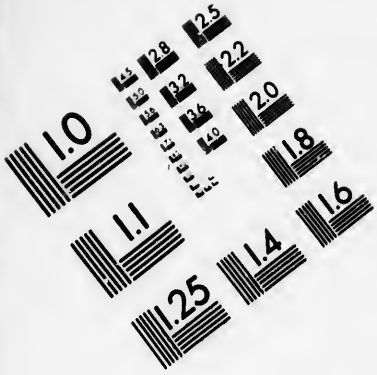

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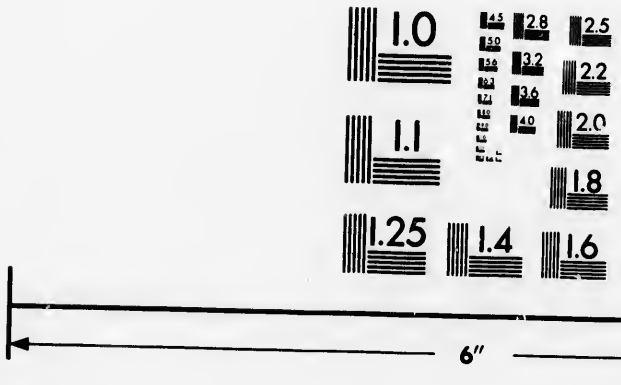

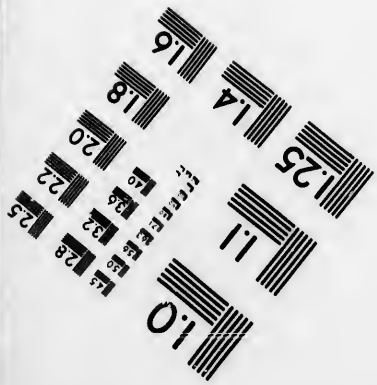

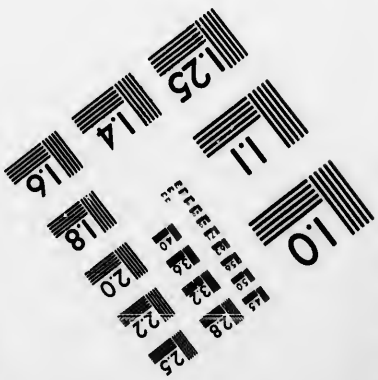

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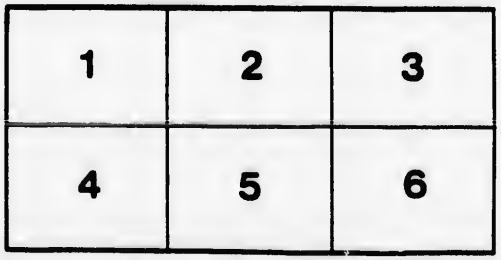

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CODE

OF

CIVIL PROCEDURE.

CODE

OF

CIVIL PROCEDURE

OF THE

PROVINCE OF QUEBEC

WITH AMENDMENTS COLLATED AND INCORPORATED

BY

W. A. WEIR, B. C. L.

Member of the Montreal Bar.

MONTRÉAL
A. PERIARD, LAW PUBLISHER,
23, St. James street.

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CODE

OF

CIVIL PROCEDURE.

FIRST PART.

GENERAL PROVISIONS.

1. The place, time, and duration of the sittings of the different courts are regulated by particular statutes.—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 before the following term; and at any sitting, held in virtue of such adjournment, the court may hear and determine all cases brought before it, whether such cases were begun before or since such adjournment.—In the absence of the judge who should preside the court, the protonotary or the clerk as the case may be, may adjourn the court from day to day during the term.—Courts cannot sit on non-juridical days.—Except as regard proceedings concerning corporations and public offices, oppositions to marriages, applications for writs of *habeas corpus* in civil matters, suits between lessors and lessees, the proceedings regulated by the first title of the second book of part second, the proceedings under articles 645, 663, 678, 679, 680, 712, 720, 730 and 763 to 780 inclusively, suits before district magistrates, suits before commissionners' courts for the summary trial of small causes, the Court of Queen's Bench, and as regards the districts of Gaspé, of Saguenay, and of Chicoutimi, the courts cannot sit between the thirtieth day of June, and the first day of September in any year; and in addition they are not obliged to sit between the thirty-first day of August and the tenth day of September, nor between the twentieth day of December and the fifteenth day of January. (*R. S. Q.*, art. 5853).

