preceding article has been filed, within six days from the judgment upon such motion, the opposant may obtain an entry of default against them, and is entitled, upon producing a certificate of such entry and an inscription in accordance with the provisions of article 534, to be relieved from the seizure, with costs against the judgment debtor,

unless the court orders otherwise.—*New.*

653. If the other parties or any of them contest the opposition, the contestation is subject to the same rules and delays as summary matters.—O. C. 587, *am.*

Infra, art. 1156 et. s.

654. When all the publications and advertisements required by law have been duly published and made at the time of a former opposition, the execution cannot be stopped by opposition, unless for reasons subsequent to the proceedings by which the sale was stopped in the first instance and upon a judge's order.

In the districts of Quebec and Montreal, such order must be given by one of the judges administering justice therein; in the other districts, except those of Gaspé, Rimouski, Beauce and Chicoutimi, such order cannot be made except by the judge who resides in the district in which the opposition is to be filed, except in the absence of the judge established by the certificate of the prothonotary.

Such order is made only after one day's notice to the opposite party.—O. C. 588*a* *am.*; R. S. 5925; C. C. P. 664; R. S. 5936.

Infra, art. 734.

III.—Sale of Movable Property.

655. If there is nothing to prevent the sale of the movable property seized, it takes place at the day, hour and place mentioned in the notice.

If the sale has been retarded by any obstacle, subsequently removed, or if there are no bidders, new notices and publications must be given.—O. C. 589, *am.*;

Supra, art. 8. *Civil Code*, arts. 1561, 1591.

656. The creditor first seizing, who does not proceed with proper diligence, cannot prevent the sale by the next seizing creditor.—O. C. 578, § 1.

Supra, art. 623; *infra*, 676 § 6

657. At the time fixed for the sale, the guardian or depositary is bound to produce all the effects seized which were placed in his charge.—O. C. 590, *am.*

Supra, art. 621 et s.

Civil Code, art. 1825.

658. The guardian or depositary may be condemned, even on pain of coercive imprisonment, to produce the property he took in charge, or pay the amount due the seizing creditor. He may, however, upon establishing the value of the effects, which he fails to produce, be discharged upon payment of such value.—O. C. 597.

Infra, art. 833, § 2.

659. The guardian or depositary has a right to a discharge or receipt for the effects which he produces, and the minutes of sale must make mention of any effects which have not been produced.—O. C. 596.

Civil Code, art. 1828.

660. The seizing officer cannot, either directly or indirectly, bid upon the property put up for sale, or become purchaser thereof.—O.C. 591, *am.*

Civil Code, arts. 1484, 1706.

661. The officer conducting the sale must make minutes thereof, specifying each article put up for sale, the names and residence of each purchaser, and the price of each purchase.—O. C. 592.

Supra, art. 659.

662. The thing seized is adjudged to the last and highest bidder, subject to immediate

payment of the price; and in default of such payment it is immediately put up again.

If, however, there is only one outbidder, he must be declared purchaser.—*New, in part*. O.C. 593.

663. The officer conducting the sale cannot, either directly or indirectly, receive anything beyond the purchase price.—O. C. 594, *am*.

664. Unless the judgment debtor consents, the sale must not proceed beyond the amount necessary to pay the debt in principal, interest and costs.

To this end the judgment debtor has a right to determine the order in which the things are to be put up for sale.—O. C. 595.

665. The adjudication of movable property under execution transfers by law the ownership of the things thus adjudged.—O. C. 598, s. 1.

Civil Code, arts. 1490, 1567, 1585, et. s., 2081, s. 6.

666. The objects mentioned in article 641 are sold in the same manner as the other movable property of the debtor.—O. C. 565.

667. In the case of seizures of shares in any corporation, the seizing officer is bound within ten days after the sale, to serve such corporation in the manner mentioned in articles 642 and 643, with a certified copy of the writ of execution, indorsing thereon a certificate designating the person to whom he adjudged the shares seized.

Such purchaser thereupon becomes a shareholder in the corporation, and has all the rights and obligations of one, and the officer appointed for that purpose by the corporation must make an entry to that effect in the manner prescribed by law. —O. C. 598, s. 2, *am*.

Civil Code, art. 1573.

668. Without prejudice to the recourse of the party aggrieved against the seizing creditor and those acting in his behalf, no demand to annul or rescind a sale of movable property under execution can be received against a purchaser who has paid the price, saving the case of fraud or collusion.—O. C. 599, *am*.

Civil Code, arts. 993, 1490, 1586, 1587, 2268.

669. Immediately after the sale, the costs thereof, including the pay of the appointed guardian, must be taxed.—O. C. 600, *am*.

Civil Code, art. 1825.

IV.—Return of the Writ, and Payment and Distribution of the Moneys levied.

670. Four days after the sale, the sheriff or bailiff pays the moneys seized or levied, after deducting the duties thereon and taxed costs, to the seizing creditor, if no opposition for payment has been received; otherwise he must return them into court, to be adjudged to such persons as are thereto entitled.—O. C. 601, *am.*; R. S. 5962.

Supra, art. 631.

671. Within six days after the sale, the sheriff or the bailiff must return the writ with all his proceedings thereunder into the office of the court.—*New*.

672. When the moneys levied have been returned into court, the seizing creditor has a right to be paid in preference to all other chirographic creditors, saving the right of a prior seizing party for his costs, the case

of the insolvency of the debtor and the case of priviliged claims. —O. C. 602, *am.*

673. When the moneys are returned, and the insolvency of the debtor is alleged, the distribution of the moneys cannot take place until his creditors generally have been called in.

The creditors are called in upon the order of the judge, published twice in the French and English languages in the *Quebec Official Gazette*, requiring them to file their claims within fifteen days from the date of the first insertion.

The same rule applies, under similar circumstances, to all cases where moneys other than the proceeds of immovables, or moneys of which an account has been rendered into court, are to be distributed.—O. C. 603, *am.*; R. S. 5927.

Infra, art. 694. *Civil Code*, art. 1036.

674. It is sufficient for the claims to state the names, occupation and residence of the claimant, and the nature and amount of his claim.

They must be accompanied with an affidavit that the sum claimed is lawfully due, and with vouchers, if there are any. —O. C. 604, *am.*

675. The moneys are distributed according to the order prescribed in the title *Of Privileges and Hypothecs*, and the title *Of Merchant Shipping*, in the Civil Code, in the statutes, and in the provisions contained in this Code.—O. C. 605, *am.*

Supra, art. 646. *Civil Code*, arts. 743, 802, 966, 1899, 1993, et s.; 2383, et s.

676. The following order is observed as regards the collection of judicial costs :

1. Costs of seizure and sale ;

2. The duty payable upon moneys levied and paid into court ;

3. The fees of the officer receiving moneys levied or paid in ;

4. The fees upon the report of distribution ;

5. The fees of the advocate prosecuting the distribution ;

6. Costs, subsequent to judgment, incurred in order to effect the seizure and sale, and according to the priority of date or of privilege when there are several seizing creditors ; the costs of a prior seizing party have a preference over those of a subsequent one ; nevertheless, if two or more writs of execution issue upon judgments rendered on the same day against the same debtor, the costs thereon are paid concurrently ;

7. Costs of seals, or of inventories, when ordered by the court ;

8. Costs of suit of the seizing creditor.—O. C. 606, *am.*; R. S. 5928 ; *Tansey* vs. *Bethune*, 3 *Dorion's*, Q. B. R. 333.

Supra, art. 593, 653 *Civil Code*, arts. 1994, 1995, 1996.

§ 3.—SEIZURE BY GARNISHMENT

677. Execution upon the movable property of a debtor, which is in the possession of a third party, may, in all cases, and must, when such third party does not consent to its immediate seizure, be effected by means of seizure by garnishment.

The same means must be adopted in executing upon debts due to the debtor, otherthan those mentioned in article 641. —O. C. 612.

Supra, arts. 613, 614, 598, 599 ; *infra*, arts. 824, 940 et s. *Civil Code*, art. 1031.

678. Seizure by garnishment is made by means of a writ, issuing from the court which rendered the judgment, and clothed with the formalities of writs of summons.

It mentions the date and amount of the judgment, orders the garnishees not to dispossess themselves of the movable property belonging to the debtor which is in their possession, or of such moneys or other things as they owe him or will have to pay him, until the court has pronounced upon the matter, and to appear on a day and at an hour fixed to declare under oath what property they have in their possession belonging to to the debtor, and what sums of money or other things they owe him or will have to pay him; it also summons the debtor to appear on the day fixed, and show cause why the seizure should not be declared valid.

In seizing salaries and wages, the writ must also state the defendant's place of residence, and the nature and place of his occupation.—*New in part.* O. C. 613, 614, *am.*

679. The rules concerning the service of ordinary writs of summons apply to seizures by garnishment.

Nevertheless, the garnishee cannot be condemned by default, unless the writ of summons or other order to appear has been served upon him personally or at his domicile.

If the defendant in the original action has no domicile, residence or place of business in the district where judgment was rendered, the seizure by garnishment may be served upon him at the office of the court.—O. C. 615, *am.*

680. The effect of seizure by garnishment is to place the property and debts of which the garnishee is debtor under judicial control, and to sequestrate in his hands all corporeal things, in the same manner as if he had been specially appointed guardian.—O. C. 616.

Civil Code, arts. 1147, 1196, 1825.

681. The delays within which the debtor must plead to the proceedings by garnishment are the same as in summary matters.

If, however, the declaration is made or completed after the day of return, the delays for pleading are computed only from the day when the declaration is completed.

In other respects the contestation is subject to the same rules and delays as summary matters. —*New.* O. C. 615.

Infra, 1154 et s.

682. The garnishee's declaration must be made on the day and at the hour mentioned in the writ.

It may, however, be made at any time before the return day, provided that creditor's notice of the day and hour is given to the seizing creditor.—O. C. 618, *am.*

683. The garnishee is bound to make his declaration under oath before the prothonotary, in the office of the court which issued the writ of seizure by garnishment.

Nevertheless, if the garnishee resides in a district other than that in which the writ is issued, he may, upon giving two days' notice to the seizing creditor, make his declaration on or before the day fixed for the return of the writ before the judge or the prothonotary of his domicile, and such prothonotary is

bound to transmit the same to the office of the court whence the writ issued.—O. C. 617, *am.*; R. S. 5929.

684. When a seizure by garnishment is made in the hands of a corporation, the declaration is made by an attorney or by any other person authorized in the manner prescribed in Article 363 for answering interrogatories upon articulated facts.

Nevertheless, in the case of a municipal corporation, the treasurer, and, in default of the treasurer, the clerk, or the secretary-treasurer, may make such declaration, —O. C. 617, *am.*; R. S. 5929.

685. The garnishee must declare in what he was indebted at the time of the service of the writ upon him, in what he has become indebted since that time, the cause of the indebtedness, and any other seizure made in his hands.

If the debt is not yet payable, he must declare when it will be.

If his indebtedness is conditional or suspended by any hindrance, he must also declare it.

He must furnish a detailed statement of the movable property in his possession belonging to the debtor, and declare by what title he holds it.—O. C. 619.

686. The seizing creditor has a right to be present when the garnishee makes his declaration, and to put any questions to him tending to prove any obligation of the garnishee towards the judgment debtor.

If any difficulty arises during the examination, the parties are sent before the judge to have it decided.—O. C. 619, *am.*

687. The garnishee is entitled to be taxed as a witness by the judge or by the prothonotary who receives his declaration, and he may retain the amount of the taxation out of the sums in which he is indebted.

If he owes nothing, such taxation may be enforced by execution against the party suing out the writ, in the manner and after the delay prescribed for judgments in summary matters.—O. C. 620, *am.*

Supra, 335; *infra*, 1160.

688. If a garnishee declares that he is not indebted and he cannot be proved to be so, the court, upon motion by the garnishee or by the debtor, orders him to be discharged from the seizure, and condemns the seizing party to pay the costs.—O. C. 631; 53 Vic., c. 59, s. 3.

689. If the declaration of the garnishee is not contested, and he has not declared that any other seizure has been made in his hands, the judge or the prothonotary, upon an inscription for judgment by either party, orders him to pay to the seizing creditor on account of, or to the extent of his debt, the moneys seized, according to their sufficiency.

Such judgment must be served, and the delay for executing it is computed only from the day of such service.—O. C. 621; 53 Vic., c. 59, s. 1.

Supra, 547.

690. If the moneys or other things due by the garnishee are payable only at a future time, he may be condemned to pay them when such time arrives; and if they are due under conditions which are not yet fulfilled, the court may, upon motion of the seizing creditor, declare the seizure binding until such conditions are fulfilled.

Without prejudice to the case

in which the insolvency of the common debtor is alleged, whenever the seizure of a conditional debt or of a debt payable with a term has been declared binding, the amount thereof is distributed in the manner provided in article 697, third paragraph, among such creditors as have filed copies of their judgments in the record of the case, and have given notice to the parties interested.—O.C. 623.

Infra, art. 694.

691. Any garnishee who fails to make a declaration is condemned as a personal debtor of the seizing creditor, to the payment of his claim.

If the seizing creditor fails to proceed against such garnishee, the debtor may obtain the dismissal of the seizure, with costs against him, or he may inscribe the case for judgment by default against the garnishee, and execute it in the name of the seizing creditor.

A garnishee may, however, obtain leave to make his declaration at any time, even after judgment, upon payment of all costs incurred by his default.—O. C. 624 : R.S. 5930 ; 53 Vic., c. 59, s. 2.

692. The judgment rendered upon a garnishee's declaration of indebtedness, is equivalent to a judicial assignment to the seizing creditor of the judgment debtor's title of debt, and effects subrogation.—O. C. 625.

Marsan v. *Tessier*, 25 L. C. J., 214. *Civil Code*, arts. 1156, 1574, 1986, et. s. 2127.

693. The contestation of a garnishee's declaration must be served upon the garnishee and filed in the office of the court within six days, to be computed from the judgment rendered upon the contestation of the seizure by the debtor, or, in the absence of such contestation, from the expiry of the delays for producing it.

In other respects, the contestation of a garnishee's declaration is subject to the same rules and delays as the original action.—O. C. 626, 627, *am.*

Supra, art. 681.

694. If there are several other seizures at the suit of different creditors in the hands of the same garnishee, each seizure has a preference over the subsequent seizures, according to the date of its service upon the garnishee, except in cases of privilege, unless the insolvency of the common debtor is alleged, in which case proceedings must be taken upon the first seizure to call in the creditors in the manner provided in article 673 ; and the garnishees in such case are condemned to pay into court the amounts they acknowledged to owe.—O. C. 622.

695. If the garnishee declares that he has in his possession movable property, the judgment orders that it shall be sold, and the garnishee must deliver it to the officer charged with selling it.

If the garnishee has in his hands negotiable paper or titles of debt payable to bearer, he may be condemned to deposit them in the office of the court, or to deliver them to a person named by the court, according to circumstances.—O. C. 629.

696. The proceeds of the sale of such movable property are afterwards paid or distributed in the same manner as other moneys levied under execution against movable property.—O. C. 630.

Supra, art. 670 et. s.

697. In seizing salaries or wages mentioned in paragraphs 10 and 11 of Article 599, the seizure by garnishment remains binding for the porportion which is seizable, so long as the contract or engagement continues, or so long as the debtor remains in the employ of the garnishee.

The other creditors who have judgments against the debtor may file a copy of such judgments in the record of the cause, and must give notice thereof to the parties interested.

The prothonotary, after collocating the first seizing party for his costs, distributes rateably among the first seizing creditor, and the creditors who have fulfilled the requirements of the preceding paragraph, the sum to be divided, and determines in a summary manner upon the writ or upon a sheet annexed thereto, the amount coming to each of the creditors.

The garnishee must, on making his declaration, deposit the sum which he owes; and if the defendant continues in his service, the garnishee must every month either renew his declaration in the office of the court, and make the required deposit, or transmit to the prothonotary, by registered letter, a sworn declaration stating the amount in which he is indebted, accompanied with the amount to be deposited.

If he neglects so to do, he may be thereto compelled by a judge's order.

If the defendant quits his service, the garnishee makes a declaration to that effect.

The garnishee may, upon making his original declaration, fix the day of the month, not later than the fifteenth, at which he will renew his declaration.

The moneys seized and deposited remain in the hands of the prothonotary, who pays them over to the plaintiff and the other creditors on demand three days after they are deposited, if there are no oppositions.

In other respects, the seizure of salaries is subject to the same rules as seizures by garnishment in general.—O. C. 628, *am.*: R. S. 5931.

698. Whenever, by virtue of a judgment rendered against a partner personally, a seizure by garnishment is served upon a commercial partnership to which he belongs, the partnership must, if it is not indebted to the judgment debtor in an amount sufficient to discharge the seizure, state in its declaration as garnishee, in addition to the requirements of article 685, the share of the judgment debtor in the stock and profits of the partnership.

The seizure remains binding even as to profits not earned or in process of being earned at the time of its service.

If, after the declaration, the partnership becomes indebted to the judgment debtor, or if it is dissolved, the garnishees must forthwith make a new declaration.

For the purpose of rendering such seizure effectual, the judge may order the production of such books, documents and statements, allow the examination of such witnesses, and give such other orders as he deems necessary.

If the partnership fails to comply with the above rules, it becomes subject to the same re-

sponsibility as in the case of failure to make the original declaration.

This rule does not apply to joint stock companies incorporated by royal charter or by act of parliament or of the legislature.

Civil Code, art. 1892.

§ 4.—EXECUTION UPON IMMOVABLES.

1.—Seizure or Immovables.

699. The seizure of immovables can only be made against the judgment debtor, and he must be, or be reputed to be, in possession of the same *animo domini*.—O. C. 632.

Supra, arts. 613, 614; *infra*, arts. 1147, 1291. *Civil Code*, arts. 374 et. s. arts. 571, 1585, 1980, 1981.

700. Constituted rents representing seigniorial dues are seized and sold according to the formalities prescribed by articles 5720 to 5727 of the Revised Statutes.

Exceptional provisions regulate the seizure and sale of immovables for the payment of municipal taxes and assessments.—O. C. 632, 633.

701. In the case of seizure of immoveables, the writ is addressed to the sheriff of the district in which the immovables belonging to the judgment debtor are situate, and orders him to seize the immovables of the debtor and to sell them in satisfaction of the condemnation pronounced against the latter in principal, interest and costs.—O. C. 633 *am*. 634.

702. The writ is executed by the sheriff himself or by one of his officers.—O. C. 634.

Supra, art. 616.

703. When an immovable is situated partly in one district and partly in another, it may be wholly seized in either of such districts.—O. C. 636, *am*.

704. The sheriff may, before proceeding to the seizure, exact from the party who places the writ in his hands a sum sufficient to meet the disbursements rendered necessary by the seizure and the publications.—O. C. 647, *am*.

Infra, art. 742.

705. Before proceeding to the seizure, the officer calls upon the debtor to declare and specify his immovable property, except in the cases of:—

1. Immovables belonging to a defendant having no domicile, residence or place of business in the district in which the immovables are situate in whole or in part;

2. Immovables surrendered in a suit;

3. Immovables subject to hypothecs, belonging to proprietors who are unknown or uncertain;

4. Immovables subject to a right of pledge or hypothec in favor of a building society, in proceedings consequent upon an action instituted by such society.

Upon the debtor's failure so to declare and specify, the officer may seize the property in the possession of the debtor, at the risk and peril of the latter.—O. C. 637, *am*.

706. The seizure of immovables is recorded by minutes which must contain:

1. Mention of the title under which the seizure is made;

2. Mention of the debtor having been called upon, as required by the preceding article;

3. A description of the immovables seized, indicating the city, town, village, parish or township, as well as the street, range or concession in which they are situated, and the number of each immovable, if there exists an official plan of the locality, if not, it must mention the conterminous lands.

If the property to be seized consists of incorporeal rights, such as rents, leases or other charges, mention must be made of the title under which they are due, with a description as above mentioned of the real property charged with the same.

If the property to be seized consists of a line of railway and its appurtenances, and a plan of such railway has not been made in accordance with article 5668 of the Revised Statutes, it is only necessary to mention the name of such railway, with its terminal points, in such a manner as to establish its identity, without stating the number of the immovables through which it passes;

4. Mention that the minutes are made in duplicate, and that one duplicate thereof has been delivered to the judgment debtor, in accordance with the next following article.—O. C. 638, *am.*; 57 Vic., c. 48, s. 1.

Civil Code, art. 2168.

707. The minutes are made in duplicate, and one duplicate is served upon the judgment debtor personally or at his domicile, residence or place of business.

If, however, the debtor has no domicile, residence or place of business in the district where the immovables are situate, in whole or in part, the duplicate minutes may be left at the office of the court.—*New, in part.* O. C. 638 *am.*

708. No minutes are necessary in the case of suits instituted by building societies for bringing to sale immovables subject to their hypothec or right of pledge, or, in the case of immovables subject to hypothecs, belonging to proprietors who are unknown or uncertain. —O. C. 641, *am.*, 907.

Infra, art. 1032.

709. The judgment debtor, as well as the seizing creditor, may cause the ground rents and charges upon the immovables seized to be mentioned in the minutes; but it is not necessary to insert mention of their being subject to rents established in redemption of seignorial rights, and any oppositions filed for that purpose cannot retard the sale, but must be returned by the sheriff, and no costs can be obtained thereon by the opposants.—O. C. 640, *am.*

Infra, arts. 716, s. 4, 724, 725, 726.

710. The seizing creditor's domicile is elected at the sheriff's office, without its being necessary to mention it in the minutes.—O. C. 639, *am.*

711. When the sheriff has seized an immovable upon a debtor, he cannot seize it again at the suit of another creditor, or of the same creditor for another debt, so long as the first seizure subsists; but he is bound to note any subsequent writ of execution as an opposition for payment upon the first writ, and in such case the first seizure cannot be discontinued or suspended, except in consequence of an opposition or with the consent as well of the seizing creditor as of subsequent creditors whose writs of execu-

tion have been noted, or by an order of a judge.—O. C. 642, *am.*

712. In the event of the seizing creditor discontinuing the seizure or receiving payment of his claim, the sheriff is bound to continue the proceedings in the name of the seizing creditor and at the cost of the judgment creditors whose writs have been noted, in order to satisfy the claims specified in the subsequent writs of execution, provided the seizure was made with all requisite formalities.—O.C. 643, *am.*

713. The immovables under seizure remain in the possession of the judgment debtor until the adjudication; but if the sale is stopped by an opposition, the seizing creditor may, according to circumstances and in the discretion of the judge, obtain the appointment of a sequestrator to receive the revenues of the immovables.—O. C. 645, *am.*; R. S. 5932.

Infra, art. 973, et. s.

714. Any person who cuts timber on the property seized, or in any manner deteriorates the same, is liable to imprisonment for a term not exceeding six months, imposed by the court or by a judge out of term. —O. C. 646, *am.*

715. From the moment that immovables have been seized, the debtor cannot, on pain of nullity, alienate them.

The alienation avails, however, if the seizure is declared null, or if, before the day fixed for the adjudication, the purchaser or the debtor deposits with the sheriff a sum sufficient to discharge the claims of the creditor in whose name the seizure was effected, as well as of any creditors whose writs of execution have been noted; and the amount thus deposited is forthwith paid by the sheriff to the creditors entitled to it.—O. C. 644.

Civil Code, art. 2091.

II.—Advertisements and Publications

716. The sheriff must insert in the *Quebec Official Gazette*, in the French and English languages, two separate times during one month, the first publication being at least thirty days before the sale, a notice stating:

1. The number of the cause and the nature of the writ;

2. The names of the plaintiff in the suit, or if there are several plaintiffs, the designation of the first named in the writ, with an indication that there are others;

3. The names of the defendant in the suit, or, if there are several defendants, a designation of the one first named in the writ, with an indication that there are others. If the plaintiff or defendant is acting as a tutor, it is sufficient to state that he is acting as tutor to the minor children of the deceased person, without designating the minors by name;

4. A designation of the immovables or of the rents, as the case may be, as inserted in the minutes, with the charges therein mentioned, and also those which the seizing creditor has requested in writing to have inserted, together with mention upon which of the debtors the property is seized;

5. The day, hour and place at which the immovables or rents will be put up for sale and adjudged.

The advertisements of sher-

iff's sales must be printed consecutively, and be preceded by a notice according to Schedule L in the Appendix to this Code. —O.C. 648, *am.* 649; R.S. 5933.

See Form Sched. L in Appendix.

717. It is also the sheriff's duty:—

1. When seizures are made in the cities of Quebec, Montreal, Three Rivers, Sherbrooke, St. Hyacinthe and Sorel, and in the town of St. Johns, to publish, at the latest fifteen days before the sale, a notice briefly detailing the particulars of the sale in a newspaper published in French, and in one published in English, in the locality; and, if there is only one newspaper in the locality, or all are published in the same language, to publish the notice in both languages in the same newspaper, and to post a copy of the notice in his office after the publication; or

2 When the seizure is made in a parish other than those contained in the above-mentioned localities to publish and post such notice on the third Sunday before the day fixed for the sale, at the door of the church of the parish in which the property seized is situated, immediately after morning service, or, if there is no church, at the most public place in the locality. If there is no service, it is sufficient to merely post the notice.—O. C. 650*b*, *in part*, *am.*; 650, *am.*; R. S. 5934.

718. In the case of a line of railway passing through several municipalities, the notice required by the second paragraph of the preceding article must be given by the secretary-treasurer of each of such municipalities.—O. C. 650, *am.*; 57 Vic., c. 48, s. 2.

719. As soon as the notice prescribed by article 716 has been given, the sheriff must send a printed copy thereof in a registered letter to the registrar of the registration division in which the immovable under seizure is situated, who must give notice thereof to the parties interested in the manner prescribed by the Civil Code.

The omission to give such notice does not invalidate the proceedings, but the officer in default is responsible for all damages which may result therefrom.

When the seizure is annulled, and the seizing creditor is condemned to pay the costs thereof, the expenses of the notice and of the cancellation of the notice of seizure are borne by him.—O. C. 650*a*, 650*c*, 650*d*, *am.*; R. S. 5934; C. C. 2161*a* to 2161*l*.

719a. When the seizure has been made in a locality other than that mentioned in paragraph 1 of article 717, in addition to the notices and advertisements which he is bound to give when no opposition has been made to the seizure or sale, or if an opposition, having been made, has been set aside, the sheriff shall cause to be published, in at least one number of a French newspaper, and in one number of an English newspaper published nearest to the place in which the immovable under seizure is situated, a notice briefly setting forth the details of such sale. The omission to give such notice does not invalidate the proceedings, but the officer in default is responsible for all damages which may result therefrom.

When the seizure is annulled and the seizing party is con-

demned to pay the costs thereof, the expenses of the notice are borne by him. 61 Vic. c. 47, s. 4.

Civil Code, 2161*a*, 2161*l*.

720. After any seizure has been released, the prothonotary must deliver a certificate of such release to any person requiring it.—O. C. 650*e*, *am.*; R. S. 5934.

III.—Suspension of the Sale and Oppositions.

721. The sale can be suspended in the following cases only:

1. By the consent of the parties;
2. By a judge's order;
3. By reason of an opposition.

—O. C. 651, *am.*

Supra, art 711; *infra*, arts. 1172, 1182, 1187.

1.—*Oppositions to annul.*

722. The party whose immovables or rents are seized may oppose the seizure or the sale thereof, in the cases and in the manner declared by article 645.

Third parties may likewise file similar oppositions when they have an actual interest therein.—O. C. 657, *am.*

Supra, art. 77.

2.—*Opposition to withdraw.*

723. Oppositions to withdraw lie in favor of third parties who claim as their property part of any immovable or rent under seizure.—O. C. 658, *am.*

3.—*Opposition to secure Charges.*

724. Oppositions to secure charges lie in favor of third parties when an immovable under seizure is advertised to be sold without mention being made of any charges to which it is subject in their favor, and from which it might be discharged by a sheriff's sale.—O. C. 659, *am.*

Supra, arts. 709, 715, s. 1; *infra*, art. 781. *Civil Code*, arts. 1792, 1908.

725. Such oppositions are unnecessary and cannot be received:

1. For the purpose of securing servitudes;
2. For the purpose of securing dues or rents created in the place of seignorial rights or of *cens et rentes*.—O. C. 659, *am.*

4.—*Opposition to Charges upon Immovables under Seizure.*

726. Any person aggrieved by reason of an immovable being advertised as subject to a charge, which prejudices his claim, may file an opposition to the end that the property be not sold subject to such charge, unless good and sufficient security be given him that it will be sold at a sufficient price to ensure payment of the amount due him.

This opposition may likewise be made either by the seizing creditor or by the judgment debtor, when the mention of such charge has been made without the participation of the opposant.—O. C. 660.

5.—*General Provisions*

727. Oppositions to the seizure and sale must be accompanied with an affidavit in accordance with the requirements of article 647.—O. C. 651, *am.*

Supra, art. 112.

728.—Every opposition to the seizure and sale must be served on the sheriff by delivering to him the original thereof, at the latest on the twelfth day before that fixed for the sale.

No opposition filed after this period can stop the sale, except upon a judge's order granted on sufficient cause shown; but if the object of the opposition is to withdraw, in whole or in part, the immovable or the rent under seizure, or to impose upon the purchaser any charge which would be destroyed by a sheriff's sale, such opposition has the effect of an opposition for payment out of the moneys levied.—O. C. 652, 654, *am.*

Infra, art. 799.

729. The service of the opposition causes a stay of proceedings upon the seizure and sale, and the sheriff is bound, saving the cases mentioned in the preceding article, to return into court, within twenty-four hours, the opposition, the writ of execution, and all proceedings thereon, including a duplicate of the notice in the *Quebec Official Gazette*, and either a copy of the notice published in the newspapers, or a certificate of the oral publications, if such have been made.

When the opposition is founded on grounds which only tend to reduce the amount claimed, or to withdraw from seizure a part of the immovables or rents seized, the sheriff proceeds in the manner prescribed by article 649.

When the opposition relates to the first writ only, and is not based upon matters of form, the sheriff must, before returning the proceedings, prepare and certify a copy of the first writ, of the writ noted, and of the minutes of seizure, and must thereupon proceed to satisfy the writ noted, in accordance with the provisions of article 649.

The judge may, upon the demand of an interested party, in the cases mentioned in the two preceding paragraphs, order the sale to be suspended.

If the opposition applies to a subsequent writ only, the sheriff returns the writ against which the opposition is directed, and continues his proceedings upon the first writ.—*New, in part.* O. C. 651, 655, 653, *am.*; C. P. L. 642, § 4.

Supra, art. 711.

730. Notwithstanding the filing of any opposition to the seizure or sale of immovables or rents, the sheriff is bound to continue the publications hereinabove prescribed; but he cannot in such case proceed with the sale without an order from the court, except in the cases mentioned in the preceding article.—O. C. 653, *am.*

731. The proceedings upon oppositions to the seizure or sale of the immovables or rents are in other respects the same as those upon oppositions to the seizure or sale of movable property.—O. C. 661, *am.*

Supra, art. 650, et. s.; *infra*, arts. 1133. 1134.

732. Every party who opposes unsuccessfully the sale of an immovable or of a rent under seizure is liable towards the seizing creditor and the debtor, not only for the costs incurred upon his opposition, but also for all damages resulting therefrom, including interest upon the amount due to the seizing creditor for the time during which the sale was stopped.—O. C. 656, *am.*

733. When oppositions are decided before the day fixed for the sale, if the seizure is not set aside, the sheriff on the day of sale proceeds to sell.

But if the oppositions are decided after the day fixed, the sheriff, before proceeding to the sale, must insert in the *Quebec Official Gazette*, at the latest fifteen days before the sale, a notice in accordance with Schedule **M** in the Appendix, and must, moreover, cause it to be published in conformity with the rules contained in articles 717 and 718.

In all such cases the sheriff must observe the conditions prescribed in the judgment.—O. C. 662, *am.*; 663; R. S. 5935.

See Form, Sched. M, in Appendix.

Supra, art. 15, § 8; *infra*, art. 767.

734. Article 654 applies to seizure in execution against immovables.—O. C. 664, *am.*; R. S. 5936.

IV.—Bidding and Sale.

735. Bids may be given in writing at the sheriff's office at any time after the seizure, but at least four days previous to the date fixed for the sale.—O. C. 665, *am.*

736. Every such bid must be in writing, and be signed by the bidder, unless it is in the form of a notarial original, and must state:

1. The name of the cause in which it is made;
2. The names, quality and residence of the bidder;
3. The immovable or rent bid upon;
4. The amount offered.—O. C. 668, *am.*

737. Every such bid must be accompanied with an affidavit declaring that it is made in good faith and not to delay the proceedings, and, if the bidder is a creditor, stating the nature and amount of his claim.

The sheriff may receive the affidavit.—O. C. 666, *am.*, 667.

738. If a person bidding is not a creditor, the sheriff may, if he thinks fit, require security from such bidder, or a deposit of a sufficient sum to cover the costs incurred by the seizing creditor up to the time of such bid, and the costs of a resale upon false bidding, in case it should be necessary.—O. C. 667, *am.*

739. The sheriff must indorse every such bid the date of its ...ing, and return it into court with his other proceedings.—O. C. 669, *am.*

740. The sheriff must furnish the officer by whom the sale is to be made with a list of the bids duly filed.—O. C. 670, *am.*

741. All immovables must be bid upon and sold at the door of the parish church of the locality where they are situated, except in the following cases:

1. Immovables situated in a parish not civilly erected must be offered for final bidding and adjudication at the registry office for the registration division in which they are situated;

2. Immovables situated within the limits of a parish wholly or partially contained in the Island of Montreal, and those situated elsewhere in any city, town or chief-place where the sheriff's office is kept, or within the suburban limits (*banlieue*) thereof, must be bid upon and sold at the sheriff's office;

3. Lines of railway must be sold at the office of the sheriff charged with the writ.

The judge may, upon the application of any interested party, allow the sheriff to sell the immovables at any other specified place, if they can there be sold to greater advantage.—*New in part*. O. C. 671; R. S. 5937; 57 Vic., c. 48, s. 3.

742. The sheriff may, before proceeding to the sale, require from the seizing creditor a sum sufficient to cover the disbursements necessitated by the sale, as well as the disbursements necessitated by the seizure and publications whenever the sum deposited under article 704 is insufficient therefor, or whenever no sum has been required in virtue of that article.—*New*.

743. On the day and at the place appointed for the sale, the officer conducting the same, after reading the notice, the charges and the conditions of the sale, and the bids filed in the sheriff's office, offers the immovables for sale, taking as an upset price the only bid or the highest bid filed with the sheriff, if any have been so filed. —O. C. 673.

Supra, art. 8.

744. Unless the judgment debtor consents, the sale must not proceed beyond the amount necessary to pay the debt, in principal, interest and costs.

Supra, art. 664.

745. The conditions of the sheriff's sale must express all those contained in articles 746, 747, 758, 759, 779 and 780, in the advertisements, and in any judgment affecting the sale— O. C. 675, *am*.

746. No bid can be received unless the bidder declares his names, quality or occupation and residence.

Verbal bids may be made by proxy.

Minutes are taken of the bids received.—O. C. 674, *am.*; 677. *Infra*, art. 757.

747. Every bid implies an undertaking to buy the property at the price of such bid, subject to the condition that no higher valid bid will be taken. —O. C. 674, *am*.

748. The following persons cannot be bidders or purchasers at the sale:

1. The party upon whom the property is sold, if personally liable for the debt;

2. The persons mentioned in article 1484 of the Civil Code:

3. The sheriff or other officer entrusted with the sale;

4. The false bidder who has not purged his default.—*New in part*. O. C. 676.

Civil Code, art. 1706.

749. The officer conducting the sale must require from every bidder, before he receives his bid, a deposit of a sum of money equal to the costs then due to the seizing creditor upon the judgment and seizure, whenever the judge, in the following cases, has imposed such condition:

1. At the instance of the seizing creditor, in any case of resale upon false bidding or whenever the sale has been stopped by an opposition:

2. Whenever an affidavit is produced, stating that the deponent is credibly informed and believes that the debtor will, with a view to retard the sale, cause the immovable to be adjudged to some insolvent or unknown person.

The advertisements need not mention such condition.—O. C. 678, 679, *am.*; R. S. 5938, 5939.

Supra, art. 15, s. 8.

750. In any case wherein a resale upon false bidding has

taken place, the judge may, upon application by any interested party, order that every bidder shall be required to deposit a sum equal to one-third of the debt due to the seizing creditor, in principal, interest and costs, but not in any case exceeding four hundred dollars. —O. C. 680, *am.;* R. S. 5949 ; 58 Vic., c. 47, s. 1.

751. The officer proceeding to the sale may, with the consent in writing of the person who has caused the condition to be imposed, or of his attorney, receive any bid without requiring the prescribed deposit.

When the person who has caused the condition to be imposed is not the seizing creditor, the written consent of the latter or of his attorney is likewise required.—O. C. 681, *am.*

752. If any bidder fails to deposit forthwith the amount required, his bid is disregarded, and the proceedings are resumed upon the previous bid.—O. C. 682.

753. Immediately after adjudication the officer proceeding to the sale is bound to refund to every bidder, except the purchaser, the amount deposited by him.

The deposit made by the purchaser is retained as part of the purchase money.—O. C. 683, *am.*

754. When several immovables cannot be sold separately without disadvantage, the judge, upon the demand of any interested party, may order such immovables to be sold as a whole.—*New.*

Infra, art. 805.

755. The adjudication of an immovable cannot be made before the expiration of a quarter of an hour from the time at which it was put up for sale, but after that delay the officer, before adjudging it, must receive all other bids offered.—C. C. P. 684.

756. The property must be adjudged to the highest and last bidder.

When there is only one outbidder, he is declared the purchaser.—*New in part.* O. C. 685.

Supra, art. 662.

757. A person who has purchased as agent for another is bound to furnish the sheriff within three days with the names, quality and residence of his principal, and evidence of his power of attorney, or a ratification of his bid and purchase; in default whereof he is held to have purchased in his own name.

He is likewise held to have purchased it in his own name, if the person for whom he acted is not known, cannot be found, is notoriously insolvent, or is incapable of being purchaser.—O. C. 686.

Supra, art. 746.

Civil Code, art. 1715, et. s.

758. The purchaser is bound to pay the purchase-money or the balance thereof within three days, after which delay he is bound to pay interest.—O. C. 687.

759. Nevertheless, the seizing creditor or any other hypothecary creditor, whose claim is mentioned in the certificate of hypothecs hereinafter mentioned, or who has filed an opposition in the hands of the sheriff, may, on becoming purchaser, retain the purchase-money to the extent of his claim until the judgment of distribution, provided he furnish the sheriff with

sureties for all damages which may result to any party interested in the event of non-payment of such sum as the judge may order such purchaser to pay into the hands of the sheriff.—O. C. 688, *am.;* R. S. 5941; *Fairbanks* vs. *Barlow*, M. L. R., 4 S. C. 180.

Infra, art. 829.

760 Upon payment by the purchaser of the purchase-money, or of so much thereof as he is not entitled to retain, the sheriff is bound to give such purchaser a deed of the sale made to him containing:—

1. A designation of the writ under which the sale took place;

2. The number of the cause, and the names and the designation of the parties;

3. A description of the immovable sold; and, if such immovable is a line of railway and its appurtenances, and an official plan of such railway has not been made in accordance with article 5668 of the Revised Statutes, mention of the name of such railway, and of its terminal points, in such a manner as to establish its identity;

4. A statement that all the formalities prescribed by law have been observed;

5. The time and place at which the property was adjudged;

6. The conditions of the sale, including those mentioned in articles 779 and 780;

7. A statement of the price at which the property was adjudged, and how it was paid;

8. A conveyance of all the rights of the judgment debtor upon the immovable.—O. C. 689, *am.;* 57 Vic., c. 48, s. 4.

Supra, art. 745; *infra*, art. 1053, 1318.

Civil Code, art. 2155.

V.—Resale for False Bidding.

761. Upon the sheriff's return that a purchaser has not paid the whole or a balance of the purchase-money, or given security when he may lawfully do so, the seizing creditor may demand that the immovable of which the purchase-money thus remains due be resold for false bidding upon the purchaser thus in default; and this is done by a petition served upon the latter with the delays required for ordinary summons.

If the purchaser has no domicile, residence or place of business in the district where the adjudication took place, the service may be made at the office of the court from which the seizure issued.—O. C. 690, *am.*

Supra, arts. 149, 758; *infra*, 788, 829.

762. If the seizing creditor fails to proceed against the purchaser with proper diligence, any other creditor whose claim appears upon the record, or the debtor, may demand the resale; but the purchaser cannot be held liable for the costs of more than one of such proceedings; and that of the seizing creditor or, in his default, the one first served has preference over the others, provided it is followed up with proper diligence.—O. C. 691, *am.*

763. The proceedings upon an application for resale for false bidding are summary, and no written contestation can be had thereon without leave of the judge.—O. C. 692, *am.;* R. S. 5942.

764. The purchaser may prevent the resale for false bidding by paying into the hands of the sheriff before such sale the amount of the purchase-money

with the interest accrued thereon since the adjudication, and all costs incurred by reason of his default.—O. C. 694.

765. The false bidder is liable to the judgment creditors and to the debtor for all interest, costs and damages, resulting from his failure or delay to pay the purchase-money, and also for the difference between the amount of his bid and the price brought by the actual sale, if such price be less.

If the price be greater, he has no right to the excess, which goes to the benefit of the judgment debtor and his creditors.—O. C. 693, *am.*

Supra, art. 748, s. 4.

Civil Code, art. 1568.

766. If the price upon the resale is not sufficient to cover the amount of the first purchase with interest thereon and the costs incurred on the resale, the false bidder may be held, even by coercive imprisonment, to pay the difference, upon an application to that effect made by any party to the suit, in the same manner and under the same conditions as that for a resale.—O. C., 695,

Infra, art. 833, § 3.

767. The sheriff proceeds upon the writ to the sale for false bidding by observing the conditions fixed by the judgment ordering the sale, and by conforming to the rules prescribed by article 733.—*New.* O. C., 696.

Supra, arts. 749, 775.

VI.—Return of Writs of Execution.

768. When the debtor has no immovables to seize, the sheriff must immediately return the writ with a certificate to that effect.—O. C., 697.

Supra, art. 590, et. s.

769. Six days after the sale the sheriff must return:—

1. The writ under which he proceeded to the sale;
2. A certificate of his proceedings;
3. The minutes of seizure;
4. A copy of the advertisements, with a certificate of their publication and of the oral publications;
5. The minutes of the bidding;
6. The conditions of sale;
7. A statement of his fees and disbursements, taxed in conformity with article 776;
8. The certificate of hypothecs charged upon the immovable seized, or, if such certificate has not yet been furnished, a declaration whether it will be furnished by him to the prothonotary;
9. All oppositions and claims placed in his hands, or writs of execution which have been noted on the first writ.—O. C., 697, 698.

Infra, arts. 1132, 1291.

770. On the day of sale, or within four days thereafter, any interested party may furnish the sheriff with a certificate signed by the registrar of the registration division in which the immovable is situate, mentioning the privileges, hypothecs and other charges affecting such immovable, and registered up to the day of sale.

If several certificates are offered to the sheriff, he must accept the first so offered; and if several are offered at the same time, the one obtained first after the seizure.

Should the interested parties fail to furnish the certificate

within the prescribed delay, the sheriff must, if he has sufficient moneys realized from the sale, procure it, paying its costs to the registrar, and transmit it to the prothonotary either with his return, or thereafter if he could not obtain it before such return.

When it appears by the sheriff's return that the certificate will not be furnished by him to the prothonotary, any interested party may do so, subject to the rules governing certificates received by the sheriff.—*New.* O. C., 699.

Infra. arts. 777, 794.

771. The certificate must contain :—

1. All hypothecs registered against the property, as soon as hypothecs are thus registered, from the time when the plan and book of reference have been in force in the registration division ;

2. All hypothecs registered against the parties who, during the ten years previous to the sale, were owners of the immovable ;

3. All anterior hypothecs of which the registration has been renewed during that period.

It must also contain the date of the act registered as creating or evidencing each hypothec, and the date of its registration, and of its renewal, if it has been renewed, the names, occupation and residence of the creditor, and the name of the notary or notaries before whom the act was passed, if it is notarial ; it must specify, when several immovables are seized, which of them is affected by each hypothec, mentioning, as regards each hypothec, every partial payment registered, and the amount in principal and preserved interest which appears to be due.

But the registrar must not include hypothecs which appear by his books to have been wholly discharged or extinguished ; and, in searching for hypothecs, the registrar must not go beyond the date of a sheriff's title, or of a sale by forced licitation, or of any other sale having the effect of a sheriff's sale, or of a judgment of confirmation of title, with regard to the immovable in question, and which has been registered ; except as to hypothecs which are not by such means discharged or extinguished.