2. The following days are non-juridical :— 1. Sundays; —2. New Year's Day; —3. The Epiphany, the Annunciation, Ash Wednesday, Good Friday, Easter Monday, the Ascension, *Corpus-Christi*, St-Peter and St-Paul's Day, All Saints' Day, the Conception and Christmas Day; —4. The anniversary of the Birth Day of the Sovereign, or the day fixed by proclamation for its celebration; — 5. The first day of July, the anniversary of the coming into force of the Union Act, or the second day of the month if the first be a Sunday;—5. Any day appointed by royal proclamation or by proclamation of the Governor as a day of a general fast or thanksgiving; but any writ of summons, or other proceeding, which, before such proclamation, has been made returnable on a day so fixed, may be returned on the next following juridical day. (*Id.* 5854).

3. If the day on which any thing ought to be done in pursuance of the law is a non-juridical day, such thing may be done with like effect on the next following juridical day. — This article applies to sales announced to be made by authority of justice. (*Id.* 5855).

4. Persons present at sittings of the courts must remain uncovered, and in silence.

5. All orders given by the court or a sitting judge for the maintenance of good order during the sittings must be instantly obeyed. — The word "judge" used alone, either in this code, or in the civil code, means in like manner the chief-justice or any assistant judge of the same court, unless the contrary is expressed.

6. The provisions of the two last, preceding articles must likewise be observed wherever judges are in the exercise of their functions.

7. Any person who, during the sitting of the court or of a judge, disturbs order, utters signs of approbation or disapprobation, or refuses to withdraw or to obey the orders of the judge, or the admonitions of the criers or other officers of the court, may be condemned at once to a fine or imprisonment, or both, according to the discretion of the court or judge.

8. 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.

9. The courts, in all cases brought before them, may, according to circumstances, even of their own accord, pronounce orders or reprimands, and suppress writings, or declare them libellous.

10. The court or presiding judge may appoint an interpreter and allow him a reasonable compensation, which

forms part of the costs of the suit.

11. Any court or any judge thereof, may require an oath when it is deemed necessary, and may, in such case, as well as in any case when an oath is required by law, or the rules of practice, administer the same.

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

13. No person can bring a suit at law unless he has an interest therein.

14. No person can be a party to a suit, 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. — All foreign corporations or persons, duly authorized under any foreign law to appear in judicial proceedings, may do so before any court in Lower Canada. — 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 Lower Canada, may also appear as such in judicial proceedings before any court in Lower Canada.

15. 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.

16 No judicial demand can be adjudicated upo unless the party against whom it is made has been heard or duly summoned.

17. The court cannot adjudicate beyond the conclusions of a suit, but it may reduce them and grant them only in part.

18. A party who brings a suit for less than he is entitled to, upon the same cause of action, may remedy the omission by an incidental supplementary demand in the same suit before judgment rendered.

19. No person can 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.

20. In any judicial proceeding it is sufficient that the facts and conclusions be distinctly and fairly stated, without any particular form

being necessary, and such statements are interpreted according to the meaning of words in ordinary language.

20*a*. No question as to the constitutionality of any statute of the Province or of the Federal Parliament, shall be raised before the courts of original jurisdiction or of appeal, unless the party raising the same shews to the court that he 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 pretentions.— Upon such notice, the Attorney-General may intervene in the case, on behalf of the Crown, and take issue in writing on such questions, and the judgment of the court, whether it grant or refuse his conclusions, must mention such intervention, and such conclusions, on which it renders judgment as if the Attorney-General were a party to the suit, and a copy of such judgment is forwarded without delay to the said Attorney-General. (*R. S. Q.*, art. 5856).

21. All provisions and rules concerning procedure are interpreted with reference to each other and in such a manner as to give them all the effect intended ; and whenever this code does not contain any provision for enforcing or maintaining some particular right or just claim, or any rule applicable thereto, any proceeding adopted which is not inconsistent with law or the provisions of this code is received and held to be valid.