If there is no hypothec registered, or if all the hypothecs registered appear to have been discharged or extinguished, he must state so in his certificate.—O. C., art. 700.

Infra, arts. 790, 808.

Civil Code, art. 2177.

772. If the registrar cannot ascertain from the books and documents in his office what persons were owners of the immovable during the ten years which preceded the sale, he must diligently inquire of the neighbouring proprietors and other persons well acquainted with the property ; and such persons are bound to give him, in writing and under oath, such information as they possess.

The registrar, in his certificate, must mention the information thus obtained, and see that every fact upon which his certificate is thus based is attested by two witnesses, whose affidavits, duly sworn to before him or any other competent officer, are annexed to such certificate.—O. C. 701.

Civil Code, art. 1073.

773. If the immovable was,

during the ten years which preceded the sale, in another county or registration division, of which neither the books, entries and documents relating to such immovable, nor copies thereof, have been transmitted to the registry office of the county or registration division in which the immovable was situated at the time of the sale, the registrar states the fact in his certificate; and in every such case the sheriff must obtain, from the registrar of such other county or registration division, a certificate of all hypothecs registered while the immovable was within such county or registration division, and the latter registrar is likewise subject to the provisions the two preceding articles.—O. C. 702, *am.*

Infra, art. 1073.

774. After the plan and book of reference have been deposited in any registry office, in accordance with the provisions of articles 2168, 2169, 2176*a* and 2176*b* of the Civil Code, the Lieutenant-Governor-in-Council may change the form of the certificate of hypothecs; and every order to that effect is published in the *Quebec Official Gazette*, and takes effect from and after the day therein fixed, provided such day be not less than one month after the publication of the order.—O. C. 703, *am.*; R. S. 5943.

Infra, art. 1073.

775. In the case of resale for false bidding, no certificate of hypothecs need be produced if one has already been filed on the occasion of the first sale.—O. C. 704, *am.*

776. The sheriff is allowed, out of the moneys which he has levied, all costs incurred by him to effect the sale, and all fees belonging to his office, after they have been taxed by the judge or by the prothonotary, together with the cost of the certificate of hypothecs; and he must hold the balance subject to the order of the court.—O. C. 705, *am.*; 55-56 Vic., c. 42, s. 2.

Infra, art. 798.

777. Any person, except the debtor, who has procured the certificate of hypothecs, is collocated by privilege for the amount which he justifies by claim under oath to have paid for the certificate, without any fee being allowed the prothonotary for such collocation.

The claim may be contested in the ordinary manner.—*New.*

Supra, art. 770; *infra*, art. 798.

VII.—Effect of Sheriff's Sales

778. The adjudication is not perfect until the price is paid, and then it conveys ownership from its date.—O. C., 706.

Infra, art. 1054. *Civil Code*, art. 1591.

779. The purchaser takes the immovable in the condition in which it is at the time of the adjudication, without regard to deteriorations or improvements subsequent to the seizure.—O. C. 707.

Supra, arts. 745, 760. *Civil Code*, art. 1498.

780. The adjudication is always without any warranty as to the contents of the immovable; but it conveys all rights belonging to it which the judgment debtor might have exercised, and also all active servitudes attached to it even although they are not mentioned in the minutes of seizure.—O. C. 708.

Supra, arts. 745, 760, s. 6; *infra*, art. 1054; *Civil Code*, arts. 408, 1499, 1503.

781. A sheriff's sale discharges property from all other real rights not mentioned in the conditions of sale, except:

1. Servitudes with which the immovable is charged;

2. Hypothecs resulting from the commutation of seignorial rights, except as to arrears accrued previously to the sale;

3. Rights of emphyteusis, of substitution not yet open, or of customary dower not yet open, except when it appears on the face of the proceedings that there exists a prior or preferable claim.—O. C. arts. 709, 710, 711.

Supra, arts. 725, 745; *infra*, art. 1045; *Civil Code*, arts. 571, 950, 953, 1447, 1588, 2081, 2081, s. 6, 2157.

782. A purchaser who cannot obtain the delivery of the property from the judgment debtor may apply to the judge by petition, of which the debtor has received notice, and obtain an order commanding the sheriff to dispossess the debtor and put the purchaser in possession, without prejudice to the recourse of the latter against the debtor for all damages and costs resulting from his refusal. —O. C. 712, *am.;* R. S. 5945.

Supra, 15, s. 8, 610, 611.

783. The proceedings upon this application are the same as upon the application for a resale for false bidding.—O. C. 713.

Supra, art. 761 et. s.

VIII.—Vacating Sheriff's Sales

784. Sheriff's sales may be vacated at the instance of the judgment debtor, or of any creditor or other interested person:

1. If fraud or artifice was employed, with the knowledge of the purchaser, to keep persons from bidding;

2. If the essential conditions and formalities prescribed for the sale have not been observed; but the seizing creditor cannot vacate the sale for any want of formalities attributable to himself or his attorney.—O. C. 714.

Civil Code, arts. 993, 1586, 1587.

785. Sheriff's sales may be vacated at the instance of the purchaser:

1. If he is liable to eviction by reason of some customary dower, substitution or other right from which the property is not discharged by sheriff's sale;

2. If the immovable differs so much from the description given of it in the minutes of seizure, that it is to be presumed that the purchaser would not have bought had he been aware of the difference—O. C. 714.

Supra, art. 781; *Civil Code*, arts. 950, 953, 992, 1447, 1502, 1586, 1587.

786. Applications under article 784 to vacate sheriff's sales must be made within the same delays as prescribed for appealing to the Court of Queen's Bench from judgments of the Superior Court.—O. C. 716; *Bérard* vs. *Barrette*, 5 R. L. 703,

Infra, art. 1209.

787. The application must be made in the suit by petition, served upon the seizing party and upon all other interested parties in the suit, and is subject to the same rules and delays as ordinary suits.

The party who prosecuted the

seizure and sale has a preferable right to contest any such application; and, if he fails to do so within the prescribed delays, any other party may take up the contestation; but the purchaser cannot in any case be condemned to pay the costs of more than one contestation.—O. C. 715, *am.*

788. Grounds of nullity against a sheriff's sale may likewise be set up by the purchaser against whom an application is made for a resale for false bidding.—O. C. 717.

IX.—Oppositions for Payment.

789. The prothonotary must keep a register in which are entered all returns by the sheriff to writs of execution, with mention of the amounts levied, of the oppositions made to the distribution thereof, of all claims filed as well in the hands of the sheriff as in the office of the court, of all contestations and of the date of the posting and of the presentation of motions for the homologation of the report.—O. C. 718, *am.*

790. Oppositions for payment are necessary only for such claims as the registrar is not bound to insert in the certificate of hypothecs required by article 771.

They are not necessary for claims resulting from municipal or school taxes, or assessments for the building or repairing of churches, parsonages and churchyards; and it is sufficient that a statement of such claims, certified by the secretary-treasurer or other authorized agent of the corporation, and accompanied with the necessary vouchers, be filed in the hands of the sheriff or prothonotary.

Claims for arrears of *cens et rentes* or rents constituted in their stead, may likewise be made by filing with the sheriff or prothonotary a statement thereof, under the signature of the creditor or of his agent.—O. C. 719.

Civil Code, arts. 2011, 2012.

791. No costs are allowed upon oppositions for the payment of any claims mentioned in the preceding article.—O. C. 721, *am.*

792. Oppositions for payment may be filed with the sheriff, if he has not yet made his return, or in the office of the court within six days after the return.

After such delay they can only be filed with the leave of the judge and upon such conditions as he imposes.—O. C. 720, *am.*; R. S. 5946.

Supra, art. 15, § 8.

X.—Payment of the Moneys without Collocation.

793. The moneys levied may, without the formality of a report of distribution, be adjudged by the prothonotary to the parties entitled to them, upon a motion to that effect, in the following cases:

1. When no opposition for payment has been filed, and no claim appears by the certificate of hypothecs;

2. When the proceeds do not exceed the costs of seizure;

3. When all the parties consent.—O. C. 723, 752, *am.*

XI.—Collocation and Distribution of Moneys.

794. Between the sixth and the twelfth days after the sheriff's return certifying that he has levied moneys, the prothono-

tary must prepare a scheme of collocation or distribution, and report the same.

If, however, the sheriff has been unable to file the certificate of hypothecs with his return, the delay above prescribed is reckoned only from the filing of such certificate.—O. C. 724, *am.*

Supra, art. 770; *infra*, art. 1057.

795. The report of distribution must mention the names and designation of the plaintiffs, defendants, opposants and claimants, the amount levied, the name of the person in whose hands it is, and the filing of the certificate of hypothecs.—O. C. 725, *am.*

796. Each collocation must form a separate article in numerical order, and must mention whether the claim bears upon all the moneys to be distributed or only upon the price of a particular immovable or part of an immovable, the nature of the claim and the date of the title and of its registration.—O. C. 726.

797. The prothonotary must prepare the report of distribution in accordance with the apparent rights of the parties, as shown by the certificate of hypothecs, the oppositions, claims and other documents forming part of the record, and in conformity with the rules contained in the Civil Code, in the titles *Of Privileges and Hypothecs* and *Of Registration of Real Rights*, and with those hereinafter declared.—O. C. 727, *am.*

Civil Code, art. 1980, et. s.; 2082, et. s.

798. Law costs must be collocated in the following order:

1. Costs of the report;

2. Commission on amounts deposited and tax upon the amount levied, if any is due, and costs of seizure and sale, if they have not been retained out of the moneys levied;

3. The amount due under article 777 to the party who has furnished the certificate of hypothecs;

4. Costs incurred upon the writ of execution against immovables, and such as may remain due upon the discussion of the movables;

5. Costs of cancelling hypothecs, or of establishing that they are extinguished;

6. Cost of seals, and of making any inventory required by law;

7. Costs incurred, either in the court below or in appeal, upon proceedings incidental to the seizure and necessary to effect the sale of the immovables;

8. Costs of suit of the seizing creditor.—O. C., art. 728, *am.*; *Tansey* vs. *Bethune*, M. L. R., 1 Q. B. 28.

Supra, art. 776. *Civil Code*, art. 2009, § 1.

799. After law costs, those claimants must be collocated in their respective order who had some right of property in the immovables sold, and failed to set up their rights in due time by opposition to annul, opposition to withdraw, or opposition to secure charges, or, in lieu thereof, have filed oppositions for payment; after, however, deducting such debts as they may be bound to pay and as have become payable in consequence of the sale of the immovable, and the costs mentioned in the preceding article.—O. C., art. 729.

Supra, art. 728.

800. Conditional hypothecs are collocated in the report ac-

cording to their rank; but the amounts thereof are made payable to subsequent creditors whose claims are exigible, upon security being given, within the delay fixed by the judge, for the return of the money in the event of the condition being fulfilled.

If there are no subsequent creditors, or if they fail to give security, the amounts are made payable to the debtor upon such security being given by him.

If such security is not given by the subsequent creditors or by the defendant, the amounts may be paid to the conditional creditors, upon their giving security to return the moneys in the event of the condition failing or becoming impossible, and paying interest, when the case requires it, to such persons as the judge may order.

If none of the parties furnish the requisite security, the amount of the conditional claim may be placed in the hands of a sequestrator or depositary agreed upon by the parties, or, if they cannot agree, upon the choice appointed by the judge.—O. C., 730, *am*; R. S., 5947.

Supra, art. 15, § 8, 559 et s. 973 et s. *Civil Code*, arts. 1079 et s, 1823 et s.

801. When a prior claim is undetermined or unliquidated, the prothonotary out of the disposable moneys must reserve a sum sufficient to cover it; and such sum remains in the sheriff's hands until the claim is determined or liquidated, or until the judge otherwise orders.—O. C. art 731. *am*.

802. Hypothecary claims due with a term of payment become exigible in consequence of the discussion and sale of the immovable subject to them, and are collocated.

If they do not bear interest, the creditor is then collocated and receives the amount of his collocation only upon giving security to pay interest to the subsequent creditors mentioned in the report, or, in default of such creditors, to the debtor, until the term expires.

If the creditor is collocated for a part only of his claim, he is not liable for interest towards such subsequent creditors until the full amount of his claim is completed.—O. C. 732, *am*; *Barrette* vs. *Lallier*, 5 C. S. Q. 65.

Civil Code, art. 1089 et s.

803. Claims for the capital of life-rents are determined and collocated according to articles 1914, 1915, 1916 and 1917 of the Civil Code.—O. C. 733.

Civil Code, art. 394.

804. Interest and arrears of rents preserved by registration of a deed are collocated in the same rank with such deed, up to the day on which the immovable is adjudged.

A creditor whose claim is registered is collocated in the same rank for such taxed costs only as are incurred in the court in which he originally obtained judgment for the recovery of his claim.

His costs in appeal rank only according to the date of their registration.—O. C. 734.

Civil Code, arts. 2034, 2121 et s.

805. In case the disposable moneys are insufficient, the prothonotary, if the record does not afford him sufficient data to perform the relative valuation himself, must suspend the distribution, and report the facts to the judge, in the following cases:—

1. When several immovables or pieces or parcels of land, separately charged with differ-

ent claims, are sold for one and the same price;

2. When a vendor's claim comes in concurrence with a builder's privilege;

3. When a creditor has some preferable claim upon part of an immovable by reason of improvements or other cause.—O. C. 735 *am;* R. S. 5948.

Supra, 754. *Civil Code*, arts. 417, 419, 2013 et s, 2049, 2072.

806. Upon the application of one of the parties interested, after notice given to the others, the judge orders experts to be named in the ordinary manner, in order to establish the respective values of the immovables, pieces of land, or improvements, and the proportion which should be allotted to each out of the moneys to be distributed.—O. C. 736, *am;* R. S. 5949.

Supra art 392 et s.

807 The relative valuation being established upon the report of the experts, the cause is sent back to the prothonotary by the judge in order that he may proceed to determine the order of collocation and the distribution of the moneys.—O. C. 737, *am.;* R. S. 5950.

808. The certificate of hypothecs is *prima facie* evidence of the facts herein mentioned; but it may be contested on the ground of error or fraud on the part of the registrar or in his books; and in such case the judge may, if the ends of justice require it, order any interested person to be called in to answer the contestation, which must also be served upon the registrar.

Such interested parties are called in by serving the order of the judge upon them in the same manner and with the same delays as upon ordinary summons.—O.C. 738, *am.;* R. S. 5951.

Supra, art. 770 et. s.

Civil Code, arts. 1207, 2159.

809. Any party to the cause, or any person appearing voluntarily, may produce any acquittance or document of a nature to establish the discharge or extinction of a claim mentioned in the certificate of hypothecs, provided it is accompanied with such proof as would be required to justify the registrar in receiving it.

The judge may thereupon correct the certificate, or order it to be sent back to the registrar for correction, or the registrar may transmit to the prothonotary a supplementary certificate in amendment to the former one.—O. C. 739.

Civil Code, art. 2148, et. s.

810. The registrar is deemed to be an officer of the court for all that concerns the certificate of hypothecs, and for the taxation of his fees and expenses for services rendered in regard thereto.

Such fees and expenses may, in case of contestation, be taxed by the prothonotary, after notice to the registrar.—*New in part.* O. C. 740; 2 *Doutre*, N. 1021.

811. Any person interested in the distribution may, even before contestation, cause any other person to be examined before the judge or the prothonotary, upon any material fact relating to any hypothec or claim.

Any person thus examined is bound to disclose the existence of any book or document relating thereto, and to produce the same if it be in his power.

If it appears by the certificate of hypothecs, or by any opposition or claim, that such person is the creditor of the hypothec,

his admissions constitute proof.

The rules relating to the summoning, examination and punishment of witnesses govern the cases provided for by this article, in so far as they are applicable.—O. C. 741, *am.*

Infra, art. 823.

812. When the hypothecary creditor of the person who was in possession of the immovable in question at the commencement of the ten years next preceding the day of the judicial sale, or his legal representatives, cannot be found so as to be summoned and examined, the judge, upon the affidavit of any person swearing that he has reason to believe, and verily believes, that the hypothec has been paid, discharged or extinguished, may order such creditor, or his representatives, to be summoned in the same manner as absentee defendants; and if such creditor, or his representatives, fail to appear, the distribution takes place in the same manner as if the hypothec had not been mentioned in the certificate of hypothecs.—O. C. 741, *am.*

Infra, art. 823.

813. The parties are allowed eight days to contest the report of distribution, reckoning from the day on which it was posted. —O. C. 742, *am.*

814. The contestation may relate: —

1. To the report itself;
2. To the rank of the collocation;
3. To the merits of any of the claims collocated.

The contestation must be accompanied with the documents in support thereof, and a notice of the delay within which it must be answered; and a copy of the contestation must be served upon the party interested, either personally or at his domicile, residence or place of business, or at the office of the court, if there is no such domicile, residence or place of business in the district.

When a contestation is filed, the report is suspended to the extent thereof.—O. C. 743, *am.*

815. Contestation of the report or of the rank of the collocations may be inscribed forthwith upon the roll for hearing, after notice given to the parties interested, without the necessity of any written answer to any such contestation.—O. C. 744

816. If the contestation of the report, or of the rank of the collocations, or of any collocation is maintained without being opposed by any party, the costs thereof are taken out of the moneys levied, or, if the contestation benefits some creditors only, out of the moneys coming to such creditors.

In the event of the costs being adjudged against one of the parties, the contesting party is still entitled to be paid them out of the moneys levied, saving to the creditor who is prejudiced by such collocation, his right to demand subrogation against the party condemned to pay them.—O. C. 745, *am.*

Civil Code, art. 1154, et. s.

817. When the contestation of the report or of a collocated claim is maintained, it avails for the benefit of the mass of the creditors, and the court orders the prothonotary to prepare a new report according to the rights of the parties.—O. C. 746, *am.*

818. The right of contesting oppositions, claims or collocations belongs to whichever of the interested parties is the first to use it.

The party whose opposition, claim or collocation is contested is not bound to answer more than one of several contestations founded on the same grounds, and he may apply to have such contestations united and the proceedings thereon conducted between him and the first contesting party, all notices required being served upon all the other contesting parties, who have a right to watch the proceedings, and even to be put in the place of the party who has taken up the contestation in the event of its withdrawal or of his neglect or refusal to proceed.—O. C. 747, *am.*

819. Contestations upon the merits of oppositions or claims are in other respects subject to the same rules and delays as summary matters.—O. O. 748, *am.*

Infra, art. 1155 et s.

820. After the delay for contesting the report has expired, the prosecuting party, or, upon his failure to do so within two days, any other party interested, may move for the homologation of the whole report, if there is no contestation, or of the part which is not contested or is not affected by the contestation, when it is only to a part.

Such motion cannot, however, be made until after notice thereof has been posted in the office of the court during at least four days.—O. C. 749.

821. When a part only of a claim is contested, the creditor may, after notice to the contesting party, apply for the homologation of the part not contested, subject to the reserve of a sum sufficient to meet the contestation.—*New.*

822. The homologation mentioned in the two preceding articles may be thus granted either by the judge or by the prothonotary, unless there is a counter-application or a contestation, in which cases the court alone must decide.—O. C. 750, *am.*; *Belleau* vs. *Bender*, 3 B. R. Q. 134.

823. If in any distribution, whether homologated or not, a creditor is collocated for any sum that is not due him, the judge, upon a declaration of the creditor to that effect, may order a supplementary distribution of the sum thus allowed him.

If the person thus collocated fails to declare what he has previously received, the judge may, upon the application of any party interested, and on production of an authentic discharge, order a supplementary distribution of the amount of such collocation.

If there is no authentic discharge, the person thus collocated must be called in, upon application to the judge; and in such case the provisions of articles 811 and 812 apply.

If the person collocated has no known domicile in the Province, or if he is dead and his legal representatives are not certainly known, the judge may, upon a certificate to that effect, order them to be called in, in the manner prescribed by article 136.—O. C. 751, *am.*
See Form, Sched. N. Appendix.

XII.—Sub-Collocation

824. Any creditor of a person who is entitled to be collocated, or is collocated upon moneys levied, has a right to file a sub-opposition, demand-

ing that, to the extent of his claim, the sum accruing to his debtor be not paid to such debtor, but be paid to him in the following cases:

1. When his debtor is insolvent;

2. When his claim carries execution.—O. C. 753, *am.*

Civil Code, arts 1980, 1981.

825. Sub-oppositions must be served on the party whose moneys are stopped.—O. C. 754, *am.*

826. The sub-collocation may follow the collocation and be included in the general report, or it may form a separate report.

It is subject to the same rules and formalities as the general report, and the costs thereof are borne by the creditor whose collocation is opposed.—O. C. 755.

827. If a debtor fails to exercise his rights and claims, any of his creditors who have made sub-oppositions may intervene in the distribution, in order to exercise the rights of such debtor, in the same manner and with as little expense as the debtor himself could have done. —O. C. 756, *am.*

Civil Code, art. 1031.

XIII.—Payment of Moneys Levied

828. At the expiration of fifteen days after the date of the judgment of homologation, the sheriff is bound to pay the moneys received by him to the parties thereto entitled.—O. C. 757.

829. If the moneys levied or a portion thereof remain in the hands of the purchaser, the judgment of distribution must be served upon him and upon his failure to pay to the sheriff, or to the parties interested, within fifteen days from such service, the amounts necessary to satisfy the claimants who have priority over him, the latter may demand the resale of the immovable upon him for false bidding.—O. C. 750.

Supra, art. 759.

830. Any party aggrieved by a judgment of distribution may seek redress by means of an appeal, or a petition in revocation if there are grounds for it, whether he has appeared in the suit, or, his claim being mentioned in the certificate of hypothecs, he has not appeared.

Any creditor mentioned in the certificate of hypothecs, who has not appeared in the cause, may also, within fifteen days, seek redress by means of an opposition to the judgment.—O. C. 761.

Infra, art 1163 et s. 1177 et s.

831. In the event of a judgment of distribution being reformed, or of the adjudication being set aside, or of the eviction of the buyer or his representatives by reason of any right from which the property was not discharged by the sale, whatever sums have been unduly paid must be returned to the sheriff, and the parties are bound to pay back such moneys upon an order from the court to that effect.—O. C. 762.

Civil Code, art. 1586.

SECTION IV.

Arrest in Civil Matters and Coercive Imprisonment.

832. Coercive imprisonment under a judgment rendered in a civil action is not allowed except against the persons and in the cases specified in the following articles:

Civil Code, art. 2271.

833. The persons liable to coercive imprisonment are :

1. Tutors, curators and trustees, for whatever is due by reason of their administration to those whom they represented ;

2. Any person indebted as sequestrator, guardian or depositary, sheriff, coroner, bailiff, or other officer having charge of moneys or other things under judicial authority ;

Civil Code, art, 1586.

3. Any person indebted as judicial surety, or for the purchase of property or effects, movable or immovable, sold in execution of the judgment of a court ;

4. Any person condemned by a judgment awarding damages for personal wrongs, in a sum of fifty dollars or upwards ;

5. Any person condemned by a judgment awarding damages under articles 2054 and 2055 of the Civil Code, in a sum of fifty dollars or upwards ;

6. Institutes under a substitution, executors or administrators, tutors, curators and trustees, for the damages occasioned by their frauds in making investments, or for damages arising from the investments having been made by them otherwise than as provided in article 981*o* of the Civil Code, or than as prescribed in the will or other instrument respecting the property administered.—C. C. 2272, *am* ; R. S. 5852.

Supra, arts 658, 766, 846. *Civil Code*, arts. 910, 981*n*, 981*o* et s, 1937, 1962.

834. Coercive imprisonment may also be ordered for contempt of any process or order of the court or of a judge, or for resistance to such process or order, or for any evasion of any such judgment or order, by preventing or obstructing the seizure or sale of property in execution of such judgment or order.

In such cases the term of imprisonment cannot exceed one year, but may be repeatedly inflicted until the process or order is obeyed.—*New, in part*, C. C. 2273 ; O. C. 782.

Supra, arts. 18, 89, 160, 303, 330, 408, 477, 620, 714 ; *infra*, arts. 846, 884, 1001, 1005, 1302, 1326, 1358.

835. Except in the cases mentioned in the two preceding articles, the following persons cannot be arrested or imprisoned by reason of any debt or cause of civil action :

1. Priests or ministers of any religious denomination whatever ;

2. Persons of the age of seventy years or upwards :

3. Women.—C. C. 2276, *am*.

Infra, art. 896. *Civil Code*, art. 1962.

836. Coercive imprisonment cannot be granted in the cases mentioned in paragraphs 1, 4, 5 and 6 of article 833 until after the expiration of three months from the service upon the defendant of the judgment establishing the balance or awarding damages.—*New, in part*, O. C. 783.

837. Coercive imprisonment can be ordered only under a special rule granted by the court, after personal notice to the party liable.

If the latter fraudulently evades service, the judge may, upon a return to that effect, prescribe whatever mode of service he deems proper.

In the case of article 834, and in all other cases in vacation, the judge may exercise all the powers of the court, and order

the defendant to be imprisoned.—O. C. 781, *am.*, 782 *in part.*

Supra, art. 146.

838. Coercive imprisonment can be executed only in virtue of a writ or order from the court or judge, which is addressed to the same officers, and is clothed with the same formalities, and contains the same matters of recital as writs of execution.—O. C. 787.

Infra, art. 888.

839. Coercive imprisonment is effected by arresting the person against whom it is directed, and placing him in the custody of the keeper of the common gaol of the district in which the writ issued.

If there is no gaol in the district, he must be imprisoned in the nearest gaol.—O. C. 789.

840. The person condemned cannot, by giving bail, obtain his provisional release from confinement.—*New.*

841. The debtor cannot be arrested:

1. On a non-juridical day;

2. At any time other than that prescribed for service of summons;

3. In a place of public worship, during divine service;

4. During the sittings of the court of a judge, or before any privileged tribunal.—O. C. 784, 785, *am.*

Supra, arts. 7, 125, 126, 147.

842. The judge may nevertheless order the arrest to be made on a non-juridical day or at any time, if the defendant is shown to be acting in such a manner as to escape it.—O. C. 786, *am.*

843. Any person thus imprisoned may, upon petition to a judge, served upon the opposite party, and accompanied with an affidavit that he is not worth fifty dollars, obtain an order commanding the creditor to pay him, as an alimentary allowance during the period of his imprisonment, a sum not less than seventy cents and not more than one dollar per week.—O. C. 790.

844. If, however, the debtor afterwards becomes owner of property exceeding in value the amount of fifty dollars, the creditor may be relieved from paying the allowance.—O. C. 791.

845. The debtor may have the order for imprisonment vacated by reason of the extinction of the debt, or of any other cause of a nature to affect the judgment granting the imprisonment.—*New.* O. C. 792.

846. The debtor may obtain his liberation:

1. If the formalities prescribed for the execution of the judgment have not been observed;

2. By paying into the hands of the sheriff, or of the prothonotary, the amount of the condemnation, in principal, interest and costs;

3. With the consent of, or by a release from the creditor;

4. Upon the failure of the creditor to pay in advance into the hands of the gaoler the alimentary allowance;

5. By the abandonment of his property, except in the case provided for by article 834.

6. If he has completed his seventieth year, except in the cases stated in articles 833 and 834.—O. C. 793, *am.*

847. The imprisonment may be vacated, or the liberation ordered, by the judge, upon application, of which notice must be given to the creditor.—O. C. 794, *am.*

848. When the debtor has been liberated by reason of default of payment of the alimentary allowance, he is no longer liable to coercive imprisonment for the same debt. —O. C. 795.

849. Abandonments of property consequent upon coercive imprisonment are governed by the rules contained in articles 854 to 892, inclusively, except in so far as special provisions are hereinafter contained.—*New.*

850. The abandonment is made by filing the declaration and the statement in the office of the Superior Court for the district in which the order for coercive imprisonment was granted.—*New.*

851. After the appointment of the curator, the record of the proceedings upon the abandonment is transmitted to the prothonotary of the Superior Court for the district where the debtor has his place of business, or, in default of such place, where he is domiciled.

Nevertheless, if the debtor has no place of business or domicile in the Province, the record remains in the office of the court where the abandonment is made.—O. C. 768, *am.*; R. S. 5956.

852. The statement may, apart from the cases mentioned in article 885, be contested by reason of any secretion by the debtor within the year immediately preceding the institution of the suit consequent upon which the order for coercive imprisonment was granted, or since, of any part of his property with intent to defraud his creditors.—*New.*

CHAPTER XXXI

Abandonment of Property.

853. The following persons may make a judicial abandonment of their property for the benefit of their creditors:

1. A debtor who has been arrested upon *Capias ad Respondendum*, as provided in the chapter thereon;

2. A trader who has ceased his payments, and upon whom a demand of abandonment has been made by any creditor whose claim is unsecured for a sum of two hundred dollars or upwards.—O. C. 763, 763*a*, *am.*; R. S. 5952, 5953.

Supra, art. 150, s. 8; *infra*, art. 926.

854. The demand required by paragraph 2 of the preceding article must be signed by the creditor or by his agent specially authorized in that behalf; and in the case of a corporation, by its president, general manager or local agent for the district where the abandonment should be made, or by the specially authorized agent of such corporation.

Any demand made by virtue of a special power of attorney must mention the fact.—*New. See Form Sched. O. Appendix.*

855. The service of the demand on a person in the Province is subject to the same rules as ordinary summons.—*New.*

856. The demand must be filed at the office of the court, together with a claim under oath accompanied by vouchers, and the special power of attorney, if any, under which the demand has been made.—O. C. 763*a*, *am.*; R. S. 5953; 55-56 Vic., c. 43, s. 1.

857. The demand may be contested by petition, which must be filed within two days after the service of the demand, and be served upon the demanding party as soon as possible.

The contesting party may, within the same delay, file a motion to stay the proceedings until a power of attorney or security for costs is furnished by the party who made the demand, whenever the latter is not resident in the Province.—*New.*

Supra, art. 15, § 8, 177.

858. The abandonment consists of the filing of the declaration, and of the deposit of the statement, as hereinafter provided.—*New.* O.C. 764; R.S. 5954.

859. If the debtor does not contest the demand, he must, within two days after it has been served upon him, file at the place where by law the abandonment must be made, a declaration that he consents to abandon all his property to his creditors; and he must deposit his statement within four days from such service.

If there is a contestation or a motion for a power of attorney or for security for costs, the delays are computed from the judgment thereon.

The judge may extend the delays for filing the declaration or for depositing the statement.—*New, in part.* O. C. 763*a*; 55-6 Vic., c. 43, s. 1.

Infra, art. 895, § 3; 931, s. 2.

860. If one or more of the members of a partnership is dead, or absent from the Province, the declaration and statement may be signed by the surviving or by the resident partners; but the abandonment does not then affect the private property of the dead or absent partner.—*New.*

861. The statement must be sworn to by the debtor and show:

1. All the movable and immovable property liable to seizure in his possession;

2. The names and addresses of his creditors, the amount of their respective claims, and the nature of each claim, whether privileged, hypothecary or otherwise.

Unless a declaration has been made by the debtor in conformity with article 859, the statement must be accompanied with a declaration by the debtor that he consents to abandon all his property to his creditors.—O. C. 764, *am.;* R. S. 5954; 55-56 Vic., c. 43, s. 2.

Supra, art. 598, 599.

862. The declaration and the statement are filed in the office of the Superior Court for the district where the debtor has his principal place of business, and, in default of such place, where he is domiciled.—O. C. 764, *am.;* R. S. 5954.

Supra, arts., 850, 851; *infra*, art. 928, 929.

863. The abandonment deprives the debtor of the enjoyment of such of his property as is liable to seizure, as well as of the possession of his books of account and titles of debt; and gives his creditors the right to have such property sold and realized for the payment of their respective claims.—O. C. 778, *am.;* R, S. 5964.

864. Immediately after the filing of the declaration that the debtor consents to abandon, whether it is accompanied by the statement or not, the prothonotary appoints a provisional guardian whom he, as far as possible, selects from the most interested creditors, who,

either personally or by a person whom he delegates for that purpose, takes immediate possession of all the property liable to seizure and of the books of account and titles of debt of the debtor.

The guardian may summarily dispose of any perishable goods, and may take conservatory measures, under the direction of the judge, or, in the absence of the latter, of the prothonotary.—O. C. 768, *am.;* R. S. 5956; 55-56 Vic., c. 43, s. 3.

Supra, art. 634.

Civil Code, art. 1825, et. s.

865. Within five days after the filing of the statement the provisional guardian must give notice of the abandonment:

1. By inserting an advertisement to that effect in the *Quebec Official Gazette;*

2. By a registered letter, posted to the address of each of the creditors, setting forth the date of the filing of the statement, and the amount and nature of each claim

In default of such notices being given by the provisional guardian within the prescribed delay, the debtor or any creditor may give them.—O. C. 765, *am.;* R. S. 5955.

866. For the purpose of advising as to the appointment of a curator and inspectors, a meeting of the creditors is called before the judge, by a registered notice posted to the address of each of them, and also inserted in a newspaper published in the district, or in a neighboring district if there be none in the district.

Such meeting must be held between the fifth and the fifteenth day after the publication of the notice calling it.—O. C. 768, *am.;* R. S. 5956; 55-56 Vic., c. 43, s. 4.

See Form, Sched. P, Appendix.

867. The judge must appoint, as curator and inspectors, the persons chosen by the majority in number and in value of the creditors present or represented at the meeting who have filed sworn claims.

If the majority in number does not agree with the majority in value, the judge decides between them, as he thinks proper.—O. C. 768; R. S. 5956; 55-56 Vic, c. 43, s. 4.

Supra, art. 15, s. 8; *infra*, arts. 890, 1338. *Civil Code*, arts. 347, 347*a*.

868. The judge may also appoint a guardian and a curator in any of the following cases:

1. When a capias cannot be executed by reason of the absence of the defendant, or because he cannot be found;

2. When the debtor is a trader who has ceased his payments, and has left the Province, or no longer resides therein;

3. When the demand has been served upon a trader of the age of seventy years or upwards, or upon a woman who is a public trader, and has not been complied with.—O. C. 780, *am.*; 763*a*; R. S. 5965; 55-56 Vic., c. 43, s. 1.

Supra, art. 15, s. 8; *infra*, arts. 890, 895, 896, 931.

869. Such appointment is made on the petition of the plaintiff or of a creditor whose claim is unsecured for a sum of two hundred dollars and upwards.

The powers and obligations of the provisional guardian and of the curator so appointed are, in so far as may be, the same as in cases of abandonment.

The judge may prescribe the observance of such formalities

and the giving of such public notices as he deems necessary. *New in part.* O. C. 780; R. S. 5965.

870. The curator takes possession of all the property mentioned in the statement, as well as of the debtor's books of account and titles of debt, and administers the property until it is sold or realized in the manner hereinafter mentioned.

He has, in like manner, a right to receive, collect and recover any other property belonging to the debtor, which the latter has failed to include in his statement, except such as is by law exempt from seizure. —O. C. 771, 772, *am.*; R. S. 5960; 52 Vic., c. 51, s. 1.

871. After the abandonment, any proceeding by way of seizure, attachment for rent or seizure in execution against the movable property of the debtor is suspended; and the guardian or the curator has a right to take possession of the goods so seized, upon serving, by a bailiff, a notice of his appointment upon the seizing creditor, or upon his attorney, or upon the bailiff entrusted with the writ.

The costs upon such seizure, incurred after the notice, or, in the absence of such notice, incurred by a creditor after he had knowledge of the abandonment, either personally, or by his attorney, or by the bailiff, and in all cases, the cost of seizure incurred eight days after the notice given by the curator, cannot be collocated upon the property of the debtor, the proceeds of which are distributed in consequence of the abandonment.

The judge may, however, permit the continuance of proceedings already commenced, upon such terms as are deemed proper.—*New in part.* O. C. 769; R. S. 5957; *Thompson* vs. *Kennedy*, M. L. R., 4 S. C. 443.

Infra, art. 890.

872. The curator must make his appointment known by an advertisement in the *Quebec Official Gazette*, and by a registered notice posted to the address of each creditor.

In such notice the curator calls upon the creditors to file their sworn claims with him within a delay of thirty days.—O. C. 770, *am.*; R. S. 5958.

See Form, Sched. Q. Appendix.

873. If subsequently to the abandonment, and before the curator has rendered his final account, the debtor acquires any additional property, he may be required, by a new demand, to abandon it also.

Immediately upon the abandonment being made, the curator takes possession of such property, and proceeds to the sale and distribution of the moneys as in ordinary cases; but is bound to reimburse the expenses incurred by any creditor through whose diligence the property is rendered available.

Such demand may be made by the curator, with the authorization of the inspectors, or by any creditor competent to demand an abandonment.—*New.*

874. The curator appointed may be required to give security, the amount whereof is fixed by the judge.

The security may be given in favor of the creditors of the debtor generally without mentioning their names.

The judge may, whenever it becomes necessary, appoint a

curator *ad hoc* to enforce any such bond against the parties liable.—*New in part.* O. C. 770*a*; R. S. 5959.

875. The curator is subject to the summary jurisdiction of the judge.—O. C. 770*a*; R. S. 5959.

876. Any property not belonging to the debtor, which is in the curator's possession by virtue of the abandonment, may be recovered by the person thereto entitled, upon a petition to the judge.—*New.*

877. The curator may, with the leave of the judge, upon the advice of the creditors or inspectors, exercise all the rights of action of the debtor and all the actions possessed by the mass of the creditors.—O. C. 772 *am.*; R. S. 5960.

Infra, art. 890.

878. The curator may sell the movable and immovable property of the debtor in the manner indicated by the judge, upon the advice of the parties interested or of the inspectors.—O. C. 772, *am.*; R. S. 5960.

Infra, art. 890.

Civil Code, art. 1565.

879. Upon the application of the curator, authorized by the inspectors, or upon the application of an hypothecary creditor, after notice to the debtor, the judge may authorize the curator to sell the immovables of the latter in such manner and after such notices, as the judge may please to order; he may also authorize or command the curator to issue his warrant to the sheriff competent to act, requiring the latter to seize and sell such immovables.

The sheriff executes such warrant without making any service upon the debtor, but by otherwise observing the same rules as in the case of an execution against immovables; and all subsequent proceedings are had in the Superior Court. The moneys realized from the sale made by the sheriff remains in his hands to be paid by him to the privileged and hypothecary creditors in accordance with the report of distribution which shall be made by the prothonotary of the Superior Court in the usual way, and the surplus shall be remitted to the curator upon an order of the judge for its distribution among the chirographory creditors by means of a dividend sheet prepared in accordance with the following article.

61 Vic., c. 47, s. 7.

The sheriff executes such warrant without making any service upon the debtor, but by otherwise observing the same rules as in the case of an execution against immovables; and all proceedings subsequent to the issue of the warrant up to the distribution of the proceeds of the sale are had in the Superior Court.

The moneys remain in the hands of the sheriff, who pays them to the parties thereto entitled under dividend-sheets prepared in accordance with the next following article.—*New in part.* O. C. 772, *am.*; R. S. 5960; 52 Vic., c. 51, s. 1.

880. The moneys realized by the curator from the property of the debtor must be distributed by the curator among the creditors by means of dividend-sheets prepared after the expiration of the delays to file creditors' claims.

Notice of their preparations must be given by an advertise-

ment in the *Quebec Official Gazette.*

A copy of the dividend sheets, with a notice of the date at which they are payable, must also be posted by registered letter to the address of each of the creditors who have filed their claims or whose names appear in the statement.

The dividend-sheets are payable fifteen days after the observance of these formalities.—O.C. 772*a*, *am.;* R. S. 5961; 53 Vic., c. 60, s. 1; 54 Vic., c. 41, s. 2.

Supra, art. 872.

881. The claims or dividends may be contested by any party interested, or by the curator at the expense of the estate if he is so instructed by the curators.

The contestation for such purpose is filed with the curator, who is bound to transmit it immediately to the prothonotary of the Superior Court for the district in which the proceedings upon the abandonment are then deposited, or for such other district as the parties interested in the contestation may agree upon; and the contestation is proceeded with and decided summarily by the judge.

The judge may allow the payment, in whole or in part, of any claims or dividends which are not contested, upon being satisfied that a sufficient sum is retained to meet the contestation.—*New in part.* O. C. 772. *om.;* R.S. 5961; 53 Vic., c. 60. s. 1; 54 Vic.. c. 41, s. 2.

Supra, art. 15, s. 8.

882. Any creditor, at any time after the filing of the statement, or the curator with the authorization of the inspectors, may summon the debtor to appear before the judge or the prothonotary, and examine him on oath concerning the statement and the condition of his affairs.—*New.* O. C. 775.

883. Upon application by any creditor at any time after the filing of the statement, or by the curator with the authorization of the inspectors, the judge may order the production of any book or document relating to the matters mentioned in the preceding article, and the examination of the consort of the debtor and of any other persons whom he deems capable of furnishing information in regard to such matters.—*New.* O.C. 772*b*; 55-56 Vic., c. 43, s. 5.

Infra. art. 890.

884. The rules relating to the summoning and examination of witnesses and the taking of evidence govern cases provided for in the two preceding articles, in so far as they apply.

Any person summoned who refuses to appear or to answer or to produce any book or document, may be condemned by the judge to imprisonment for a term not exceeding one year. If any dispute arises during the examination, the parties are sent before the judge to have it decided.—*New.* O. C. 772*b*, 716; 55-56 Vic., c. 43, s. 5.

Supra, art. 834.

885. The curator, authorized by the inspectors, or any creditor, may contest the statement, by reason:

1. Of the fraudulent omission to mention property of the value of one hundred dollars;

2. Of fraudulent misrepresentations therein with respect to the number of the creditors, or the nature or amount of their claims;

3. Of secretion by the debtor, within the year immediately

preceding the filing of the statement, or since, of any portion of his property, with intent to defraud his creditors.—O.C. 773, *am.*; R.S. 5962; 55-56 Vic, c, 43, s.6.

Supra, art. 15, s. 8.

886. The contestation of the statement must be made within four months from the day on which the advertisement of the curator's appointment appears in the *Quebec Official Gazette*. —*New.* O. C. 773; R. S. 5962.

887. The contesting party is also bound, within the same delay, to prove his allegations by all legal means.

The judge may, however, prolong the delay for making such proof, but not beyond two months.

The judge may, when satisfied that the delay is due to the fault of the debtor, allow, from time to time, a further delay of two months.—*New in part.* O. C. 774, *am.*

888. If the contesting party establishes any one of the offences mentioned in article 885, the judge may condemn the debtor to be imprisoned for a term not exceeding one year.

The rules contained in articles 838, 839, 840, 841 and 842 apply in so far as may be, to proceedings in execution of the condemnation.—*New in part.* O.C. 776 *am.*; R. S. 5963.

889. If the statement is not contested within the required delay, or if the contestation is not proved within such delay, the judge may order the discharge of the debtor, and the latter is exempt from arrest or imprisonment by reason of any cause of action which existed before the making of such statement, without prejudice to cases where he has been already arrested under a capias, or is imprisoned for any debt of the description mentioned in articles 833 and 834; and in case of such imprisonment or arrest, he may obtain his liberation from the judge, upon petition and sufficient proof.—O. C. 777, *am.*; C. C. 2275.

890. Judgments and orders rendered in virtue of articles 866, 867, 868, 871, 874, 877, 878, 879, 882 and 883 are not subject to review or to appeal.—*New.*

891. The abandonment of his property discharges the debtor from his debts to the extent only of the amount which his creditors have been paid out of the proceeds of the sale of such property.—O. C. 779.

892. The curator must keep a register containing the names and description of the debtor, the date of the abandonment, the amount of the proceeds of the property, the amount of each claim, the amount paid to each creditor, the number of dividends and the amount of his fees and disbursements.

The register may be consulted by any creditor, during reasonable hours, at the curator's place of business.

Within two months after the date when the last dividend-sheet is payable, the curator must deposit the register in the office of the court to which it appertains.

The curator must also, within the same delay, unless the judge otherwise orders, under penalty of all costs and damages, prepare a certificate of all his proceedings, and file it in the office of the Superior Court, with all papers and documents relating to his management; and the complete record thus returned forms part of the records of such court.—*New.*

FOURTH PART.

PROVISIONAL REMEDIES.

CHAPTER XXXII

GENERAL PROVISION.

893. In the cases provided for by the following Chapters, a plaintiff may have the person or the property of his debtor, or the object in dispute, placed in judicial custody, or may otherwise obtain provisional relief, subject to a right of action by the latter to recover damages upon establishing a want of reasonable and probable cause in resorting to any such extraordinary remedies.—O. C. 796, *am.*

Supra, art. 15, s. 8.

CHAPTER XXXIII.

CAPIAS AD RESPONDENDUM.

SECTION I

Issue of the Capias.

I. ISSUE OF THE CAPIAS **804.**
II. EXECUTION OF THE CAPIAS **906.**
III. RELEASE UPON BAIL **910.**
IV. CONTESTATION OF THE CAPIAS **919.**
V. EFFECT OF THE CAPIAS **925.**

894. The Superior Court only has jurisdiction in matters of capias.—O. C. 808.

895. The plaintiff may obtain a writ of summons and arrest against the defendant whenever a personal debt amounting to fifty dollars or upwards is due him, and such debt has been created or is made payable within the limits of the Provinces of Quebec and Ontario, in any case wherein the defendant:—

1. Is immediately about to leave the Provinces of Quebec, and Ontario, with intent to defraud his creditors in general or the plaintiff in particular, and the plaintiff will thereby be deprived of his recourse against the defendant; or

2. Is secreting or making away with, has secreted or made away with or is immediately about to secrete or make away with, his property, with intent to defraud his creditors in general or the plaintiff in particular, and the plaintiff will thereby be deprived of his recourse against the defendant; or

3. Is a trader who has ceased his payments, and has refused to make a judicial abandonment of his property for the benefit of his creditors, although duly required to do so.—O. C. 797, 798, 799, 806, *am.*; R. S. 5966.

Supra, art. 859.

896. Except in the cases mentioned in articles 833 and 834, a writ of capias cannot issue:

1. Against priests or ministers of any religious denomination whatever;

2. Against septuagenarians;

3. Against women.—O. C. 805, *am.*

Supra, art. 835; *infra*, art. 919, s. 4.

897. The writ of capias may be joined with the writ of summons, or may be issued afterwards as an incident in the cause. In the latter case it must be accompanied with a summons to hear it adjudged that the writ be joined with the principal demand and be declared valid.

The writ may also issue after judgment has been obtained for the recovery of the debt.—O. C. 802, *am.*

898. The writ of capias is obtained upon an affidavit of the plaintiff, his bookkeeper, clerk or legal attorney, setting forth, besides the required personal indebtedness, the existence of any one or more of the grounds for which capias lies.

The affidavit must be drawn up in accordance with the forms contained in Schedule R in the Appendix to this Code, or any others to the same effect.—*New in part.* O. C. 798, 799; R. S. 5966.

See Form, Sched. R, Appendix.

Supra, art. 119.

899. If the demand is founded upon a claim for unliquidated damages, the affidavit must also state the nature and amount of the damages sought, and the facts which gave rise to them, and must be submitted to the judge, without whose order the writ cannot issue.

In granting leave to issue the writ, the judge must fix the amount of the bail, upon giving which the defendant may be released.—O. C. 801, *am.*

Infra, arts. 904, 910, 913.

900. The affidavit may be made by one person only, or by several persons, each of whom swears to a portion of the necessary facts.—O. C. 807.

901. Any affidavit, founded upon information or belief, must state the grounds of such belief, and the sources of such information.—*New.*

See Form, Sched. S, Appendix.

902. The writ is issued by the prothonotary, or by the clerk of the Circuit Court, who, in such case, acts as an officer of the Superior Court, and draws up the writ as though it were issued by the prothonotary.—*New in part.* O. C. 797, 810, 811.

903. Before issuing the writ, the officer to whom the application is made must be satisfied that the allegations of the affidavit are sufficient.—*New.* C. S. L. C., c. 87, s. 1.

904. The writ is signed by the issuing officer; it must bear an endorsement stating the names of the person who made the affidavit, the amount for which the capias issued, and, in the case of article 899, the amount of the bail fixed by the judge.—O. C., 807, 803, *am.*

905. The writ is addressed in the manner prescribed by article 601.—O. C. 809, 810, *am.*; R. S. 5967.

Supra, art. 116.

SECTION II

Execution of the Capias.

906. If the writ of capias is addressed to the sheriff, he is bound to execute it or cause it to be executed by his officers.—O. C. 817.

Supra, arts. 125, 126, 868.

907. If the writ of capias is

addressed to a bailiff, he arrests the defendant and delivers him over, together with the writ, to the sheriff, who thereupon becomes responsible for the defendant.—O. C. 816, *am.*

908. The sheriff is bound to keep the defendant in the common gaol of the district until the latter gives security or is released from confinement.—O. C. 818, *am.*

909. It is sufficient to leave a copy of the declaration either with the defendant, or at the office of the court, within three days after the service of the writ.

Within the same delay, a copy of the affidavit must be served upon the defendant, or left at the office of the court.—*New in part.* O. C. 804.

Infra, arts. 939, 942, 948, 954.

SECTION III

Release upon Bail

910. Before the last day of the delay allowed for appearance, a defendant arrested upon capias may obtain his provisional release from confinement by giving good and sufficient sureties to the sheriff, to the satisfaction of the latter, that he will pay the amount of the judgment that may be rendered upon the demand, in principal, interest and costs, or, in the case of article 899, the amount of the judgment to the extent of the sum fixed by the judge, should he fail either to give bail pursuant to article 913 within ten days after the day upon which he must appear, or to surrender himself within such delay into the custody of the sheriff.

The sureties offered must, if the plaintiff or the sheriff so requires, justify their sufficiency on oath, but need not justify on real estate.—*New in part.* O. C. 828, *am.*

See Form, Sched. T, Appendix.

Civil Code, arts. 1938, 1939, 1940, 1962, et. s.

911. The sheriff is in such case responsible only for the sufficiency of the sureties at the time when the bail was given.—O. C. 829.

912. He may free himself from any further liability by offering an assignment of the bail-bond taken by him.

This assignment may be effected by simply endorsing his name on the bail-bond.—O. C. 830, *am.*

913. The defendant may obtain his release from confinement upon giving good and sufficient sureties, to the satisfaction of the judge or prothonotary, that he will make an abandonment of his property for the benefit of his creditors within thirty days after the rendering of judgment maintaining the capias, and also that he will surrender himself into the custody of the sheriff, when required to do so by an order of the judge, within thirty days after service of such order upon him or his sureties, and that, in default of such abandonment and surrender, or of either, such sureties will pay to the plaintiff the amount of the judgment in principal, interest and costs, or, in the case of article 899, the amount of the judgment to the extent of the sum fixed by the judge.—O. C. 776, 825, *am.*

See Form, Sched. V, Appendix.

Supra, art. 559 et. s.; *infra*,

art. 926. *Civil Code*, arts. 1938 et. s., 1962 et. s.

914. The release may be obtained in the manner prescribed by the preceding article at any time before judgment—O.C. 825.

915. Such bail is offered after one day's notice, containing a description of the sureties proposed, served upon the plaintiff or his attorney.—O. C. 826, *am*.

916. The sureties offered must, if the plaintiff so requires, justify their sufficiency on oath, but need not justify on real estate.—O.C. 827, *French Version*.

Supra, art. 516. *Civil Code*, art. 1939.

917. The sureties or any of them, may themselves arrest the defendant and deliver him to the sheriff; or may obtain without notice, from the prothonotary, an order commanding the sheriff or a bailiff to make the arrest.

The execution of such order is governed by the rules contained in articles 906, 907 and 908.—O. C. 831, *am*.

918. When the sureties have themselves arrested the defendant, the sheriff is not bound to receive him without a written requisition, signed by the sureties or by one of them, or by their authorized attorney.

The requisition must contain the title of the court, the names of the parties to the suit and of the sureties, and must require the sheriff to take the debtor into his custody.

It is the duty of the sheriff to give the sureties a certificate of such surrender. O. C. 832, —*am*

SECTION IV

Contestation of the Capias.

919. Upon petition presented to a judge, the defendant may have the capias quashed in the following cases:

1. Whenever he shows that the allegations of the affidavit upon which the capias is founded are insufficient;

2. Whenever he shows that he is exempt from arrest;

3. Whenever the plaintiff fails to establish the truth of the essential allegations of the affidavit.—O. C. 819, *am*.

Supra, arts. 15, § 8; 895, 896.

920. In order to decide upon this incidental proceeding, the judge may order the immediate return of the writ of capias and the proceedings had upon it; but the delays for pleading to the action are computed only from the date on which the return would otherwise have been made.—O. C. 820, *am*.

921. If the contestation is merely as to the sufficiency of the allegations of the affidavit, the judge may dispose of it after hearing the parties.—O. C. 821.

922. If the contestation is founded upon the falsity of the allegations, or upon the defendant's being exempt from arrest, issue must be joined upon the petition of the defendant independently of the contestation upon the principal demand.

The contestation is subject to the same rules and delays as summary matters.—O. C. 821, *am*.

Infra, art. 1156, et. s.

923. A defendant whose application to be released from confinement is rejected may appeal to the Court of Review or to the Court of Queen's Bench.—O. C. 822, *am*.

Supra, art. 52.

924. If the court or the judge quashes the capias, the plaintiff may obtain a suspension of the

judgment by declaring immediately that he intends to take the decision to review or to appeal.

In the former case, he must serve the inscription and deposit the amount required by article 1196 before the expiry of the next juridical day after the rendering of judgment, and, in the latter case, must serve the inscription within the same delay, and give security in the ordinary way.

If the plaintiff is entitled to appeal from the judgment in review, he must immediately declare his intention of doing so, file the inscription in appeal before the expiry of the next juridical day after the rendering of judgment in review, and give security in the ordinary way.

If the plaintiff fails to comply with these formalities, the defendant is released—.O. C. 823, *am.*; 54 Vic., c. 41, s. 3.

Infra, art. 1209.

SECTION V.

Effect of the Capias.

925. Upon a petition by the plaintiff. the debtor against whom a capias has been maintained, and who has been released upon bail, may be condemned by the court to imprisonment for an indeterminate time.

The order decreeing the imprisonment may be rendered as soon as judgment has been pronounced maintaining the capias, but it is executory only thirty days after its service.

In other respects, it is applied for, contested and executed in the same manner as coercive imprisonment.—*New*, O. C. 776.

Supra, art. 837 et s.

926. Saving the responsibility incurred by the sureties whenever the defendant has not made an abandonment of his property within thirty days after judgment maintaining the capias, the debtor may make such abandonment at any time. —*New in part*, O.C. 766; R. S. 5963.

Supra, arts. 853, 913.

927. Abandonments consequent upon capias are governed by the rules contained in articles 854 to 892, inclusive, except in so far as special provisions are contained in this section.—*New.*

928. The abandonment is made by filing the declaration and the statement in the office of the Superior Court for the district in which the capias issued.—O. C. 764, *am.*; R. S. 5954

Supra, arts. 850, 862.

929. After the appointment of the curator, the record of the proceedings upon the abandonment is transmitted to the prothonotary of the Superior Court for the district where the debtor has his place of business, or, in default of such place, where he is domiciled.

Nevertheless, if the debtor has no place of business or domicile in the Province, the record remains in the office of the court where the abandonment is made,—*New in part*, O. C. 768, *am.*; R. S. 5956.

Supra, art. 851.

930. The statement may, apart from the cases mentioned in article 885, be contested by reason of any secretion which preceded the capias and was the cause of it being maintained, unless the things secreted are

included in the abandonment; and if it is proved that such things are not therein included, the debtor is subject to the penalty imposed by article 888.—*New in part*, O. C. 773, *am.*

Supra, art. 852.

CHAPTER XXXIV.

Attachment Before Judgment.

SECTION I.

Simple Attachment.

I. SIMPLE ATTACHMENT **931**.
II. ATTACHMENT BY GARNISHMENT **940**.

931. A creditor may, before obtaining judgment, procure a writ to attach the goods and effects of his debtor, in any case wherein the defendant is personally indebted to the plaintiff in a sum exceeding five dollars:

1. In the case of the *dernier équipeur*:

2. When the defendant:—

a. Is immediately about to leave the Province with intent to defraud his creditors in general, or the plaintiff in particular, and the plaintiff will thereby be deprived of his recourse against the defendant; or

b. Is secreting or making away with, has secreted or made away with, or is immediately about to secrete or make away with, his property, with intent to defraud his creditors in general or the plaintiff in particular, and the plaintiff will thereby be deprived of his recourse against the defendant; or

c. Is a trader who has ceased his payments, and has refused to make an abandonment of his property for the benefit of his creditors, although duly required to do so.—O. C. 834, *am.*; R. S. 5970.

Supra, arts. 15, s. 8, 612, 895. *Infra*, art. 940.

932. The writ of simple attachment is addressed and executed in the manner prescribed by article 601.

It commands the sheriff or bailiff to attach the movable property of the defendant, and to summon the latter to appear and answer the demand and to hear the attachment declared valid.—O. C. 836, 840, *am.*; R. S. 5971.

933. The writ is obtained upon an affidavit of the plaintiff, his book-keeper, clerk, or legal attorney, setting forth, in the case of the *dernier équipeur*, the existence of the required indebtedness, and in other cases, besides the required indebtedness, the existence of any one or more of the other grounds for which attachment before judgment lies.—*New*, O. C. 834, R. S. 5970.

Supra, arts. 112, 119.

934. The writ is issued by the prothonotary or by the clerk of the Circuit Court, as the case may be, and is clothed with the formalities of ordinary summons.

It may also be issued for the Superior Court, by the clerk of the Circuit Court, who in such case acts as an officer of the Superior Court, and draws up the writ as though it were issued by the prothonotary.—O. C. 838, 839, *am.*, 840, *in part*.

935. The seizure of the property of the defendant and the nomination and powers of guardians and depositaries are

subject to the rules governing the execution of judgments.

The seizing officer may make the seizure in another district if the debtor has conveyed his property there or has withdrawn there himself.—O. C. 841, 851, *am.*

936. A copy of the writ of attachment must be served upon the defendant as soon as the seizure is completed.—O. C. 850.

937. If the defendant is absent from the Province, or conceals himself so as to prevent the service of the writ of attachment or of the minutes of seizure, the judge may, upon a return to that effect, prescribe the method of service.—O. C. 852, *am.*

Supra, arts. 145, 146.

938. A defendant whose effects have been seized may have them restored to him by the seizing officer within three days from the service of the minutes of seizure: —

1. By depositing with the seizing officer the amount indorsed on the writ, together with interest and costs, or such amount only, if it is for unliquidated damages; or

2. By giving the seizing officer, who is bound to accept them, good and sufficient sureties, who justify under oath to the amount indorsed upon the writ, with interest and costs, or to such amount only if it is for unliquidated damages, that he will satisfy the judgment that may be rendered.

In default of his doing so within the specified delay, the effects remain under seizure to satisfy the judgment, unless the judge orders otherwise.—O. C. 853, *am.*

939. The issue of the writ of attachment, its form, execution and contestation are governed, in so far as may be, by the provisions of articles 899, 900, 901, 903, 904, 909, and 919 to 924, inclusively.—*New.* O. C. 835, 837, 854.

Supra, arts. 52, 640.

SECTION II

Attachment by Garnishment

940. In all the cases where a writ of simple attachment may be granted, a creditor may also attach any movable property belonging to his debtor which may be in the hands of third persons, and also whatever sums they owe him.—O. C. 855, *am.*

Supra, arts. 15, s. 8, 677, 931; *infra*, art. 1152.

941. This attachment is effected by means of a writ addressed and executed in the manner provided by article 601, commanding the garnishees not to dispossess themselves of the movable property belonging to the debtor which is in their possession, and of such moneys or other things as they owe him or will have to pay him, until the court has pronounced upon the matter, and ordering them to appear on a day and at an hour fixed to declare under oath what property they have in their possession belonging to the defendant, and what sums of money or other things they owe him or will have to pay him, and summoning the defendant to appear on the day fixed and answer the demand of the plaintiff and to hear the attachment declared valid.

In seizing salaries and wages, the writ must also state the defendant's place of residence, and the nature and place of his

occupation.—*New in part*. O.C. 856, 857, *am*., 860; R. S. 5972.

Supra, art. 678.

942. The writ is clothed with all the formalities required for ordinary summons, and is subject to the provisions of articles 899, 900, 901, 903, 904, 909, 933 and 934, in so far as they can apply.—O. C. 858, 859.

943. The provisions contained in articles 679, 680, 682, 683, 684, 685, 686, 687, 688, 690, 691, 692, 693, 694, 695, 696, 697 and 698 are also applicable to attachment by garnishment.—O. C. 860, 862, 863, 864, *am*.

944. If the declaration of the garnishee is not contested, the judge, in rendering judgment upon the principal demand, adjudicates also upon the attachment and the declaration of the garnishee.—O. C. 861.

945. The contestation of the attachment by the defendant, and any appeal from the judgment upon the petition to quash, are governed by the rules contained in articles 919 to 924, inclusively.—O. C. 865, *am*.

CHAPTER XXXV

Attachment in Revendication

946. Whoever has a right to revendicate movable property may obtain a writ for the purpose of having it attached, upon production of an affidavit setting forth his right and describing the property so as to identify it.

This right of attachment in revendication may be exercised by the owner, the pledgee, the depositary, the usufructuary, the institute in substitutions, and the substitute.—O. C. 866.

Supra, arts. 15, s. 8; 112, 119, 876; *infra*, 1022, 1103, 1152.

Civil Code, arts. 459, 947, 956, 1543, 1993, 1999, 2268.

947. The writ of attachment in revendication orders the seizure of the effects revendicated, and that they be placed in the hands of guardians until judgment is rendered upon the revendication.

The name of the person upon whose affidavit the writ issues is indorsed upon the writ.—O. C. 867.

948. The formalities prescribed in articles 909, 932, 934, 935, and 936 are observed in attachment in revendication in so far as they apply.—O. C. 868, *am*.; 872;

949. The defendant may have the effects returned into his possession, upon giving good and sufficient sureties that he will produce them when required, which he is in such case bound to do in the same manner as a judicial sequestrator.

Nevertheless, the judge may, according to circumstances, grant possession of the effects to the plaintiff, subject to the same conditions.—O. C. 869, *am*.

Supra, art. 833, s. 2.

Civil Code, art. 1823 et. s.

950. Before the effects are delivered to the party applying for them, the other party may require an inventory thereof to be made, establishing the condition of the effects, their description and their value, in order to settle the amount of the security to be given, which is done by experts named in the ordinary course of procedure.—O. C. 870.

Supra, art. 392 et. s.

951. If neither of the parties applies for the effects seized, they remain in the custody of

the guardian appointed; or, at the request of either of the parties, the judge may, if they are of a nature to produce fruits, order them to be placed in the hands of a sequestrator.—O. C. 871.

Infra, art. 973, et. s.

CHAPTER XXXVI

Attachment for Rent

952. The owner or lessor may cause the effects and fruits in or upon the house, premises or lands leased, and subject to his privilege, to be seized for the rent, farm dues, or other sums due in virtue of the lease.—O.C. 873, *am.*; R. S. 5973.

Supra, arts. 15, s. 8; 119, 598, 599, 640, 871; *infra*, arts. 1089, 1152, et. s.

Civil Code, arts. 1619, et. s., 2005.

953. He may likewise follow and seize elsewhere, even for amounts not yet due, the movable effects which were in the house or premises leased, when they have been removed without his consent; but he must do so within eight days after their removal.

An attachment in recaption must be served upon the new lessor, who must also be summoned to show cause against its execution.—O. C. 873, *am.*; R. S. 5973.

Civil Code, art. 1623.

954. The provisions contained in article 935, as well as those contained in article 909, respecting the service of the declaration, apply likewise to attachment for rent.—O. C. 874, 875, *am.*; R. S. 5974.

CHAPTER XXXVII

Conservatory Attachment

955. If there is no other remedy equally convenient, beneficial and effectual, the plaintiff may obtain a conservatory attachment upon producing an affidavit, showing:

1. That he is entitled to reclaim the possession of movable property sold by him with a term for the payment of its price;

2. That he is entitled to rank by preference upon the price of movable property, and that it is being dealt with in such a manner as to defeat his remedy;

3. That he is entitled, by reason of some provision of law, to have movable property placed under judicial custody, in order to assure the exercise of his rights over it.—O. C. 834, 866; 54 V. c. 39, s. 1.

Civil Code, arts. 1543, 1998, 1999.

Supra, art. 15, s. 8.

956. The proceedings upon conservatory attachment are subject to the rules governing attachment before judgment, in so far as they can apply.

CHAPTER XXXVIII

Injunctions

957. Any judge of the Superior Court may grant an interlocutory order of injunction in any of the following cases:

1. At the time of issuing the writ of summons:

a. Whenever it appears by the petition that the plaintiff is entitled to the relief demanded, and that such relief consists, in whole or in part, in restraining the commission or continuance

of any act or operation, either for a limited period or perpetually;

b. Whenever the commission or continuance of any act or operation would produce waste, or would produce great or irreparable injury;

2. During the pendency of a suit:

a. Whenever the commission or continuance of any act or operation during the suit would produce waste, or would produce great or irreparable injury;

b. Whenever the opposite party is doing or is about to do some act in violation of the plaintiff's rights, or in contravention of law, respecting the subject of the action, which is of a nature to render the final judgment ineffectual.—*New.* O. C. 1033*a*; R. S. 5991; *Cal.* 526; N. Y. 603, 604; *Eng. J. A.* 1873, s. 25, sub-sec. 8; *Eng. R.* 657*a*, 662; *Ont. J. A.*, s. 53, sub-sec. 8; H. & L. 52 *et seq.*

Supra, art. 15, s. 8.

958. An injunction cannot be granted:

1. To restrain proceedings at law, saving the power of the court or of the judge to direct, by an order in any matter or suit pending before them, that the proceedings therein be stayed:

2. To restrain the exercise of any office in a public or in a private corporation.—*New. Eng. J. A.* 1873, s. 24, sub-sec. 5; *Cal. C. C.* 3423.

959. After the issue of an interlocutory injunction, any additional injunction which is deemed necessary may be granted.—*New.* O. C. 1033*i*; R. S. 5991; *Cal.* 527.

960. The application for an interlocutory injunction is made by petition, supported by one or more affidavits verifying its allegations.—O. C. 1033*b*, *am.*; R. S. 5991.

961. In cases of urgent necessity the judge may grant an interlocutory injunction without notice.

In all other cases he must require notice to be given to the opposite party in whatever manner he deems proper; but he may, in that event, grant an interim injunction, to remain in force during the time therein specified.—O. C., 1033*c*, *am.*; R. S. 5991; *Cal.* 530.

962. The judge may, when the petition is presented, allow either party to answer in writing the allegations of the opposite party, and to file affidavits or to adduce evidence if necessary, and may fix delays for so doing.—*New.*

963. No interim or interlocutory injunction can issue unless the person applying therefor first gives security, in the manner and for the amount prescribed by the judge and to his satisfaction, for the costs and damages which the opposite party may suffer by its issue.

In the case of an additional injunction, the judge may dispense with the obligation to give security.

The judge may at any time order that the security be increased or reduced, or that new security be given in place of any which has become insufficient.—*New in part.*—O. C. 1033*d*, 1033*i*; R. S. 5991.

Supra, art. 559 et. s.

964. The injunction consists of an order enjoining the opposite party, his servants, agents and employees, to refrain from *a* specified act, or to suspend all acts and operations respecting the matters in controversy, un-

der pain of all legal penalties. *New in part.*—O. C. 1033*a* 1033*e*, *am.*; R. S. 5991.

965. The order is served upon the opposite party in the manner provided for writs of summons, or prescribed by the judge.

When an interlocutory injunction is granted at the time of issuing the writ of summons, it is served along with such writ summoning the opposite party to answer upon the merits of the petition thereto annexed; but, when it is granted during the suit, it is served along with the petition.—*New.*

966. When an interlocutory injunction is granted without notice, the person against whom it is directed may, at any time before judgment, apply by motion to have it vacated or modified.

The contestation upon such application is governed by the provisions of article 962.—*New. Cal.* 523, 532.

967. Any injunction may from time to time be suspended for such period and upon such conditions, as to security or otherwise, as the judge deems reasonable, and may afterwards, in like manner, be renewed from time to time.—O. C. 1033*i*; R. S. 5991.

968. The final judgment adjudicates upon the conclusions of the petition, as well as upon the merits of the action.

If the judgment is in favor of the plaintiff, it pronounces the injunctions required, and adjudicates as to costs.

It must be served on the opposite party.—*New in part.* O. C. 1033*l*; R. S. 5991.

Supra, art. 547.

969. Any final judgment, confirming an interlocutory injunction, remains in force, notwithstanding appeal or review.

An interlocutory injunction remains in force, notwithstanding a final judgment dissolving it, whenever the petitioner, immediately upon the rendering of the judgment, declares his intention to take the case to review or to appeal, and, within two days thereafter, serves his inscription in review or in appeal.

The court before which the appeal is brought, whenever the application is made during term, or two judges of the Court of Queen's Bench or of the Superior Court, as the case may be, whenever the application is made out of term, may provisionally suspend any injunction. *New.* O. C. 1033*h*; R. S. 5991.

Supra, art. 608.

970. The judge may order the destruction, demolition or removal of anything done in contravention of the injunction, if it is practicable.—O. C. 1033*m*, *am.*; R. S. 5991.

Supra, art. 608.

971. Any person against whom an injunction is directed, who infringes or refuses to obey it, or any person who, although not named or described therein, knowingly contravenes its commands, is subject to a fine not exceeding two thousand dollars, payable to the Crown, with or without imprisonment for a period not exceeding sixty days, without prejudice to the right of the parties aggrieved to recover damages.

Such penalties may be repeatedly inflicted until the contravening party obeys the injunction.—*New in part.* O. C. 1033*n*, *am.*, 1033*n*; R. S. 5991.

972. The penalties provided

by the preceding article are imposed by rule previously served upon the contravening party.—*New.*

CHAPTER XXXIX.

JUDICIAL SEQUESTRATION.

973. All demands for sequestration are made by petition to the court or to the judge.

It may also, according to circumstances, be ordered by the court without being demanded by the parties.—O. C. 876.

Supra, art. 15, *s.* 8, 713, 951.

Civil Code, art. 1823, et s.

974. The judgment ordering sequestration commands the parties to appear before the court or before a judge, on a day fixed, to appoint a sequestrator; and if the parties cannot agree, or if one of them makes default, the judge appoints one of his own accord.—O. C. 877, *am.*; *Ord.* 1667, *tit.* 19, *art.* 4.

Supra, 591, s. 8.

975. Notice must be given to the sequestrator of his appointment and of the time and place at which he will be sworn.—*New. Ord.* 1667, *tit.* 19, *art.* 6.

976. The sequestrator must be sworn before the judge or the prothonotary to administer well and faithfully the things of which he is appointed depositary.

He is put in possession by a bailiff, who draws up a statement containing a description of the property sequestrated.

This statement must be signed by the bailiff and also by the sequestrator, if he can sign; if he cannot, mention must be made that he declared he could not sign after he was called upon to do so and the statement had been read to him.—O. C. 878.

Supra, art. 833, s. 2.

977. If either party, by violent means, hinders the appointment or the administration of the sequestrator, the other party may apply to be put provisionally in possession of the things in dispute, under the same conditions as a sequestrator.—O. C. 886.

FIFTH PART.

SPECIAL PROCEEDINGS.

CHAPTER XL.

Proceedings Affecting Corporations or Public Offices.

SECTION I.

I. Corporations Illegally Formed or Violating or Exceeding Their Powers **978**.

II. Usurpation of Public or Corporate Offices or Franchises **987**.

III. Mandamus **992**.

IV. Prohibition **1003**.

V. General Provisions **1006**.

978. In all cases of general public interest, the Attorney-General must and in all othe

cases may, but need not, unless sufficient security is given to indemnify the Government for the costs to be incurred, prosecute violations of the law in the following cases :

1. Whenever any association or number of persons acts as a corporation without being legally incorporated or recognized.

2. Whenever any corporation, public body or board violates any of the provisions of the acts by which it is governed, or becomes liable to a forfeiture of its rights, or does or omits acts, the doing or omission of which amounts to a surrender of its corporate rights, privileges and franchises, or exercises any power, franchise or privilege which does not belong to it or is not conferred upon it by law.—O. C. 997, *am.*; R. S. 5988.

Supra, 15, s. 5, 511.

979. When security of costs has been so given, the information must mention the names of the person who has solicited the Attorney-General to take proceedings and of the person who has become security for costs.—O. C. 997 *am.*; R. S. 5988.

980. The writ of summons can issue only upon the authorization of the judge granted upon the presentation of a special information containing conclusions adapted to the nature of the contravention, and supported by affidavit affirming the truth of the facts set forth in the information.—O.C. 998, *am.*; R. S. 5989.

981. The writ is in the same form as ordinary writs of summons.—O. C. 998, R. S. 5989.

982. Whenever the writ is addressed to persons usurping corporate rights, it is served either upon any one of such persons, or at the principal office or place of business of the association, by speaking to a reasonable person.—O. C. 999 *am.*

983. The proceedings are in all other respects subject to the same rules and delays as summary matters.—*New.* O. C. 999, 1000-1006.

Infra, 1153 et s.

984. If the judgment declares the association to have been illegally formed, the persons composing it are personally bound to pay the costs; and if it is rendered against a corporation, public body or board, the costs may be levied either upon the property of such corporation, public body or board, or upon the private property of the directors or other officers thereof.—O. C. 1007.

985. Whenever any corporation, public body or board has forfeited its rights, privileges and franchises, the judgment declares it to be dissolved and to be deprived of its rights.—O. C. 1008.

Civil Code, art. 368, s. 3.

986. Any creditor or other interested party may demand the appointment of a curator to the property of the corporation, public body or board so dissolved.

The rules governing the appointment of curators to dissolved corporations, their rights, powers and obligations, apply to such curators.—*New.* O. C. 1008, 1009-1015; C. C. 371-378*a*; R. S. 5798; C.C. 684-688; O. C. 1331-1336; R. S. 6022.

Infra, art. 1339.

Civil Code, art. 371 et s.

SECTION II

Usurpation of Public or Corporate Offices or Franchises

987. Any person interested may bring a complaint whenever another person usurps, intrudes into or unlawfully holds or exercises:—

1. Any public office or any franchises or privileges in the Province:

2. Any office in any corporation or public body or board.

Whether such office exists under the common law or was created in virtue of any statute or ordinance. C. C. P. 1016, *am.*

Supra, art. 15, s. 5.

988. The issue and the form of the writ of summons and the proceedings thereupon are governed by the rules contained in articles 980, 981 and 983.—O. C. 1017, *am.*

989. The plaintiff, in addition to the allegations concerning the usurpation and illegal detention of the office, franchise or privilege, may in his petition declare the names of the person who has a right to such office, franchise or privilege, and allege such facts as are necessary to show such right.

The court may in such case adjudicate upon the claims of both parties.—O. C. 1018, *am.*

990. If the petition is well founded, the judgment orders the defendant to be ousted and excluded from the office, franchise or privilege; the judge may also condemn the defendant to pay a fine not exceeding the sum of four hundred dollars, which must be paid over to the Crown.—O. C. 1019, *am.*; 54 Vic., c. 47, s. 1.

991. Any person whom the judgment declares to be entitled to the office, franchise or privilege may, after taking the oath of office, and giving such security as may be required, take upon himself the exercise of such office, franchise or privilege, and may demand of the defendant all keys, books or papers and insignia in the possession or custody of such defendant and belonging to such office, franchise or privilege; and in the case of neglect or refusal to deliver up the same, the court may order the sheriff to take possession of such keys, books, papers and insignia, and to deliver over the same to the person adjudged to be entitled thereto, without prejudice to criminal proceedings. — O. C. 1021, *am.*

Supra, arts. 579, 608.

SECTION III

Mandamus

992. If there is no other remedy equally convenient, beneficial and effectual, a mandamus lies to enforce the performance of an act or duty in the following cases:

1. Whenever any corporation or public body omits, neglects or refuses to perform any act or duty incumbent upon it by law;

2. Whenever any corporation omits, neglects or refuses to make any election which by law it is bound to make, or to recognize such of its members as have been legally chosen or elected, or to reinstate such of its members as have been removed without lawful cause;

3. Whenever any public officer or any person holding any office in any corporation, public body or court of inferior jurisdiction omits, neglects or re-

fuses to perform any duty belonging to such office or any act which by law he is bound to perform;

4. Whenever any heir or representative of a public officer omits, refuses or neglects to do any act which, as such heir or representative, he is by law obliged to do;

5. In all other cases in which the plaintiff is interested in requiring the performance of any act or duty which is not of a merely private nature.—O. C. 1022, *am.*; *Eng. R.* 719; C. P. L. 835.

Supra, art. 15, s. 5.

993. The writ of summons can issue only upon the authorization of a judge of the Superior Court, granted upon the presentation of a petition supported by affidavit, affirming the truth of the facts set forth in the petition.—O. C. 1023, *am.*; R. S. 5990.

Supra, art. 112.

994. The writ by which the proceedings are commenced is in the same form as ordinary writs of summons.—O. C. 998; R. S. 5989.

995. The proceedings are, in all other respects, subject to the same rules and delays as summary matters.—*New.* O. C. 1024.

Infra, art. 1153 et. s.

996. If the petition is well founded, the judge may order the issue of a peremptory writ, commanding the defendant to do the thing demanded of him.

Whenever an election has to be made, the judgment prescribes the mode in which advertisements must be given, which must be, so far as possible, the same as if the election had been made at the proper time.—*New in part.* O. C. 1025, 1028.

997. A copy of the peremptory writ is served upon the defendant in the manner provided for ordinary summons, or, if he has no domicile and cannot be found in the Province, in the manner prescribed by the judge.—O. C. 1030, *am.*; 51 Vic., c. 41, s. 5.

Supra, art. 145.

998. If the matter relates to the making by a corporation of any election to an office which is vacant by reason of such election not having taken place within the time required, or being or having been declared null, the proceedings are the same as above mentioned, and the writ commands the proper officer, or, in his absence, such person as is appointed by the judge, to proceed to such election, at the place and time fixed, after having given the notices therein prescribed, and to do every act to be done in order to such election, or to show cause to the contrary.—O. C. 1027, *am.*

999. Nevertheless, every such election and every act done thereto is void, unless as great a number of voters are present and vote thereat as would have been required if the election had taken place at the usual time and under ordinary circumstances.—O. C. 1029.

1000. Any person to whom, or the person representing any corporation to which the peremptory writ is directed, is bound to return the copy of the writ served upon him on the day specified, together wtih a certificate thereon of its execution.—O. C. 1026, *am.*

1001. If the defendant fails to comply with the peremptory writ, he may be held by coercive

imprisonment to do so, unless the defendant is a corporation, in which case it may be condemned to pay a fine not exceeding two thousand dollars, payable to the Crown, which is levied by execution in the ordinary manner against its movable and immovable property.

Such fine may be repeatedly inflicted until the mandamus is obeyed.—O. C. 1025, *am.*

Supra, art. 834.

1002. The penalties imposed by the preceeding article are inflicted by rule previously served upon the contravening party.—*New.*

SECTION IV.

Prohibition.

1003. The writ of prohibition lies whenever a court of inferior jurisdiction exceeds its jurisdiction.

It is applied for, obtained, contested and executed in the same manner as mandamus, and with the same formalities; and the writ of summons contains a summons to the court of inferior jurisdiction and to the party proceeding therein.—O. C. 1031, *am.*; C. P. L. 846.

Supra, art. 15, s. 5, 50.

1004. The peremptory writ commands the court of inferior jurisdiction and the party proceeding therein to discontinue all proceedings in the matter.—*New.*

1005. In the case of failure to comply with the peremptory writ on the part of any member of the court of inferior jurisdiction or of the party upon whom the writ has been served, a fine not exceeding two thousand dollars, payable to the Crown, with or without imprisonment for a term not exceeding one year, may be imposed for every such infraction.

Such fine is imposed in the manner prescribed in article 1002.—*New.*

Supra, art. 834.

SECTION V

General Provisions

1006. No appeal lies to the Court of Queen's Bench from any final judgment rendered under the provisions of this Chapter in matters relating to municipal corporations and offices.

In all other cases, the inscription in appeal from the judgment of the court of original jurisdiction, or from that of the Court of Review, can be filed only within thirty days from the rendering of the judgment appealed from.

Supra, art. 43 § 2, 52 § 4; *infra*, art. 1209.

CHAPTER XLI

Annulment of Letters Patent

1007. Any letters patent granted by the Crown may be declared null or be repealed by the Superior Court:

1. When such letters were obtained by means of some fradulent suggestion, or when some material fact has been concealed by the patentee, or with his knowledge or consent;

2. When they have been granted by mistake or in ignorance of some material fact;

3. When the patentee, or those claiming under him, have done or omitted to do some act,

in violation of the terms and conditions upon which such letters patent were granted, or for any other reason have forfeited their rights and interests in such letters patent.—O. C. 1034, *am.*

Supra, art. 509.

Civil Code, arts. 992, 993.

1008. All demands for annulling letters patent may be made upon information brought by Her Majesty's Attorney-General or Solicitor-General, or any other officer duly authorized for that purpose.—O. C. 1035, *am.*

1009. The writ is in the same form as ordinary writs of summons; and the proceedings are subject to the same rules and delays as ordinary matters.—O. C. 1036, *am.*

1010. The inscription in appeal from the judgment of the court of original jurisdiction, or from that of the Court of Review, can be filed only within thirty days from the rendering of the judgment appealed from.—O. C. 1037, *am.*; 54 Vic., c. 41, s. 7.

Infra, art. 1209.

CHAPTER XLII

Petition of Right

1011. Any person having a claim to exercise against the Government of this Province, whether it be a revendication of movable or immovable property, or a claim for the payment of money on an alleged contract, or for damages or otherwise may address a petition of right to Her Majesty.—O. C. 886*a*; R. S. 5976.

Supra, arts. 48, 54.

1012. Such petition is addressed to Her Majesty, and must state the names, the occupation or quality, and the domicile of the suppliant and of his attorney, if any, and be in other respects drawn up in accordance with the ordinary rules of pleading.—O. C. 886*b*, *am.*; R. S. 5976.

See Form, Sched. V., Appendix.

1013. The petition must be supported by an affidavit of the suppliant or of a competent person, verifying the truth of the facts therein alleged, and may be accompanied with a factum.—O. C. 886*c*, *am.*; R. S. 5976.

1014. The petition is left with the Provincial Secretary for submission to the Lieutenant-Governor, in order that he may consider it, and, if he think fit, grant his fiat that right be done.

No fee is payable on leaving or on receiving back the petition.—O. C. 886*d*; R. S. 5976.

1015. Upon the Lieutenant-Governor's fiat being obtained, the petition and fiat are filed in the office of the Superior Court in the district of Quebec.—O. C. 886*e*; R. S. 5976.

1016. The suppliant must, at the time he files his petition in the prothonotary's office, produce and file the written proofs which he has alleged in support of his claim, together with an inventory of such exhibits.

He must also deposit a sum of two hundred dollars, which sum is intended to pay the costs of the Government if the Court should grant any; if not, it is returned to the suppliant.—O. C. 886*f*; R. S. 5976.

Supra, art. 155 et. s.

1017. A copy of the petition and of the Lieutenant-Governor's fiat certified by the prothonotary, with an endorsation thereon that the deposit has

been made, is left at the office of the Attorney-General with a notice requesting the production of a contestation within thirty days after the date of service.—O. C. 886*g*; R. S. 5976.

See Form, Sched. W., Appendix.

1018. If within such delay, to be established by the production of a certificate of service of the petition, fiat and notice, a contestation is not filed, the suppliant proceeds as in a case by default.

If a contestation is filed, the subsequent proceedings are the same as in an ordinary contested case, save that a trial by jury cannot be had.—O. C. 886*h*, 886*k*; R. S. 5976.

1019. In case any petition of right relates to the recovery of any immovable or movable property which has been granted away or disposed of, by or on behalf of her Majesty and her predecessors, a writ of summons is issued by the prothonotary, upon the written requisition of the suppliant, and such writ is served, together with a copy of such petition and of the Lieutenant-Governor's fiat certified by the prothonotary, upon the person in the possession or enjoyment of such immovable or movable property, commanding him to appear before the court within the delay therein mentioned, and to plead to or answer the claim.—O. C. 886*i*, *am.*; R. S., 5976.

1020. The inscription in appeal from the judgment of the court of original jurisdiction, or from that of the Court of Review, cannot be filed except within thirty days from the rendering of the judgment appealed from.—O. C. 886*j*, *am.*; R. S., 5976.

Infra, art. 1209.

1021. The costs may be awarded to or against the suppliant, as in ordinary suits.

All costs adjudged shall be paid to or by the Provincial Treasurer, as the case may be. O. C. 886*l*; R. S. 5976.

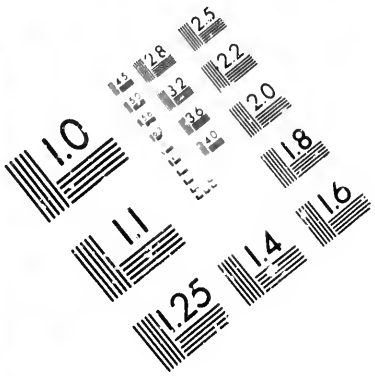
1022. When the Government is adjudged to surrender movable property, the suppliant may, after the expiry of the delay to appeal, or, in case of appeal, fifteen days after the rendering of the judgment in appeal, obtain a writ of attachment in revendication, under which the property is seized and delivered to the suppliant.—O. C. 886*m*; R. S. 5976.

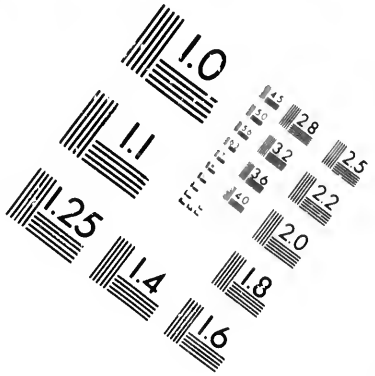
Supra, arts. 579, 964, et. s.

1023. When the Government is adjudged to surrender immovable property, the suppliant may after the expiry of the delay to appeal, or, in case of appeal, fifteen days after the rendering of the judgment in appeal, obtain a writ of possession, under which the suppliant is placed in possession.—O. C. 886*n*; R. S. 5976.

Supra, arts. 579, 610, 611.

1024. When the Government is adjudged to pay costs or a sum of money with or without costs to the suppliant, after the expiry of the delay to appeal, or, in case of appeal, after the rendering of the judgment in appeal, a certified copy of the final judgment may be left at the office of the Provincial Treasurer, and the Provincial Treasurer must pay out of any money in his hands for the time being, legally applicable thereto, or which may be thereafter voted by the Legislature for that purpose, the amount of any





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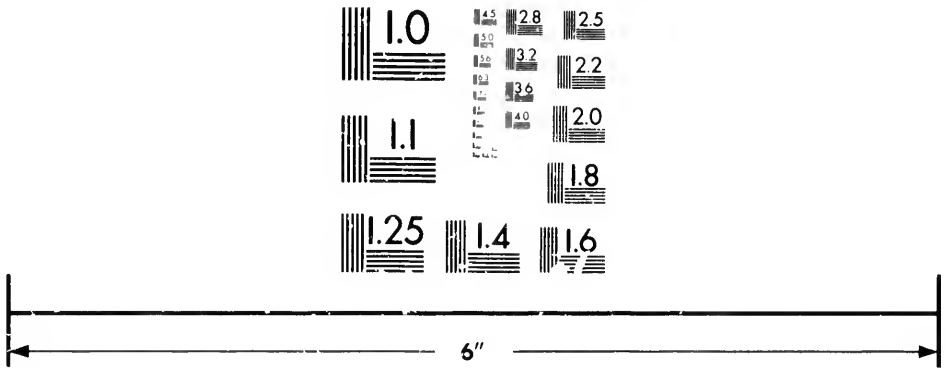

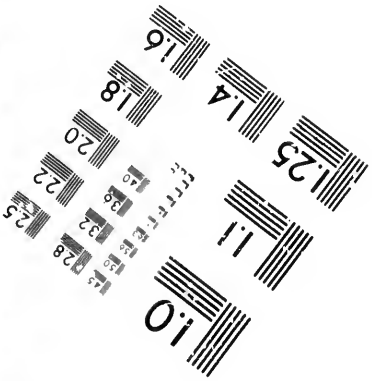

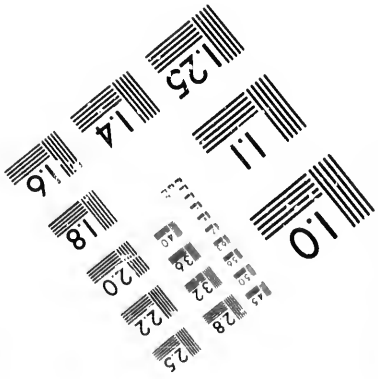

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moneys or costs which have been awarded to the suppliant by the judgment.—O. C. 886*o*, *am.*; R. S. 5976.