22. No public officer or other person fulfilling any public duty or function 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 suit has been given him at least one month before the issuing of the writ of summons.— Such notice must be in writing, it must specify the grounds of the action, must be served upon him personally or at his domicile, and must state the name and residence of the plaintiff's attorney or agent.

23. Any party to a suit may appear and plead either in person or through the ministry of an advocate. — Notaries may prepare the proceedings specified in the third part of this code, and submit the same to the judge or to the protonotary, and may even sign in the name of the petitioners all petitions necessary for such proceedings. (*R. S. Q.*, art. 5857).

24. Neither the day of service nor the terminal day is counted in the delays fixed for summoning.—Delays continue to run upon sundays and holidays ; but if a delay expires on a holiday, it is of right extended to the next following day. — The same

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rule applies to all other delays in procedure.

25. Whenever a record is required by law to be transmitted from one court to another, or to a different place, the transmission may be effected through the post-office, and the party requiring it is bound to advance the postage to the person charged to make such transmission; and for any delay caused by the neglect of such party to pay such postage, he is deemed to be in fault.— With the consent of all the parties, the record may be transmitted by any other means.

26. The provisions of article 17 of the Civil Code apply to this Code.—Any copy of this Code, whether designated as *Code of Civil Procedure of Lower Canada*, or as *The Code of Civil Procedure of Lower Canada*, or any copy of the Civil Code, whether designated as *Civil Code of Lower Canada*, or as *The Civil Code of Lower Canada*, or any extract of either of the said codes, printed by the printer duly authorized by Her Majesty, is deemed authentic.—Any abbreviated form of reference to any act or part of an act is sufficient, if it is intelligible.

27. Exceptional provisions concerning certain matters and proceedings in the districts of Saguenay, Chicoutimi, Gaspé and the Magdalen Islands are contained in chapters 77, 78, 79, 80, 83 and 85 of the Consolidated Statutes for Lower Canada (*See R. S. Q.*, art. 2400, 2333, 2356, 2357, 2368, 7514 and 7515).

SECOND PART.

PROCEDURE BEFORE THE DIFFERENT COURTS.

BOOK FIRST.

SUPERIOR COURT.

PRELIMINARY PROVISIONS.

28. 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 admiralty; and in the district of Quebec it has exclusive original jurisdiction in cases of petition of right.—The judges of the superior court, at their sittings in review, have exclusive original jurisdiction to hear and determine: 1. All motions for new trial or for judgment *non obstante veredicto*, in cases in the superior court in all the districts of the province; and 2. All motions for judgment upon a verdict, or in arrest of judgment, in cases in the superior court in the districts of Quebec and Montreal. (*R. S. Q.*, art. 5858).

29. The judges of the superior court, or any ten or more of them, may, from time to time, make any rules of practice that may be necessary for regulating proceedings, in or out of term, in causes and matters brought before them whether in the superior or in the circuit court, and all other matters of procedure not regulated by this code; provided such rules be not inconsistent with the provisions of this code:—All rules of practice thus made by such judges and signed by them, are, without any other formality and immediately upon receipt thereof, or of a copy thereof certified by the prothonotary of the superior court having custody of the original thereof, entered in the registers of each of the said courts respectively, at each place where it is held, and have then full force and effect in

the district or circuit where it has been so registered. — The judges of the superior court, or any ten or more of them, may also 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 by the rules of practice. — The 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 art. 2710, 2711 and 2712 of the Revised Statutes of the Province of Quebec.— Any officer or other person receiving any other or greater fees or emoluments than are specified in the tariff of the circuit court, for the discharge of the duties and services therein mentioned, is liable to a penalty of eighty dollars for each offence, by civil action recoverable before the circuit court and payable one half to the crown, and the other half to the party prosecuting. (*Id.*) (1).