CHAPTER XLIII

Hypothecary Recourse Against Immovables of Which the Owners are unknown or Uncertain.

1025. When the owner of an hypothecated immovable is unknown or uncertain, the creditor to whom the capital or two years of the interest, or two years of arrears of any constituted or other rent, secured by such hypothec, is due, may present a petition to the Superior Court, praying for the sale of such immovable.—O. C. 900.

1026. Such petition must contain :—

1. All allegations necessary to establish the debt and the hypothec ;

2. A description of the immovable ;

3. The names of the occupier, if the immovable is occupied, and, if it is not, the names of the last known occupier, the period for which it has remained unoccupied, the names of all the known owners since the hypothec was created, and a declaration that the petitioner has in good faith made due search and used due diligence to discover the owner ;

4. Conclusions praying that public notice be given to the actual owner to appear and answer the petition, and that, in default of his doing so, the immovable be brought to sale.—O. C. 901.

Supra, art. 124.

1027. The petition must be verified by affidavit.—O. C. 902, *am.*

1028. The Court, upon this petition, orders such proof as it deems necessary ; and, if the proof offered is sufficient, it orders the publication of a notice in accordance with Schedule X, in the Appendix to this Code.—O. C. 903.

See Form, Sched. X., Appendix.

1029. The notice must be inserted once a week during four consecutive weeks in a newspaper published in the French language and in one published in the English language, in the district in which the immovable is situated, or, if there be none, then in two newspapers published in one of the nearest districts.

Except in the cities of Quebec, Montreal, Three Rivers, Sherbrooke, St. Hyacinthe and Sorel, and in the town of St. Johns, it must moreover be read and posted in both languages, at the door of the church of the parish in which the immovable is situated, on a Sunday, immediately after morning service ; if there is no such service, it is sufficient to merely post the notice.

If there is no church, the notice must be posted in the registry office of the locality.—O. C. 904, *am.*

1030. If, within two months from the last insertion in the newspapers, no person appears as hereinafter provided, the petitioner proceeds as in any other suit in which the defendant fails to appear ; and upon proof that the required formalities have been observed, the court declares the immovable hypothecated, and orders that it be sold for the payment of the

petitioner's claim.—O. C. 905.

See Form, Sched. Y., Appendix.

1031. Service of this judgment is not necessary.—O. C. 906.

Supra, art. 547.

1032. Fifteen days after judgment rendered, a writ issues commanding the sheriff to seize and sell the immovable hypothecated, observing the formalities required for ordinary seizures and sales of immovables, saving the minutes of seizure, which are not required.—O. C. 907, *am.*

Supra, arts. 614, 705, 708.

1033. Any proprietor, or any holder entitled to exercise rights of ownership, may, at any time before the rendering of the judgment ordering the sale, enter an appearance, specifying his title and the extent of his right of property; and, within two months, to be computed from the expiry of the delay mentioned in article 1030, the petitioner is bound to file in the office of the court a demand against the party appearing, for the recognition of the hypothec, and to serve it upon such party. The same proceedings are had upon such demand as upon ordinary suits for the recognition of hypothecs.—O. C. 908, *am.*

See Form, Sched. Z., Appendix.

Civil Code, art. 2058 et. s.

1034. If several persons appear, claiming to be owners, each one in opposition to the others, the petitioner cannot be prevented from proceeding by such opposite claimants, unless his application is contested by one of them, who must previously establish an ostensible right of property, or unless one of them pays the amount of his claim and costs.—O. C. 909.

1035. In the case of there being opposing claimants to the property, without any contestation of the hypothecary demand, the court may, reserving its decision upon the opposing claims, grant the prayer of the petitioner, saving to the parties appearing, and to those who have not appeared, their claims upon the balance of the moneys levied, the distribution of which is made in the ordinary course.—O. C. 910, *French Version.*

1036. If one or more known owners are in possession jointly with others who are unknown or uncertain, the creditor may, in the ordinary manner, sue the known owners as possessing jointly with others unknown or uncertain, and proceed in the same suit in the manner herein above provided, against those who are unknown or uncertain, modifying the notice which is to be published so as to meet the circumstances.—O. C. 911.

CHAPTER XLIV

Compulsory Partition and Licitation

1037. When co-heirs or co-proprietors cannot agree upon a partition of their common property, the action at law to obtain such partition belongs to the one who is first to institute it.—O. C. 919.

Civil Code, arts. 305, 689, et. s., 1363, 1452, 1898.

1038. All the co-heirs or co-proprietors must be parties in the suit for a partition.—O. C. 920, *am.*

Supra, art. 521.

1039. A special tutor must be named to each minor whose

interests are opposed to those of any other minor.—O. C. 921.

Civil Code, art. 693.

1040. The court, before rendering judgment upon the suit for partition, orders that the immovables shall be viewed and valued by experts appointed according to the ordinary rules, in order to ascertain whether the whole of the immovables can be conveniently divided, and, in such case, to form the shares according to the provisions of articles 702, 703 and 704 of the Civil Code.—O. C. 922.

Supra, art. 392 et. s.

Civil Code, art. 696.

1041. If all the parties are of full age they may agree on one expert.—O. C. 923.

Supra, art. 393.

1042. The same proceedings are had upon the report of such expert as upon any other report of experts.—O. C. 924.

Supra, arts. 406 et. s. 414 et. s.

1043. After the report of the experts has been homologated, the court sends the parties before the prothonotary or some other person to proceed with the allotment of shares, minutes of which are taken.—O. C. 925.

1044. If the suit is for an account and a partition, the lots are not formed until after the accounts, the returns, the formation of the mass and the pretakings have been determined by a practitioner, who is named by the parties or by the court, and whose report must also be homologated.—O. C. 926.

Supra, art. 410.

Civil Code, arts. 699 et. s.. 712 et. s., 1355 et. s. 1468.

1045. When immovables cannot be advantageously divided, or when there are not as many lots as co-partitioners, the court may order that such immovables be put up to public auction and be sold by way of licitation.—O. C. 927.

Civil Code, arts. 300, 698, 1562, 1563.

1046. Rules concerning voluntary licitation are contained in the Tenth Part of this Code.

The provisions of this Chapter apply to licitations judiciously ordered upon actions of partition.—O. C. 928.

Infra, arts. 1341 et. s. 1355, 1399 et. s.

Civil Code, arts. 698, 709.

1047. When the court has ordered a licitation, the plaintiff must give notice that the immovables therein designated will be put up to auction and adjudged to the highest and last bidder at the sitting of the Superior Court next after the expiration of one month from the first insertion of such notice, subject to the conditions mentioned in the list of charges, and announce that all oppositions to the sale must be filed at least twelve days before the day fixed for the sale, and that all oppositions for payment must be filed within six days after the adjudication, on pain of being foreclosed.—O. C. 929, *in part, am ;* R. S. 5980.

See Form, Sched. AA., Appendix.

1048. Such notice must be published :

1. By being inserted in the *Quebec Official Gazette* twice during the course of one month ;

2. Moreover, if the immovables are situated in the city of Quebec, Montreal, Three Rivers, Sherbrooke, St. Hyacinthe or Sorel, or in the town of St. Johns, by being inserted in a newspaper published in French and in one published in English

in the locality, and if there is only one newspaper in the district, or all are published in the same language, in both languages in the same newspaper; and, if the immovables are situated in a parish other than those contained in the above mentioned localities, by being read aloud and posted on the third Sunday before the day on which the licitation is to take place, at the door of the church of the parish in which the immovables are situated immediately after morning service, or if there is no church, at the most public place in the locality. If there is no service, it is sufficient to merely post the notice.—O. C. 929, 930, *am.*; R. S. 5980.

1049. If the plaintiff fails to proceed with the publication of such notice within fifteen days from the judgment of licitation, any other party may do so, and the first who takes such proceedings has the preference, and has alone the right to be paid the costs of the licitation.—O.C. 931.

1050. Oppositions to secure charges, to withdraw or to annul, in respect of immovables which are to be sold by licitation, cannot be received after the twelfth day previous to the day fixed for the licitation; if they are filed after that period, the right of the opposant is converted into an opposition for payment out of the price of the immovable.—O. C. 932, *am.*

Supra, arts. 799, 1047.

1051. If any opposition to secure charges, to withdraw or to annul or any other proceeding incidental to the licitation, cannot be decided before the day fixed for the sale, the licitation is suspended, and when rendering judgment upon such opposition or proceeding the court may, if necessary, fix another day upon which the sale may be proceeded with, after the parties have caused another notice, in the same form as the first in so far as it can apply, to be published in the *Quebec Official Gazette* at least two weeks before the day thus fixed.—O. C. 933, *am.*; R. S. 5981.

1052. Bids may be made in writing at the office of the court in the same manner as in cases of sale of immovables by the sheriff, and on the day appointed bids are received at the office of the court, but the adjudication is completed before the court.

Minutes are drawn up of such bids and adjudication.

Strangers are in all cases admitted to bid.—O. C. 934.

1053. The adjudication is made in accordance with the conditions contained in the list of charges, which must have been approved by the judge after hearing the parties, and must have been filed in the office of the court at least fifteen days before the day fixed for the sale.

After the adjudication is completed and the purchaser has complied with the conditions by paying the moneys which must be deposited in court, the prothonotary must prepare a deed of sale, which must be drawn similarly to a sheriff's deed in so far as the provisions of article 760 are applicable.—O C. 935, *am.*

1054. The adjudication, after the observance of the formalities above prescribed, transfers the property with its active and passive servitudes, has the same effects as a sheriff's sale, and discharges the property in the

same manner from such other charges, privileges and hypothecs as are not mentioned in the list of charges.—O. C. 936.

Supra, art. 778 et s.

Civil Code, arts. 2081, s.6, 2156, 2157.

1055. The price of the adjudication must be paid according to the conditions of the sale, and, unless otherwise provided, into the hands of the prothonotary within three days after adjudication, saving the purchaser's right to retain the moneys on giving security as in the case of a sheriff's sale; and the purchaser failing to pay such price is subject to the same penalties and liabilities as the false bidder upon immovables sold in execution.—O. C. 937, *am.*

Supra, arts. 759, 761 et s.

1056. All oppositions or claims for payment out of the proceeds of the licitation must be filed in the office of the court within six days after the adjudication, after which period they cannot be received except by order of the court and upon such conditions as it may impose.—O. C. 938.

Supra, arts. 790, 791, 792, 1047.

1057. The distribution of the purchase-money is subject to the same formalities as in cases of execution against immovables, and the party prosecuting the licitation is bound to obtain the certificate of registered hypothecs which is necessary for that purpose.—O. C. 939, *am.*

1058. If any immovable is situated partly in one district and partly in another, its licitation as a whole may be demanded and may be ordered in either district, if the jurisdiction in such case is not assigned by law to a particular court.—O. C. 940.

Supra, art. 101.

CHAPTER XLV

Actions of Boundary.

1059. Whenever two contiguous lands have never been bounded, or the boundaries have disappeared, or the fences or boundary works have been wrongly placed, and one of the neighbours refuses to agree upon a surveyor to determine the boundaries or to verify or to rectify the division line, as the case may be, the other party may bring an action against him to compel him to do so.—O. C. 941.

Civil Code, arts. 504, 504a.

1060. If the parties do not agree, the court names a sworn surveyor, whom it charges with making a plan of the locality, showing the respective pretensions of the parties, and with making such other operations as it may deem necessary.—O. C. 942.

1061. The surveyor thus named is bound, under his oath of office, to proceed in the same manner as experts.—O. C. 943.

Supra, art. 398 et s.

1062. If the parties desire it, more than one surveyor may be appointed.—O. C. 944.

1063. The fixing of bounds, the verifying of ancient boundaries or rectifying of division lines, is ordered in conformity with the rights and titles of the parties, and is done by the person named by the court, who proceeds in accordance with the judgment, and, if necessary, places boundary marks in presence of witnesses in accordance with law, and must draw up a

statement of his operations and return the original of such statement to the court.—O. C. 945, *am.*

CHAPTER XLVI

Possessory Actions

1064. The possessor of any immovable or real right, other than a farmer on shares or a holder by sufferance, who is disturbed in his possession, may bring an action in disturbance against the person who prevents his enjoyment in order to put an end to the disturbance and be maintained in his possession.

The action for repossession may be brought by any person who has had possession of an immovable or real right for a year and a day against any person who has forcibly dispossessed him.—O. C. 946.

Civil Code, arts. 476, 572, 2192 et s.

1065. Possessory actions must be brought within a year from the disturbance.—O. C. 947.

1066. Actions on disturbance or for re-possession cannot be joined with the petitory claim, nor can the latter be brought until the action on disturbance or for repossession has been terminated and the condemnation has been satisfied and executed.

Nevertheless, if the party who has obtained judgment is in default with regard to the taxation of the costs or the liquidation of the damages, the other party may bring his petitory action on giving security that he will satisfy such condemnation. —O. C. 948, *am.*

Supra, arts. 87, 610, 611.

CHAPTER XLVII

Discharge from Hypothecs, or Confirmation of Title

1067. Any person who has acquired immovable property by any title of a nature to transfer ownership may free such property from any hypothecs with which it is charged, by obtaining a confirmation of his title according to the formalities hereinafter prescribed. — O. C. 949, *am.*

1068. Such person must lodge the title which he seeks to have confirmed in the office of the Superior Court, in the district where the immovable is situated, or in which the confirmation of the title must be obtained, and obtain from the prothonotary a notice in French and in English, mentioning that the deed has been so lodged, containing a designation of the deed and of the parties thereto, a description of the immovable, the date at which the application for confirmation will be presented to the court, an indication of the persons who possessed the immovables during the three years next before such notice, and calling upon all creditors who claim to have any privilege or hypothec upon the immovable to file their oppositions within six days from the day fixed for presenting the application

If the deed comprises immovables situated in different districts, an application for confirmation of title should be made in each districts for such immovables as are situated therein.

When the immovable is situated partly in one district and partly in another, the proceed-

ings may be had in either district, and avail for the whole of the immovable.—O. C. 950, *am.*, 951.

See Form, Sched. BB. 1068.

Supra, art. 101.

1069. Such notice must be published :—

1. By being inserted in the *Quebec Official Gazette* twice during the course of one month ;

2. Moreover, if the immovable is situated in the city of Quebec, Montreal, Three Rivers, Sherbrooke, St. Hyacinthe or Sorel, or in the town of St. Johns, by being inserted in a newspaper published in French and in one published in English in the locality, and if there is only one newspaper in the district, or all are published in the same language, in both languages in the same newspaper ; or, if the immovable is situated in a parish other than those contained in the above-mentioned localities, by reading aloud and posting such notice on the third Sunday before the day on which the application for confirmation of title is to be made at the door of the church of the parish in which the immovable is situated immediately after morning service, or, if there is no church, at the most public place in the locality. If there is no service, it is sufficient to merely post the notice.—O. C. 951, 952, *am.;* R. S. 5982, 5983.

1070. In the case of immovables by fiction of law, the proceedings are had in the district where the vendor or assignor had his domicile during the three years next preceding the execution of the deed to be confirmed, or, if during that period he had his domicile in more districts than one, then in the district in which he is actually domiciled, giving the same notice in the other districts in which he was domiciled during such three years.—O. C 953.

Civil Code, art. 382.

1071. Upon the day mentioned in the notice, the applicant must present his application for confirmation to the court.—O. C. 954 ; R. S. 5984.

1072. The applicant must file with his application :—

1. Certificates of the publications and posting required, if such have been had, and copies of the *Quebec Official Gazette* and of the newspapers containing the notices ;

2. Certificates from the registrar or registrars within whose divisions the immovable is or was situated, prepared, in so far as may be, in conformity with article 771.—O. C. 954, 955, *am.* ; R. S. 5984.

1073.—The provisions of articles 772. 773 and 774 apply also to the certificate mentioned in the second paragraph of the preceding article.—O. C. 956, *am.*

1074. All hypothecary creditors, whose rights are not made known by the deed of which confirmation is sought, or by the registrar's certificate, are bound, on pain of being foreclosed from doing so, to file their oppositions on or before the sixth day after the day fixed for presenting the application.—O. C. 957, *am.*

Supra, art. 1068.

1075. No opposition is, however, necessary for the preservation of the principal of rents created in place of seignorial rights.

The provisions of articles 790 and 791 apply also to proceedings to obtain confirmation of title.—O. C. 958.

1076. During the month pre-

scribed for the publication of the notice of the application for confirmation of title, any creditor of the vendor or assignor or of his predecessors in title, may appear at the office of the court, and bid an increase over the sum, price, or other consideration or value, if any, mentioned in the title, and have his bid received, provided the increase be equal to at least one-tenth of the whole price, sum or other consideration of value, and the bidder offers, besides, to refund to the applicant all his costs and lawful disbursements, giving him security to that effect in the ordinary manner, or depositing for that purpose a sufficient sum, according to the discretion of the judge reserving the subsequent completion of the precise amount.—O. C. 959, *am.*; R. S. 5985.

1077. Any other creditor of the vendor or assignor may, in like manner, and under the same conditions, outbid such creditor, and all such creditors may continue outbidding each other, provided each outbidder offers an increase of at least one-twentieth of the price, purchase money or other consideration or value, over and above the costs and lawful expenses.—O. C. 960, *am.*

1078. The applicant may, however, retain the immovables at the amount of the highest bid legally offered.—O. C. 961.

1079. If no such outbidding takes place within the delay above-mentioned, the value of the immovable remains definitively fixed at the price and sum mentioned in the title-deed, saving the provisions hereinafter contained.—O. C. 962, *am.*

1080. If the applicant desires to discharge the property from hypothecs, he must deposit in the hands of the prothonotary, together with a certificate of hypothecs, the price mentioned in the title-deed, or the amount which such price has reached by the outbidding.

When, however, he has an hypothecary claim against the property, which appears by the certificate of the registrar, he may retain the purchase-money, to the extent of his claim, until judgment has been rendered, provided he furnishes the prothonotary with good and sufficient sureties for all damages that may be suffered by any interested party in the event of the non-payment of such sum as the court shall order.

If it appears by the certificate of the registrar that there are no hypothecs and if there are no oppositions or claims, or if the amount which has been deposited or for which security has been given is sufficient to pay all the charges which appear, then judgment of confirmation is pronounced purely and simply.—O. C. 963, *am.*; R. S. 5986.

1081. But if the sum which has been deposited or for which security has been given is not sufficient to pay all the charges and hypothecs which appear, or if no price is mentioned in the deed, the judge may, at the instance of the applicant, name two experts, and the applicant names a third, in order to determine the value of the property and to report thereon; the whole according to the ordinary formalities.—O. C. 964, *am.*

Supra, art. 392, et s.

1082. If the value determined by the experts does not exceed the price paid in by the

applicant, the judgment of confirmation is pronounced purely and simply.

If the value determined by the experts exceeds the price thus paid in, or if no price is mentioned in the title-deed, the applicant cannot obtain a confirmation unless he deposits the difference between the value thus ascertained and the price, or the whole of such value, if no price has been agreed upon.—O. C. 965.

1083. The provisions of the last two preceding articles do not apply to cases of expropriation of property by competent authority for public purposes when the compensation or indemnity has been settled by arbitration or by experts according to law.—O. C. 966.

Civil Code, arts. 407, 1589, et s. 2081, § 6. R.S. arts. 5754*a* et s.

1084. Upon proof of the observance of all the formalities hereinabove prescribed, judgment is pronounced confirming the title-deed as free from all hypothecs other than those mentioned in article 1075—O. C. 967.

Civil Code, art. 2081, § 7.

1085. If the applicant files a written declaration to that effect, judgment may be rendered subject to the hypothecs mentioned in the registrar's certificate, and to the oppositions and claims filed; and in such case the immovable is discharged only from such hypothecs as are not mentioned in such judgment.—O. C. 968.

1086. The price deposited is distributed under an order of the court, as moneys levied upon the seizure and sale of immovables under execution.—O. C. 969.

1087. The prothonotary, before delivering to any person a copy of any judgment of confirmation of title, must cause such judgment to be registered in the proper registry office, as prescribed in the title *Of Registration of Real Rights* in the Civil Code, and has a right to demand from the applicant the costs and expenses of such registration, and of the cancellings which it occasions.—O. C. 970.

Civil Code, arts. 2156, 2157.

1088. The word "hypothec" in this chapter includes all privileges affecting real estate. O. C. 971.

CHAPTER XLVIII

Certain Proceedings Between Lessors and Lessees.

1089. Whenever any rent is due by a lessee and is not paid when due, the proprietor or lessor may notify the lessee, in writing, to quit the premises leased within a delay which shall not be less than three clear days; and, if he quits within the said delay, the rent due is remitted him.

If the lessee refuses or neglects to comply with the said notice within the specified delay, the lessor may, by suit before a competent court, have all the movables garnishing the leased premises, and which have not been removed within the specified delay, attached, and have them sold in the ordinary manner, without the said lessee having any right to avail himself of the exemption from seizure provided for under articles 598 and 599, paragraph 2.

The lessor need not avail himself of the benefit of this article, and in that case he retains all

his rights and recources as though this article did not exist. *New.* O. C. 556*a*, 60 Vic., c. 55.

CHAPTER XLIX

Separation Between Consorts

I. Separation of Property **1090.**

II. Separation from Bed and Board **1099.**

SECTION I

Separation of Property

1090. No suit for separation of property can be brought by a married woman without the previous authorization of a judge, granted upon a petition to that effect, or upon conclusions for that purpose contained in the declaration in such suit. —O. C. 972.

Supra, arts. 78, 509.

1091. Suits for separation of property must be brought only in the cases mentioned in article 1311 of the Civil Code, and within the jurisdiction prescribed by article 96 of this Code.—O. C. 973, *am.*

1092. The formalities required for ordinary summons in [ordinary cases]* must be strictly observed in such suits, and the consort summoned has no power to dispense with the same, either directly or indirectly, even as regards the delay upon the summons.

Notice of such suit must be given and published during one month in the *Quebec Official Gazette*, and in two newspapers at, or as near as possible to, the place where the defendant resides, one of which is published in the French and the other in the English language.

No proceedings can be had in such suit until after the publication of such notice.—O. C. 974; R. S. 5987.

1093. Whenever the suit for separation of property is taken against the will of the husband, the wife may, with the authorization of the judge, obtain an attachment against the movable property of the community, for the preservation of the share which she will have a right to claim when the partition takes place.

The attachment is effected in the same manner as attachment for rent, but the husband remains judicial depository of the property attached.

The judge may, according to circumstances, allow the attachment to be released or suspended, with or without security.—*New.* O. C. 987; C. P. C. C. 204.

Supra, art. 952 et s.; *infra*, art. 1102.

Civil Code, arts. 204, 205.

1094. Any creditor of the person sued for separation of property has a right to intervene in the suit, in order either to watch the proceedings or to contest the plaintiff's claim, and he may for this purpose set up whatever grounds and exercise whatever rights his debtor might.—C. C. 975.

Supra, art. 220 et s.

Civil Code, arts. 1031, 1315, 1316.

1095. Separation of property thus sued for cannot be granted

* These words are found in the corresponding article of the old code, and appear to have been inadvertently omitted by the codifiers.

upon the confession or the admissions of the defendant; the allegations of the declaration must be established by some other legal proof.—O. C. 976.

Civil Code, art. 1311.

1096. The judgment pronouncing separation of property may at the same time determine the reprises of the plaintiff, or order that they be determined by a practitioner or by experts, if there is occasion for it.—O. C. 977.

Supra, arts. 392, 410.

Civil Code, art. 1314.

1097. Every judgment ordering separation of property must be inscribed without delay, by the prothonotary upon a list kept for that purpose, and posted in the office of the court which rendered the judgment; and such inscription and the date thereof must be mentioned at the end of such judgment in the register in which it is recorded. *New.* C. C. 1313, *in part*; R. S. 6235.

1098. The judgment of separation may be executed either voluntarily, by the actual payment, established by an authentic act, of what the wife has a right to receive or get back, or by legal means, by proceedings instituted for the purpose of obtaining such payment, but without prejudice to the rights of third parties.—O. C. 981; O. C. 1312, *in part*.

Civil Code, art. 1314*a* et s.

SECTION II

Separation from Bed and Board

1099. No suit for separation from bed and board can be brought except within the jurisdiction stated in article 96 of this Code.—*New.* C. C. 192, *am.*

Civil Code, art. 186 et s.

1100. The suit is brought, tried and decided in the same manner as all other civil suits; nevertheless, the parties cannot admit the allegations, proof of which must always be made before the court.—*New.* C. C. 193.

Supra, art. 509.

Civil Code, art. 186.

1101. A wife who desires to obtain a separation from bed and board must, in order to bring the suit, first obtain the authorization of a judge, by means of a petition giving a summary statement of the facts which give rise to her application, with an affirmation under oath, and indicating the house where she intends to reside during the suit, and where she will convey the linen and wearing apparel necessary for her use.

The application must be served upon her husband if the judge so orders.—O. C. 986.

Supra, art. 78.

Civil Code, arts. 191, 195, 201, 202, 203.

1102. If the wife thinks proper to demand an attachment of the movable property of the community for the preservation of the share, which she will have a right to claim when the partition takes place, she must likewise be authorized by a judge for that purpose.

The attachment is effected in the same manner as attachment for rent, but the husband remains judicial guardian of the property attached.

The judge may, according to circumstances, allow the seizure to be released or suspended, with or without security.—*New in part.* O.C. 987; C. F. C. C. 204.

Supra, arts. 952 et s. 1093.

Civil Code, arts. 204, 205.

1103. The wife may also join with her demand for separation an attachment in revendication of such movable property as belongs to her.—O. C. 988.

Supra, art. 946 et s.

1104. The trial of the case, the judgment, its execution and its publication are subject to the provisions contained in the preceding section.—O. C. 989.

Supra, art. 1095 et s.
Civil Code, art. 206 et s.

CHAPTER I.

Oppositions to Marriage

1105. Oppositions to marriage are brought before the Superior Court of the district of the domicile of the party whose marriage is opposed, or of the place where the marriage is to be solemnized, or before the judge of such court.—*New.* C.C. 115.

Supra, art. 15, § 6.
Civil Code, art. 136 et s.

1106. The opposition must be accompanied with a notice indicating the day and hour at which it will be presented.—O. C. 990, *am.*

1107. The opposition and notice must be served both upon the functionary called upon to solemnize the marriage and upon the intended consorts, or the persons who represent them, a delay of five intermediate days being observed, with the usual addition where the distance exceeds fifty miles.—O. C. 991. *am.*

1108. The proceedings upon the opposition are in other respects subject to the same rules and delays as summary cases between lessors and lessees.—O. C. 992, *am.*

Infra, art. 1154 et s.

1109. If the opposant fails to present his opposition upon the day fixed, any person interested may obtain judgment of non suit against him, upon filing a copy of the opposition served upon such person; and upon receiving a copy of such judgment, the functionary called upon to solemnize the marriage may proceed.—O. C. 993.

Civil Code, art. 143.

1110. If the opposant fails to proceed in the manner prescribed, the opposition is declared abandoned.—O. C. 994.

1111. The judge, before rendering judgment upon the opposition, may, if there be cause for it, summon the relatives, and, in default of relatives, the friends of the intended consorts, in order that they may give their opinion upon the intended marriage, and that such further action may be had as to law may appertain.

If the opposition is made by a tutor or curator the judge cannot decide upon it without the advice of a family council, which he must order to be called.—*New in part*, O. C. 995; C. C. 138.

1112. Whenever an appeal or review has been taken, the proceedings thereon are summary and have precedence.—O. C. 996, *am.*

1113. If the opposition is dismissed, the opposants, other than the father or mother, may be condemned to pay costs, without prejudice to the recourse in damages.—*New*, C. C. 147, *in part.*

CHAPTER LI.

Habeas Corpus Ad Subjiciendum in Civil Matters.

1114. Any person who is confined or restrained of his liberty, otherwise than under any order in civil matters granted by a court or judge having jurisdiction, or than for some criminal or supposed criminal matter, or any other person on his behalf, may apply to any one of the judges of the Court of Queen's Bench, or of the Superior Court, for a writ addressed to the person under whose custody he is so confined or restrained ordering the latter person to bring him forthwith before the judge who granted the writ, or before any other judge of the same court, together with the cause of his detention, in order to examine whether such detention is justifiable.—O. C. 1040, 1952, *am.*

Supra, a . 15, s. 7.

1115. The application must be supported by an affidavit, showing that there are probable and reasonable grounds for the application.—O. C. 1041.

Supra, art. 112.

1116. The writ issues in the name of the Sovereign, is sealed with the seal of the court to which the judge who granted it belongs, and is attested in the same manner as any other writ.

It is returnable without delay, unless a term of the court is so near that the writ cannot be executed before such term, in which case the judge may order the writ to be returned during term; and if the end of term be so near that the writ cannot properly be executed during the term, it may be made returnable during the following vacation.—O. C. 1042.

1117. The writ is served by leaving the original with the person himself to whom it is addressed, or by speaking to his domestic servant or agent at the place where the person is confined or restrained.

The return of service is made upon a certified copy.—O. C. 1043, *am.*

1118. If the person upon whom the writ of *Habeas Corpus* is served fails to comply with it, he is held to be guilty of a contempt of the court under whose seal the writ issued, and the judge may grant a rule under the seal of the court, returnable before such ju , or before the court for his imprisonment.—O. C. 1044, *am.*

Supra, art. 834.

1119. Upon the return of the writ of *Habeas Corpus*, or of the rule mentioned in article 1118, the judge proceeds, as soon as he conveniently can, to examine, by affidavit or by the examination of witnesses under oath, into the truth of the facts alleged, and decides accordingly.—O. C; 104 *am.*

1120. If the judge before whom the writ is returned in vacation is in doubt as to the truth of the facts alleged in the return, he may admit to bail the person so confined or restrained, upon his entering into a recognizance with one or more sureties, or in the case of minors or of women under marital authority, upon security being given by recognizance in a reasonable sum, for the appearance of the party before the court on a fixed day during the next term, and, from day to day, to abide such order as the court may make.—O. C. 1046, *am.*

1121. The writ of *Habeas Corpus* is thereupon transmitted to the court, together with the recognizance and all the papers connected with the application, and the court thereupon makes such orders as to justice may appertain.—O. C. 1047.

1122. The court may direct one or more written issues for the trial of the facts alleged in the return, and such issues are tried either by affidavit or by the examination of witnesses before the court or judge, as such court or judge may think proper.—O. C. 1048.

1123. The same proceedings are had in term in the Court of of Queen's Bench and in the Superior Court, respectively, for controverting the truth of the return.—O. C. 1049.

1124.—The court or the judge may pronounce upon all costs incurred in the issuing, contestation and execution of the writ of *Habeas Corpus*.—O. C. 1050.

1125. Whenever a writ of *Habeas Corpus* has been once refused by any judge, the application cannot be renewed before him or before any other judge unless new facts are alleged; but the application may be renewed before the Court of Queen's Bench at its next sitting in appeal at a place where appeals are brought from the district in which the application is made.—O. C. 1051.

SIXTH PART.

PROCEDURE IN THE CIRCUIT COURT.

CHAPTER LII

General Provisions

1126. All the powers conferred upon the Superior Court, or upon the judges and officers thereof, respectively, relatively to matters within their jurisdiction, are also conferred upon the Circuit Court, within the limits of its cognizance, upon the judges who hold such court, and upon the officers of the said court, respectively, with regard to the same matters and the other matters which form the subject of the present Part, or with regard to any other matter concerning the manner of conducting suits, actions or proceedings in the Circuit Court.

Whatever may or must be done by the prothonotary, as regards proceedings in the Superior Court, may or must be done in like manner by the clerk of the Circuit Court, as regards proceedings before the latter court, except, however, the judicial powers conferred upon the prothonotary in the absence of a judge.—O. C. 1059, *am.*

Supra, arts. 33, 54 et s.

1127. All commissioners and other persons authorized to receive affidavits to be used in the Superior Court have also like powers with regard to the Circuit Court.—O. C. 1060.

Supra, art. 25 et s.

1128. The Circuit Court for any district is held at the same place as the Superior Court, and

its jurisdiction extends over the whole district by the name of which it is designated.

It cannot, however, grant more costs against a defendant than he would have had to pay if he had been sued before the Circuit Court in the county in which he resides and in which the cause of action originated. —O. C. 1061.

1129. The Circuit Court for a county has jurisdiction over the whole extent of such county, even when more than one place therein is appointed for its sittings.—C. C. 1063.

1130. In the cases mentioned in article 49, the defendant may, before pleading to the merits, evoke the suit or action, and require it to be removed to the Superior Court in the same district for hearing and judgment.

The declaration of evocation is filed in the record, which is thereupon removed to the office of the prothonotary, and the Superior Court determines in a summary way whether the evocation is well founded or not. In the former case the Superior Court tries the cause and renders judgment therein; in the latter case the cause is sent back to the Circuit Court.

If, in any cause susceptible of being evoked, the defendant in his defence disputes or calls in question the plaintiff's title to any immovable, in such manner as might impair or injuriously affect the rights of the plaintiff in the future, the latter may evoke the suit, and proceedings are then had as in cases of evocation by the defendant.—O. C. 1058, *am.*

1131. All proceedings incidental to an execution against movable property, whatever may be the amount or the value of the thing claimed, are within the jurisdiction of the court which issued the writ.—O. C. 1083, 1103.

1132. The writ of execution against an immovable is returnable to the Superior Court of the district in which the judgment was rendered.—O. C. 1086, 1102, *am.*

1133. All proceedings incidental to the seizure or sale of immovables seized are carried on before the Superior Court, into which the writ of execution is returnable, in the same manner as if the judgment had been rendered by such court.—O. C. 1088, *am.*

1134. Upon the return into the Superior Court of a writ of execution against immovables, granted by the Circuit Court, the former court may order the clerk of the latter to transmit the original record in the case, that it may serve for all legal purposes.—O. C. 1090, *am.*

CHAPTER LIII

Procedure in Cases Susceptible of Review or of Appeal

1135. Saving the special provisions contained in the foregoing chapter, in all causes, matters and things susceptible of review or of repeal, instituted and pending in the Circuit Court, the rules governing proceedings up to judgment, judgments therein, remedies in the Circuit Court against such judgments, the execution of such judgments, oppositions to seizures and sales, attachments before judgment, attachments in revendication, attachments for rent, conservatory attachments,

and judicial sequestration, except those relating to trial by jury and to abandonment of property are the same as in like matters in the Superior Court. —*New* O. C. 1059, 1065.

Supra, art. 55.

CHAPTER LIV.

Procedure in Cases not Susceptible of Review or of Appeal.

1136. Saving the special provisions of Chapter Fifty-second, and of the present Chapter, in causes, matters and things not susceptible of review or of appeal, instituted and pending in the Circuit Court, the rules governing proceedings up to judgment, judgments therein, remedies in the Circuit Court against such judgments, the execution of such judgments, oppositions to seizures and sales, attachments before judgment, attachments in revendication, attachments for rent, conservatory attachments, and judicial sequestration, except those relating to trial by jury and to abandonment of property, are the same as in like matters in cases in the Superior Court.—*New*.

Supra, art. 54.

1137. When the writ of summons is addressed to the sheriff or a bailiff of a district other than that whence it issued, it may be served by the sheriff or any bailiff of such district; but he is entitled to no more costs than if the service had been effected by the bailiff nearest to the residence of the defendant thus summoned.

Any writ of summons, of subpœna or of execution, issued out of any Circuit Court in any county, may be served or executed by any bailiff residing in the district; but such bailiff is entitled to no more costs than if the service had been made or the execution had been effected by the bailiff residing nearest to the residence of the person summoned or against whom the execution is taken.

Nevertheless, in any case in which it is established, to the satisfaction of the judge or of the clerk, that such writ should be addressed to and executed by the sheriff or some other bailiff, it may be so addressed and executed; in which case the costs are taxed as from the office of the sheriff or from the residence of such bailiff, and for the distance actually travelled—O. C. 1068, *am.*; R. S. 5997.

Supra, art. 116.

1138. If the defendant is in default to appear or to plead, the plaintiff is not bound to give notice of the inscription for proof, when such proof is necessary, or of the inscription for judgment—O. C. 1099.

Supra, arts. 418, et s. 532 et s.

1139. The delay for pleading to the merits is four days from the appearance of the defendant.

There is a like delay of four days between each subsequent pleading allowed by law.—O. C. 1070, *am*.

Supra, art. 9. *Infra*, arts. 1155, 1156.

1140. Immediately after issue joined, the case may be inscribed by either party for proof and hearing.

Article 295 does not apply to any such inscription—O. C. 1072, *am*.

Infra, art. 1158.

1141. Notice must be given to the opposite party at least

three days before that fixed for proof and hearing.—O. C. 1099.

Infra, 1159.

1142. The proof is made orally and in open court, without notes thereof being taken. —O. C. 1101.

1143. No person residing at a distance of more than forty-five miles from the place where the proof is to be taken, or beyound the limits of the circuit, is bound to attend as a witness unless he is summoned in conformity with the provisions contained in articles 299 and 300.—O. C. 1076.

1144. Issues of law are raised by demurrer; and whenever a demurrer or an answer in law has been filed, the case may, nevertheless, be inscribed for proof and hearing, reserving the argument upon the law issues until after the proof.—O. C. 1077, *am.*

Infra, 1157.

1145. The judge may at any time order the proof to be had, or a witness or a party to be examined in another circuit, and may order that the record, or a part thereof, be transmitted for that purpose, according to the provisions contained in articles 357 and 358.—O. C. 1078, *am.*

1146. Whenever, in consequence of an opposition to the seizure or sale, an order to stay execution is necessary, it may be granted by the judge, either within or beyond the limits of the circuit, or by the clerk.—O. C. 1084, *am.*

1147. In default of movable property, the judgment may be executed upon such immovables of the debtor as are within the limits of the district in which the judgment was rendered, or in any other district.

Nevertheless, saving the cases mentioned in article 1148, judgments for sums not exceeding forty dollars can be executed only against the movable property.—O. C. 1085, 1102.

Supra, art. 614.

1148. In the case of an immovable which is declared by the judgment to be hypothecated, and has been surrendered, or in cases of arrears of rents constituted under the Seignorial Act of 1854, whatever may be the amount thereof, a writ of execution may issue immediately against such immovable. —O. C. 1087, 1102, *am.*

Supra, art. 614.

1149. All cases not susceptible of review or of appeal are determined in a summary manner; and, when the amount claimed does not exceed twenty-five dollars, they are decided according to equity and good conscience.—O. C. 1104.

Infra, art. 1253.

SEVENTH PART.

SUMMARY MATTERS

CHAPTER LV

Procedure in Summary Matters

1150. The following are deemed to be summary matters, and are tried as such according to the rules set forth in this chapter:

1. Actions arising from the relation of lessor and lessee;

2. Actions founded on bills of exchange, promissory notes, cheques, or orders for payment, *bons* or acknowledgments of debt ;

3. Actions by traders for the price and value of goods or articles sold, work done, materials furnished or moneys disbursed in the ordinary course of their commercial operations ;

4. Actions by farmers for the price of their farm produce ;

5. Actions by advocates, notaries and physicians to recover sums due them for professional services ;

6. Actions by printers for printing, publications, or work performed by them in that capacity, as well as those for the price and value of subscriptions to newspapers ;

7. Actions founded upon loans of money, whether secured by hypothec or not ;

8. Actions for salary or wages of schoolmasters, teachers, clerks, employees, workmen and laborers, as well as actions arising from the relations between servants and their masters ;

9. Actions by hotel and boarding-house keepers for sums due for board and lodging ;

10. Actions arising from the purchase or sale of rigging, or from fitting out and provisioning vessels ;

11. Actions arising from freighting, chartering and loans upon respondentia ;

12. Actions arising from engagements or agreements for wages and hiring of crews ;

13. Actions arising from engagements of seamen for service in merchant shipping ;

14. Actions to unseat or disqualify mayors, aldermen, municipal councillors or school commissioners,—*New in part.* O. C. 887 ; R. S. 5977 ; 53 Vic., c. 61, s. 1 ; 54 Vic., c. 41, s. 4.

Supra, art. 15, § 1, 2, 3.

1151. Saving the special provisions contained in this chapter, the rules governing procedure in ordinary cases apply likewise to summary matters. —*New.*

1152. In the actions mentioned in paragraph 1 of article 1150, the class of action and the jurisdiction of the court are determined by the value or the amount of the rent or the amount of the damages alleged.

The lessor may join with his action a demand for such rent as he is entitled to, with or without an attachment for rent, an attachment in recaption, an attachment before judgment in hands of the lessee or of garnishees, or an attachment in revendication of movable property leased.—O. C. 888, *am.;* R. S. 5977 ; C. S. L. C., c. 40, s. 9.

Civil Code, arts. 1624, 1625, 1641.

1153. In the actions mentioned in paragraph 1 of article 1150, the delay upon summons is only one intermediate day when the place of service is within a distance of fifteen miles, with an additional day for every fifty miles in addition; provided always that the delay need never exceed twenty days, whatever the distance.

In other summary actions, the delay for summons is the same as is prescribed by article 149.—O. C. 891, *am.*; R. S. 5977.

Supra, art. 9.

1154. Notice of motions urging preliminary exceptions must be given to the opposite party within two days from the return, saving the cases mention-

ed by articles 177, paragraph 6, 178 and 181.—*New.*

Supra, arts. 9, 15, § 3, 164 et s.

1155. The defence must be filed within two days from the return of the action.

Nevertheless, whenever preliminary exceptions have been filed, this delay runs from the time of judgment upon such exceptions, except where it is otherwise provided in the first section of chapter sixteenth of this Code.—O. C. 892; R. S. 5977.

Supra, arts. 9, 15, § 3; 202 et s.

1156. Any other pleading which may be necessary to complete the issues must be filed on the juridical day following the filing of the pleading immediately preceding it.—O. C. 892, 3, 893, *am.*; R. S. 5977.

Supra, arts. 9, 202 et s.

1157. The hearing upon an inscription in law can only be had upon the expiry of one day from its service upon the opposite party.

Nevertheless, in cases not susceptible of review or of appeal, the case may be inscribed for proof and hearing, reserving the argument on the law issues until after the proof.—*New.*

Supra, arts. 191 et s. 1144.

1158. As soon as issue is joined, or judgment has been rendered on the inscription in law, if there is one, the case may be inscribed for proof and hearing.—O. C. 894, 897*a*; *am.*; R. S. 5977.

Supra, arts. 293 et s. 1140.

1159. A notice of at least three days must be given to the opposite party of the day fixed for proof and hearing.—O. C. 897*a*, *am.*; R. S. 5977.

Supra, art. 9

1160. Judgment may be rendered either in term or out of term.

It is executory eight days after it is rendered.

The delay for ejectment, however, in the actions mentioned in paragraph 1 of article 1150, is within the discretion of the court.—O. C. 898: R. S. 5977.

1161. The delays respecting summons and pleadings also apply to all interventions, oppositions or other incidental proceedings of the same nature. —O. C. 899; R. S. 5977.

1162. The words: "summary procedure," must be written or printed at the head of each original and copy of the writ of summons issued under the provisions of this chapter, which provisions must be interpreted so as not to take away the right of proceeding under the ordinary rules of procedure.—O. C. 899*a*; R. S. 5977; 53 Vic., c. 61, s. 3.

EIGHTH PART.

REMEDIES AGAINST JUDGMENTS

CHAPTER LVI

Oppositions to Judgments

1163. Any defendant condemned by default to appear or to plead may, if he was prevented from filing his defence by surprise, fraud or any other cause considered sufficient by the judge, obtain relief from the judgment by means of an opposition.—O. C. 483*a*, 484.

Supra, art. 830.

1164. The opposition must contain all grounds, whether in support of the opposition or of the defence.—O. C. 485, *am.*; 483*a*, *in part*.

1165. The opposition must be accompanied with an affidavit that the facts therein contained are, to the deponent's knowledge, true.—O. C. 486, 483*a*.

See Form, Sched. CC., Appendix.

1166. The opposition must be made within fifteen days after service of the judgment: or, if there is no such service, it must be made either before the sale under the seizure, or within ten days from a return of *nulla bona*, or within ten days from the service upon the defendant of any seizure by garnishment issued by virtue of such judgment.—O. C. 484, *am.*

1167. Notwithstanding the expiry of the above delays, the defendant may be allowed to make opposition, upon establishing that, owing to absence, severe illness or other circumstances of irresistible force, he was prevented from learning of the action or of the judgment, or from making opposition within the prescribed delays.

In such case, however, the opposition does not lie whenever, after the hindrance ceases or knowledge is obtained of the action or of the judgment or of proceedings in execution, the defendant, if he is present in the Province, fails to make opposition within a delay of fifteen days, or, if he is absent therefrom, within such delay as is considered necessary according to the distance.—*New.* C. P. G. 138, 139.