30. Every judge, prothonotary and clerk, and every commissioner authorized for that purpose, as hereinafter mentioned, 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, or the affirmation in the cases which admit of it unless such right be restricted by some provision of law.—Any judge of the superior court may, in the district in which he discharges his functions, empower, by one or more commissions, under the seal of the court, as many persons as may be necessary in any district, as commissioners to receive affidavits therein, to be used in the superior court or the circuit court. — The chief-justice of the superior court and any other judge of the same 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 Upper Canada, as commissioners to receive affidavits therein, to be used in any court of record in Lower Canada. — The Governor may likewise, from time to time appoint fit persons, residing in any part of Great Britain and Ireland, or in any of the English colonies, as commissioners for receiving such affidavits. — Every deposition or affidavit thus received, has the same force and effect, and is entitled to the same credence

(1) Tariff of fees for advocates are made by the general council of the Bar, under the provisions of article 3599 of the *Revised Statutes* of the Province of Quebec. (*Note* under *R. S. Q.*, art. 5858).

as if it had been received in open court.— The provisions of the 26 Vic., chap. 41, give like force and effect to all affidavits received before a commissioner authorized by the lord chancellor to administer affidavits in chancery 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 incorporated 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. — The words "commissioner of the superior court," whenever they are used in this code, mean a commissioner appointed under any of provisions of this article.

30*a*. The Lieutenant-Governor in council may appoint one or more advocates or councillors-at-law residing and practising their profession in any foreign country to act as commissioners and there administer oaths and receive affidavits, declarations, affirmations in any deed or document to be carried into execution or to have its civil effect in the province of Quebec.—Every act or document made in any such country, and bearing the signature of a commissioner so appointed, makes proof before all courts, and has the same effect as those mentioned on the preceding article — The commissioners so appointed are called "commissioners for receiving affidavits in (*state the name of the country*)"; and the nomination of each of them shall be published in the *Quebec Official Gazette*.— The words "commissioner of the superior court" whenever they are used in this Code mean also a commissioner appointed under this article. (*R. S. Q.*, art. 5859.)

31. If a party establish, under oath, that he does not possess sufficient means to make the necessary disbursements, the court or a judge, on being satisfied by affidavit that such party has a good cause of action, or a good defence, may, except for the institution of a suit to recover a penalty, grant him leave to plead *in formâ pauperis*, and may order all officers of justice to afford him their services without any remuneration; but such party, if he fail in the suit, is not exempt from condemnation to pay costs to the other party. (*Id.*, art. 5860).

32. Such leave may, however, be revoked by the court or judge, upon proof that the party was or has since become able to make the necessary disbursements.

ery act or document any such country, ing the signature of ssioner so appointed, oof before all courts, the same effect as ntioned on the pre- rticle — The com- s so appointed are commissioners for affidavits in (*state of the country*)''; nomination of each hall be published in c *Official Gazette*.— s ''commissioner of ior court'' when- are used in this an also a commis- pointed under this . *S. Q.*, art. 5859.) a party establish, , that he does not fficient means to necessary disburse- court or a judge, tisfied by affidavit party has a good action, or a good ay, except for the of a suit to recover grant him leave *formâ pauperis*, der all officers of afford him their thout any remu- ut such party, if the suit, is not m condemnation sts to the other art. 5860). leave may, how- oked by the court on proof that the or has since be- make the neces- ements.

33. 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 justice, who are then intitled to an execution to obtain payment thereof from such party, by way 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 prothonotary, who pays the same, free of charge, to the parties entitled thereto.

34. In matters purely personal, other then those mentioned in articles 35, 36, 38, 40, and 42, the defendant may be summoned either:— 1. Before the court of his domicile ;--2. Before the court of the place where the demand is served upon him ;— or 3. Before the court of the place where the right of action originated. — Every fire or life insurance company may be summoned, by the insured, his heirs and assigns, for all rights arising out of a fire insurance policy, before the court of the place in which the insured moveables or immoveables were, and for all rights arising out of a life policy, before the court of the place in which the insured has a had his domicile (*R. S. Q.*, art. 5861).

35. In every suit for separation from bed and board, or for separation of property only, the defendant must be summoned before the court of the domicile of the husband.

36. Every suit in damages against a public officer, by reason of any act done by him in the exercise of his functions, must be brought before the court of the place where such act was committed.

37. 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.

38. In matters purely personal, if there are several defendants in the same suit residing in different jurisdictions, they may all be brought before the court of the jurisdiction where one of them has been summoned in conformity with article 34. — In real actions, they should 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.

39. In matters of succession, the parties are summoned before the court of the place where the succession devolves, if it opens in Lower Canada, otherwise, before that of the place where the property is situated, or that of the domicile of the defen-

dant or of some one of the defendants.

40. In actions in warranty and actions in continuance of suit, the defendants are summoned to the place where the principal action was brought wheresoever their domicile may be.

41. When a real action has for its object an immoveable or immoveables, situated partly in one district or circuit, and partly in another, the suit may be brought in either.

42. If the sole judge administering justice in any district is liable to be recused or 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.

42*a* In any suit brought upon a judgment rendered out of the Dominion of Canada, any defence set up or that might have been set up to the original suit, may be pleaded to the suit upon such judgment. (*R. S. Q.*, art. 5862).

42*b*. In any suit brought upon a judgment rendered by a provincial court in any other province of the Dominion of Canada, in a suit in which personal service was made upon the defendant within such other province or in which in the absence of such personal service, the defendant appeared, no defence that might have been set up to the original suit can be made and pleaded to the suit on such judgment. (*Id.*).

42*c*. In the case of a suit against a corporation, service within such other province on the officers indicated in the charter or in the law under which the charter has been granted, or if officer cannot be found within such other province, service therein on any person through whom by the law of such other province, a valid service on such corporation can be made is held to be a personal service to bring the case under the provisions of the preceding article. (*Id.*).

42*d* In any suit brought upon a judgment rendered by a provincial court in any other province of the Dominion of Canada, in a suit in which the defendant was not personally served within such other province, or in which in the absence of personal service, he did not appear, any defence that might have been set up to the original suit, may be made and pleaded to the suit upon such judgment. (*Id.*).

TITLE I.

OF THE SUIT.

CHAPTER I.

OF SUMMONS.

43. 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.

44. Writs of summons are issued by the prothonotary, upon the written requisition of the plaintiff.

45. They may be drawn up either in the French or in the English language.

46. They are attested and signed by the prothonotary.

47. The absence of the seal of the court does not invalidate the writ.

48. 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 on the day and at the place therein mentioned. —If there are several defendants residing in different districts, several writs must issue directed in the same manner. (*R. S. Q.*, art. 5863).

49. The writ must state the names, the occupation or quality and the domicile of the plaintiff, and the names and actual residence of the defendant.—In actions upon bills of exchange or promissory notes, or any 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 instrument. — If the defendant has no domicile or permanent residence in this province, the mention of his surname alone will suffice, if his christian name cannot be obtained, provided he be otherwise sufficiently designated in the writ, and that such writ be 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. (*R. S. Q.*, art. 5864).

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

51. The formalities mentioned in articles 46, 48, 49 and 50 are required on pain of nullity.

52. If the object of the de-

mand is a thing certain, it should be described in such a manner as clearly to establish its identity. — If it relates to a corporeal immoveable, the nature of such immoveable, the city, town, village, parish, or township, street, range or concession wherein it is situated, and also the lands conterminous to it, should be mentioned. — If it is a body of land, known under a particular name, it is sufficient to give its name and its situation. — If the immoveable forms part of a township, parish, city, town, or village, the lots in which are numbered, it is sufficient to state its number. — If the demand relates to rents constituted for the redemption of seigniorial rights, or to rights relating to any seigniory, they must be described according to the provisions of the act 27 and 28 Vict., c. 39.

53. The writ of summons, and the declaration served upon the defendant, and filed in the office of the prothonotary, may be amended or altered with the leave of the court. — The amendment cannot be allowed if it changes the nature of the demand.

54. No party can be summoned on a Sunday or a holiday without the express leave of a judge.

55. No summons can be served before seven o'clock in the morning, or after seven o'clock in the afternoon. — This provision, however, does not apply to cases of *capias ad respondendum*.

56. 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 sheriff, when the service is to be made by him.

57. 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, service may be made upon the defendant at his office or place of business, if he has one.

58. In all cases in which the defendant resides in the same domicile with the plaintiff he must be served personally, unless the court grants leave to serve him otherwise.

59. 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.

60. Service upon a general partnership may be made at its place of business, if it has one, and if it has not, upon one of the partners.