1168. The opposition is filed in the office of the court, but it is without effect, and cannot be received by the prothonotary unless it is accompanied with an order of the judge allowing it to be filed.—O. C. 487, 483*a*.

1169. The defendant must deposit in the office of the court a sum sufficient to meet the costs incurred after the return of the writ up to the judgment, and the service thereof.

Such sum is paid to the party indicated by the judgment on the opposition.—O. C. 486, *am.*

1170. Within three days after filing the opposition, the defendant must, on pain of nullity, serve a copy thereof, together with a copy of the certificate of filing, either upon the parties in the cause, or, if the opposition is made within a year and a day after the judgment, upon their attorneys.—O. C. 489, *am.*

1171. If the opposition is made after the issue of a writ of execution, a copy of the certificate of the filing of the opposition is served upon the officer charged with the writ.—O. C. 488, *am.*

1172. The service of the opposition and certificate has the effect of staying the execution or of suspending the sale under the seizure until final judgment on the opposition.

In the case provided for by the preceding article, the officer must, immediately after service of the certificate of the filing of the opposition, return into the office of the court the writ of execution and the certificate served upon him.—O. C. 488, *am.*

1173. The opposition forms part of the proceedings in the original suit, and is a defence to the action. It is subject to the same rules and delays as such action. The delays for con-

testing the opposition are computed from its service.—*New in part*, O. C. 489, 490.

1174. A party must bear all costs incurred by reason of his own default, whatever judgment be rendered on the opposition.—*New*, C. P. G. 145, s. 1.

CHAPTER LVII

Petitions in Revision.

1175. Whenever the defendant has not been served personally or at his real domicile, or ordinary and actual place of residence or of business, he may apply by petition, within a year and a day, for the revision of any judgment rendered against him by default.—O. C. 483, *am.*

1176. The petition in revision is governed, in so far as may be, by the rules contained in articles 1164, 1165, 1167, 1168, 1170, 1171, 1172, 1173 and 1174.—*New.*

CHAPTER LVIII

Petitions in Revocation of Judgment

1177. Judgments which are not susceptible of being appealed from or opposed, or against which adequate relief cannot be obtained by means of appeal or opposition, may be revoked upon a petition presented to the same court by any person who was a party or was summoned to be a party to the action, in the following cases:

1. Where fraud or artifice has been employed by the opposite party;

2. Where any proceeding prescribed by law has not been adopted, and the nullity resulting therefrom has not been covered by the parties;

3. Where the judgment decides matters not submitted for decision;

4. Where the judgment is for more than was demanded;

5. Where the judgment has omitted to pass upon any part of the demand;

6. Where the judgment has been rendered upon documents which have only subsequently been discovered to be false, or upon any unauthorized tender or consent disavowed after judgment;

7. Where, after judgment, rendered, documents of a conclusive nature have been discovered which had been withheld, owing to circumstances of irresistible force, or had been withheld or concealed by the opposite party;

8. Where, after judgment, other new evidence of a conclusive nature has been discovered, which satisfies the conditions contained in article 505.

9. Where, in the case of minors or interdicted persons, no defence or no valid defence, has been made in their behalf.—*New in part*, O. C. 505; C. P. C. F. 480, 481; C. P. G. 281, 284; *Ord.* 1667, *tit.* 35.

Supra, arts. 113, 830.

1178. It can be received only during six months, to be computed, in the case of persons of full age, from the service of judgment, or from notice thereof, or from their obtaining knowledge of such judgment, and, in the case of minors, from the service of judgment made after their majority.—*New in part*, O. C. 506, C. P. C. F. 483.

1179. When the petition in revocation is based upon the falsity of documents, fraud or the discovery of documents withheld or concealed, or of any

other new evidence, the delays run only from the date when such falsity or fraud is ascertained, or such documents or evidence are discovered.—*New in part*, O. C. 506, C. P. C. F. 488; *Ord.* 1667, *tit.* 35, *art.* 12.

1180. When the petition in revocation is based upon any unauthorized tender or consent, the delay runs from the rendering of judgment maintaining the disavowal.—*New.*

Supra, art. 252.

1181. The petition must be accompanied with an affidavit that the facts therein alleged are true.—*New.*

1182. The petition in revocation cannot prevent or stay execution unless an order to suspend is granted by the judge.—C. C. P. 507.

1183. The attorney who acted for a party in the cause may also represent him upon the petition in revocation of judgment, without a new power being required.—O. C. 508.

1184. If there are sufficient grounds for a petition in revocation of judgment, the court may replace the parties in the same position as they were in before the fact which gave rise to the petition, and the proceedings thereon are subject to the same rules and delays as the original action.

The court may also give judgment at the same time upon the petition and upon the merits of the original action.

In all cases it adjudicates upon the costs of the first judgment, according to circumstances.—O. C. 509, *am.*

CHAPTER LIX

Oppositions by Third Parties.

1185. Any person, whose interests are affected by a judgment rendered in a case in which neither he nor persons representing him were made parties, may file an opposition to such judgment—O. C. 510.

Supra, art. 77.

1186. This opposition is made by petition to the court, and is accompanied with an affidavit of the truth of the facts therein alleged.

It must be served either upon all the parties in the cause, or, if it is made within a year and a day after the judgment, upon the attorneys who represented him.—O. C. 511, *am.*; R. S. 5911.

1187. This opposition cannot prevent or stay execution unless an order to suspend is granted by the judge.—*New.*

1188. The proceedings upon opposition by third parties are, after the filing thereof, subject to the same rules and delays as the original action.—O. C. 512, *am.*

CHAPTER LX

Review Before Three Judges.

1189. The review takes place before three judges of the Superior Court, sitting as a court of review.—O. C. 495. R. S. 5907.

Supra, arts. 51, 52, 53.

1190. The judge who rendered the judgment complained of cannot sit in review, except in the following cases:

1. When the proceedings in review are being prosecuted by default or *ex parte;*

2. When judgment in review is to be rendered by consent;

3. When the issue relates only to matters of procedure in review.—*New in part*, O. C. 495; R. S. 5907.

Infra, art. 1229.

1191. The time and duration of the sittings in review are regulated by the court and by the rules of practice.—O. C. 500, *am.*; R. S. 5909.

1192. The court may sit in two or more divisions at the same time, in separate apartments.

Each division of the court, when so sitting, has jurisdiction for hearing and determining all cases and matters submitted to it, and has the same powers as if sitting in one division only.—O. C. 499*a*; 59 Vic., c. 44, s. 1.

1193. Proceedings in review may be brought by the legal representatives of a party to a suit who has died.—*New*. O. C. 1154.

Supra, art. 270: *infra*, art. 1226.

1194. Proceedings in review of judgments rendered against a woman who has since married may be brought by her husband, jointly with her; or, in the case of a judgment rendered against a party represented by a tutor or curator or other person, but who has since attained full age or come into the exercise of his rights, by such party himself, without the assistance of the tutor or curator who represented him or other person who assisted him in the original suit; or in the case of a judgment rendered against testamentary executors, some or all of whom have been replaced or have died, by the persons appointed in their stead or by the remaining executors.—*New*. O. C. 1154.

Supra, arts. 78, 81, 270; *infra*, art. 1226.

1195. If some of several parties die after the inscription in review, such proceedings may be continued by and between the other surviving parties.—*New*, O. C. 1155.

Infra, art. 1226.

1196. The review cannot be obtained until the inscribing party has deposited in the office of the court by which the judgment was rendered within eight days after the date of the judgment:—

1. The sum of fifty dollars, in matters wherein the amount in controversy does not exceed four hundred dollars;

2. The sum of seventy-five dollars in all other cases.

The deposit is intended to pay the costs in review of the opposite party, if any are allowed; otherwise, it is returned to the party by whom it is made.

When the judgment has been rendered elsewhere than in the City of Quebec or of Montreal, an additional sum of three dollars, for making up and transmitting the record, must accompany the deposit.—O. C. 497, *am.*; R. S. 5908.

Supra, arts. 9, 10 924; *infra*, art. 1210.

1197. When several parties inscribe separately in review, a deposit must be made with each inscription.

Nevertheless, only one deposit is necessary whenever there has been a single trial and judgment upon a principal and an incidental or cross demand.—*New*.

Supra, art. 217.

1198. The inscribing party must file in the office of the

court, as soon as the required deposit has been made, an inscription for review, notice of which must be given to the opposite party or to his attorney.

The prothonotary is then bound to forthwith transmit the record, together with a copy of the judgments and orders rendered in the case, to the prothonotary of the Superior Court at the place where the case is to be heard, if it is not there already.—O. C. 498.

Supra, arts. 31, 53, 493.

1199. The deposit and the inscription have the effect of staying the execution of the judgment and of suspending proceedings on the appeal.—O. C. 499, *am.; Cassils* vs. *Fair*, 2 Q. B. R. 382.

Supra, arts. 597, 969; *infra*, art. 1210.

1200. The provisions of articles 279 to 285, concerning peremption of suits, apply also to review.

Peremption has the effect of dismissing the inscription in review.—*New*. O. C. 1168.

Infra, art. 1239.

1201. If the suit is pending in the Superior Court at Quebec or Montreal, the prothonotary must set down the case on the roll for hearing as soon as the inscription and notice are filed; or, if it is pending elsewhere, as soon as he receives the record.—O. C. 501, *am.*

1202. The inscription is not made for any particular day; but the case must be heard, in its turn, on the day in the sittings in review next after the expiry of eight days from the day on which the notice of inscription was filed in the office of the court in which the judgment was rendered.

The court may, however, on motion, of which notice has been given to the opposite party, accompanied with an affidavit establishing that the inscription in review of any cause was made with the view of unjustly obtaining delay, order that, after the expiry of the above delays, it shall be heard, before its turn, on any day or days specially fixed for that purpose.

Cases instituted in virtue of paragraph 4 of article 52 have precedence over all other cases; but such precedence does not continue without leave of the court if the case is once called and is not proceeded with.—O. C. 500, 500*a*, *am.;* R. S. 5909, 5910; 59 Vic., c. 44, s. 2.

Supra, arts. 10, 1112.

1203. The original judgment may be confirmed, reversed or modified by all the judges who heard the case, or by a majority of them; and, unless an appeal to Her Majesty is taken, their judgment, together with the record, must be sent back to the court in which the case was first decided, to be there registered as being the judgment in the suit, at the same place, in the same manner and with the same effect as if it had been rendered on the day upon which it was received by the prothonotary.—O. C. 502, *am.*

Supra, arts. 31, 69.

1204. Whenever any cause has been heard in review by three judges, and at least one of the judges who heard the same is present in court and ready to render any interlocutory or final judgment therein, then if any judge who heard the cause, and would be competent to sit in judgment therein, be

absent by reason of his appointment to another court, of illness or any other cause, but has addressed a letter to the prothonotary of the court, containing his decision in the case and signed by him, or has, in testimony of his concurrence therein, signed a judgment to be delivered, and delivered by a judge so present, such judge is deemed to be present for the purpose of such judgment, and the decision so transmitted and signed by him has the same effect as if delivered or concurred in by him in open court. —O. C. 502.

1205. No change in the personal composition of the court, by the appointment of any assistant judge as puisne judge, or by the appointment of a puisne judge as chief justice, or by the resignation, death or appointment to another court of any chief justice or of a puisne judge or of an assistant judge, can have alone the effect of rendering a rehearing of any case necessary, if a sufficient number of judges who heard the case remain to render a judgment; either interlocutory or final.—O. C., 503.

Infra, art. 1241.

1206. If a judge or an assistant judge, who has heard a case, together with other judges, is removed to another court, or is appointed a chief justice or a judge of the same court, or of another court, or obtains leave of absence, he may render judgment, whether interlocutory or final, together with the other judges, as if no such change had taken place.—O. C. 504.

Supra, art. 540; *infra*, art. 1241.

1207. If by reason of the absence, leave of absence, disqualification or incompetence of any of the judges, or of any other cause, the order of advisement requires to be discharged, such discharge may be ordered by the other judges or by any one of them.—*New.* O. C. 1171.

Infra, art. 1242.

1208. The Court of Review may exercise all the powers necessary for its jurisdiction, and make such orders as it may deem proper for the purpose of remedying any insufficiencies of the record, of staying proceedings in the court of first instance in cases from which the review has been brought, of regulating the necessary deposit, and of providing for all cases in which the law affords the party no special remedy.—*New.* O. C. 1177, *in part.*

Supra, art. 597.

CHAPTER LXI

Appeals to the Court of Queen's Bench

1209. Proceedings in appeal must be brought within six months from the date of the judgment, saving the cases provided for by articles 924, 1006, 1010 and 1020.

This delay is binding even upon minors, women under marital authority, persons interdicted or of unsound mind, and upon persons absent from the Province, when those who represent them, or whose duty it is to assist them, have been duly brought into the suit.

If the party dies before appealing, the delay is computed against his heirs or legal representatives only from the day of his death.

When judgment has been

rendered by default, the delay is computed only from the expiry of the time allowed for filing an opposition thereto.—O. C. 1118, *am.*; 54 Vic., c. 48.

Supra, arts. 43, 44, 47, 1166.

Civil Code, arts. 306, 343.

1210. Proceedings in appeal may be taken during the delay allowed for demanding a review before three judges, or after proceedings in review have been commenced, if the party who has taken such proceedings discontinues the same.—O. C. 1118; 54 Vic., c. 48.

Supra, arts. 1196, 1199.

1211. If the appeal is from an interlocutory judgment, it must first be allowed by one of the judges of the Court of Queen's Bench, upon a summary petition, accompanied with copies of such portions of the record as may be necessary to decide whether the judgment in question is susceptible of appeal, and falls within one of the cases specified in article 46; but the judge before whom such application is made may, if he deems it advisable, refer it to the court then sitting, if the application is made during term, or may continue it to the first day of the next term, if it is made out of term.

The application must be made within the thirty days next after such rendering of the judgment, and cannot be received afterwards.—O. C. 1119; 54 Vic., c. 48; 56 Vic., c. 42, s. 1.

Supra, art. 46; *infra*, art. 1225.

1212. The petition must be served upon the opposite party, and, if required, is followed by a rule calling upon such opposite party to give his reasons against the granting of the appeal; and the service of such rule upon him has the effect of suspending all proceedings before the court from which the appeal is taken.—O. C. 1120; 54 Vic., c. 48.

1213. Proceedings in appeal are brought by means of an inscription filed in the office of the court which rendered the judgment, of which notice must be served upon the opposite party or his attorney.

The inscription must contain a description of the parties, the date of the judgment appealed from, a description of the sureties proposed, and a notice of the date, hour and place when and where the sureties are to appear to sign the bond.

Such security must be given within five days after the inscription is so filed, or within such further delay as a judge of the court which rendered the judgment may order.

If security is not given within the prescribed delays, the opposite party may obtain from the prothonotary a certificate of default, and the inscription in appeal is thereupon held to be abandoned and of no effect, saving any recourse which may appertain to the appealing party.

The costs incurred upon the proceeding so abandoned are taxed by the prothonotary.—*New in part.* O. C. 1121; 54 Vic., c. 48.

Supra, arts. 493, 560.

1214. On the day fixed in the notice, the appellant must give good and sufficient security that he will effectually prosecute the appeal, that he will satisfy the condemnation and pay all costs and damages adjudged in case the judgment appealed from is confirmed; or else he must declare in writing in the office of the court whose judg-

ment is appealed from, that he does not object to the judgment rendered against him being executed, or he must file a copy of any judgment ordering provisional execution of the judgment appealed from, in which cases he is only bound to give security for the payment of the costs in appeal, if he fails; and, if the judgment is reversed, the respondent who has caused the judgment to be executed is bound to refund to the appellant the net amount only of the moneys levied by execution, together with legal interest, or to restore the property of which he was put in possession, together with the rents, issues and profits since.—C. C 1122, *am.;* 54 Vic., c. 48.

Supra, arts. 597, 969.

1215. The security must be received before a judge or the prothonotary of the court in which the judgment was rendered, who may swear the sureties offered, and ask them any pertinent questions with respect to their sufficiency.—C. C. 1123; 54 Vic., c. 48.

Supra, art. 561 et s.

Civil Code, arts. 1938 et s., 1962 et s.

1216. When the security-bond has been executed, the prothonotary must forthwith transmit a certified copy of such bond and of the inscription to the clerk of appeals at Quebec or at Montreal, as the case may require.

He must also forthwith make up and complete the record in the case, according to the forms prescribed by the court of appeal, with a list of all the papers which form part of it and a transcript of all the entries in the registers, the whole certified under the signature and the seal of the court, and, upon being paid his fees, charges and the cost of transmission, must remit them to the clerk of appeals.

The clerk of appeals, upon receiving such records and papers, must send a receipt therefor to the prothonotary.—*New in part.* O. C. 1124, *am.;* 54 Vic., c. 48.

Supra, art. 3147.

1217. If the copies of the inscription and bond are not forthwith transmitted, or if the record is not transmitted within fifteen days after the bond has been executed, and the prothonotary is in default, the appellant may obtain, from any judge of the court which rendered the judgment, a rule against him to transmit such documents or record.—O. C. 1125, *am.;* 54 Vic., c. 48.

1218. At any time after security has been given, and before the expiry of five days after the record has been received by the clerk of appeals, the appellant and the respondent must each file a written appearance in the office of the court of appeal, under penalty of being foreclosed.—O. C. 1126, *am.;* 54 Vic., c. 48.

1219. In default of the record being transmitted within fifteen days after the bond has been executed, the respondent may, upon producing a certificate from the clerk of appeals to that effect, obtain a judgment discharging the appeals, unless the appellant proves diligence.—O. C. 1127; 54 Vic. c. 48,

1220. Unless the court otherwise orders, the respondent may, within eight days next after the period allowed to appear, set up by motion any exception resulting from:

1. Irregularities in the inscrip-

tion or in the service of the notice thereof;

2. Insufficiency of the security-bond;

3. Non-existence or forefeiture of the right to appeal;

4. Acquiescence in the judgment;

5. Renunciation of the judgment.—O. C. 1128, *am.*; 54 Vic., c. 48.

1221. The court of appeal during term, or any judge thereof, out of term, has power to reduce excessive security, or to order new security to be given in place of any which has become insufficient.—O. C. 1129, *am.*; 54 Vic., c. 48.

Infra, art. 1248.

Civil Code, art. 1940.

1222. If both parties seek redress against the judgment, their cross-proceedings in appeal may be joined.—O. C. 1130, *am.*; 54 Vic., c. 48.

1223. Within fifteen days after the judgment upon an exception, if there is any, to the proceedings in appeal, or within fifteen days after the expiry of the delay for filing the appearance, each party must file, with the clerk of appeals, a printed *factum* or case; in default whereof the appeal may be declared abandoned, with costs against the appellant, if he is in default, or be heard *ex parte*, if the respondent is in default.—O. C. 1131, *am.*; 54 Vic., c. 48.

1224. As soon as the parties have filed their appearances, or after the delay to file the same has expired, if only one party has appeared, and the record has been received by the court of appeal, the case is set down upon the roll by the clerk of appeals, and is heard in its turn in accordance with the rules of practice and orders of the court; but the parties are not bound to be present in court before the expiry of the delays mentioned in the preceding article.—O. C. 1132, 1169, *am.*; 54 Vic., c. 48; 58 Vic., c. 47, ss. 2, 3.

1225. Appeals from interlocutory judgments must be inscribed by the clerk of appeals, and be heard by privilege in a summary manner without any factums being filed.—O. C. 1133; 54 Vic., c. 48.

Supra, arts. 46, 1112, 1211, 1212.

1226. Articles 1193, 1194 and 1195 apply to proceedings in appeal.—O. C. 1154, 1155, *am.*

Supra, art. 1209.

1227. Four judges of the Court of Queen's Bench constitutes a quorum in appeal.

Any lesser number of judges, or even the clerk in the absence of all the judges, may, on any day in term, open and adjourn the court, receive returns and motions of course, call parties, record appearances and defaults, and do all acts which do not require the exercise of any judicial discretion.—O. C. 1156, *am.*

1228. The judges in appeal may be recused for the same causes and in the same manner as in the Superior Court.—O. C. 1157, *am.*

Supra, art. 237 et s.

1229. Any judge who sat at the rendering of the final judgment in the cause, or of any interlocutory judgment appealed from, is incompetent to sit in appeal upon the same.—O. C. 1158, *am.*

Supra, art. 1190.

1230. No petition in recusation is necessary if the cause of incompetency appears on the face of the record.—O. C. 1159.

1231. The Chief Justice, or, in his absence, the senior judge

of the Court of Queen's Bench, may, by notice in writing addressed to the Chief Justice of the Superior Court, request the attendance of a judge of the latter court at the sittings of the court of appeal, in the following cases:

1. When one or more judges of the Court of Queen's Bench is disqualified or incompetent to sit in a case, or is absent from the Province or on leave, or is ill, or dies;

2. When only four judges are available for the hearing of any case;

3. When a rehearing of a case has become necessary because of its having been heard by four judges only, three of whom are not agreed as to the judgment to be rendered.—O. C. 1161, *am.*; R. S. 2302, 2303.

1232. In all such cases, the judges of the Superior Court replace those of the Court of Appeal; and the Chief Justice of the Superior Court communicates with the other judges of the latter court, and it is arranged between them which of them will replace any particular judge of the Court of Queen's Bench who is unable to sit.—O. C. 1162.

1233. The provisions of the two preceding articles apply likewise in the cases of the disqualification, incompetency, death, absence, leave of absence or illness, of the judge thus appointed to replace another.—O. C. 1162, *am.*

1234. The powers of the replacing judge in regard to causes, of which he has taken judicial cognizance, are not affected by the return of the judge replaced, the expiry of his leave, or his ceasing to be incompetent, or by the appointment of a judge of the Court of Queen's Bench who would not be incompetent in the case.—O. C. 1163.

1235.—Nevertheless, if the replacing judge has not heard the case upon the merits, the judge thus replaced may take cognizance of the case and render judgment therein.—O. C. 1164.

1236. If the record in the case is incomplete, either by reason of the absence of any document, or of the inobservance of any material formalities, the court of appeal may, upon the suggestion of either party, order a writ to issue in the name of the Sovereign, addressed to the proper court, requiring it to perfect the record, and to cause a duly certified return to be made to that effect.—O. C. 1165.

Infra, art. 1248.

1237. Interventions, continuance of suits, changes of attorney and other incidental proceedings take place in appeal, upon petition, according to the formalities prescribed by the court.—O. C. 1166, *am.*

Supra, arts. 220, 259, 266 et. s.

1238. Discontinuance and disavowal in appeal are affected in the same manner and under the same conditions as in the Superior Court.—O. C. 1167, *am.*

Supra, arts. 251 et. s., 275 et. s.

1239. The provisions concerning peremption of suits in the Superior Court apply also to appeals.

Peremption of appeals has the effect of rendering the judgment appealed from final.—O. C. 1168, *am.*

Supra, arts. 279 et. s., 1200.

1240. The court may receive affidavits and documents relat-

ing to any incidental proceedings in appeal, or may send the case back to the court from which the appeal is taken, in order that evidence may be made in regard to such matters. —*New.*

1241. Judgment cannot be rendered in appeal unless at least three judges concur therein; and judgment may be rendered even in the absence of one judge when the case has been heard before five judges.

The provisions relative to judgments, contained in articles 1205 and 1206, apply in similar cases as regards judgments to be rendered by the Court of Queen's Bench.

Whenever a case has been heard by a full court or by a quorum of judges, and at least three of the judges who heard it are present in court and ready to render judgment therein, then, if any judge who heard the cause, and would be competent to sit in judgment therein, be prevented by removal to another court, illness or other cause from being present, but has addressed a letter to the clerk of the court, containing his decision and signed by him, or has, in testimony of his concurrence therein, signed a written decision to be delivered by any other judge, such judge shall be deemed to be present as regards such judgment; and the decision so transmitted and signed by him has the same effect as if delivered and concurred in by him in open court.—O. C. 1170.

Supra, arts. 538, 1204.

1242. If by reason of the absence, leave of absence, disqualification or incompetency of any of the judges or any other cause, the order for advisement requires to be discharged, such discharge may be ordered by the other judges or by any one of them.—O. C. 1171.

Supra, art. 1207.

1243. The court may adjourn to any day or days in vacation, and from day to day, for the purpose of hearing cases or of rendering judgment.—O. C. 1172, *am.*; 54 Vic., c. 48, s. 5.

1244. Judgment may be rendered by the court at any place where its sittings are held other than that where the case was heard, if the judges are of opinion that otherwise the parties will be exposed to unnecessary delay.

In such case the court in term, or a majority of the judges in vacation, orders the clerk to give notice to the interested parties at least three days before that on which judgment is to be rendered.

Such judgment is entered and registered at the place where judgment would have been rendered in the ordinary course.—O. C. 1173, *am.*

1245. Every judgment in appeal must contain a summary statement of the points of fact and of law in the case, and the reasons upon which it is founded, with the names of the judges who concurred therein and of those who dissented therefrom, and an adjudication as to the costs.—O. C. 1174, *am.*

Supra, art. 541.

1246. The costs are taxed by the clerk of appeals, subject to a revision of such taxation by a judge within six months either in term or out of term, after sufficient notice to the opposite party.

Such revision cannot prevent or stay execution, and the decision of the judge in that be-

half has the same effect as a judgment of the court.—O. C. 1175.

Supra, art. 554.

1247. Judgments in appeal are executed both for principal and costs by the court of first instance; and, for that purpose, the record is sent back to it, unless a further appeal to a higher court has been moved for.—O. C. 1176.

1248. The court sitting in appeal may exercise all the powers necessary for such jurisdiction, and make such orders as it may deem proper for the purpose of remedying any insufficiencies of the record, of staying proceedings in the court of first instance in cases appealed from, of regulating the putting in or renewal of security, and of providing for all cases in which the law affords the party no special remedy.

It may also make and establish tariffs for any of its officers whose fees or salaries are not otherwise fixed.—O. C. 1177, *am.*

Supra, arts. 597, 1221, 1236.

CHAPTER LXII

Appeals to Her Majesty

1249. The execution of a judgment from which an appeal is taken to Her Majesty in Her Privy Council cannot be prevented or stayed unless the party aggrieved gives good and sufficient sureties within the delay fixed by the court which rendered the judgment, that he will effectually prosecute the appeal, satisfy the condemnation, and pay such costs and damages as may be awarded by Her Majesty in the event of the judgment being confirmed.

The security must be received before one of the judges of the court which rendered the judgment.

The sureties justify their solvency upon the real estate which is described in the bail-bond.

One surety suffices, if he is the owner of real estate, which he describes, equal in value to the amount of the security over and above all charges and hypothecs.

The judge who receives such security may order, either on demand or otherwise, the production of the registrar's certificate, the valuation rolls and any other documents for the purposes of the security, and is bound to put such questions as he deems advisable to the sureties. Such questions and the answers thereto may be taken down in writing.

The appellant may, however, exempt himself from furnishing such security, by depositing an amount equal to that required for the security, either in money, in bonds of the Dominion or of this Province, or in municipal debentures, and such moneys, bonds or debentures are deposited either in the office of the court which rendered the judgment or with the sheriff, as the judge may direct.—O. C. 1179, 1178a., am.; R. S. 6009, 6010.

Supra, arts. 68, 69, 559 et s.

Civil Code, arts. 1938 et s., 1962 et s.

1250. The appellant may also consent to the judgment being executed, and in such case may give security for the costs in appeal only, under the same conditions as under article 1214.—O. C. 1180.

1251. The execution of any judgment appealed from cannot

be prevented or stayed after six months from the day on which the appeal was allowed, unless the appellant files in the office of the clerk of the court which rendered the judgment a certificate, signed by the clerk of Her Majesty's Privy Council, or any other competent officer, stating that the appeal has been lodged within such delay, and that proceedings have been had therein.—O. C. 1181, 1178*a*, *am.*; R. S. 6009.

1252. The clerk of the court which rendered the judgment must register any exemplification of a decree of Her Majesty in Her Privy Council as soon as it is presented to him for that purpose, without requiring any order to that effect from the court which rendered the judgment, and must send back the record in the case to the court below, together with a copy of the exemplification which has been registered as above mentioned.—O. C. 1182, 1178*a*, *am.*; R. S. 6009.

NINTH PART.

INFERIOR JURISDICTIONS

CHAPTER LXIII

Procedure Before the Commissioners' Court for the Summary Trial of Small Causes

1253. The commissioners cannot sit and hold their court separately and at the same time in the same locality.

The court may be held by one commissioner, and several or all the commissioners may likewise sit together.

They must decide according to equity and good conscience and to the best of their ability and judgment.—O. C. 1183.

Supra, arts. 15, § 10, 59, 60, 1149.

1254. The commissioners have for keeping order during their sittings, and for enforcing the execution of their warrants, orders and judgments, the same powers as the other courts of the Province.—O. C. 1184.

Supra, art. 17 et s.

1255. They may be recused for the same reasons as judges or other courts.—O. C. 1185.

Supra, arts. 237, 238.

1256. The recusation must be in writing.—O. C. 1186.

1257. If all the commissioners are recused by either of the parties, the case is immediately transmitted to the nearest Commissioners' Court, which decides upon the validity of the recusation, and afterwards hears and determines the merits of the case in the event only of the recusation being maintained.

But, if the recusation is overruled, the case is sent back to the former court, which may, without reference to the merits, tax the costs of such recusation against the party who made it. —O. C. 1187.

Supra, art. 31, 245, 248.

1258. It may, in matters within its jurisdiction, grant:

Interventions;

Attachments for rent;

Attachments in revendication;

Seizures by garnishment after judgment;

Simple attachments or attachments by garnishment before judgment, for sums exceeding five dollars, whenever it is established by the affidavit of the plaintiff or of his agent that the defendant is secreting, has secreted, or is immediately about to secrete his property, or absconds, or is immediately about to leave the Province with intent to defraud his creditors.

Such affidavit may be received by one of the commissioners or by the clerk of the court,—O. C. 1191, 1192, *am.*

Supra, art. 931.

1259. These proceedings may be executed beyond the limits of the judicial district in which they are issued, provided an order of one of the commissioners, authorizing such execution within the district where it requires to be executed, is endorsed upon the warrant.

Every warrant of attachment for rent, attachment in revendication, seizure after judgment, simple attachment, or attachment by garnishment, must be made returnable in the manner prescribed by article 1264, and the return with a certificate of the proceedings must be made on the day so fixed.—O. C. 1192.

1260. In the case of attachment by garnishment before judgment, or of seizure after judgment, the garnishee, within two days after the writ has been served upon him, may make his declaration under oath before the clerk of the Circuit Court nearest to the place where the writ was served upon him. O. C. 1192*a*, *am.*; R. S. 6012.

Infra, art. 1288.

1261. Such clerk is authorized to administer the oath required, and must, after having drawn up and received the declaration of the garnishee, forward the same without delay by a registered letter to the clerk of the Commissioners' Court where the cause is pending.

He is entitled to a fee of one dollar, payable by the garnishee for drawing up, receiving and forwarding the declaration as required, and, on the payment of such fee, he prepares a receipt which he forwards with the declaration of the garnishee.—O. C. 1192*b*; R. S. 6012.

Infra, art. 1288.

1262. Such sum of one dollar is taxed by the commissioners or by their clerk as an integral part of the costs of suit: and the receipt given therefor and forwarded to the clerk of the Commissioners' Court is equivalent to a judgment of such court in favour of the garnishee against the seizing creditor, and may be executed by seizure after the same delay and in the same manner as any other judgment of such court. —O. C. 1192*c*; R. S. 6012.

Infra, arts. 1281, 1289.

1263. Any minor above the age of fourteen years may bring a suit before a Commissioners' Court for the recovery of wages or salary in the same manner as if he was of age.—O. C. 1193.

Supra, arts. 78, 81.

Civil Code, art. 304.

1264. The delay upon ordinary summons must be at least

three clear days when the defendant does not reside more than six miles from the place to which he is summoned. When the distance exceeds six miles, the delay is increased one day for each additional six miles.—O. C. 1194, *am.*

1265. The writ of summons contains:

A command to the defendant to pay the plaintiff the amount demanded or to appear before the court to answer such demand;

The names, residence and occupation, both of the plaintiff and of the defendant;

A summary statement of the cause of action;

The day on which the defendant must appear;

The date of the writ;

The signature of the commissioner.—O. C. 1195.

1266. Ordinary writs of summons may be served by any bailiff of the Superior Court, or by any literate person, who makes affidavit as to such service.—O. C. 1196, *am.*

1267. If the summons is accompanied with an attachment, it can only be served by a bailiff.—O. C. 1197.

1268. Either party may evoke the case to the Circuit Court for the district when the contestation relates:

To any immovable rights;

To any fee of office;

To any sum of money due to the Crown;

To any duty, rents, revenue or annual rent, or other matter by which rights in future may be bound.—O. C. 1198, *am.*

Supra, art. 56.

1269. The improbation of any act or document produced before the court has the effect of an evocation to the Circuit Court.—O. C. 1199, *am.*

1270. In the cases of the two preceding articles, the commissioner, or one of the commissioners, or the clerk, must, within fifteen days, transmit the record to the Circuit Court, together with a certified transcript of the entries in the register concerning the same.

Nevertheless, in case of improbation, the record cannot be transmitted unless the party alleging the falsity gives sufficient security for the costs to be incurred upon such improbation.—O. C. 1200, *am.*

Supra, art. 31.

1271. In default of such security being given within the delay fixed by the court, the party forfeits his right of evocation, and the Commissioners' Court may proceed to hear and determine the case without regard to the improbation.—O. C. 1201.

1272. If the evocation is allowed, the case is heard and determined by the court to which it is evoked as if it had originated therein.—O. C. 1202.

1273. No person can act as attorney for either of the parties before a Commissioners' Court, unless he is an advocate or attorney at law, or the holder of a special power of attorney, or unless it is in the presence and with the consent of the party.

No clerk of the court or bailiff can in any case act as such attorney.—O. C. 1203, 1205, *am.*

Supra, art. 85.

1274. Any person other than an advocate or attorney at law, who acts for one of the parties, must do so gratuitously.

If such person for so acting receives, either directly or indirectly, any fee, emolument or

remuneration whatever, he becomes disqualified from acting as attorney before a Commissioners' Court, without prejudice to the right of the party who has paid to sue for repayment.—O. C. 1204, *am.*

1275. If the defendant has been served personally and makes default, or if he confesses judgment, or if the parties agree to it, the case may be heard on the day of the return, and judgment may be rendered.

In any other case the suit must be postponed to a subsequent day for trial.—O. C. 1206, *am.*

1276. By consent of the parties the case may be referred to the decision of three arbitrators, one of whom is named by each party and the third by the court.

The court may also, in its discretion, order such reference.

The arbitrators, before acting, must be sworn before one of the commissioners or before a justice of the peace, to fulfil their duty faithfully and impartially.

They may hear the parties and their witnesses, who must be sworn before a commissioner or before a justice of the peace.

The decision of two of the arbitrators is final, and must be homologated and executed accordingly.—O. C. 1207.

Supra, arts. 411 et s. 417.

1277. The cases are heard, tried and determined in a summary manner, without any written pleadings being necessary. —C. C. 1208.

1278. Oral testimony is admitted in all cases.

But the bailiff or other person who served the writ of summons cannot testify to any facts or admissions which came to his knowledge after the issue of the writ of summons, except in relation to the service itself.—O. C. 1209, *am.*

Supra, art. 320.

1279. Upon the application of either of the parties, the court may compel any person residing within its jurisdiction to attend as a witness in any case, under a penalty of not less than one dollar or more than four dollars. —O. C. 1210. *am.*

1280. The court, in rendering judgment, may condemn the unsuccessful party to the costs of suit, of contestation and of arbitration.

But if the amount of the judgmen does not exceed two dollars, the court may reduce the costs to the same amount as that for which judgment is rendered.—O. C. 1211.

1281. If the debtor fails to satisfy the amount of the condemnation against him within eight days, he may be compelled to do so by the seizure and sale of his movable property liable to seizure.

He is liable to the costs of such execution to the amount of one dollar and a half.

If the sale does not take place, he is not bound to pay more than seventy-five cents of costs.

These costs do not in any case include the expense of feeding cattle, if any have been seized.

The warrant of execution must be made returnable and be returned in the same way as the other warrants mentioned in article 1259.—O. C. 1212 : 53 Vic., c. 62, s. 2.

Supra, arts. 598, 599.

1282. No opposition to the sale of movables under seizure can stay proceedings unless it is allowed by a commissioner and accompanied with an order to that effect.—O. C. 1213.

1283. Oppositions thus al-

lowed are heard and determined in the same manner as other cases before the court,—O. C. 1214.

CHAPTER LXIV

Procedure Before the District Magistrate's Court

1284. All proceedings in and the proof and hearing of the actions mentioned in article 62 take place in a summary manner and on any juridical day, whether fixed or not as one of the days on which the court can sit..—O. C. 1215*b*; R. S. 6013.

1285. Except in so far as they are inconsistent with the rules contained in this Chapter, the provisions relating to cases in the Circuit Court, not susceptible of review or of appeal, apply to the District Magistrate's Court, to the Magistrate holding it, and to the officers thereof.—O. C. 1215*c*, *am.*; R. S. 6013.

1286. Articles 1263, 1264 and 1265 (except the words: "the signature of the commissioner," in the three last mentioned articles), 1273, 1274, 1275, 1276, 1277, 1278 and 1280, and the first and last paragraphs of article 1281 apply to every Magistrate's Court in the same manner as if the words: "Commissioners' Court, "commissioner" or "commissioners," meant and included respectively the words: "Magistrate's Court," or "district magistrate."—O. C. 1215*d*, *am.*; R. S. 6013.

1287. All writs issuing from the court are signed by the district magistrate or by the clerk of the court; and all certificates or copies of proceedings of the court signed by the clerk are *prima facie* evidence of their contents.—O. C. 1215*e*; R. S. 6013.

1288. Attachments for rent, attachments in revendication, seizures by garnishment after judgment, simple attachments or attachments by garnishments before judgment, may be executed anywhere within this Province; but in the case of seizures by garnishment, either before or after judgment, the garnishee may, within three days after the service of the writ upon him, make his declaration on oath before the clerk of the nearest Circuit Court, who has power to administer such oath, and is entitled to ceive from such garnishee the sum of one dollar for taking such declaration. He must transmit the same forthwith by post, in a registered letter, to the clerk of the Magistrate's Court from which the writ of attachment issued, together with his receipt for the said sum of one dollar.—O. C. 1215*f*, *am.*; R. S. 6013.

Supra, arts. 1260, 1261.

1289. The said sum of one dollar is taxed by the district magistrate or the clerk of the court, as forming part of the costs of the suit; and the receipt of the clerk of the Circuit Court for the said sum, transmitted to the clerk of the Magistrate's Court, stands as a judgment of the said court in favour of the garnishee against the party seizing, and may be enforced by execution after the same delay and in the same manner as any other judgment of the court.—O. C. 1215*g*; R. S. 6013.

Supra, art. 1262.

1290. No suits or proceedings in civil matters before any such district magistrate, or be-

fore a Magistrate's Court, under this Chapter, can be removed to any other court, by *certiorari* or otherwise.—O. C. 1215*h*; R. S. 6013.

1291. Judgments rendered by the Magistrate's Court for sums exceeding forty dollars may, in default of movable property, be executed upon the immovables of the debtor.

The writ is addressed to the sheriff of the district in which the immovables are situated, is returnable before the Superior Court of such district, and is there proceeded upon in the same manner as like writs issuing from the Circuit Court.—O. C. 1215*i*; R. S. 6013.

Supra, arts. 614, 1132, 1133, 1134, 1147.

CHAPTER LXV

Remedies Against the Proceedings and Judgments of Courts of Inferior Jurisdiction.

1292. In all cases where no appeal is given from the inferior courts mentioned in articles 59, 63, 64 and 65, the case may be evoked before judgment, or the judgment may be revised by means of a writ of *certiorari*, unless this remedy is also taken away by law.—O. C. 1220.

Supra, art. 1290.

1293. The remedy lies nevertheless, only in the following cases:

1. When there is want or excess of jurisdiction;
2. When the regulations upon which a complaint is brought, or the judgment rendered, are null or of no effect;
3. When the proceedings contain gross irregularities, and there is reason to believe that justice has not been or will not be done.—O. C. 1221.

1294. The writ of *certiorari* can only be granted upon petition, supported by an affidavit of the facts and circumstances of the case.—O. C. 1222.

1295. A previous notice of time and place at which the petition will be presented must be served upon the functionary seized of the case, or who rendered the judgment, as well as upon the other parties in the case.—O. C. 1223, *am.*

1296. The service of such notice on the functionary seized of the case, or who rendered the judgment, has the effect of suspending all proceedings in the court below.—O.C. 1224, *am.*

1297. The petition must be presented to a judge of the Superior Court or of the Circuit Court.

The opposite party is entitled to appear and make any oral objections of a nature to prevent the granting of the writ.—O. C. 1225, *am.*

Supra, art. 57.

1298. Writs of *certiorari* are clothed with the formalities required for writs of summons, and command the functionary to whom they are addressed to certify and transmit, within a fixed delay, all the papers connected with the case, by whatever names the parties may be therein designated.—O. C. 1226, *am.*

1299. Mention must be made on the back of the writ that it has issued by order of the court or judge.—O. C. 1227.

1300. The writ is served upon and left with the functionary to whom it is addressed; and, if it is addressed to a court composed of several functionaries, it is left with one of them.

Such service suspends all proceedings before them under pain of being liable for contempt of court.

The return of such service is made upon a certified copy of the writ.—O. C. 1228.

1301. The persons to whom the writ is addressed are bound to comply with it by annexing to it all the papers demanded, and certifying their return on the back of the writ.—O. C. 1229.

1302. If they fail to comply with the writ they are liable to coercive imprisonment in the ordinary manner.—O. C. 1230.

Supra, art. 834.

1303. Notice of the issue of the writ and of the day fixed for its return must be given to the opposite party.—*New.*

1304. If the opposite party has not already appeared and filed an appearance in the ordinary form, he may do so immediately after the writ is regularly returned; and thereupon the case may be inscribed on the roll by either party, to be heard in the ordinary manner.—O. C. 1231.

1305. All interlocutory or final judgments upon writs of *certiorari* are drawn up and served in the same manner as in ordinary suits.—O. C. 1232.

Supra, art. 547.

1306. No appeal lies from the judgment on the application for the writ of *certiorari* or from the judgment on the writ itself; nor are such judgments subject to review.—O. C. 1234.

Supra, art. 43, §1.

1307. The procedure regulated by this chapter applies also to all other cases in which the writ of *certiorari* will lie, and against any other inferior court not referred to by article 1292; but it does not apply with respect to any court exercising vice-admiralty jurisdiction, over which the Superior Court or the Circuit Court has no control.—O. C. 1235, *am.*

TENTH PART.

NON-CONTENTIOUS PROCEEDINGS

CHAPTER LXVI

General Provisions

1308. In all proceedings under the provisions of the Tenth Part of this Code, the delays upon summons are the same as those prescribed for ordinary matters.—O. C. 1337, *am.*

Supra, art. 149.

1309. All applications made or proceedings brought before a judge must remain among the records of the court and form part thereof.—O. C. 1338.

1310. The prothonotary of the Superior Court may exercise all the powers conferred upon the court or a judge thereof; but any decision by such prothonotary is subject to be revised by a judge upon application being made to that effect, after notice given to the persons interested.—O. C. 1339.

Supra, art. 52, § 2.

CHAPTER LXVII.

Registers and Their Authentication.

SECTION I.

I. REGISTERS OF CIVIL STATUS **1311**.

II. REGISTERS OF REGISTRY OFFICES **1317**.

III. REGISTERS OF SHERIFFS AND CORONERS **1318**.

Registers of Civil Status

1311. All registers intended to record births, marriages and deaths or religious profession must, before being used, be numbered upon the first and every subsequent leaf, with the number of the leaf written in words, at full length, and be sealed with the seal of the Superior Court or of the Circuit Court, by affixing the same upon the two extremities of a ribbon or other such fastening, passing through all the leaves of the register and secured inside of the cover thereof; and upon the first leaf must be written an attestation under the signature of the judge or the prothonotary of the Superior Court of the district, or of the clerk of the Circuit Court of the county, which comprises the Roman Catholic parish church, private chapel or mission, the Protestant church, or religious congregation or society authorized to keep such registers, and for which they are to serve, and to which they belong, specifying the number of leaves contained in the register, the purpose for which it is intended, and the date of such attestation.

Such certificate cannot, however, be given until the formalities prescribed by special acts with regard to certain religious congregations have been fulfilled.—O. C. 1236; R. S. 6014.