61. Service upon a joint-stock company may be made at its office, speaking to a person employed in such

office, or elsewhere upon its president, secretary or agent.

62. If the partnership has no known office or place of business, nor any known president or secretary or agent, upon a return to that effect, the court or judge may order it to be summoned by a notice to be inserted during one month in at least one newspaper, and such notice is held to be a sufficient service.

63. 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.

64. Foreign companies or corporations, and all executors of wills, administrators, or representatives of the succession of persons having had property in Lower Canada, may, if they have an office or an agent in Lower Canada, or carry on business therein, be summoned there, in the manner provided in article 61, and, if they have no such office, in the manner prescribed in article 62.—Foreign railway companies who control either as owners or lessees, any line of railway extending to or passing through the province of Quebec, and who have no office, president, secretary or agent therein, are sufficiently summoned by service made upon any of their station agents or depot masters, in charge of such stations or depots, belonging to or order the control of the control of the said companies, as are situated within this province. (*R.S.Q.*, art. 5865).

65. 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.

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

67. 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.

68. If the defendant has left his domicile in Lower Canada or has never had such domicile, but has property therein, the court or judge, or the prothonotary, upon a return stating that he cannot be found in the district, may order him to appear within two months from the last publication of such order. — The order must be published in the French and English languages, and be twice inserted in a newspaper published in each language respectively in the district where the court is held ; and in default of either of such newspapers in such district, then it is inserted in a similar newspaper of the nearest lo-

cality; and such newspapers are indicated in the order by the court, judge, or prothonotary. — The order need not be published at length, but may be in the following form:

Form for publication.

PROVINCE OF QUEBEC, }
District of..... }

IN THE SUPERIOR COURT.

A. B., of the (*domicile and occupation*),

Plaintiff,

vs

C. D., of the (*residence and occupation*),

Defendant.

The defendant is ordered to appear within two months.

(*Date*)

E. F.,
P. S. C.

(*R. S. Q.*, art. 5866).

69. Nevertheless, and without prejudice to the mode of summons mentioned in the preceding article, when a defendant, having property in the province has never had or has no longer any domicile therein, or when the cause of action arose in the province and the defendant resides in the Dominion of Canada, the judge or the prothonotary, upon proof of the fact, by affidavit or otherwise, may grant leave to serve the writ of summons at the domicile of the defendant, and such leave is endorsed in writing by him, upon the writ, which may then be served by any bailiff of a court of superior jurisdiction in the place in which the service is to be made or any literate person, either of whom 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 commissionner of the superior court for the Province of Quebec or by any bailiff of the superior court for the province. (*Id.*, art. 5867).

70. Persons imprisoned may be summoned by personal service between the wickets.

71. A summons cannot, on pain of nullity, be served in church, nor in court, nor upon a member of the legislature upon the floor of the House.

72. A summons may be served at any domicile elected by the party for such purpose.

73. Persons may be summoned to appear upon any day in the year other than a Sunday or holiday.

74. Bailiffs cannot make services in cases in which they are interested, nor in those which concern their relations by birth or affinity, to the degree of cousin-german inclusively.

75. In ordinary cases the delay upon summons is ten intermediate days between

the day of service and the day fixed for the appearance, when the distance from the domicile of the defendant to the place where the court is held does not exceed five leagues. —In demands by reason of usurpation of office, and in those for writs of *mandamus*, of prohibition, and of *scire facias*, the delay is three days. In suits between lessors and lessees the delay upon summons is one day only.—When the distance exceeds five leagues the delay is increased one day for each additional five leagues.

76. Writs of summons must be returned into the office of the clerk of the court on or before the day fixed.

77. The writ must be accompanied with a return or certificate of service.

78. Such return of service, if made by a bailiff, must state : — 1. His names, his residence, and the district for which he is appointed ; — 2. The day and hour of the 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 defendant's domicile, or the place of service ; — 6. The amount of the costs of service. —If the return is made by the sheriff, it must contain the same statement, with the exception of what is mentioned in the first paragraph.

79. The truth of the return can only be contested by improbation, unless the court orders otherwise.

80. The court may grant leave to amend any error in the return.

CHAPTER II.

OF THE RETURN.

81. Every writ of summons and every writ of capias or attachment, must be filed in the office of the clerk, on or before the day on which the defendant is therein summoned to appear, or upon the next following juridical day in the case of article 3.

82. If the writ is not returned, as hereinabove provided, the defendant may obtain the benefit of a default against the plaintiff, and be discharged from the suit, with costs, upon filing the copy of the writ served upon him.

SECTION I.

OF APPEARANCE.

83. The defendant, when duly summoned, must appear, either in person or by attorney and must file a written appearance in the office of the clerk of the court on the day fixed, or on the next following juridical day.

SECTION II.

OF ELECTION OF DOMICILE.

84. Every party appearing in person is held, by reason

of such appearance, to have elected domicile in the office of the prothonotary in which his appearance is filed. — Whenever one of the parties has, since the commencement of the suit, left the province, or has no domicile therein, all orders, rules, notices or other proceedings, may be served upon him at the prothonotary's office, as being his legal domicile, provided the sheriff or bailiff alleges in his return that he has made fruitless endeavours to find him, and that, to the best of his belief, he is not within the limits of the province. (*R. S. Q.*, art. 5868).

85. 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 prothonotary's office, in the register kept for that purpose. — In default of making such election of domicile, or of registering the same or any change thereof, such attorneys are held to have elected domicile at the prothonotary's office, where all services upon them may be validly made.

SECTION III.

OF NON-APPEARANCE.

86. If the defendant does not appear within the delays prescribed, the prothonotary, on the next following juridical day, must enter a default against him, and the plaintiff, upon obtaining a certificate of such entry, may proceed to judgment *ex parte*.

87. Notwithstanding the entry of such default, the defendant may, at any time before judgment, upon special application and sufficient cause shown, be relieved from it, upon such conditions as the court may think proper to impose.

88. This application must be served upon the plaintiff at least one clear day before it is presented.

SECTION IV.

OF JUDGMENT BY DEFAULT FOR NON-APPEARANCE.

89. If, in any action founded upon a bill of exchange, promissory note, *cédule*, cheque, act or private-writing, the defendant fail to appear or to plead, judgment may be rendered out of term upon the written application of the plaintiff, without its being necessary to prove the signatures to such documents, or to make any other proof.

90. Judgment may be rendered in the same manner when the action is founded upon an authentic document.

91. In actions founded upon verbal agreements to pay specific sums of money, or upon detailed accounts, or for goods sold and delivered, or for money lent, judgment may likewise be rendered

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forthwith upon the production, together with the inscription for judgment, of an affidavit of the plaintiff, or one of the plaintiffs, or of any other credible person, whether competent or not to be a witness in the case, duly made before a judge, or the prothonotary, or a commissioner of the superior court, and establishing that, to the knowledge of the deponent, the amount claimed is due by the defendant to the plaintiff. The judge in term has the same powers as the prothonotary respecting the rendering of judgments upon the plaintiff's affidavit, in the cases specified in this article. (*R. S. Q.*, art. 5869).

92. In every such case, the prothonotary in vacation, or in term, upon the case being inscribed for judgment, draws up a judgment, in the name of the court, conformably to the demand and to the amount which appears to be due; and such judgment is held to be the judgment of the court, and is re-recorded accordingly. (*Id.*, art. 5870).

93. The plaintiff may, at any time before executing such judgment, renounce the same, and, upon filing with the prothonotary his renunciation in writing, he may proceed in the ordinary form, in the same manner as if it had not been rendered; he must, however, bear the costs of such judgment.

SECTION V.

OF CONFESSION OF JUDGMENT.

94. The defendant may, at any stage of the proceedings, file, or cause to be taken down in writing at the prothonotary's office, 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 such confession.

95. 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 an attorney-at-law.

96. 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, and is recorded and executed accordingly. The judgment thus drawn up need not mention the presence of a judge, but it must contain a recital of the confession as it was given, and of the inscription by the plaintiff, and lastly the condemnation, in the name of the court, against the defendant.

97. If the confession of

judgment is not accepted, the plaintiff must give the defendant notice to that effect, and, after such notice, the case is proceeded with in the ordinary course; 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; saving the power of the court to grant the defendant whatever costs of contestation it may think proper.