Civil Code, arts. 39 et. s., 45.

1312. The duplicate register which is to remain in the hands of the priest, minister or person doing the parochial or clerical duty of each Roman Catholic parish church, Protestant or religious congregation, must be bound in a substantial and durable manner.

A copy of the title "*Of Acts of Civil Status*," in the Civil Code, and of the first, second and third chapters of the title "*Of Marriage*," in the same Code, must be attached to such duplicate.—O. C. 1237.

Civil Code, arts. 39 et s., 49, 115 et s.

1313. *Curés*, churchwardens of *fabriques*, and other such administrators, in places where baptisms, marriages and deaths have taken place, and also the superior of communities in which vows of religious profession have been made, are respectively bound to fulfil the requirements of the laws with regard to the registers of acts of civil status, and may be compelled to do so by such means and under such pains, penalties or damages as the law allows.—O. C. 1238.

1314. Any person who desires to have any register rectified must present to the judge a petition for that purpose, stating the error or omission of which he complains, and praying that the register may be rectified accordingly.

The petition must be served upon the depositary of such register.—O. C. 1239, *am.*

Supra, art. 1308.

Civil Code, art. 75 et s.

1315.—The judge may also order the petition to be served upon any person whom he deems interested in the application.—O. C. 1240, *am.*

Supra, art. 1308.

1316. Any judgment ordering a rectification must contain an order for the inscription of such judgment upon the two registers, and no copy of the act rectified can thereafter be delivered without the corrections thus ordered to be made. O. C. 1241.

SECTION II

Registers of Registry Offices

1317. Every register of a registry office, of which the law requires the authentication, must, before an entry is made therein, be authenticated by an attestation, written on the first page, and signed by the prothonotary of the district in which the register is to be used; and such attestation must mention the purpose for which such register is intended, the number of leaves contained therein, and the date of the attestation.

Each leaf must be numbered in words, written at full length, and the prothonotary must write thereon the initial letters of his name.—O. C. 1242, *am.*

Civil Code, arts. 2181, 2182.

SECTION III

Registers of Sheriffs and Coroners

1318. The sheriff and the coroner of each district must keep a duplicate register for transcribing and registering therein all deeds or acts of sale made by them of real property in their official capacity, and, when such register is filled, one of the duplicates thereof must be deposited by such sheriff or coroner in the office of the Superior Court for the District.—O. C. 1243, *am.*

Supra, arts. 35, 760.

1319. Such registers must be authenticated in the same manner as those of the registry offices mentioned in article 1317.—O. C. 1244.

CHAPTER LXVIII

Inspection of Notarial Documents

1320. Notaries are bound, upon payment of their lawful fees and dues, and without any judge's order, to give communication or copies of or extracts from any act or document forming part of their official records, to the parties or to their heirs or legal representatives.—O. C. 1245.

1321. They are not bound to give such communication, copies or extracts to other parties without an order from a judge, unless it is of such a nature that it should be registered.—O. C. 1246.

1322. If the notary refuses to give such communication, copies or extracts, as required, the person demanding the same may, by petition duly served upon the notary, apply to a judge for an order for inspection, which is granted upon proof of his right or interest.—O. C. 1247.

Supra, art. 1308.

1323. If communication only is demanded, the order fixes the day and hour when communication of the act must be given.

If a copy or extract is demanded, the order fixes the time at which it must be furnished.—O. C. 1248.

1324. The service of the order of the judge upon the notary must give a sufficient delay for a compliance with such order.—O. C. 1249.

1325. The copy or extract must be certified to have been delivered in compliance with the order; and the notary mentions the fact at the foot of the copy of the order that was left with him.—O. C. 1250.

1326. If the notary fails to comply with the order of the judge, he is liable for all consequent damages, and to coercive imprisonment.—O. C. 1251.

Supra, art. 834.

1327. When the original of any authentic act or of a public register has been lost, destroyed or carried away, and any authentic copy or extract thereof exists, the holder of such copy or extract may apply to the judge for leave to deposit the same with such public officer as the judge will name, to be there used and considered as an original, the copies of which will be deemed authentic.—O. C. 1252.

Civil Code, art. 1217.

1328. A similar application may be made by any party to a deed, in order to compel any other party thereto, who is in possession of an authentic copy or extract thereof, to deposit such copy or extract for the same purpose.

The party so in possession must comply with the order of the judge in that behalf, under pain of all damages.

The party requiring such deposit must bear the costs and expenses so incurred, and is obliged to furnish the other party with a copy of the deed and to indemnify him for all travelling and other expenses.—O. C. 1253, *am.*

Civil Code, art. 1217.

1329. The petition must be served upon all other interested parties mentioned in the act.—C. C. 1254.

Supra, art. 1308.

1330. Upon satisfactory proof, the judge orders the document produced to be deposited in the prothonotary's or notary's office, or other public office in which the original was, or if it is a notarial act, forming part of the records of a notary who is dead or has ceased to practice, then in the place in which the records of such notary are deposited; and every copy of the document thus deposited avails for proof in the same manner as if such document was the original.—O. C. 1255, *am.*

CHAPTER LXIX

Family Councils.

1331. Whenever application is made to provide minors, interdicted persons, absentees or substitutes, with tutors, or tutors *ad hoc*, or subrogate-tutors, or curators, or to authorize such tutors or curators to do some particular act, or for leave to alienate immovables belonging to persons who have not the free exercise of their rights, or for the emancipation of minors, or to appoint judicial advisers, the judge of the court cannot act without previously having taken the advice of a family council.—O. C. 1256, *am.*

Civil Code, arts. 88, 122, 249, 267, 269, 297, 301, 302, 306, 307,

315, 317, 321, 329, 336*e*, 350, 945; *Infra*, arts. 1337, 1340, 1346.

1332. Family councils are convened and composed in the manner provided in the ninth title of the first book of the Civil Code.—O. C. 1257.

Civil Code, art. 249 et s.

1333. Any person demanding the convocation of a family council must show that he has used due diligence to summon the nearest relatives residing in the district, and the delay for such notice is one intermediate day, when they reside at a distance less than fifteen miles from the place where the family council is to meet, with the usual additional delay when the distance exceeds fifteen miles.—O. C. 1258, *am.*

1334. Before giving their advice upon the matters submitted to them, the relatives and friends must be sworn before the person by whom they are convened.—O. C. 1259.

1335. The minutes of the advice given by the relatives and friends must be signed by them, or must mention the reasons which prevent them from signing.—O. C. 1260.

1336. The Superior Court and the Circuit Court, and any judge of the Superior Court or of the Circuit Court, at any place where sittings of either of the said courts are held, and in or out of term, have like jurisdiction in, and may decide, all matters in which the advice of a family council is required, and the proceedings in such cases must remain among the records of the court in which the application was made.—O. C. 1261, *am.*

CHAPTER LXX

Tutors, Curators, and Judicial Advisers.

1337. The proceedings to be taken for the appointment of tutors and subrogate-tutors to minors, and of curators to interdicted persons, emancipated minors and absentees, and of judicial advisers, are explained in the different titles of the Civil Code which treat of such matters respectively—O.C. 1262. *am.*

Supra, art. 594, § 6, 1331 et s.; *infra*, art. 1340.

Civil Code, arts. 88, 249 et s. 267, 331, 336*o*, 339, 341, 348.

1338. The proceedings to be taken for the appointment of curators to successions which are vacant or are accepted under benefit of inventory, or to property judicially abandoned by debtors, are regulated under the respective titles in this Code concerning such matters.—O. C. 1263, *am.*

Supra, arts. 581, 594, § 6, 866 et s.; *infra*, arts. 1410, 1426 et s.

Civil Code, arts. 347, 347*u*, 348, 685.

1339. The proceedings for the appointment of curators to the property of corporations that have been dissolved or declared illegal are regulated under the title "*Of Corporations*," in the Civil Code, and in article 986 of this Code.—O. C. 1264.

Supra, art. 594, § 6.

Civil Code, arts. 347, 347*a*, 348, 372.

1340. The proceedings for the appointment of curators to substitutions are the same as those for the appointment of tutors to minors.—O. C. 1265.

Civil Code, arts. 249 et s., 347, 347*a*, 348, 945.

CHAPTER LXXI

Sale of Property Belonging to Minors and Other Disqualified Persons

I. OF PROPERTY EXCEEDING $400 IN VALUE **1341**.

II. OF PROPERTY NOT EXCEEDING $400 IN VALUE **1357**.

III. GENERAL PROVISIONS **1361**.

SECTION I

Of Property Exceeding Four Hundred Dollars in Value

1341. No voluntary alienation of immovable property, or of shares or stock in financial, commercial or industrial companies, belonging to minors or interdicted persons or to substitutions, can be made without the order and permission of the judge.—O. C. 1267, *am.*

Infra, arts. 1409, 1429.

Civil Code, arts. 297 et s., 951, 1010, 1046, 709.

1342. Before the advice of the family council is taken, the immovable must be inspected by two experts, appointed, one by a tutor and the other by the subrogate-tutor, if the immovable belongs to a minor; if it belongs to an interdicted person, one by the curator and the other by one of the relatives nearest of kin to, or, in default of relatives, by a friend of such person; and if it belongs to a substitution, one by the curator to the substitution, or by a substitute of full age and capacity, and the other by the institute.

Such experts must not be related either to the parties or to the persons acting for them.—O. C. 1268, *am.*; C. S. L. C., c. 48, s. 1.

1343. The nomination of experts may be made under the sanction of the judge or of the notary before whom the application is made to have a family council convened.—O. C. 1269.

Supra, art. 392 et s.

See Form. Sched. DD. Appendix.

1344. The experts, after being sworn before the judge, prothonotary, clerk, or notary, must ascertain the condition and value of each immovable, and verify the other circumstances on account of which the sale is demanded, and make a written report thereof.—O. C. 1270, *am.*

See Form. Sched. EE. Appendix.

1345. If the experts cannot agree, each must report his respective opinion, giving the reasons upon which such opinion is based.—O. C. 1271.

1346. The report is submitted to the family council, together with the application to be authorized.—O. C. 1272.

See Form. Sched. GG. and *III. Appendix.*

1347. If the matter relates to the investment of moneys or to shares or stock in financial, commercial or industrial companies, the value thereof must be ascertained.—O. C. 1273, *am.*

1348. If the application is based upon the ground of necessity, the authorization can be granted only upon the production of an account prepared in the manner prescribed by article 298 of the Civil Code.—*New.* C. C. 298, *in part*.

1349. The order authorizing the sale must fix an upset price for each immovable, share or stock, saving the provision of article 1356, and, independently of the other conditions imposed upon the sale, such upset price cannot be less than the value ascertained.—O. C. 1274, *am.*

1350. If authorization to sell is refused, the reason for such refusal must be given in writing and form part of the record. —O. C. 1275, *am.*

1351. The sale must be made judicially in the presence of the subrogate-tutor or of the curator, as the case may be, to the highest bidder, by public auction before the court, judge, prothonotary or any other person specially appointed for that purpose.—*New.* C. C. 299, *in part.*

1352. A notice containing a description of the immovables, and mentioning the place, day and hour of the sale, must be published in the following manner:

1. When the immovables are situated in the city of Quebec, Montreal, Three Rivers, Sherbrooke, St. Hyacinthe or Sorel, or in the town of St. Johns, by inserting such notice, at the latest, fifteen days before the sale, in a newspaper published in French and one published in English, in the locality; and if there is only one newspaper in the locality, or all are published in the same language, by inserting it in both languages in the same newspaper; or

2. When the immovables are situated in a parish other than those contained in the above-mentioned localities, by reading aloud and posting the notice on the third Sunday before the day fixed for the sale at the door of the church of the parish, immediately after the morning service, or, if there is no church, at the most public place in the locality. If there is no service, it is sufficient to merely post the notice.—O. C. 1276, *am.*

1353. The notice of sale in the case of shares or stock in financial, commercial or industrial companies is given in the manner prescribed by the order granting the authorization.—*New.* C. C. 29?, *in part.*

1354. If no higher price is offered than the upset price, the person applying for the sale may proceed to effect a private sale, but he can only do so within the four months which follow the authorization, and for a sum not less than the upset price.—O. C. 1277.

1355. In the case of a voluntary licitation of an immovable, held undividedly between a tutor and his pupil, and which cannot be advantageously divided, proceedings are had in the manner above-mentioned, and no purchase of it by the tutor is valid unless the minor is represented at the sale by a tutor *ad hoc*.—O. C. 1278.

Supra, art. 1046.

Civil Code, arts. 269, 709.

1356. In the case of sale of securities, such as capital sums, shares or interest in financial, commercial or industrial companies, or public securities belonging to minors, interdicted persons or absentees, or to substitutions, the jndge authorizing sueh sale, upon the advice of a family council, may, if he thinks fit, order that the sale be made at the current rate upon the stock exchange by a broker or other

person appointed for that purpose, without advertisement or other formalities, and may authorize the gradual disposal during such delay as shall be determined of such securities at the current rate upon the stock exchange.

The broker or person appointed must make a report of all sales by him made, and forward it to be deposited in the office of the court where the authorization for the sale has been deposited, with an attestation under oath, showing the current market value of securities sold on the day of each sale. —O. C. 1278*a*, *am.*; R. S. 6016.

Civil Code, art. 351*a*.

SECTION II

Of Property not exceeding Four Hundred Dollars in Value

1357. Whenever the real value of the whole of the immovables or immovable rights, capital sums, shares or interest in any financial, commercial or industrial company, belonging to a minor or disqualified person or to a substitution, does not exceed the sum of four hundred dollars, the judge may, upon petition presented to him to that effect by the tutor and subrogate-tutor of such minor, or by the curator of such disqualified person, or by the institute or the curator of the substitution, or a substitute of full age and capacity, as the case may be, after making summary inquiry as to the value of the said property, order the sale thereof by public auction at the prices and upon the conditions which he may deem just and reasonable to fix, in the interest of such minor or disqualified person.—O. C. 1278*b*; R. S. 6016.

Civil Code, art. 351*b*.

1358. The judge has power to issue under his hand an order to compel the appearance before him, without costs, of any person whom he deems qualified to afford him the information necessary to determine the value.

Any such person refusing to comply with such order becomes guilty of contempt of court.—O. C. 1278*c*; R. S. 6016.

Supra, art. 834.

1359. The notice of the sale is governed by the rules contained in articles 1352 and 1353. —O. C. 1278*d*, *am.*; R. S. 6016.

1360. The judge may, when he deems it advisable, exempt the petitioners from the necessity of publishing the notice mentioned in the preceding article, and authorize them to sell such property, by mutual consent, to any person paying the price fixed by such judge.—O. C. 1278*e*; R. S. 6016.

SECTION III

General Provision

1361. Any person charged with the sale of property belonging to a minor or other disqualified person, or to a substitution, must prepare a report of his proceedings, and return the same into the office of the Superior Court, together with his proceedings.

Such report and proceedings remain deposited in the office of the Superior Court.—*New.*

CHAPTER LXXII

Proceedings Relating to Successions

I. AFFIXING SEALS **1362**.
REMOVAL OF SEALS **1375**.
II. MAKING OF THE INVENTORIES **1387**.
SALE **1399**.

SECTION I

Seals

§ 1.—AFFIXING SEALS

1362. Seals can be affixed on the property of a succession so long only as an inventory thereof has not been made.—O. C. 1279.

1363. Whenever seals are required to be affixed, a commissioner is named for that purpose by the judge upon the application of any party interested.—O. C. 1280, *am.*

Supra, arts. 594, § 3, 676, § 7, 798, § 6.

Civil Code, art. 681.

1364. The affixing of seals may be demanded :—

1. By all those who lay claim to the succession of the deceased or to a community dissolved by the death of one of the consorts ;

2. By the creditors ;

3. By the testamentary executor.

4. By the Crown, when there are no heirs, or when the property is confiscated.—O. C. 1281.

1365. The commissioner must draw up minutes of the proceedings in affixing seals, in which he must state :—

1. The date ;

2. A designation of the person requiring the seals and the nature of his right ;

3. The judicial order authorizing the affixing of seals :

4. The attendance and declaration of the parties ;

5. A description of the places, bureaus, chests or closets, over the openings of which seals are affixed ;

6. A summary description of all articles found in view and placed under seals ;

7. The taking, at the close of the affixing of seals, of the oath of the parties residing on the premises, that nothing has been, either directly or indirectly, taken away by them or with their knowledge ;

8. The names and designations of the persons in whose custody the things under seals have been placed, and with whom a copy of the minutes must be left ;

9. The signing of the parties present, or their being called upon to sign, and the reasons which prevented them from doing so.—O. C. 1282.

1366. The seals are affixed upon each extremity of a band passing over the keyhole of the lock, if there is one, or, if not, passing over the joint of the opening of the apartment or receptacle containing the effects, in such a manner that it cannot be opened without breaking the band or removing the seals.—C. C. P. 1283.

1367. If, when seals are being affixed, a will made in authentic form by the deceased is found open, the commissioner enters a description of it in his minutes, and delivers it to the guardian ; but if the will is not in authentic form, or if it is closed or sealed, the commissioner, after sealing it himself, must deposit it in the office of the court, together with his min-

utes, in order that probate may be effected at the instance of the persons interested.—O. C. 1283, *am*.

Infra, art. 1430.

Civil Code, art. 856 et s.

1368. When the commissioner finds the doors fastened, or is refused admittance, he must report the fact to the judge, who may order the opening to be effected by all necessary means in the presence of two witnesses, and with such force as may be required.

The commissioner may, in the meantime, place guards around the premises in order to prevent fraudulent removals. — O. C. 1284, *am*.

Supra, arts. 608, 620.

Civil Code, arts. 659, 670, 1348, 1364.

1369. If, after he has entered the house, the commissioner meets with a declaration of opposition, he must mention it in his minutes, in order that the matter may be referred to the judge; but he must place guards in the meantime to prevent fraudulent removals.—O. C. 1286.

1370. The judge decides forthwith upon the opposition, either by countermanding or restricting the affixing of seals, or by ordering the proceedings to continue.—O. C. 1287.

1371. Whenever a reference to the judge has taken place, whatever is done or ordered thereon is certified at the foot of the commissioner's minutes.—O. C. 1288.

1372. If there are no movable effects, the commissioner must state so in his minutes.—O. C. 1289.

1373. As soon as the commissioner has completed his minutes, he is bound to deposit them in the office of the court to form part of the records thereof.—O. C. 1290.

1374. No second affixing of seals can take place, unless the first has been impugned as null.

In affixing seals the second time, the bands are placed across those of the first sealing.—O. C. 1291.

§2.—REMOVAL OF SEALS.

1375. All applications for the removal of seals, when contested, and all oppositions made after the affixing of seals has been completed, are heard summarily, unless the pleadings are ordered to be in writing.—O. C. 1292.

1376. If the affixing of seals is declared null, an order is given at the same time commanding the commissioner who affixed them, or some other person, to remove them without any inventory, and to make a return of such removal; and, in default of this order being complied with, any bailiff holding a copy of the order may break them and make a return of his having done so —O, C. 1293.

Supra, art. 594, § 3.

1377. If, however, seals have been affixed a second time, the complete removal cannot take place until both sealings have been adjudicated upon.—O. C. 1294.

Supra, art. 1374.

1378. If seals have been affixed before the burial of the deceased, they cannot be removed before the expiration of three days after such burial, except for urgent reasons, which must be stated in the order which authorizes the removal. —O. C. 1295.

1379. The removal of seals from the whole or from a part of the property may be demanded by such persons as may demand to have them affixed, and also by any person claiming to be owner of the effects placed under seals, according to their respective rights; and the right to prosecute such demand belongs to him who first makes it.—O. C. 1296.

Supra, art. 1364.

Civil Code, art. 292.

1380. The removal of seals must be applied for by petition to the judge, in order that the inventory may be proceeded with after notifying all persons interested.—O. C. 1297.

1381. The judge, when authorizing the removal of seals, orders that an inventory of the effects shall forthwith be made, after summoning, by a bailiff's notice, or a notice in notarial form, the heirs of the deceased, the surviving consort, the testamentary executor, and all known legatees.

Nevertheless, if the persons entitled to be present at the removal of seals, or to take part in an inventory, reside outside the Province, they need not be summoned. In such case a judicial procurator is named by the judge, on application of the person demanding the removal of seals, or the making of an inventory, to represent such persons; and notice must be given such judicial procurator to be present.

Notwithstanding the nomination of a judicial procurator to represent the persons abovementioned, such persons or any of them may also be present and take part, or may send a power of attorney to the judicial procurator, or to any other person, if they think fit to do so. Such appearance or appointment of a mandatary terminates the mandate of the judicial procurator. —O. C. 1298; R. S. 6017.

Supra, art 1308; *infra*, arts. 1389, 1390.

1382. If any of the persons mentioned in the preceding article have not the full exercise of their rights, they must be provided, according to law, with tutors or curators, as the case may be.—O. C. 1299.

Supra, art. 1337.

1383. The seals are removed in succession, as the making of the inventory progresses.

If the effects under seals are not all inventoried at one time, the seals are reaffixed upon the remainder.—O. C. 1300.

1384. One or more returns of removal of seals must be made, as the inventory progresses.—O. C. 1301.

1385. The return of removal of seals must contain:—

1. The date;
2. The names, residence and occupation of the applicant, and his elected domicile;
3. A recital of the order for removal;
4. Mention that the notices required by article 1380 have been given;
5. Mention of the persons present and their respective allegations;
6. The names of the notary or notaries charged with making the inventory, and of the appraisers.
7. The verification of the seals, if they were unbroken; if not, the state in which they were found, saving recourse against whoever may be liable. —O. C. 1302.

1386. If papers or effects are found, which do not belong to

the succession or the community, and which are claimed by third persons, they are delivered to the proper persons, after describing them in the return, if such description is demanded.—O. C. 1303.

SECTION II

Inventories.

§ 1.—MAKING OF THE INVENTORY.

1387. The formalities and proceedings prescribed by the present section apply to all cases in which an inventory is required.—O. C. 1314.

Supra, art. 594, § 3; *infra*, arts. 1405, 1427 s. 2.

Civil Code, arts. 90, 97, 292, 463, 638, 662, 664, 681, 686, 688, 826 et s. 919, 946, 1342 et s. 1389.

1388. An inventory of the property belonging to a deceased person or to a community dissolved by his death, may be demanded by any person who has an interest in it; but the following persons only can take part in it:—

1. Those who represent the deceased;

2. The consort of the deceased, or such consort's representatives, if a community existed;

3. The testamentary executor.

In the case of a community of property dissolved by a judgment, the inventory may be demanded by either of the consorts.—O. C. 1304.

Civil Code, arts. 267, 292.

1389. All persons entitled to take part in it must be present at the inventory, or be represented thereat in accordance with article 1381, or have been notified to be present in the same manner as for the removal of seals.—O. C. 1305; R. S. 6018.

Supra, art. 1308.

1390. The person who is bound to have the inventory made chooses the executing notary; the other parties may appoint a second notary.

In cases where seals have been affixed, the order for their removal designates the notary who is to make the inventory, subject to the above restriction.—O. C. 1306.

1391. The inventory must be in authentic form.—O. C. 1307.

1392. The inventory is composed of two parts.

The first, or the preamble, contains the names, occupation and residence of the persons making the inventory, of those who applied for it, of the persons present or who failed to appear, of all interested persons absent, if they are known, of the appraisers, and the respective allegations, pretensions and protestations of the parties.

The second part is the inventory proper and contains:—

1. A designation of the place where the inventory is made;

2. A description of the movable property and effects, and a valuation thereof made according to their real value by two sworn appraisers;

3. A designation of the amounts in specie or in valuable securities;

4. A designation of all papers, which must also be numbered from first to last, and be paraphed by the executing notary;

5. All declarations of claims or of indebtedness made by the parties;

6. Mention of the oath having been taken, at the end of the inventory, by those who, before

the inventory, were in possession of the things, or who inhabited the house in which such things are, to the effect that no portion of them has been fraudulently removed or carried away with their knowledge;

7. The deposit of the papers and effects in the hands and custody of the person agreed upon by the parties or named by the judge;

8. A designation of the immovables.—O. C. 1308, *am.*

Civil Code, arts. 292, 659, 670, 1348, 1364, 2168.

1393. If, while the inventory is being made, difficulties arise between the parties as to their respective rights and pretensions, the notary is bound to record such pretensions in the inventory, together with all protestations against the same, leaving the parties to their judicial recourse.—O. C. 1309.

1394. Any of the parties may petition the judge to oblige the notary to enter their pretensions or protestations in the inventory, and the judge is bound to decide upon such petition in a summary manner after the other parties have had notice of it.

As soon as the order made upon such petition has been served upon the notary, he is bound to transcribe it in the inventory and to conform to it. O. C. 1310.

1395. Whenever difficulties have arisen as to the right to be present at the inventory, the judge may order the exclusion of any of the parties when it is manifest that they have no right; or else he may order that proceedings shall be taken provisionally in their name, subject to the respective protestations of the parties and to their right to obtain a decision upon their pretensions after the inventory is completed.—O. C. 1311, *am.*

Supra, art. 1388.

1396. With the consent of all the parties the sale may be proceeded with at once as the inventory is being made; and in such case no valuation of the effects by appraisers is necessary.—O. C. 1312.

1397. The surviving consort or other person, who is bound to have the inventory made, is entitled to the custody of the inventoried effects in preference to any one else; unless, upon being referred to, the judge, for some important reason, orders otherwise.—O. C. 1313.

1398. The inventory may, whenever required, be judicially closed, at the chef-lieu of the district, by the judge of the Superior Court, the prothonotary or deputy prothonotary, or at any place in the district, outside the chef-lieu, where the Circuit Court is appointed to be held, by the judge or the clerk or the deputy-clerk of such Circuit Court, upon the submission of the original inventory or an authentic copy thereof, with a sworn declaration that such inventory is faithful and correct. Every prothonotary, and every clerk of the Circuit Court held at a place not being the chef-lieu of a district, shall keep an indexed register, in which he shall enter and make, and certify as true, a copy of every such sworn declaration and closure of inventory made in his district or circuit.—*New.* 61 Vic. c. 47, s. 9.

§ 2.—SALE.

1399. When the sale of the movable property is demanded by any of the heirs pursuant to article 697 of the Civil Code, or of any other copartitioner, it takes place upon a day fixed, of which public notice must have been given.—O. C. 1315.

Supra, art. 1046.
Civil Code, arts. 1562, 1563.

1400. The sale takes place wherever the effects are situated, and for cash, unless it is otherwise agreed or ordered.—O. C. 1316.

1401. The sale is effected by a bailiff or by any person agreed upon by the parties, and the moneys are received by the person thus employed.—O. C. 1317, *am.*

Civil Code, art. 1565.

1402. The sale may take place either in the presence of the persons interested or in their absence after they have received due notice of it.—O. C. 1318.

Supra, art. 1308.

1403. Minutes of the sale are drawn up, stating what interested persons were present, and what notice was given to those who were absent, and specifying each object put up for sale, the price for which it was sold, and the name of the purchaser. —O. C. 1319.

1404. If any of the coheirs or copartitioners are minors, the notice of sale must also be published and posted in the same manner as in cases of sale of movable property under execution.—O. C. 1320.

Supra, arts. 638, 639,

SECTION III

Benefit of Inventory

1405. Benefit of inventory can only be granted upon petition to the judge, stating that an inventory of the property of the succession will be or has been made, that the petitioner has not acted as heir, and that he believes it in his interest not to confound his rights with the obligations of the succession.—O. C. 1321.

Civil Code, arts. 301, 642, 660 et s., 878.

1406. The beneficiary heir is bound to give notice of his quality as such, by an advertisement in the form contained in Schedule JJ in the Appendix to this Code, published at least twice in two newspapers designated by the judge.—O. C. 1322, *am.*

Civil Code, art. 676.
See Form. Sched. JJ. Appendix.

1407. Benefit of inventory is granted only on condition of rendering an account and paying to such person as may be entitled thereto whatever moneys may be received; and the beneficiary heir must, if thereunto required, as provided by article 663 of the Civil Code, give security to the amount and in the manner fixed by the judge.—O. C. 1323; R. S. 6619.

Supra, art. 559 et s.

1408. An heir under benefit of inventory cannot sell the movable property of the succession without observing the same formalities as in the case of successions in which minors are concerned.—O. C. 1324, *am.*

Supra, art. 1404.
Civil Code, art. 674.

1409. He may sell the im-

movables or the shares and stock in financial, commercial or industrial companies, by observing the formalities provided by law for the sale of property belonging to minors or other disqualified persons, on advice of the parties interested, present at a meeting convened for that purpose, in the manner prescribed by the judge.

Such sale cannot take place in the case of immovables except with the consent of all hypothecary creditors.—O. C. 1325, *am.*; R. S. 6020.

Supra, art. 1341 et s.

Civil Code, art. 675.

1410. In cases where the beneficiary heir has any claims to exercise against the succession, he must cause a curator to be appointed, the same formalities being observed as are prescribed for the appointment of curators to vacant successions.—O. C. 1326,

Supra, art. 1338; *infra*, art. 1426.

Civil Code, arts. 347, 347*a*, 348, 671.

SECTION IV

Letters of Verification

1411. Whenever, in this Province, an abintestate succession devolves, having property situate outside of its limits, or debts due by persons not residing therein, any one or more of the heirs may apply to the judge in the district in which the deceased had his domicile, or, if he had no domicile in the Province, to the judge in the district in which he died, for letters of verification establishing upon what persons the succession has devolved, and the share of each heir.—O. C. 1326*a*, 1326*b*, *am.*; R. S. 6021.

Supra, art. 102.

Civil Code, arts. 597, 650*a*.

1412. The petition for this purpose sets forth that the person whose succession has devolved has died without leaving a will, leaving property situate outside the Province, or debts due by persons not residing therein, and mentions the persons who are his heirs, their relationship to him and their filiation.—O. C. 1326*b*, *am.*; R. S. 6021.

1413. The allegations of the petition must be verified by affidavit.—O. C. 1326*c*, *am.*; R. S. 6021.

1414. The petition, and a notice of the time when it will be presented, must be served upon the known heirs who reside in the Province.

A summary notice of the intended application, and of the time when it will be made, must be inserted once a week during four consecutive weeks in one newspaper published in the French language, and in one published in the English language, in the district.

The delay between the service of the petition and its presentation is six days whenever the distance does not exceed one fifty miles, with an additional day for each additional fifty miles, and at least thirty days between such presentation and the last insertion of the summary notice.—O. C. 1326*d*, *am.*; R. S. 6021.

Supra, art. 1308.

1415. The petition must be accompanied with the acts of civil status necessary to establish the allegations, or, in default thereof, with an affidavit

to justify their absence.—O. C. 1326*e*, *am.*; R. S. 6021.

Civil Code, art. 228 et s.

1416. Any heir may enter an appearance, and may contest the petition in whole or in part.

The contestation is subject to the rules and delays of ordinary matters. — O. C. 1326*f*, 1326*g*. 1326*h*, *am.*; R. S. 6021.

1417. Letters of verification may be contested by action brought in the district where they were granted, by any heir of whom mention has been omitted and who has not intervened.—O. C. 1326*j*. *am.*; R. S. 6021.

1418. Such action must be accompanied with an affidavit, denying the correctness of the letters, stating in what their incorrectness consists, and attesting the truth of the facts alleged in the declaration.

All the heirs mentioned in the contested letters of verification, or their representatives, must be impleaded.—O. C, 1326*k*, *am.*; R. S. 6021.

1419. The declaration and affidavit must be filed at the time of the issue of the writ; and notice of the contestation, under the signature of the prothonotary, must be published in the same manner as the notice of an application for letters of verification. —O. C. 1326*l*; R. S. 6021.

1420. When the action in contestation of letters of verification is maintained, the judgment either corrects or revokes them.

Corrected letters of verification have the same effect as the original letters.

They may also be contested by any heir who was neither an intervening party nor a party in any action in contestation.—O. C. 1326*m*, *am.*; R. S. 6021.

1421. Except during the pendency of an action of contestation, authentic copies of letters of verification, either original or corrected, as the case may be, are delivered, under the seal of the court, to all persons requiring the same for use outside the Province, in all proceedings and circumstances where it is required to prove who are the heirs of the deceased, or to obtain ancillary letters of administration.—O. C. 1326*n*; R. S. 6021.

SECTION V

Putting into Possession.

1422. Putting into possession, whenever it may be demanded, must be applied for by petition to the judge in the district in which the absentee or deceased person had his last domicile, or, if he had no domicile in the Province, in the district in which the property is situate.—O. C. 1327, *am.*

Supra, art. 102.

Civil Code, arts. 93, et s. 607, 638.

1423. The petition in the case of absentees must be accompanied with an act of notoriety, by three witnesses duly sworn, establishing the facts upon which the petition is based, and also with such other proof as is adjudged necessary.—O. C. 1328, *am.*

1424. Putting into possession cannot be granted until notice has been given and published, in the manner required for the summoning of absentees, calling upon all persons who may have any rights against the succession of the property in

question to bring their claims before the judge.—O. C. 1329.

Supra, art. 136.

1425. The proceedings upon such claims and upon the petition for putting into possession are the same as upon ordinary suits.—O. C. 1330.

SECTION VI

Vacant Successions

1426. The judge proceeds to the appointment of a curator to a vacant succession, after taking the advice of the relations and creditors of the deceased, convened in the manner prescribed by such judge.—O. C. 1333, *am.*

Supra, arts. 1338, 1410.

Civil Code, arts. 347, 347*a*, 348, 401, 684 et s.

1427. The curator is bound:

1. To give notice of his appointment by an advertisement published at least twice in two newspapers determined by the judge;

2. To cause an inventory to be made observing the same formalities as in ordinary successions;

3. To cause the movable property to be sold, observing the same formalities as in the case of successions in which minors are concerned.—O. C. 1334, *am.*

Supra, arts. 1387 et s. 1404.

1428. He may sell the immovables and shares in financial, commercial or industrial companies by following the formalities established by law for the sale of property belonging to minors, upon the advice of the parties interested, present at a meeting convened for that purpose in the manner prescribed by the judge.

Such sale, as respects immovables, cannot be had except with the consent of all the hypothecary creditors.—O. C. 1335, *am.*; R. S. 6022.

Supra, art. 1341 et s.

1429. He is bound to render an account of his administration in the same manner as any other curator, and also from time to time, whenever required by a competent court or by the judge to do so.—O. C. 1336.

SECTION VII

Probate of Wills

1430. Any judge of the Superior Court, at any place where the said court or the Circuit Court is appointed to be held, in court or out of court, in term or out of term, or in vacation, and any prothonotary of the Superior Court, at the place where his office is therein held, out of court, but in term or out of term, have and exercise within and for the district in which such place as aforesaid lies, the same power and authority as are vested in the court exercising superior original jurisdiction by article 857 of the Civil Code in what respects the probate of wills.

The proceedings shall form part of the records of the Superior Court at the place where they are held, or of the Circuit Court at such place, if the Superior Court is not held there. *New.* C. C. 857.

Supra, art. 1367.

Civil Code, art. 856 et s.

ELEVENTH PART.

ARBITRATIONS

CHAPTER LXXIII

Arbitrations

1431. Submission is an act by which persons, in order to prevent or to put an end to a lawsuit, agree to abide by the decision of one or more arbitrators whom they agree upon.—O. C. 1341.

Civil Code, art. 1918 et s.

1432. Those persons only can enter into a submission who have the legal capacity to dispose of the objects comprised in it.—O. C. 1342.

Civil Code, arts. 177 et s., 297 et s., 307, 322, 334, 351, 985 et s., 1919.

1433. The appointment of arbitrators by the court is regulated in articles 411, 412 and 413 of this code.—O. C. 1343.

Supra, art. 1276.

1434. Deeds of submission made out of court must state the names and additions of the parties and arbitrators, the objects in dispute, and the delay within which the award of the arbitrators must be given.—O. C. 1344.

1435. Submission must be in writing.—O. C. 1345.

Civil Code, art. 1214.

1436. The arbitrators must hear the parties and their proofs respectively, or establish a default against them, and decide according to the rules of law, unless by the submission they have been exempted from doing so.

If they have been appointed at the same time as mediators, or as mediators only, they are not required to decide according to the rules of law.

The witnesses to be examined before the arbitrators may be sworn before the prothonotary or the clerk of the Circuit Court of the locality, or before a commissioner of the Superior Court. —O. C. 1346, *am.*

1437. During the delay fixed by the submission the appointment of the arbitrators cannot be revoked, except with the consent of all the parties.

If the delay is not fixed, either of the parties may revoke the submission when he pleases. —O. C. 1347.

1438. The submission becomes inoperative:—

1. In the case of death, refusal, withdrawal or inability to act of one of the arbitrators, unless some clause provides that it shall avail notwithstanding, or that such arbitrator shall be replaced by another chosen by the parties or by the remaining arbitrator or arbitrators, or otherwise;

2. In the case of the decision not being given before the expiration of the delay fixed;

3. By the failure to agree, if the appointment of a third arbitrator has not been provided for;

4. By the mutual consent of the parties;

5. By the loss of the thing which forms the subject of the submission;

6. By the extinction of the ob-

ligation which formed the subject of the submission ;

7. By revocation in the case of the preceding article. — O. C. 1348.

1439. Arbitrators cannot be recused except for reasons which have arisen or have been discovered since their appointment.—O. C. 1349.

1440. If the arbitrators fail to agree, and the appointment of a third arbitrator has been provided for, such appointment is made in conformity with the submission and the case is examined anew.—O. C. 1350.

1441. No award of arbitrators can be rendered when there are more than one, unless the two named, or one of these and the third arbitrator, agree upon each item of the award.—O. C. 1351.

1442. The award of the arbitrators is made out in notarial form or deposited with a notary, who draws up an authentic act of the deposit, and it must be pronounced in the presence of the parties, or a copy thereof must be left with or served upon them within the delay fixed by the submission. — O. C. 1352, *am.*

1443. Any extra-judicial award of arbitrators can only be executed under the authority of a competent court, upon a suit brought in the ordinary manner to have the party condemned to execute it.—O. C. 1353.

1444. The court before which such a suit is brought may examine into any grounds of nullity which affect the award, or into any questions of form which may prevent its being homologated, but it cannot inquire into the merits of the contestation ; nevertheless, when a penalty has been stipulated in the submission, the court may do so whenever the party contesting has paid or tendered the amount of the penalty either to the party who accepts the award or into court.—O. C. 1354.

Supra, art. 417.

APPENDIX.

SCHEDULE A

FORMS OF DECLARATION (ART. 123, § 2)

1.—*Action on a Deed of Sale.*

PROVINCE OF QUEBEC, }
District of }

SUPERIOR COURT

No. A. B. Plaintiff.

vs.

C. D. Defendant.

The plaintiff claims $ from the defendant, as the amount due by the defendant under a certain deed of sale passed at , on , before notary; and prays for judgment for that sum, with interest from and costs.

(*Date*). G. H.,
Attorney for Plaintiff.

2.—*Action on a Deed of Obligation*

(TITLE OF CASE)

The plaintiff claims $ from the defendant, as the amount due by the defendant under a certain deed of obligation passed on , at before , notary; and prays for judgment for that sum, with interest from and costs.

(*Date*). G. H.
Attorney for Plaintiff.

3.—*Action on a Bill of Exchange by an Indorsee against the Acceptor*

(TITLE OF CASE)

The plaintiff claims $ from the defendant, as the amount of a bill of exchange, dated , drawn by , accepted by the defendant, payable months after date, to the order of , and indorsed to the plaintiff; and prays for judgment for that sum with interest from and costs.

(*Date*). G. H.,
Attorney for Plaintiff.

4.—*Action on a Bill of Exchange by an Indorsee against the Drawer and the Acceptor*

(TITLE OF CASE)

The plaintiff claims $ from the defendants, as the amount of a bill of exchange, dated , drawn by the defendant , accepted by the defendant , payable at months after date, to the order of , and by him indorsed to the plaintiff, together with $ as costs of protest, whereof the defendant, , had due notice; and prays for judgment against the defendants jointly and severally for the said sums, with interest from and costs.

(*Date*). G. H.,
Attorney for Plaintiff.

5.—*Action on a Promissory Note*

(TITLE OF CASE)

The plaintiff claims $ from the defendant, as the amount of a promissory note, dated , at signed by the defendant, payable months after date; and prays for judgment for the said sum, with interest from and costs.

(*Date*). G. H.,
Attorney for Plaintiff.

6.—*Action on a protested Promissory Note against the Maker and Indorser.*

(TITLE OF CASE)

The plaintiff claims $ from the defendants, as the amount of a promissory note signed by the defendant, , indorsed by the defendant , dated at , payable at months after (date), together with $, costs of protest, whereof notice was given to , the indorser; and prays for judgment against the defendants, jointly and severally for the said sums, with interest from and costs.

(*Date*) G. H.,
Attorney for Plaintiff.

7.—*Action on a Private Writing.*

(TITLE OF CASE)

The plaintiff claims $ from the defendant, as the amount due for goods sold and delivered to by the plaintiff, at , in pursuance of a guarantee signed by the defendant at , on , and addressed to the plaintiff; and prays for judgment for the said sum with interest from and costs.

(*Date*) G. H.,
Attorney for Plaintiff.

8.—*Action on an Account*

(TITLE OF CASE)

The plaintiff claims $ from the defendant, as the price (*or* value, *as the case may be*), of goods sold and delivered (*or* for services rendered, *or as the case may be*), to the defendant at the times and places, and for the several amounts stated in the account herewith produced; and prays for judgment for that sum, with interest from and costs.

(*Date*) G. H.,
Attorney for Plaintiff,

SCHEDULE B

FORM FOR PUBLICATION OF SUMMONS IN NEWSPAPERS (ART. 136)

PROVINCE OF QUEBEC, }
District of }

SUPERIOR COURT

A. B., of the (*domicile and occupation*),
Plaintiff;
vs.

C. D., of the (*residence*),
Defendant.

The defendant is ordered to appear within one month.

(*Date*) E. F.,
P. S. C.

SCHEDULE C

FORM OF AFFIDAVIT OF SERVICE BY A LITERATE PERSON (ART. 137)

A. B., of , being duly sworn, doth depose and say:

I served the within writ of summons, and the declaration thereto annexed, on C. D., the defendant (*or as the case may be*) therein named, on the , 18 , at o'clock, in the , at , in the Province of , by delivering to *him* personally a true copy of the said writ and declaration (*or, as the case may be*, by leaving a true copy thereof for the said C. D. with a reasonable person of *his* family at his residence at).

And I have signed.
A. B.

Sworn before me, at , 18.
J. P.

Commissioner or Justice of the Peace.

SCHEDULE D

FORM OF GENERAL DENIAL (ART. 202)

(TITLE OF CASE)

The defendant denies all the allegations of the declaration, and prays for the dismissal of the action with costs.

(*Date.*) G. H.,
Attorney for Defendant.

SCHEDULE E

FORMS OF DEFENCE (ART. 203)

1—*Defence of Payment*

(TITLE OF CASE)

The defendant pleads payment by cash made at on , (*or* by a cheque dated at, etc., *or as the case may be*); and prays for the dismissal of the action with costs.

(*Date.*) G. H.,
Attorney for Defendant.

2—*Defence of Novation*

(TITLE OF CASE)

The defendant pleads that the plaintiff's claim was novated by reason of the acceptance by the plaintiff, in discharge of the defendant, of a claim for $, assigned to him by the defendant on , at , by act in private writing (*or* in notarial form, *or as the case may be*); and prays for the dismissal of the action with costs.

(*Date.*) G. H.,
Attorney for Defendant.

3.—*Defence of Release*

(TITLE OF CASE)

The defendant pleads that the plaintiff's claim has been extinguished by release in private writing (*or* in notarial form, *or as the case may be*), made at , on ; and prays for the dismissal of the action with costs.

(*Date.*) G. H.,
Attorney for Defendant.

4.—*Defence of Compensation*

(TITLE OF CASE)

The defendant pleads that the plaintiff's claim is compensated by an equal amount belonging to a claim of the defendant against the plaintiff, arising under the following circumstances: (*here state the facts briefly*); and prays for the dismissal of the action with costs.

(*Date.*) G. H.
Attorney for Defendant.

5.—*Defence of Prescription*

(TITLE OF CASE)

The defendant pleads prescription by thirty years (*or* five years, *or as the case may be, and state briefly the facts giving rise to the prescription*); and prays for the dismissal of the action with costs.

(*Date.*) G. H.,
Attorney for Defendant.

SCHEDULE F

FORM OF EXPERTS' OATH (ART. 400)

I, A. B,, of (*if there be two or more persons to be sworn say* I, A. B., of , and I, C. D , of),

Swear that, in the presence of E. F., the plaintiff, and G. H., the defendant, named in an interlocutory judgment pronounced in (*here insert the name of the court*) in the district of , bearing date the 18 , or in their absence, after due notification shall have been given them, to attend at a place designated, and on a day and hour to be stated to them, respectively, I will faithfully proceed as an expert to the view and examination required by the said judgment; and that I will truly report my opinion in the premises, without favour or partiality.

So help me God.

SCHEDULE G

FORM OF CERTIFICATE OF THE DUE ADMINISTRATION OF THE OATH (ART 400)

Sworn before me , a commissioner of the Superior Court in the district of (*or* subdelegate authorized by the commission, *or* the judgment, *as the case may be*, hereunto annexed, *or as the case may be*), at , the , 18 .

SCHEDULE H

FORM OF WITNESSES' OATH (ART. 404)

I, (*insert the name, profession or quality and place of residence of the witness*), swear that I am not related or allied to, or a servant of either party, and that I am not interested in the event of the present cause (*or, if the witness says he is, state in what degree he declares himself to be related or allied to either and which of the parties, or what situation he holds in the service of either of them*); and that the evidence, which I shall give before the experts (*or* arbitrators, *or* mediators, *as the case may be*), named in the in-

terlocutory judgment pronounced by (*here insert the name of the court*), in the present cause, shall be the truth, the whole truth and nothing but the truth.

So help me God.

SCHEDULE I

FORM OF CHALLENGE TO THE ARRAY. (ART. 449)

(TITLE OF CASE)

The (plaintiff *or* defendant), challenges the array of the panel on the ground that it was returned by X. Y., sheriff of the district of (*or* E. F., deputy of X. Y., sheriff of the district of , (*as the case may be*) that and the said X. Y. (*or* E. F., *as the case may be*) was guilty of partiality (*or* fraud, *or* wilful misconduct, *or as the case may be*) in returning the said panel.

(*Date*) H. K.,
Attorney for the (Plaintiff *or* Defendant).

SCHEDULE J

FORM OF CHALLENGE TO THE POLLS (ART. 456)

(TITLE OF CASE)

The (plaintiff *or* defendant) challenges G. H., on the ground that the said G. H. is interested in the suit (*or as the case may be*).

(*Date.*) H. K.,
Attorney for the Plaintiff *or* Defendant).

SCHEDULE K

FORM OF AFFIDAVIT TO OBTAIN JUDGMENT BY DEFAULT OR EX PARTE (ART. 532, §2)

(TITLE OF CASE)

A. B., of , the plaintiff (*or* one of the plaintiffs, *or as the case may be*), being duly sworn, doth depose and say

The sum of $, being the amount demanded of the defendant, is to my knowledge justly due by him to the plaintiff (*or* plaintiffs), for the causes in his (*or* their) demand mentioned.

And I have signed, A. B.
Sworn, etc.

SCHEDULE L

FORM OF ADVERTISEMENT OF SHERIFF'S SALE (ART. 716)

PUBLIC NOTICE is hereby given that the undermentioned lands and tenements have been seized and will be sold at the respective times and places mentioned below.

No. *Fieri facias.*

A. B., of the city of , in the county of , in the district of , against C. D., of , in the county of , in the district of (*as the case may be, and insert the description of the land or other immovable property, parish, seigniory or township, and the county and district in which the same is situate,*) , in the county, etc., bounded, etc.

To be sold at , on the day of , at o'clock in the (forenoon.)

SCHEDULE M

FORM OF ADVERTISEMENT OF SHERIFF'S SALE (ART. 733)

(TITLE OF CASE)

Notice is hereby given that the sale of the immovables seized in this cause, formerly announced to take place at (*hour*), on (*day*), 18 , at (*place*), will take place at (*hour*), on (*day*) 18 , at (*place*). A. B., Sheriff.
(*Date.*)

SCHEDULE N

FORM FOR PUBLICATION IN THE NEWSPAPERS OF A NOTICE TO CREDITORS COLLOCATED (ART. 823)

Province of Quebec, }
District of }

SUPERIOR COURT

A. B., Plaintiff;
vs.
C. D., Defendant;
and
E. F., Creditor collocated.

It is ordered that the said E. F. (*his quality and domicile*) or his legal representatives do appear before this Court on the 18 , in order to answer the contestation of his claim.
(*Date*). R. S.,
Prothonotary.

SCHEDULE O

FORM OF DEMAND OF ABANDONMENT UPON A TRADER WHO HAS CEASED HIS PAYMENTS (ART. 854)

To A. B., of (*state place of domicile or ordinary residence, occupation, and firm name if any*):

You are hereby required by C. D., your creditor, whose claim is unsecured in a sum of $, to make a judicial abandonment of your property for the benefit of your creditors, in the office of the prothonotary of the Superior Court for the district of , in the Court House in
(*Date.*) C. D.

SCHEDULE P

FORM OF NOTICE OF MEETING OF CREDITORS FOR THE APPOINTMENT OF CURATOR AND INSPECTORS

(ART. 866)

(TITLE OF CASE)

The said , having made a judicial abandonment of his property, for the benefit of his creditors on the , 18 , the creditors of the said are notified to meet in the office of the undersigned prothonotary, on the 18 , at o'clock in the noon, to advise as to the appointment of a curator and inspectors.
(*Date.*) F. G.,
Prothonotary.

SCHEDULE Q

FORM OF NOTICE OF APPOINTMENT OF CURATOR (ART. 872)

(TITLE OF CASE)

Notice is hereby given that, on the 18 , by an or-

der of the court, the undersigned was appointed curator to the property of the said
. who has made a judicial abandonment of his property for the benefit of his creditors.
Sworn claims must be filed with me within thirty days from this notice.
(*Date.*) H. B.

SCHEDULE R

FORMS OF AFFIDAVIT FOR CAPIAS (ART. 898)

1.—*Against a Debtor absconding from the Provinces of Quebec and Ontario*

(TITLE OF CASE)

I (*names, domicile and occupation*), being duly sworn, do depose and say:—
1. I am the said plaintiff (*or* the bookkeeper, *or* the clerk, *or* the legal attorney, of the plaintiff, *as the case may be*).
2. The defendant is personally indebted to the plaintiff in the sum of $... .....
3. The said indebtedness arose in the following manner; (*state the cause of indebtedness succinctly, and the time and place where it has arisen.*)
4. The defendant is immediately about to leave the Provinces of Quebec and Ontario, with intent to defraud his creditors in general and the plaintiff in particular (*or* with intent to defraud the plaintiff, *as the case may be.*)
5. The plaintiff will thereby be deprived of his recourse against the defendant.
And I have signed.
Sworn, etc.

2.—*Against a Debtor who secretes his Property*

Follow the foregoing form, with the exception of Paragraph 4, *for which substitute the following:*
4. The defendant is secreting (*or* making away with, *or* has secreted *or* made away with, *or* is immediately about to secrete *or* make away with) his property, with intent to defraud his creditors in general and the plaintiff in particular (*or* with intent to defraud the plaintiff, *as the case may be*).

3.—*Against a Trader who refuses to make an Abandonment.*

Follow the first form hereinabove given, with the exception of the fourth and fifth paragraphs, for which substitute the following:—
4. The defendant is a trader who has ceased his payments, and refuses to make a judicial abandonment of his property for the benefit of his creditors, although duly required to do so.

SCHEDULE S

FORM OF AFFIDAVIT FOR CAPIAS FOUNDED ON INFORMATION AND BELIEF (ART. 901)

Follow the forms in Schedule R, with the exception of paragraph 4, *for which substitute the following:—*
4. I am credibly informed, and believe, that the defendant is immediately about to leave, etc. (*or as the case may be*); and the sources of my said information and the grounds of my said belief are the following: (*here state them succinctly.*)

SCHEDULE T

FORM OF PROVISIONAL BAIL-BOND (ART 910)

(TITLE OF CASE)

We (*names, domiciles and occupations*), sureties on behalf of the defendant (jointly and severally), promise and undertake that the defendant will, on (*state here the day on which the defendant is required to appear*), or at any time previously thereto. or within ten days thereafter, give good and sufficient security in conformity with article 913 of the Code of Civil Procedure, to the satisfaction of the Superior Court for the said district, of any one of the judges of the said court, or of the prothonotary, or that the defendant will surrender himself into the custody of the sheriff within the same delay ; and, in default thereof, that we, the said sureties, will pay to (*name here the sheriff*), sheriff of the said district, his heirs, representatives and assigns, the amount of the judgment to be rendered herein to the extent of (*state here the amount, if not for unliquidated damages indorsed on the writ*), and also in such further sum as the interest and costs shall amount to (*or in case of unliquidated damages, state simply the amount fixed by the judge, omitting mention of interest and costs*).

And we have signed.

SCHEDULE U

FORM OF BAILBOND (ART. 913)

(TITLE OF CASE)

We (*names, domiciles and occupations*), sureties on behalf of the defendant (jointly and severally), promise and undertake that the defendant will make a judicial abandonment of his property for the benefit of his creditors within thirty days after the rendering of judgment maintaining the capias, and also that the defendant will surrender himself into the custody of the sheriff, when required to do so by an order of the court or judge, within thirty days after service of such order upon him or his sureties ; and that, in default of the defendant's making such abandonment or surrender, or either, within the delays abovementioned, we, the said sureties, will pay to the plaintiff the amount of the judgment to the extent of (*state here the amount, if not for unliquidated damages, indorsed on the writ*), and also such further sum as the interest and costs shall amount to (*or, in case of unliquidated damages. state simply the amount fixed by the judge, omitting mention of interest and costs..*

And we have signed.

SCHEDULE V

FORM OF PETITION OF RIGHT (ART. 1012)

In the Superior Court, District of Quebec,

To the Queen's Most Excellent Majesty :

The humble petition of A. B., of (*domicile and occupation*) by his attorney, C. D., of (*residence*), sheweth :

1. (*State the facts*).

Your suppliant, therefore,

humbly prays that (*state the relief claimed*).

(*Date*).

SCHEDULE W

FORM OF NOTICE TO THE ATTORNEY-GENERAL (ART. 1017)

To the Honourable the Attorney-General of the Province of Quebec:

The suppliant prays for a statement in defence or contestation on behalf of Her Majesty, within thirty days after the date of service of the above petition of right, or otherwise the suppliant will proceed as in a case in which the defendant fails to appear.

(*Date.*)

SCHEDULE X

FORM OF NOTICE IN THE NEWSPAPERS IN HYPOTHECARY ACTIONS AGAINST UNKNOWN PROPRIETORS (ART. 1028)

Province of Quebec, }
District of }

Know all men that A. B., of the parish of in the district of , by his petition filed in the office of the Superior Court under No. , prays for the sale of an immovable situated in the said district, to wit: (*describe the immovable in conformity with Article* 706), which land is now occupied by D. C. (*or* has not been occupied for years, and was last occupied by N.); and that the said A. B. alleges that by deed of , entered into by D. E., of , before F. G., notary (*or as the case may be*), at , on the , a hypothec was constituted upon the said immovable hereinabove described, for the sum of , and claims from the present proprietors of the said immovable the sum of , due him for .

The said A. B. further alleges that the present proprietor of the said immovable is unknown (*or* uncertain), and that the known proprietors, since the date of the said deed of , have been N. G. and F.

Notice is therefore given to the proprietor of the immovable to appear before the said court, at , within two months, to be reckoned from the fourth publication of this present notice, to answer the demand of the said A. B., failing which, the court will order that the said immovable be sold by sheriff's sale.

(*Date*) H. P.,
Prothonotary.

SCHEDULE Y

FORM OF WRIT FOR THE SALE OF IMMOVABLE (ART. 1030)

To the Sheriff of the District of

Whereas the following notice hath been given in conformity with Article 1030 of the Code of Civil Procedure (*recite the notice*): and, whereas, judgment was rendered on the day of , ordering the sale of the immovable described in the said notice;

You are hereby required to make the ordinary announcements thereof and to sell the said immovable in order to the payment to the said A. B., of the sum of and

taxed costs, and you shall make a return of this writ and of the oppositions which have then been placed in your hands.

H. P.
Prothonotary.

SCHEDULE Z

FORM OF APPEARANCE OF PROPRIETOR OR POSSESSOR (ART. 1033)

I, B. C., appear to answer the petition of A. B., as proprietor of the immovable described in the said petition by virtue of (*mention the title upon which the proprietor bases his claim, and give the date thereof*).

SCHEDULE AA

FORM OF NOTICE OF LICITATION (ART. 1047)

Notice is hereby given that under and by virtue of a judgment of the Superior Court sitting at , in the district of , on the 18 , in a cause in which A. B. (*description at length*) is plaintiff, and C. D. (*description at length*) is defendant, ordering the licitation of certain immovables described as follows, to wit: (*here insert the description of the property to be sold*), the property above described will be put up to auction and adjudged to the last and highest bidder on the , 18 , sitting the Court, in the court room of the Court House in , subject to the charges, clauses and conditions contained in the list of charges, deposited in the office of the prothonotary of the said Court; and that any opposition to annul, to secure charges, or to withdraw, to be made to the said licitation, must be filed in the office of the prothonotary of the said court at least twelve days before the day fixed as aforesaid for the sale and adjudication, and that any opposition for payment must be filed within six days after the adjudication; and failing the parties to file such oppositions within the delays hereby limited, they will be foreclosed from so doing.

G. H.

(*Date.*)

SCHEDULE BB

FORM OF NOTICE OF PETITION FOR CONFIRMATION OF TITLE (ART. 1068)

Notice is hereby given that there has been lodged in the office of the prothonotary of the Superior Court, in the district of , a deed executed before A.B., notary, on the between C.D., of ; and E.F., of ; being a (*sale*) by the said C. D. to the said E. F., of (*describe the immovable*), and possessed by as proprietor, for the three years now last past; and all persons who claim any privilege or hypothec upon the said immovable immediately before the registration of the said deed by which the said (*lot*) was acquired by the said C. D. are hereby notified that application will be made to the said Court on the 18 . for a judgment of confirmation of title; and that unless their claims are such as the registrar is bound by the

provisions of the Code of Civil Procedure to include in his certificate to be filed in this case, they are hereby required to serve their oppositions in writing, and file the same in the office of the said prothonotary within six days after the said day, in default of which they will be forever precluded from the right of so doing.

SCHEDULE CC

FORM OF AFFIDAVIT IN SUPPORT OF OPPOSITION TO JUDGMENT (ART. 1165)

(TITLE OF CASE)

G. H., of . the opposant (*or* one of the opposants, *or other person, as the case may be*), being duly sworn, doth depose and say:

The facts set forth in the annexed opposition are, to my knowledge true.

And I have signed.

G. H.

Sworn, etc.

SCHEDULE DD

FORM OF NOMINATION OF EXPERTS (ART. 1343)

On the day of , in the year one thousand eight hundred and , at o'clock in the noon, before the undersigned notary for the Province of Quebec, residing in the district of , came and appeared A, residing , of the one part, and B, residing , of the other part, who have appointed, to wit, the said A, C, and the said B, D, as experts for the purpose of proceeding to the inspection of the real estate belonging to , described in the declaration made by the said , by act before , notary, to ascertain the value thereof (*and if the sale is demanded on account of indivisibility, add* and whether or not it can advantageously be divided).

SCHEDULE EE

FORM OF EXPERTS' OATH (ART. 1344)

I, and I, swear that I will faithfully proceed to the performance of what is required of me by the act of my appointment executed before notary, on the , and that I will make a true report of my opinion on the whole matter, without favour or partiality.

So help me God.

Sworn, etc.

SCHEDULE FF

FORM OF REPORT OF EXPERTS (ART. 1344)

The experts appointed by , on , declare that, having previously made oath, as appears by the certificate hereunto annexed, they proceeded on the , 18 , to , the inspection of the real estate and dependencies described in , the , and after due examination and obtaining all information necessary for the purposes mentioned in their said act of appointment, they value

and estimate the said real estate (*if there are several immovables, they should be valued separately; and if the sale is made on account of indivisibility, add* and further, they declare that it cannot advantageously be divided).

The said experts further declare that they are not related to the parties interested in the matter in question, nor to their legal representatives.

(*Date.*)

SCHEDULE GG

FORM OF MINUTES OF FAMILY COUNCIL (ART. 1346)

On the day of , in the year one thousand eight hundred and , at o'clock in the noon, before me, the undersigned notary for the Province of Quebec, residing in the district , came and appeared , who affirms that in conformity with the declaration made by act before , notary, bearing date the , for the purpose of obtaining authority to sell, for the reasons therein set forth, the real estate belonging to , therein designated and described as follows, to wit: (*here describe the real estate*) he did for the said purpose caused to be summoned before us, to wit: , in default of relations, requiring us, they being present, to receive their advice as to the contents of the act of declaration aforesaid, and the parties abovenamed having appeared, we have caused to be read the said act of declaration, the report of the experts made before , notary, and have taken and received from them the necessary oath, and such oath having been made, they have all unanimously declared that they are of opinion that..... (*Should there be a division of opinion, mention the same, and give the reasons therefor.*)

SCHEDULE HH

FORM OF PETITION FOR HOMOLOGATION (ART. 1346)

Province of Quebec,)
District of -)

To the Honourable Judges:

A. (*addition and place of domicile*) humbly represents that he has caused the relations and friends of to be consulted by , notary, at on the 18 , and has, caused to be fulfilled all proceedings, by law required to be had in order to , and submitted for your approval.

And he therefore prays that Your Honours will take these proceedings into consideration and homologate them.

(*Date.*)

SCHEDULE JJ

FORM OF NOTICE BY BENEFICIARY HEIR (ART. 1406)

Notice is hereby given that the undersigned has accepted, under benefit of inventory, the succession of the late.....in his lifetime of (*state here the residence and occupation.*

(*Date*)

A. B.

RULES OF PRACTICE

OF THE

SUPERIOR COURT, THE CIRCUIT COURT AND THE COURT OF REVIEW.

The following RULES OF PRACTICE were adopted at a meeting of the judges of the Superior Court held, in the Court-house of Quebec, on the 22nd and 23rd of December, 1897, and at which were present: the honorable Sir Louis-Napoléon Casault, chief justice, Sir Melbourne M. Tait, assistant chief justice, and the honorable judges Routhier, Caron, Bourgeois, Jetté, Taschereau, Gill, Cimon, Loranger, Andrews, Pelletier, Larve, Ouimet, Davidson, Tellier, de Billy, Pagnuelo, Gagné, Doherty, Archibald, Curran, White et Lemieux.

RULES OF PRACTICE OF THE SUPERIOR COURT

IT IS ORDERED as follows:

1. All former rules of practice are rescinded and the following established and proclaimed to be the rules and orders of this court:

2. The Queen's counsels and barristers practising in this court shall appear, when in court, habited in black, with white necktie, and in such robes and bands as heretofore have been used and none shall be heard in any case, unless so habited.

3. The prothonotary shall appear in court habited in black, with white necktie, and in such robes and bands as heretofore have been used.

4. The sheriff shall appear in court habited in black, with white necktie, and with his robe, his wand of office and his sword.

5. The deputy-prothonotaries and deputy-sheriffs shall appear in court habited in black, with white necktie, and in such robes and bands as have been ordered in the case of the prothonotary, and the deputy-sheriffs shall further bear the wand of office.

6. The chief-crier and criers shall appear in court habited in black, with white necktie, and in the robes heretofore used. The chief-crier, or the crier discharging his functions, shall further bear the staff of office.

7. The sheriff, the prothonotary, the chief-crier and the criers shall, sitting the court, personally attend in their respective places, from the opening to the rising of the court.

8. When several divisions of the court shall sit at the same time, the sheriff and the prothonotary may be represented, in each of the said divisons, by one of their deputies and the chief-crier by a crier.

9. The offices of the sheriff

and of the prothonotary shall be open on all juridical days from the hour of nine in the morning to the hour of five in the afternoon and during the whole duration of the sittings of the court and of the presence of a judge in chambers.

10. The chief-crier and criers shall attend at the court-house from the hour of nine in the morning to the hour of five in the afternoon, and even after the latter hour, so long as the court shall remain in session or a judge shall be present in the court-house.

11. All orders and rules applying to the sheriff in the execution of his duties, shall extend to his deputies, to the coroner and to the prothonotary or his deputy, whenever they shall exercise the functions of the sheriff.

12. No barrister or attorney, sheriff, prothonotary or deputy of either of those officers, bailiff or sheriff's officer, chief-crier or crier shall be bail or surety in any action or proceeding cognizable by this court or by any judge thereof.

13. A commissioner, appointed to receive the affidavits to be used in this court must, before acting as such, be sworn. He cannot receive the affidavits of his relations within the degree of cousin german inclusively, nor those of the parties whom he represents in any cause or in any proceeding even non-contentious, except as to notaries, in the cases in which the law authorizes them to do so.

14. All decisions of this court on points of practice shall be entered by the prothonotary, when so directed by the court, in a book to be kept by him for that purpose. To this book there shall be an index, and practitioners shall, during office hours, have access thereto and may take extracts and copies therefrom.

15. Every breach of an order or rule of practice of this court, for which a fine or specific punishment is provided, shall be considered a contempt of court and punished accordingly.

16. In the computation of delays, no fraction of a day shall be reckoned, except in the case provided by article 297 of the code of procedure.

17. When another delay is not specified, it is of one clear day, without derogation to the discretionary power of the judge in cases of urgency.

18. The prothonotary shall keep a register in which he shall enter all writs of summons other than the writ of *subpœna*. Such entry shall specify the names of the plaintiff and those of the defendants, if known, and, if there be several plaintiffs, the names of one of them, with an indication that there are others; the amount demanded, the cause of action, the nature of the writ, the name of the attorney or of the person by whom it has been sued out, the date of its issue and that of its return, if it be returnable on a day fixed. All persons may have access to this register during office hours.

19. The prothonotary shall also keep a register of all writs of execution issued from his office, specifying in each case the number of the cause, the names of the parties, the description of the writ, the amount to be levied by virtue thereof, the cause of action, the date of the judgment, the day on which

the writ has issued, and the return day thereof, the name of the attorney or person by whom it has been sued out and everything required by article 789 of the code of procedure. All persons may have access to this register during office hours.

20. The prothonotary shall also keep a plumitif in which shall be entered the number of each cause and the names of the parties, together with the nature of the debt and of the writ of summons, its date and that of its return, concise notes of all the papers fyled, of all the proceedings, of all the orders and decisions and of the interlocutory judgments to the final judgment, with the date of each, the names of the witnesses and their taxation, and mention of those examined, the date of the writs of execution and of their return, as well as the nature thereof and of the return, the nature of the oppositions and of the claims fyled, and all the above-mentioned details of productions, proceedings, orders, decisions and judgments thereon, the date of the fyling of the reports of distribution and collocation, that of their homologation and their transmission to the sheriff and, generally, a concise note of all that shall have been done in each cause. He shall also keep a separate register, in which shall be entered at length all the orders, decisions and judgments in each cause, with their date, the name of the judge or judges rendering the same, the number of the cause and the names, actual domiciles and qualities of the parties. This plumitif and register shall be communicated, during office hours, to all persons asking for the same.

21. The prothonotary shall prepare and hand to the judge holding the court a roll of the causes to be argued, in which shall be separately entered, for each day, the motions, the causes inscribed *ex parte*, those on preliminary exceptions, those on demurrer, those inscribed on the merits and those inscribed for proof and hearing. This roll shall include the number of each cause and, briefly, the names of the parties and their attorneys.

22. Before putting a record *en délibéré* on the merits, the prothonotary shall number all the documents of the record according to the date of their fyling and shall, with the record, transmit to the judge a copy of the interlocutories that may be revised by the final judgment, except the rulings at enquete, which are already entered in the depositions.

23. The prothonotary shall prepare, for his own use, a similar roll on which he shall note, during the sittings of the court, all the proceedings that take place, all the orders made by the court and all the decisions on incidental matters that may be pronounced without *délibéré*, except the rulings at enquete which are noted in the depositions.

24. The sheriff shall also keep at his office a register of all the writs of execution, containing all the details mentioned in rule 19, with a mention of the nature of the writ, as well as of all the oppositions fyled, of all the proceedings and matters thereto relating, and of all the bids in writing that shall have been received. And all persons shall have access to this register during office hours.

25. Every writ of summons,

except those of *sub-pœna*, and writs of execution, shall be issued only upon appearance and *fiat* of the attorney or of the party sending out the same, and the fyling of the affidavit, if one be required for their issue. If the writ be one of execution, the *fiat* must include all the specifications mentioned in rule 19.

26. The writ of *Venire Facias* and the writ of *Habeas Corpus* shall be applied for by *fiat*.

27. The *fiat* for the writ of summons must specify the day of the return of the writ, if it be made returnable at a fixed date; if not, it must specify the delay within which the defendant or any other shall appear after his summons.

28. All services upon the lawyer or attorney of a party shall be made between the hours of nine of the forenoon and five in the afternoon, and those upon the parties between the hours fixed by article 126 of the code of procedure.

29. Every document whatever of the procedure must be signed by the attorney or by the notary, where he is authorized to represent a party, or by the party himself, if he be not represented by an attorney or a notary.

30. When the causes of action are stated in the writ itself, the name of the plaintiff's attorney must be written in a legible manner on the back of the writ of summons and the copy thereof that shall be served. —C. P. 123.

31. Every affidavit or certificate of service of any document of the procedure must contain the specifications mentioned in numbers 1, 2, 3 and 6 of article 153 of the code of procedure, and when the service is made upon a person who is not, by the code of procedure, bound to make or reputed to have made election of domicile, such affidavit or certificate must further contain the specifications mentioned in numbers 4 and 5 of the said article.

32. When, by leave of the judge, the writ is returned after the delay fixed for its return, notice thereof must be given to the defendant. If the defendant has appeared, the delay to plead runs from the service of such notice. If the defendant has not appeared, the notice must specify the fixed date at which or the delay within which the defendant should appear, as in the case of a new summons.

33. Every list of exhibits shall be signed and contain an index to all the exhibits fyled, specifying, under the number of the cause and the names of the parties, the number given to the exhibit, its date and its description, and no exhibit shall be received unless thus mentioned in the said list.

34. No paper-writing of any description whatsoever, except the exhibits, shall be received by the prothonotary, unless the same be legibly written on one side only of the paper and on good foolscap, and unless the endorsation specifies its nature, the party fyling it, and if fyled in a cause, the number of such cause and the names of the parties.

35. A concise note of the date of the fyling at the office of the prothonotary or at that of the sheriff of any paper or document whatever shall be inscribed on the back of such paper or docu-

ment with the initials of the officer receiving the same.

36. All the parties to a suit shall be entitled to communication of all exhibits and other paper-writings fyled therein. The consent for their removal shall be in writing and the *récépissé* shall be dated and signed on the list of exhibits.

37. Without the consent of all the interested parties, no exhibit, in any suit, shall be withdrawn pending such suit or within six months after the final judgment therein without an order from a judge, and, if such exhibit be not the copy of an authentic instrument, it can only be withdrawn on deposit in the record of a copy of the said exhibit certified by the prothonotary, unless otherwise ordered by the judge.—C. P. 159.—C. P. 1209.

38. Security for costs, when ordered, may be replaced by the deposit at the office of the prothonotary of a sum in current coin or in bank notes, of which the court or the judge shall determine the amount and which may be increased, when the proceedings adopted show its insufficiency.

39. The deposit required for the revision mentioned in article 33, of the code of procedure, shall be $10 and one day's notice of such revision shall be given to the opposite party.

40. The deposit to accompany the presenting of a motion urging preliminary exception shall be of the sum, which, pursuant to the tariffs then in force, will embrace, according to the class of action, both the fee to which the plaintiff's attorney shall be entitled on the rejection of such motion and what should be paid to the prothonotary on its fyling.—C. P. 165.

41. The sum to be deposited in the office of the court with the motion for the fixing of a day for trial by jury shall embrace both the amount of twelve dollars for the jurors and the sums payable, according to the tariff then in force, to the sheriff, to the crier and to the prothonotary for striking the jury, for the writ of *Venire Facias*, for calling and swearing the jury and for recording the verdict. If the sum so deposited be insufficient to pay the sheriff's costs, the requisite balance shall be paid to the sheriff before the swearing in of the jury; and if the sum payable to the jurors be insufficient, the requisite balance shall be paid to the prothonotary before the jury render their verdict.—C. P. 434.

42. Every appearance must be in writing and signed.

43. In addition to the notice prescribed by the code of procedure, the permission of the judge must be obtained by an attorney before he ceases to represent a party.—C. P. 260.

44. The putting in default to appoint another attorney is made by motion.—C. P. 260.

45. The revocation and substitution of an attorney must be authorized by the judge.—C. P. 265.

46. The delay of summons to answer on articulated facts or under oath of office is of one juridical day, but when the party summoned to answer on articulated facts is a corporation or a legally recognized company, the delay is of six days, with the addition in either case of one day when the residence of the party summoned or the

head-office of the corporation or company is more than fifty miles distant from the place of appearance and of one day for each additional fifty miles.

47. Every petition and every motion or special demand must set forth the grounds urged in its support and be supported by an affidavit which must be served upon the adverse party at the same time as the petition, motion or demand, but the affidavit is only necessary where the facts urged do not appear in the record or by the entries in the plumitif.

48. Whenever, outside of proceedings in *ex parte* cases, a service has to be made upon a party who has made no election of domicile or who, according to the code of procedure, is not held to have done so, if such party resides at a distance of more than fifty miles from the place where the petition, motion or demand is to be presented to the court or judge, a delay of an additional day shall be allowed for each fifty miles over the first.

49. No party shall be heard on other grounds in support of any petition, demand or motion than those therein set forth.

50. Every motion urging a preliminary exception founded on the ground that the name, residence or quality are not given or that all the parties are not impleaded, shall specify the names, residence or quality which should have been given, and those of the parties whose presence is essential.

51. Rule 47 does not apply to the following demands and motions:

1. The motion to receive a report of experts.—C. P. 418.

2. The motion to homologate an award of arbitrators.—C. P. 417.

3. The motion to define the facts to be submitted to the jury. The motion must be accompanied by a statement of the facts which the party considers ought to be submitted to the jury. And, when it is presented to the judge, the opposite party, if it desires to suggest others, shall do so by means of a statement indicating them.—C. P. 425.

4. The motion to fix a day for striking the panel.—C. P. 433.

5. The motion to fix a day for the trial and to order the summoning of a jury.—C. P. 433.

6. The motion to object to the jury being exclusively composed of merchants or traders.—C. P. 435.

7. The motion to have the jury composed exclusively of persons speaking the French language, or of persons speaking the English language, or for a jury *de medietate linguæ*.—C. P. 436.

8. The motion for *acte* of tender and payment made in a suit.—C. P. 584.

9. The motion for putting in default to appoint an attorney.

10. The motion for substitution or revocation of an attorney.

11. The motion for the sheriff or bailiff to return his writ.

12. The motion to dismiss for want of proceedings.

13. The motion to homologate in whole or in part the rank or the distribution.

14. The motion to order the sheriff to bring in the body.

15. The motion to obtain *acte* of the court.

52. Notice of every petition, motion and special demand and

of simple motions must be given to the adverse party.

53. The examiner (*commissaire enquêteur*) shall not decide the objections made at the enquete or to the questions on articulated facts; but shall take down the answer, after having noted and reserved the objection.

54. Each of the parties may take communication at the sheriff's office of the writ of *Venire Facias* before its return.

55. Whenever the writ, the declaration, the answer or other part of the procedure is amended, without previous leave, the delay to reply thereto only runs from the service and fyling of the amendment. And the same rule shall apply to the case provided by article 517 of the code of procedure.—C. P. 513.

56. No judgment shall be pronounced or proceeding taken, in any action founded upon an account, until such account with the detail of all the items composing it shall have been served and fyled.—C. P. 532.

57. The party, who has declared his option for a trial by jury, shall, as soon as the judge shall have defined the facts, deposit 25 printed or type-written copies of the facts so defined at the office of the prothonotary, who shall hand one to each of the jurors after they have been sworn in.

58. No petition or demand, save that to proceed *in formâ pauperis*, shall be presented to a judge in chambers without having been previously presented to the prothonotary and the amount payable thereon duly paid.

59. In the case of execution taken by a party in his own name for the costs, of which his attorney has obtained distraction, the latter's consent must be specified in the writ and the *procès-verbal* of seizure. C. P. 555.

60. Demand of payment, at the time of a first execution, is requisite only when the seizure is made at the domicile of the debtor or in his presence.—C. P. 635.

61. A copy of the *procès-verbal* of seizure must be left with the debtor.

62. Every opposition served upon the sheriff or fyled at his office or at the office of the prothonotary must be accompanied by all the paper writings urged in its support, together with a list or inventory of such documents. The oppositions served upon the bailiff need not be accompanied by the documents and inventory, but in that case such documents and inventory should be fyled in the office of the court without delay.

63. Every opposition, which is not signed by an attorney who has made an election of domicile as prescribed by article 86 of the code of procedure must contain an election of domicile at some inhabited house within a radius of one mile from the place where the court sits.

64. No opposition to the seizure of immovables, founded on the ground that the debtor possesses movables, shall be received, unless it contains the enumeration, the value and the situation of the movables which the debtor claims to possess, and in no case shall it be fyled without leave of the judge.

65. The prothonotary shall post up all reports of collocation and distribution on the first juridical day of the week fol-

lowing their preparation and keep posted in a conspicuous place in his office, accessible to all, a table of the said reports.

66. The debtor cannot demand the dismissal of the seizure or inscribe his case for judgment against the garnishee in default before the first day of the sittings of the court following the expiration of the eight days after the default has been established.

67. The security mentioned in article 800 of the code of procedure must be given—that by the subsequent creditors within the fifteen days after the homologation of the report of collocation, that by the debtor within the fifteen days following the delay accorded to the creditors and that by the conditional creditors within the fifteen days following the delay allowed to the debtor, but the judge may, on special demand, of which notice shall be given to the others interested, extend these delays. Notice of the day on which the security will be put in shall also be given to them, with mention of the sureties to be offered. The delay for this last notice must not be less than three days.

68. When the contestation is only of the order or the rank of the collocations, the delay for the notice of inscription is only three days.

69. The judgment mentioned in article 831 of the code of procedure shall be rendered on motion, of which a three days' notice, with the extensions of time allowed by article 145 of the same code, shall be given to the interested parties, at their domiciles, residences or places of business or at the office of the court, if they have no domicile, residence or place of business.

70. The discharge from payment of the alimentary allowance accorded to the person subjected to coercive imprisonment is pronounced with the observance of the same formalities as for obtaining the said allowance.—C. P. 844.

71. The security authorized by articles 938 and 949 of the code of procedure cannot be received save upon notice to the adverse party, specifying the names, residences and qualities of the sureties.

72. In the case of attachment by garnishment before or after judgment, of simple attachment, of attachment in revendication, of attachment for rent and of attachment for payment, if the articles attached or seized be of a perishable nature or liable to deteriorate, the judge may order the sale thereof and the deposit in the office of the court of the moneys arising therefrom.

73. Irregularities in the *procès-verbal* of simple attachment attachment for rent, attachment in revendication and conservatory attachment should be urged by special motion within the three days following that of the return of the writ and after notice to the adverse party.

74. The demand for sequestration is special and notice must be given to the adverse party.—C. P. 973.

75. The list of charges must be prepared by the party prosecuting the licitation and, in his default, by another party and be submitted to the judge for his approval after notice to the other parties. It must be accompanied by the vouchers

justifying the imposition of the charges.—C. P. 1053.

76. The costs and lawful disbursements which the bidder and over-bidders must offer are established and determined by the judge on putting the petitioner in default by simple notice to that effect. And if they desire to give security, the same notice must contain the names, qualities and residences of the sureties offered.—C. P. 1076.

77. When the deed, of which the purchaser seeks comfirmation, imposes upon him charges, the value of which is not stated therein, he shall have their value determined by experts named in the manner provided by articles 1081 of the code of procedure and their value thus established, is added to the price, if there be one, to determine the proportion of the bid and the over-bids.—C. P. 1074.

78. The experts mentioned in the preceding rule may, at the same time, value the immovable, and, if they have made this valuation, their report replaces the one required by article 1081 of the code of procedure.

79. The petition for *Certiorari* must be presented within the six months.

80. The hearing on the inscription to be heard on the merits, in the case of *Certiorari*, only takes place three days after its service.—C. P. 1304.

81. The delay for the notice of the presenting of the petition for revision of the decision of the prothonotary in non-contentious matters is one day and this notice may be given to the notary representing the party before the prothonotary, or by the notary, as the case may be.

82. In the case provided by article 1330 of the code of procedure, the judge fixes the day for proceeding to proof and determines the manner in which it shall be made, either by affidavit or by deposition taken stenographically.

83. The delay for the service of the petitions mentioned in articles 1314 and 1329 of the code of procedure shall be of three days, with the extension of time mentioned in article 149 of the code of procedure.

84. The opposition made to the affixing of seals and the application for the removal of the same must be served upon the party who has demanded the seals, with notice of the day and hour on which they will be presented.—C. P. 1375, 1376.

85. The jurisdiction of the judge in chambers extends to the exercise of all the powers conferred upon him by the code of procedure and to the proceedings mentioned in articles 15, 691, 761 and 763 of that code.

86. In the district of Quebec, excepting such of the juridical days as are fixed for the sittings in review and the Saturday, all the juridical days of the months of February, March, April, May, June, October and November and the juridical days following the ninth of September and the ninth of January and preceding the twenty-first of December shall be days upon which parties can proceed to enquetes and merits.

87. In all cases in which the fees of examiners, experts, arbitrators, auditors, practitioners, appraisers and other officers named by the court or by the judge, are not established by law or by the Lieutenant Gov-

ernor in council, these fees shall be as follows:

For administering the oath	$ 1 00
For deposit of the report (if required	1 00
For each day of six hours during which they shall have been employed, including the preparation and drawing up of the report	5 00

With, further, their travelling and hotel expenses, if they reside beyond the limits of the city, town or village where they have to perform the duties imposed upon them, and, if these duties have to be performed in another municipality at a distance of more than two miles from their residence.

88. Except in the cases provided by law and expert witnesses, who shall be entitled to $4 per day, witnesses shall be taxed at $1 per day, plus their travelling and hotel expenses. A party to a suit is taxed as a witness only when he has been summoned by the opposite party.

89. The forms contained in the appendix to these rules should be used in the cases for which they are proposed, but the use of others of the same tenor shall not entail nullity.

RULES OF THE CIRCUIT COURT

IT IS ORDERED, as follows:

1. The rules of practice for the Superior Court are likewise those of the Circuit Court and its officers, and shall be therein observed in all cases in which its jurisdiction permits and in which no contrary special rules for non-appealable cases are made by these presents.

2. The forms for the Superior Court shall be likewise those for the Circuit Court by making therein the changes necessitated by the difference in the names of the court and by designating the Superior Court more especially than it is in the forms whenever the writ issued from the Circuit Court is returnable in the Superior Court.

3. The following rules apply only to non-appealable cases.

4. The clerk shall keep a register of the judgments wherein shall be entered at length all the orders, rulings and judgments in each case, with their date and the name of the judge rendering the same, the number of the case and the names, actual domicile and quality of the parties.

5. The clerk shall also keep a register wherein shall be entered the number of the case, the names of the plaintiff and those of the defendants (adding, if there be several plaintiffs, a specification to that effect), the date of the issue of the writ and of its return, its nature, the amount of the demand and its nature, the name of the plaintiff's attorney, the appearance of the defendant, whether personally or by attorney, the date of the fyling of the preliminary exceptions and pleas to the merits, the date of the inscription and of the judgment, with its amount, the date of the different writs of execution and of their return, with their nature, the amount of the proceeds thereof, the oppositions fyled, their contestation and the judgment thereon and its date. This

register, as well as that mentioned in the preceding rule, shall, during office hours, be communicated to all asking for the same.

RULES FOR THE SUPERIOR COURT SITTING AS A COURT OF REVIEW.

IT IS ORDERED, as follows :

1. The days on which the Superior Court shall sit as a court of review shall be, at Montreal, every juridical day, and at Quebec the last four juridical days of the months of January, February, March, April, May, June, September, October and November.

2. When notice of the presenting of a petition or motion has been given for a day fixed for the sittings in review and that, for any reason whatever, the said court is prevented from sitting, such petition or motion shall be given to the clerk and submitted to the court at its next sitting.

3. When, on the day on which a case is to be argued, the party who inscribed it does not appear or has not fyled the statement hereinafter mentioned with the notes of his proof, the inscription may be rejected and, if the opposite party fails to appear or has not fyled his statement and the notes of his evidence, the party inscribing may argue *ex parte*.

4. Except in the case of revision of a judgment on opposition to marriage, each of the parties shall fyle a statement or factum of the grounds and reasons which he desires to urge. This statement shall be divided into articles regularly numbered and set out under each number the different grounds and points of law submitted, supporting the latter by the legal authorities bearing on the same by reference or transcription and the parties shall not be heard on grounds other than those urged in their statements.

5. The said statement must be type-written and five copies thereof deposited at the office of the court of review two days before the hearing of the case. One of these copies shall remain to form part of the archives in review, one shall form part of the record and shall be transmitted with it to the prothonotary of the district in which the case was first judged, and one shall be handed to each of the three judges hearing the case in review.

6. The motions prescribed by articles 493 and 494 of the code of procedure do not exempt from the fyling of the statement mentioned in the two preceding rules.

7. The record transmitted to the court of review must be accompanied by a list of all the papers composing it, and by a copy of all the entries in the plumitif and of all the judgments, orders and rulings in the cause.

8. Provisional execution, its prohibition or its suspension shall be accorded only on special petition setting forth the reason in its support and supported by an affidavit. The petition and the affidavit must be served upon the adverse party, with two days' notice of its presentation.

9. The prothonotary shall

prepare and hand to each of the three judges in review a roll upon which the cases are entered in the order of the fylings required by article 1201 of the code of procedure; and this roll shall include the number of the case, the names briefly of the parties and of their attorneys, that of the judge whose judgment is submitted to review, together with the date of the judgment and that of the inscription.

10. The clerk shall also prepare for his own use a similar roll wherein he shall note, during the sittings of the court, all the proceedings that take place, all the orders given by the court and all the rulings on incidental matters made without going *en délibéré*.

GENERAL RULES APPLICABLE TO ALL THE COURTS.

After having been made as prescribed by article 73 of the code of procedure, the rules of practice shall be deposited in the office of the prothonotary of this court at Quebec, who shall cause them to be translated into English and published in the Quebec *Official Gazette*.

L. N. Casault, Chief Justice,
M. M. Tait,
A. B. Routhier,
J. B. Bourgeois,
L. B. Caron,
L. A. Jetté,
Henri T. Taschereau,
Charles Gill,
Ernest Cimon,
L. O. Loranger,
Frederick W. Andrews,
H. C. Pelletier,
Jules E. Larue,
J. Alphonse Ouimet,
Charles Peers Davidson,
Louis Tellier,
Ls A. de Billy,
S. Pagnuelo,
J. A. Gagné,
Charles J. Doherty,
J. S. Archibald,
J. J. Curran,
Wm. White,
F. X. Lemieux.

FORMS

No. 1.

FIAT FOR WRIT OF SUMMONS

Province of Quebec,)
District of)
SUPERIOR COURT.

A. B., (*actual domicile and quality*),
Plaintiff,

vs

C. D., (*actual or last known residence*),
Defendant.

I appear for the plaintiff and demand a writ of summons against the defendant to appear (*if returnable at a fixed date* on the day of the month of next *or* instant: *if at an intermediate date* on the sixth day *or more according to the distance of the place where the summons has to be made*, after summons). Demand $ action for debt (*or* damages, *or as the case may be*).

Writ addressed to this 189

E. F.,
Atty for Plff.

N. B.—The notes beneath form No. 2 indicate the changes which, in the cases therein mentioned, should be made therein.

No. 2.

WRIT OF SUMMONS ADDRESSED TO THE SHERIFF OR TO A BAILIF OF THE DISTRICT IN WHICH THE WRIT IS DELIVERED

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

No.

To C. D., (*actual or last known residence*),

Defendant;

WE command you to appear in Our said Court, at the court house in (*the city or town or village or municipality of* , *as the case may be*) "the day after the service of this writ" to answer to the demand of A. B., (*actual domicile and quality*) Plaintiff, contained in (*the declaration or the requête libellée, as the case may be*) hereunto annexed.

In default whereof, the Plaintiff may obtain judgment against you by default.

IN WITNESS WHEREOF, We have caused the seal of Our said Court to be hereunto affixed, at , this (*day, month*) in the year of Our Lord, one thousand

A. B.
P. S. C.

This writ is addressed to the Sheriff or to a bailiff of the district of (*name of the district in which the writ is delivered*).

No. 3.

WRIT OF SUMMONS ADDRESSED TO THE SHERIFF OR TO A BAILIFF OF A DISTRICT OTHER THAN THAT IN WHICH THE WRIT IS DELIVERED.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

No.

To the Sheriff (or to a bailiff) of the district of (*name of the district.*)

GREETING:

WE command you to summon C. D., (*actual or last known residence*), Defendant, to appear in Our said Court, at the court-house, in (*the city or town or village or municipality of , as the case may be*) on "the day after the service of this writ" to answer to the demand of A. B., (*actual domicile and quality*) Plaintiff, contained in the declaration hereunto annexed.

In default whereof by the said Defendant, the Plaintiff may obtain judgment against him by default.

IN WITNESS WHEREOF, etc.
P. S. C.

N. B. 1. *When the declaration is written in the body of the writ, the words* "CONTAINED IN THE DECLARATION HEREUNTO ANNEXED" *must be replaced by the words* "WHO CLAIMS FROM YOU" (*with a blank of half a page*).

2. *On the back of the copy of the writ served upon the defendant, the officer making the service shall put* "SERVED THE (*day, month, year*) *and his signature.*

3. *If the writ be made returnable on a determinate day, the part between parentheses must be replaced by the day and the month, with the words* PRESENT *or* NEXT (*as the case may be*).

4. *When the action is by the Attorney-General for the Crown or in his official quality, the words* "TO THE DEMAND OF N. B. ETC., CONTAINED IN THE DECLARATION HEREUNTO ANNEXED" *must be replaced by the following* TO THE SPECIAL INFORMATION OF OUR ATTORNEY-GENERAL (OF CANADA *or* OF THE PROVINCE OF QUEBEC, *as the case may be.*)

5. *In* QUI TAM *actions, after the word* "PLAINTIFF," *must be added* "PROSECUTING AS WELL IN HIS OWN NAME AS FOR US" *or by indicating the party joined other than the Crown to whom a part of the fine belongs.*

6. *In the summons in prohibition, to the name of defendant should be added that of the judge of the lower court or of the court itself, as the case may be.*

7. *Form No.* 3 *is the one which should be used when the writ is addressed to the sheriff or to a bailiff of the district in which it is delivered and at the same time to the sheriff or to a bailiff of another district.*

No. 4.

SUBPŒNA.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

To GREETING :

No.

WE command you that, laying aside all and singular business and excuses, you and each of you, be and appear in your proper person before US, in Our Superior Court for the district of , in Our, on the day of at TEN of the clock in the forenoon of the same day, then and there to testify all and singular those things which you or either of you know in a certain cause now pending in Our said Court before Us, between

A. B.
vs.
C. D.,

in an action

and this, you or either of you shall by no means omit, under the penalty imposed by law.

IN WITNESS WHEREOF, etc.,
this day of
Deputy P. S C.

No. 5.

SUBPŒNA DUCES TECUM.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

No.

To GREETING :

We command you that, laying aside all and singular busi-

ness and excuses whatsoever, you and each of you be and appear in your proper persons before Us, in Our Superior Court, for the district of , in Our , on the day of at TEN of the clock in the forenoon of the said day, then and there to testify all and singular those things which you or either of you know and that you bring with you and produce (*blank for designation of the documents to be produced*) to show, all and singular, those things which the said paper-writing doth import concerning a certain cause now pending in Our said Court, before Us, between

A. B.
and
C. D.

and you or either of you, shall by no means omit, under the penalty imposed by law.

IN WITNESS WHEREOF, etc.

Deputy P. S. C.

No. 6.

ORDER TO ANSWER ON ARTICULATED FACTS OR SUPPLEMENTARY OATH.

Province of Quebec, }
District of }

Victoria, &c.

To

In a cause No. of the said Superior Court; in which A. B., (*domicile and quality, as in the summons*) is

Plaintiff;

and

C. D., (*residence, as in the summons*) is

Defendant.

WE command you, at the instance, of to be and appear, in your proper person, before Us, at the court-house , in Our , in Our said district, on the day of , at TEN of the clock in the forenoon, then and there, to answer "the Interrogatories upon *Articulated Facts*, to be put to you according to law."

IN WITNESS WHEREOF, etc.

Deputy P. S. C.

N. B.—For the part between parentheses must be substituted *under the supplementary oath put to you.*

No. 7.

SUMMONS TO BE EXAMINED ON ABANDONMENT OF PROPERTY.

Province of Quebec }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

In re abandonment of property by (*blank for name of debtor*).

To

We command you to appear before a judge or the Prothonotary of this Court in (this city *or* town of) the (*blank for date and month present or next*), to be there interrogated relative to the statement of the affairs of the debtor aforesaid, and We command you, then and there, to produce all the books and documents relating to the said statement of affairs of the said debtor.

IN WITNESS WHEREOF, etc.,

Deputy P. S. C.

No. 8.

FORM OF SUMMONS UNDER ARTICLE 811 OF THE C. P.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

A. B., Plaintiff;
vs.
C. D., Defendant.

To

WE command you, at the instance of to appear before a judge of this Court or the Prothonotary thereof, at the courthouse in (the city *or* town of) the (*blank for date, month present or next*), at TEN o'clock in the forenoon, to be examined on all the facts relating to a hypothec (*or claim*) mentioned in the certificate of the registrar for the registration division of (*name of division*) (*or in an opposition fyled in this cause*), and to, then and there, produce all the books or documents in your possession relating to such hypothec (*or claim.*)

IN WITNESS WHEREOF, etc.,

Deputy P. S. C.

No. 9.

FIAT FOR WRIT OF VENIRE FACIAS.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

No.

A. B., (*actual domicile and quality.*)

Plaintiff;
vs.

C. D., (*known residence, as in writ of summons,*

Defendant.

I demand a writ of *Venire Facias* addressed to the Sheriff of this district, returnable the this 18

Attorney for Plff.

No. 10.

FIAT FOR CAPIAS, ARRET SIMPLE, SAISIE-REVENDICATION AND SAISIE-CONSERVATOIRE.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

A. B., (*actual domicile and quality*),

Plaintiff.
vs.

C. D., (*actual or last known residence*),

Defendant.

I appear for the plaintiff and demand for him against the defendant a writ of *capias ad respondendum* addressed to returnable (*number of days after service*). Demand $ action of debt (*or of damages, as the case may be*), this 18

Atty. for Plff.

N. B. 1. *If the writ be after judgment, the fact must be mentioned and the date of the judgment given.*

2. *If the writ be for "arrêt simple" the words* "CAPIAS AD RESPONDENDUM" *should be replaced by "saisie-arrêt to* ATTACH BY SEIZURE AND ARREST THE MOVABLE EFFECTS OF THE SAID DEFENDANT."

3. *If the writ be for* "SAISIE-REVENDICATION" *or for* "SAISIE-CONSERVATOIRE," *those words should be substituted for* "CAPIAS AD RESPONDENDUM," *and the enumeration and description of the movable effects to be seized should be added, together with mention of the nature of the demand after mention of its amount.*

No. 11.

WRIT OF VENIRE FACIAS.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

No.

To THE SHERIFF OF OUR DISTRICT OF

GREETING:

WE command you that you cause to come before Us, in Our Superior Court in Our (*city of, town of, or village of, or parish of, as the case may be*) in Our said district, on , at TEN o'clock in the forenoon, the several persons named in the panel hereunto annexed, to make a special jury in the cause between

A. B., (*domicile and quality, as in the writ of summons*)
Plaintiff;

vs.

C. D., (*residence, as in the said writ*)
Defendant.

And have then and there this writ.

IN WITNESS WHEREOF, etc.,

P. S. C.

No. 12.

WRIT OF CAPIAS AD RESPONDENDUM.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

No.

To GREETING:

WE command you to arrest (*Names and actual or last known residence of the defendant.*)
if he be found within the limits of Our district of or in any other district of this Province, and to detain him under safe guard and to bring him before Us in Our Superior Court in Our in Our said district of (the sixth or more) day after his arrest as aforesaid, so that he may answer to the demand of

A. B., (*actual domicile and quality*).
Plaintiff.

contained in the declaration to be served pursuant to law, and to continue to detain him until there shall be further done and received what, in Our said Court, shall be ordered in this respect; and have you also then and there this writ.

IN WITNESS WHEREOF, etc.,

Deputy P. S. C.

N. B.—*On the back of the writ shall be entered:* "Issued on the affidavit of for the sum of, this day of , 18

G. F.,
Atty for Plff.

N. B.—For this form and the *two following. When for the execution, the capias is addressed to the bailiffs, the following must be inserted between the words* "PROVINCE" *and to* "DETAIN HIM":—and to deliver the body of the said C. B., together with the present writ and the return of your doings thereon, to the sheriff of this district. And we enjoin the said sheriff to receive and detain the said C. D., &c., as aforesaid.

No. 13.

WRIT OF CAPIAS DURING THE SUIT.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

VICTORIA, &C.

No.

To

GREETING.

WE command you, in a cause pending before Our said Court, in our said district, in which A. B. (*actual domicile or quality*) is plaintiff, and C. D. (*actual or last known residence*) is defendant, to arrest the body of the said C. D., if he be found within the limits of Our district of , or of any other district of this province, to detain him in safe keeping and to bring him before Us in Our Superior Court in Our district of , in Our (*city or town, etc.*), the day after his arrest as aforesaid, so that he may answer to the demand contained in the petition hereunto annexed, a certified copy of which shall be served upon the said C. D., as well as a certified copy of the present writ, and to continue to detain him until there shall be done and received what in our said court shall be ordered in this respect; and have you also then and there this writ.

IN WITNESS WHEREOF, etc.,

Deputy P.S.C.

N. B.—If the writ be addressed to a bailiff the additions indicated at the foot of the preceding form must be made.

Entry on the back of the writ as noted in form No. 12.

No. 14.

WRIT OF CAPIAS AFTER JUDGMENT.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

VICTORIA, &C.

No.

To

GREETING:

WE command you, in a cause heretofore pending in Our said Court, in Our district of in Our (*city or town, etc.*) in which A. B., (*actual domicile and quality*) was plaintiff, and C. D., (*actual or last known residence*) was defendant, and

in which the said plaintiff, on the obtained judgment against the said defendant for the sum of , with interest at per cent from and costs since taxed at with interest from to arrest the body of the said C. D.
(*Remainder as in form No. 12.*)

Entry on the back of the writ as noted in form No. 12.

declared good and valid. Whereupon, you will certify unto Us your doings upon this writ.

In witness whereof, etc.,

Deputy P. S. C.

On the back of the writ :—
Issued upon the affidavit of for the sum of

Attorney for Plaintiff.

No. 15.

WRIT OF SIMPLE ATTACHMENT (SAISIE-ARRET SIMPLE.)

Province ebec,)
District of)

In the Superior Court

Victoria, &c.

To the Sheriff of *(or to the Bailiff's of)*

Greeting :

We command you at the instance of A. B., (*actual domicile and quality*) plaintiff, to attach the movables and effects of C. D., (*actual or last known residence*); and the said movables and effects so attached safely to keep, until the attachment thereof shall be determined by this court in due course of law. And We command you also to summon the said defendant to appear before this Court, at the court-house in in Our (*city or town or village*) on the day at vice upon him answer the *demande* in the declaration, to pursuant to law; set forth the reasons, if any why the attachment should not be

No. 16.

WRIT OF SAISIE-REVENDICATION.

Province of Quebec,)
District of)

In the Superior Court.

Victoria, &c.

No.

To the Sheriff (*or to the Bailiff of*).

Greeting :

We command you, at the instance of A. B., (*actual domicile and quality*) plaintiff, to seize, attach and revendicate the movable effects following, namely : (*enumeration and description of the effects to be seized as in the fiat*) of which the said plaintiff claims the possession in his quality of (*owner or pledgee, depositary usufructuary, institute of substitution or substitute, as the case may be*), and which he alleges to be of the value of and to be detained by C. D., (*actual or last known residence*) the defendant, and the said movable effects to hold in your charge and custody, until the attachment thereof shall be determined as of right by Our

said Court; and We also command you to summon the said C. D., the defendant, to appear before this Court, at the court-house, in Our (*city, or, &c.*) the day after the service upon him of this writ to answer to the demand contained in the declaration to be served pursuant to law, and to set forth the reasons, if any there be, why the said attachment should not be declared good and valid. After which you will return your proceedings on this writ.

IN WITNESS WHEREOF, etc.,

P. S. C.

On the back of the writ :—

Issued on the affidavit of
for the sum of $

Atty for Plff.

No. 17.

WRIT OF SAISIE-CONSERVATOIRE

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

VICTORIA, &c.

No.

To

GREETING :

WE command you, at the instance of A. B., (*actual domicile and quality*), plaintiff, to seize and arrest the movable effects following, namely : (*description as in the affidavit and fiat*) in the possession of C. D., (*actual and last known residence*) defendant, of which he, the said plaintiff, is entitled (*to retain the possession or to rank by preference upon the price thereof or to have placed under judicial custody in order to assure the exercise of his rights, as the case may be*), and to hold and detain the same until this court, upon the said attachment, shall have ordered as of right. And we further command you to summon the said defendant to appear before this Court, at the court-house, in Our (*city or, &c.*)

N. B.—*The remainder as in the writ of arrêt simple.*

IN WITNESS WHEREOF, etc.

P. S. C.

On the back of the writ :—

Issued on the affidavit of
for the sum of

Attorney for Plff.

No 18.

FIAT FOR WRIT OF SAISIE EN MAIN TIERCE BEFORE JUDGMENT.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

A. B., (*actual domicile and quality.*)

Plaintiff;

vs.

C. D. (*actual or last known residence*).

Defendant;

and

E. F., (*actual domicile and quality*).

Garnishee.

I appear for the plaintiff and

demand for him against the defendant a writ of saisie-arrêt in the hands of the garnishee above named, addressed to and returnable (*hour, day, month, year*). Demand $ action (*of debt or damage, as the case may be*).
This 18
Atty for Plff.

No. 19.

FIAT FOR SAISIE-GAGERIE.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

A. B., (*actual domicile and quality*),
Plaintiff.
C. D., (*actual or last known residence*),
Defendant.

I appear for the plaintiff and demand for him against the defendant a writ of *saisie-gagerie* addressed to to attach all the movables and effects garnishing the following premises, to wit: (*description of the premises*). Writ returnable the day after the service of this writ.
Demand $ rent
This 18
Attorney for Plff.

No. 20.

FIAT FOR WRIT OF SAISIE-GAGERIE PAR DROIT DE SUITE:

Province of Quebec, }
District of }

SUPERIOR COURT.

A. B., (*actual domicile and quality*).
Plaintiff;
vs.
C. D., (*actual or last known residence*).
Defendant;
and
E. F., (*actual or last known residence*).
Mis en cause.

I appear for the plaintiff and demand for him a writ of *saisie gagerie* addressed to to attach for rent the household goods, effects, animals, "merchandize" "and farm implements" which garnished the following premises, to wit: (*description of the premises*) and which the said defendant has, within eight days, removed to or upon the following premises, to wit: (*description of premises*). Returnable the day after service of this writ on the defendant.

Demand $ rent
This 18
Atty for Plff.

N. B. The words *merchandize and farm implements should be omitted when the premises leased are neither a shop nor a farm.*

No 21.

WRIT OF SAISIE-GAGERIE.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

No.

To

GREETING:

WE command you, at the instance of A. B., *actual domicile and quality*), plaintiff, to attach, by seizure and arrest of *Saisie-gagerie*, in the hands of C.D., (*actual or last named residence*), defendant, all and every the movable effects, household goods, and furniture "merchandize" and "implements used in its working" which shall be found "on the farm as well as" in the "store," workshop, house and dependencies occupied by the defendant and described as follows, to wit: (*description of the premises*) and to keep the same until, upon the attachment thereof, it shall be ordered by Our said Courts as of right. We command you also to summon the said C. D., defendant, to be and appear before Our said Court, in Our (city or town, etc.,) the day after the service upon him of this writ, to answer to the demand of the said plaintiff, contained in the declaration to be served pursuant to law and to state the reasons, if any there be, why the said attachment should not be declared good and valid. After which, you will return your proceedings on this writ.

IN WITNESS WHEREOF, etc.,

P. S. C.

N. B. *When the premises leased are not a store, "the words* MERCHANDIZE AND SHOPS *should be struck out, in the writ and when not a farm, the words* "IMPLEMENTS USED IN THE WORKING" *and the words* "ON THE FARM AS WELL AS" *should be struck out in the writ.*

No. 22.

WRIT OF SAISIE GAGERIE PAR DROIT DE SUITE.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

To

GREETING:

WE command you, at the instance of A. B., (*domicile and quality*) plaintiff, to attach by seizure and arrest of *saisie-gagerie* all and every the movable effects, household goods, furniture and animals which, within the last eight days, furnished and garnished the following premises, to wit: (*description of premises occupied by the lessee under the lease*) which the said C. D., (*actual or last known residence*) the defendant, heretofore possessed in virtue of a lease granted to him and which he, the said defendant, has within the eight days aforesaid, carried off and removed to the following property, to wit: *description of the premises to which the effects have been removed*) belonging before the carrying off and removal aforesaid to E. F., (*actual domicile and quality*) or in his possession and to hold the same until, upon the said attachment. Our said Court shall have ordered as of right. And We further command you to summon the said C. D. and E. F. to appear before Our said

Court, at the court-house, in Our (*city or town*, &c.) the day after the service upon each of them of the present writ, to answer to the demand contained in the declaration to be served, pursuant to law, and to set forth the reasons, if any they have, why the said attachment should not be declared good and valid. After which, you will return your doings on this writ.

IN WITNESS WHEREOF, etc.,

P. S. C.

Entry on the back of the writ

Issued on the affidavit of for the sum of

Atty for Plff.

No. 23.

WRIT OF SAISIE-EN-MAIN TIERCE BEFORE JUDGMENT

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

VICTORIA, &c.

No.

To

GREETING:

WE command you, at the instance of A. B., (*actual domicile and quality*), Plaintiff to summon C. D., (*actual residence*), Defendant, and E. F., (*actual domicile and quality*), Garnishee, to appear before this Court, at the court-house, in Our (*city or town or of*) the day of the month of (*present or next*), at ten o'clock in the forenoon for the said garnishee to declare upon oath, the sums of money, movable effects or other things that he owes or has in his possession belonging to the said defendant, or that he may owe or have belonging to him hereafter in his possession: and We command the said garnishee not to dispossess himself of the said moneys, movable effects or other things, until Our Court shall have ordered upon the said attachment as of right; and for the said defendant to answer to the demand of the plaintiff contained in the declaration to be served pursuant to law and to set forth the reasons, if any he has, why the said attachment should not be declared good and valid. And, in default by them to appear, and by the said garnishee to make the required declaration, judgment may be obtained against them by default and the *saisie-arrêt* declared valid.

IN WITNESS WHEREOF, etc.

P. S. C.

Entry on the back.

Issued on the affidavit of for the sum of

Atty for Plff.

N. B. *Whenever required by law, mention must be made of the nature of the defendant functions and where he exercises them immediately after his name and actual residence.*

No. 24.

FIAT FOR WRIT OF SAISIE-ARRÊT EN MAIN TIERCE AFTER JUDGMENT

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

A. B., (*actual domicile and quality*)

Plaintiff;

No.

vs.

C. D., (*actual or last known*

residence and, when the law so requires, mention of the nature of the calling of the defendant and the place where he exercises it).

Defendant;

and

E. F., (*actual domicile and quality*)

Garnishee (*Tiers-Saisi.*)

I appear for the plaintiff and demand for him a writ of *saisie-arrêt* after judgment in the hands of the garnishee. Writ addressed to and returnable the (*day and month.*)

"Judgment (*date and amount*)
" with interest at per
"cent from (*date*) Costs,
"with interest from
"The plaintiff is authorized to "take out execution for the costs "in his own name."

This 18

L. N.,

Atty for Plff.

N. B.—1. *If the saisie-arrêt is not taken for a balance or for the costs, the form should be changed accordingly.*

2. *When the saisie arrêt is demanded before judgment all in the above fiat marked with parentheses* should be omitted.

—

No. 25.

WRIT OF SAISIE-ARRÊT AFTER JUDGMENT.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

VICTORIA, &c., (as in No. 2.)

No.

A. B., (*domicile and quality, as in the judgment*)

Plaintiff,

vs.

C. D., (*residence as in the judgment, and, where the law so requires, mention of the nature of his calling and the place where he exercises it.*)

Defendant.

and

E. F., (*actual domicile and quality*) Garnishee (Tiers-Saisie)

WHEREAS the plaintiff above named has obtained judgment in this Court against the defendant above named on the for the sum of with interest at per cent from the "and the costs since taxed at with interest thereon from the date of the judgment" and there still remains due the whole amount of the said sum, "the costs" and the interest "upon the one and upon the other" or the balance of (as the case may be) "and whereas the plaintiff has been authorized to execute the said judgment for the costs."

We command you and each of you, the said garnishee (*tiers saisi*) and defendant, to appear before this Court at the courthouse (*in the city or town or village or parish of, as the case may be*) on the day of the month of (*next or present, as the case may be*) at ten o'clock in the forenoon, for the said garnishee (*tiers-saisi*) to declare upon oath the sum or sums of money, rents, revenues and movable effects that he has or shall or may have in his hands due or belonging to the said defendant, and to show the reasons, if any you have, why the present attachment should not be declared good and valid. And you, the said garnishee (*tiers-saisi*) are enjoined not to dispossess yourself of the sums of money to the amount of the

sum and the interest remaining due as aforesaid otherwise than as required by law, and of the said sums of money which the law does not authorize us to dispose of otherwise and of the said revenues, rents and movable effects, until the court has determined.

In default by the said garnishee (*tiers-saisi*) and defendant to appear and by the said garnishee to make the declaration and to comply with the injunctions above mentioned, the said garnishee (*tiers-saisi*), may be adjudged and condemned by default to pay the debt, interest and costs remaining due as aforesaid, and also the costs of the present instance, to which costs the defendant will be condemned each time that an effective attachment does not suffice to discharge all that he owes.

IN WITNESS WHEREOF, etc., (as in the other writ.

This writ is addressed to

P. S. C.

N. B. 1° *When the seizure is only taken for the principal and the interest thereon or for any part thereof the parts between parentheses should be omitted.*

2° *When the writ is addressed to the sheriff or to the bailiff of a district other than in which it is delivered, this form should be altered, as follows: After the names, domicile and quality of the garnishee, the writ should, on another line, be addressed* To (*designation of the officer or officers to whom the writ is addressed*)

GREETING:

Then insert the first paragraph beginning "Whereas," and the command as follows:

We command you to summon the said garnishee (*tiers-saisi*) and defendant to appear before this Court, at the court house, in the (city, town, village, &c., *as the case may be*), on the day of the month of (present *or* next, *as the case may be*) at ten o'clock in the forenoon, the said garnishee to declare upon oath the sums of money, rents, revenues and movable effects that he has or shall or may have in his hands, due or belonging to the defendant and the said garnishee and defendant to show the reasons, if any they have, why the present attachment should not be declared good and valid. And you are enjoined; *remainder as in form* 25). *The address of the writ being at the beginning of the second paragraph need not be repeated at the end.*

No. 26.

FIAT FOR WRIT OF FIERI FACIAS.

Province of Quebec,)
District of)

SUPERIOR COURT.

No.

A. B., (*actual domicile and quality, as in the judgment.*)
Plaintiff;

vs

C. D., (*actual residence, as in the judgment*).
Defendant.

No.

I demand for the plaintiff a writ of execution addressed to

the Sheriff of this district to seize and sell the movable and immovable effects of the defendant Judgment (*date*) for $ with interest on $ at per cent Costs taxed with interest from the date of judgment distracted in favor of L. M., attorney.

The plaintiff is authorized to execute for the costs at 18

Attorney for Plaintiff.

N. B. *When the execution is only against movables, the writ may be addressed to the sheriff or to the bailiffs, and, in such case, the words* "AND IMMOVABLES" *must be omitted. And, if the party causing the execution is not empowered to execute for the costs, all relating to the latter must be struck out. If the execution be only against immovables,* MOVABLES *must be struck out, and in that case the writ can only be addressed to the sheriff.*

No. 27.

WRIT OF FIER. FACIAS.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

VICTORIA, &c.

To the Sheriff of the district of ( )

No.

GREETING,

WHEREAS

A. B., (*domicile and quality as in the judgment*), heretofore, by the judgment of Our said Court, bearing date the (*date, month and year*) recovered against C. D., (*known residence as in the judgment*) the sum of currency; with interest on the sum of from the (*day, month and year*) at the rate of per centum per annum, until paid; and costs since taxed at the sum of currency with interest thereon from the date of the said judgment, the said costs distracted in favor of Mr. L. M., attorney; and whereas the said judgment remains as yet unsatisfied, therefore We command you to levy of the goods and chattels, lands and tenements of the said C. D., in your district, the sum of currency, being the amount of the said principal and costs for which the plaintiff is authorized to execute, with interest on one and the other as aforesaid, the whole remaining to be paid with the costs of this writ and further your costs and disbursements and to pay and deposit the moneys according to law, your fees and disbursements as aforesaid being therefrom first deducted.

And, after the said sale, you shall return this writ to Our said Court with your doings thereon.

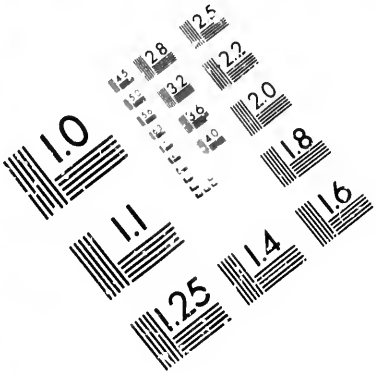
IN WITNESS WHEREOF, etc.,

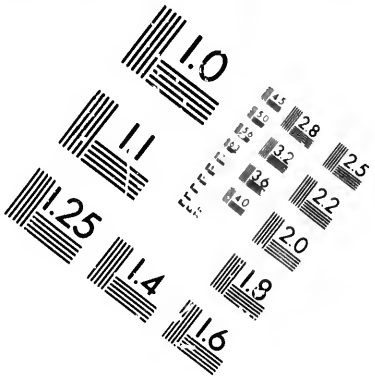
Attorney for Plaintiff.

Deputy P.S.C.

N. B.—*When the seizure is only of immovables the words* "GOODS AND CHATTELS" *must be struck out. And when the seizure is of movables the words* "LANDS AND TENEMENTS" *must be expunged and then the writ may be addressed to the Sheriff, or to the bailiffs appointed for the district or only to the latter.*

If the plaintiff is not authorized to seize for the costs every-





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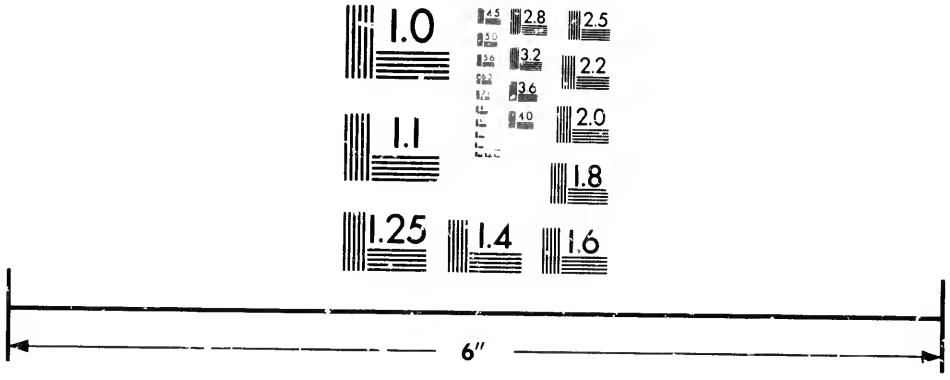

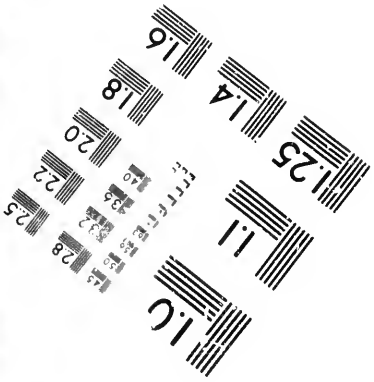

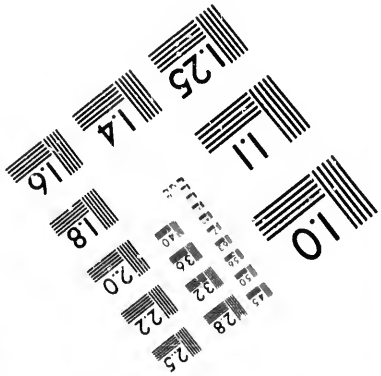

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thing in the foregoing form relating to the costs must be struck out.

No. 28.

WRIT OF VENDITIONI EXPONAS, ARTICLE 601.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

VICTORIA, &c.

No.

To the Sheriff, &c., and to the Bailiffs, &c.

GREETING:

WHEREAS on the (*day, month, year*) A. B., (*actual domicile and quality as in the judgment*) obtained judgment in Our said Court against C. D., (*residence as in the judgment*) for the sum of $ with interest thereon at per cent from and costs since taxed at with interest thereon from the date of judgment And whereas an execution was issued on the to satisfy the said judgment to seize and sell the effects (*movable and immovable or movable or immovable only*) of the said C. D., and whereas the said effects were seized on the (*day, month, year*) as appears by the procès-verbal bearing date the annexed to this writ; but whereas the said writ under which the said attachment was made is (*lost or destroyed*) and the subsequent costs and the cost of the present writ amount to.

We command you to proceed to the sale of the effects attached as aforesaid, to wit: as they are described and specified in the procès-verbal hereunto annexed and, after deducting your costs and disbursements, to pay or deposit the proceeds according to law, and We order you, after the sale, to return this writ and your doings thereon.

IN WITNESS WHEREOF, etc.

N. B.—*The fiat for this writ does not differ from form No. 27 save in the addition of the subsequent costs.*

No. 29.

WRIT OF FIERI FACIAS ON SURRENDER.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

VICTORIA, &c.

No.

To the Sheriff of the district of

GREETING:

WHEREAS on the (*day, month, year*) A. B., (*domicile and quality, as in the judgment*) plaintiff, in a hypothecary action against C. D., (*residence, as in the judgment*), defendant, obtained, before Our said Superior Court, in Our said district of judgment declaring the following property, to wit: (*designation*) hypothecated in his favor for the payment of the sum of with interest thereon at per cent from (*day, month, year*) and for the costs since taxed at with interest thereon from the date of the judgment, the said costs distracted in favor of L. M., who consents to the execution for the same by the plaintiff, and whereas the

said C. D. on the *(day, month, year)* has made a surrender of the said property and that E. G. *(domicile and quality)* has been named curator to the said surrender, We command you to seize and attach the said property upon the said curator and to sell the same, and, after deducting your costs and disbursements, to deposit and pay the proceeds according to law, And you shall return the present writ to this Court, with your doings thereon.

IN WITNESS WHEREOF, etc.

N. B.—*The fiat for this writ does not differ from form No. 29 save in the addition of the designation of the property seized.*

No. 30.

FIAT FOR WRIT OF POSSESSION.

Province of Quebec,)
District of)

IN THE SUPERIOR COURT.

No.

A. B., *(actual domicile and quality, as in the judgment)*

Plaintiff:

vs.

C. D., *(residence, as in the judgment)*

Defendant.

I demand for the plaintiff a writ addressed to (sheriff or bailiff) and returnable without delay to put the said plaintiff in possession of *(description)* which the defendant has been condemned to deliver up to him, but which he detains and refuses to deliver up.

Judgment *(date)*

This 18

Atty for Plff.

No. 31.

WRIT OF POSSESSION.

Province of Quebec,)
District of)

IN THE SUPERIOR COURT.

Victoria, &c.,

To

No.

GREETING:

WHEREAS, on the day of one thousand eight hundred and in and by a certain judgment rendered in Our Superior Court, at in a cause under No. wherein

A. B., *(present domicile and quality, as in judgment)* was plaintiff and C. D., *(residence, as in the judgment)* was defendant, it was adjudged that the said defendant should, within from the service upon of the judgment in this cause rendered, quit, abandon and deliver up to the said plaintiff the (premises *or* the house *or* the property) described in the declaration in this cause as follows, to wit: *(designation)*

And whereas it further appears of record that a true copy of the aforesaid judgment was duly served upon the said defendant, and that notwithstanding the said service, the said defendant still remains in possession of the above described (premises *or* house *or* property) and refuses to deliver up the same, although duly notified so to do as aforesaid.

We, therefore, command you that, without delay, you eject, in due course of law, the said defendant from the above described (premises *or* house *or*

property) and cause all the goods and effects which may be found therein, to be placed in the street, *mis sur le carreau*, and cause the said plaintiff to be put in possession of the same, and that you return this writ, with your doings thereon, to Our said Superior Court at without delay.

IN WITNESS WHEREOF, etc.

Attorney for Plff.

Deputy P. S. C.

No. 32.

ORDER TO PUT PURCHASER IN POSSESSION.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

No.

To the Sheriff of our district of

GREETING:

WHEREAS on the day of one thousand eight hundred and ninety by a judgment rendered in Our said Superior Court, at , in a cause under the number , in which

A. B., (*domicile and quality, as in the summons*) was plaintiff,

and

A. D., (*residence, as in the action*) was defendant.

and

L. M., (*actual domicile and quality*) was purchaser.

It was adjudged that the said purchaser be put in possession of the following immovable, to wit: (*designation*).

Wherefore, We, the undersigned, Judge, &c., hereby order you to eject the said defendant, without any delay whatever, and in due course of law, from the premises above designated and to place the said purchaser in possession thereof, and you will report your doings on this order to Our Superior Court at without delay.

IN WITNESS WHEREOF, Our signature at
This

A. A.
Judge.

No. 33.

FIAT FOR VENDITIONI EXPONAS TO SELL MOVABLES AND EFFECTS DECLARED BY GARNISHEE.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

A. B., (*domicile and actual quality, as in judgment*).
Plaintiff.
and
C. D., (*residence, as in the judgment.*)
Defendant.
and
E. F., (*actual domicile and quality, as in the judgment.*)
Garnishee.

I demand for the a writ of Venditioni Exponas addressed to to sell the following movables and effects

declared by the garnishee, namely: (*enumeration and designation of the movables and effects declared*).

Judgment (*date*)..... $
with interest at per cent from
Taxed costs ....
with interest from date of judgment.. .....
Judgment ordering the garnishee to deliver up the effects to the officer charged with their sale (*date*)
Costs of *saisie-arrêt*...
with interest from the date of the 2nd judgment.....
Cost of Vend.-Ex.....

$

This 18

Atty for Plff.

No. 34.

WRIT OF VENDITIONI EXPONAS AGAINST GARNISHEE.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

No.

To the Sheriff of the district of or to the bailiffs, &c.

GREETING:

WHEREAS on the (*day, month, year*) A. B., (*actual domicile and quality, as in the judgment*) plaintiff, obtained judgment in Our said Court, in Our (*city or town, &c.*) against C. D., (*residence, as in the judgment*) defendant, for the sum of with interest thereon at per cent from the and costs since taxed at with interest from the date of judgment and distracted in favor of L. M., plaintiff's attorney; Whereas the said A. B., in execution of the said judgment, subsequently sued out an attachment (saisie-arrêt) in the hands of E. F., (*actual domicile and quality as in the judgment*) who declared that he had in his possession the following effects, belonging to the aforesaid defendant, to wit: (*specification of the effects declared*), and, whereas, by judgment of Our said Court in Our (*city, town, &c.*) bearing date the , it was ordered that all the said movable effects should be sold, and that the said garnishee should deliver them to the officer charged with the sale thereof, and that this last judgment has been served upon the said garnishee on (*date*): Whereas the costs on the said attachment have been taxed at and are also distracted in favor of L. M., plaintiff's attorney, who has consented that the plaintiff do take execution in his name for the costs. We command you to receive the said effects and to sell the same as by law provided, and, de luction made of your fees and disbursements from the proceeds of the said sale, to pay to the plaintiff the amount of the principal, the costs and the interest on the principal as aforesaid, and on the costs from the dates of the judgments allowing them, with further the sum of for the cost of this writ, and you shall return this writ and your doings thereon after the delay fixed by the code of procedure.

IN WITNESS WHEREOF, etc.

N. B.—*If there has to be distribution, instead of ordering to pay over to the plaintiff, the writ addressed to the sheriff orders him* "TO PAY TO THE PERSON TO BE ORDERED BY OUR SAID COURT" *and the writ addressed to the bailiffs orders them* "TO RETURN THE PROCEEDS TO THE OFFICE OF OUR SAID COURT TO BE ORDERED THEREIN AS OF RIGHT."

No. 35.

FIAT FOR COERCIVE IMPRISONMENT.

Province of Quebec,)
District of)

IN THE SUPERIOR COURT.

No.

A. B., *actual domicile and quality, as in the judgment.*)

Plaintiff;

and

C. D., (*residence, as in the judgment.*)

Defendant.

I demand for the plaintiff a writ of (*contrainte par corps*) against the said defendant addressed to and returnable without delay.

Judgment (*date*).. ...	$
With interest from (*date*).....	
Taxed costs	
With interest from date of judgment.....	
Judgment pronouncing *contrainte*..... .	
Costs of obtaining *contrainte*.	
Costs of the writ	
	$

This 18

Atty for Plff.

No. 36.

WRIT OF CONTRAINTE PAR CORPS.

Province of Quebec,)
District of)

IN THE SUPERIOR COURT.

Victoria, &c.

To the Sheriff of the district of and to the bailiffs of the Superior Court named for the district of

GREETING.

WHEREAS on the (*day, month, year*) in this Court, judgment was rendered in a case under the number wherein A. B., (*domicile and quality, as in the judgment*) was plaintiff, and D. C. (*residence, as in the judgment*) was defendant, condemning the said defendant to pay unto the plaintiff the sum of for (*damages, for personal wrongs or otherwise, as the case may be*) with costs since taxed at : whereas "the said judgment was served upon the said defendant on the (*day, month, year*) and " the said defendant has not satisfied the said judgment ; Whereas coercive imprisonment was, on the (*day, month, year*) pronounced against the said defendant.

WE therefore order you to arrest the body of the said (*names of the defendant*) if he may be found in the district of and to deliver him to the keeper of the common gaol of this district of to be there detained until he has placed in the hands of the Sheriff of this district or of the Prothonotary of this court the following sums, to wit:

1. The sum of (*amount of the judgment*) with interest thereon at per cent from (*day, year, month*)

2. The sum of amount of the costs of action with interest thereon from the date of judgment.

3. The sum of amount of the costs on obtaining the *contrainte par corps*.

4. The sum of for the cost of this writ and your fees and disbursements for the arrest and conveyance of the said to the gaol aforesaid.

And you shall make return to this court immediately of this writ and of your doings thereon.

WE order the gaoler of the gaol aforesaid to receive the said and to safely detain him in the said prison until he has paid and satisfied the sums above mentioned.

IN WITNESS WHEREOF, etc.

P. S. C.

N. B.—*When the unsatisfied judgment has been pronounced against the persons mentioned in paragraphs 2 or 3 of article 583 of the Code of Procedure the words between parentheses should be omitted.*

No. 37.

ORDER FOR THE APPEARANCE OF A WITNESS DETAINED IN GAOL.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

TO THE GAOLER of the common gaol of the district of

No.

WE, judge, &c., order you to bring before Our Superior Court for the district of in Our for the district of on the day of one thousand eight hundred and ninety at o'clock in the forenoon of the said day, the person of now incarcerated in the said common gaol of the district of for the said to give upon oath evidence in a certain cause actually pending in the said Court, before Us, between

A. B.
and
C. D.

; and immediately after the said shall have given his evidence you are ordered to convey him back carefully and to lodge him safely in the common gaol of the said district of

N. B.—Judge of the Superior Court.

No. 38.

FIAT FOR HABEAS CORPUS AD SUBJICIENDUM.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

I demand a writ of Habeas Corpus addressed to A. (*names, residence and quality*) commanding him to produce without delay (*or on* the day of the present month of at o'clock, *(of the forenoon or of the afternoon)* the body of *(names and description* (before

This 18

Atty for Pet'r,

No. 39.

WRIT OF HABEAS CORPUS AD SUBJICIENDUM.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

Victoria, &c.

To (*names, residence and quality*),

GREETING:

We command you to produce before one of the judges of this Court, in their chambers, in the court-house of the district of in Our (*city or town*) without delay (*or, if such be the order, on the day of the month of at o'clock of the forenoon or the afternoon*) the body of (*names and description*) or under whatever other name or description that he may be known, whom—it is said—you have in your custody or whom you detain or deprive of his liberty and to report to the said judge the causes and reasons of the said detention in order to determine if it be justifiable and to decide what may be of right. And have you then and there this writ.

IN WITNESS WHEREOF, etc.,

P. S. C.

No. 40.

INJUNCTION.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

No.

To

C. D., (*designation by actual domicile and otherwise of the party to whom the injunction is made*).

GREETING:

At the instance of A. B., (*actual domicile and quality*), WE, the undersigned, judge, &c., command and enjoin you the said C. D. and your officers, representatives and employees to not commit (*Detail minutely what is interdicted*) or to suspend all actions and operations relative to (*detail also the things interdicted*) and to appear before one of the judges of Our Court, at the court-house in Our (*city or town*, &c.) on the day after the service upon you of this writ or at any time before or after the expiration of this delay to answer to the special petition to be served upon you herewith.

And WE enjoin the officer charged with the service of this order to return it before Our said Court with his certificate of service immediately thereafter.

A. B.

No. 41.

FIAT FOR PEREMPTORY MANDAMUS AND PEREMPTORY PROHIBITION.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

I demand for (*names and designation of the plaintiff, as in the writ of summons*) against (*names and designation of the defendant, as in the writ of summons, also adding in the case of prohibition*, to the name and designations of the court that of the party in the cause in which proceedings are prohibited) commanding the (*the defendant*

in the case of mandamus and the court in the case of prohibition, for the mandamus) to do, &c., *as stated in the judgment and for the prohibition*) to desist from all proceedings in the cause (*designating the case as in the judgment.*)

Judgment (*date*)

For the mandamus. Writ returnable (*specifying the date.*)

For the prohibition. Writ returnable without delay.

This 18

L. M. ,
Atty for Petr.

No. 42.

PEREMPTORY WRIT OF MANDAMUS.

Province of Quebec,)
District of)

IN THE SUPERIOR COURT.

Victoria, &c.

No.

To (*Name and designation of the corporation or public body, or court, or public officer or heir, or representative of such officer.*

Defendant.

GREETING:

Seeing that by judgment bearing date (*day, month, year,*) Our Superior Court, sitting at in this district, on the of A. B. (*actual domicile and quality, as in the writ of summons,*) ordered the issue of a peremptory writ of mandamus informing you the above named defendant to (*describe as in the judgment the act required*). We command and enjoin you to do without delay (*repeat the act required,*) and to have with you before Our said Court in Our (*city or town*, &c.) on or before the day of the month of (*present or next*) the copy of this writ that will be served upon you, with a certificate of the manner in which it has been executed. Fail not herein under the pains and penalties of the law.

IN WITNESS WHEREOF, etc.

P. S. C.

No. 43.

PEREMPTORY WRIT OF PROHIBITION.

Province of Quebec,)
District of)

IN THE SUPERIOR COURT.

Victoria, &c.

To (*name and designation of the lower court and of the defendant, as in the writ of summons*).

GREETING:

No.

Seeing that, by judgment bearing date (*day, month, year*) Our Superior Court, sitting at in the district, on the of A. B., (*actual domicile and quality, as in the writ of summons*) has enjoined the court above mentioned to abstain from all proceedings in the cause (*specify the cause, as in the judgment*). We command and enjoin you the said court to abstain from all proceedings in this cause. Fail not herein under the pains and penalties of the law.

IN WITNESS WHEREOF, etc.

P. S. C.

The officer charged with the service of this writ must return it immediately after service.

No. 44.

FORM OF WRIT OF CERTIORARI.

Province of Quebec, }
District of }

IN THE SUPERIOR COURT.

To

Victoria, etc.

No.

GREETING:

WE, being willing for certain causes, that

(blank of several lines)

by whatsoever name the parties may be called therein be by you sent and returned before Us, We command you to return and send to Our Superior Court, in Our in Our said district, on the day of in the year of Our Lord one thousand , under your seal all orders, judgments, convictions and proceedings which have been stated to Us to be now in your possession and custody, the whole as fully and distinctly as done by you, and also this writ so that thereupon may be done what of right, and according to law, shall be meet to be done.

IN WITNESS WHEREOF, etc.

P. S. C.

A. B.

Attorney for Petitioner.

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