98. If there are several defendants in the same suit, some only of whom confess judgment, the plaintiff may proceed, upon such confession, to recover against those who have acknowledged their indebtedness, saving his right to continue the suit against the others.

SECTION VI.

OF THE FILING OF EXHIBITS.

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

100. If the exhibits are private writings, or notarial originals, the party may retain them until the articulation of facts, provided he files copies thereof, certified by him or by his attorney.

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

102. Any person in possession of a document filed and forming part of a record, or having taken or received it, may, upon motion, be coerced by imprisonment, to return the same, without prejudice to his liability for damages.

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

104. Every exhibit filed in a cause becomes common to all the parties to the suit, and they may obtain copies thereof from the prothonotary so long as it remains in his hands.

105. The prothonotary cannot receive any exibit in blank, nor any list of exhibits in which the designation of any exhibit is not filed up.

106. If the exhibits in support of the demand have not been filed on the return day, they cannot be filed afterwards without giving notice to the opposite party; saving the provisions of article 100.

CHAPTER III.

OF CONTESTATION.

SECTION I.

GENERAL PROVISIONS.

107. All declinatory and dilatory exceptions, and ex-

ceptions to the form, which the defendant intends to plead, must be filed within four days from the return of the writ, except in the case mentioned in article 121.

108. The plaintiff is bound to answer any such exception within eight days after it is filed; excepting where he is himself obliged to call in warrantors; the delay then begins only from the expiration of the delays to which such warrantors are entitled to answer the demand brought against them.

109. The defendant, when he is entitled to reply, must file his replication within eight days from the filing of the plaintiff's answer.

110. A like delay of eight days is allowed for the filing of any other pleading that may be necessary, or is permitted by the court, in order to complete the issues.

111. The party failing to file any such preliminary exception, answer, or replication, or other pleading, within the delays prescribed, is by law, foreclosed from doing so, unless the court, upon cause shown, has extended the delay, or has otherwise ordered.

112. No plea containing a preliminary exception can be filed unless it is accompanied with a deposit of such sum of money as is fixed by the rules of practice of the court.

SECTION II.

OF DECLINATORY EXCEPTIONS.

113. When a declinatory exception, filed by the defendant is maintained, the parties must be dismissed, saving their recourse before a competent court.

114. The parties must also be dismissed by the court, even though no such exception has been pleaded, if the action is manifestly beyond the jurisdiction of the court.

115. The court, in declaring itself incompetent, may award costs, according to circumstances.

SECTION III.

OF EXCEPTION TO THE FORM.

116. The following grounds must be pleaded by exception to the form:—1. Informalities in the writ or service; — 2. Informalities in the declaration when it contravenes the provisions contained in articles 14, 19, 50, 52 and 56.

117. The plaintiff, upon an exception to the form as well as at any other time before judgment, may, by leave of the court, amend either the writ or the declaration, on payment of such costs as the court determines.

118. If the copy of the writ or of the declaration is incorrect, or different from the original, the plaintiff may, upon leave of the court and on payment of costs, furnish

the defendant with a correct copy.

119. Nullities in the writ or service, and informalities in the declaration, are waived by the appearance of the defendant and his failure to take advantage of them within the delays prescribed.

SECTION IV.

OF DILATORY EXCEPTIONS AND SPECIALLY OF ACTIONS IN WARRANTY.

120. 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 he has a right to demand security from the plaintiff, or the execution of some precedent obligation;—3. When the plaintiff contravenes the rule that the parties should remain in their respective positions until these are changed by judicial authority;—4. When the defendant has a right to exercise a recourse in warranty against a third party;—5. When he has a right to demand the discussion of the principal or original debtor;—6. When the plaintiff has joined in his action several claims which are incompatible, or susceptible of different modes of trial; and in such case the defendant cannot be bound to defend 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.

121. 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 other preliminary pleas, do not begin to run against the defendant until after the time allowed him to make such inventory and to deliberate.

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

123. The delay allowed to call in warrantors is eight days after service of the principal demand, exclusive of whatever time may be required to summon the warrantors, pursuant to the provisions of article 75.

124. The demand in warranty must be special and 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 calling in of the warrantors

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125. 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.

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

127. In cases 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 be executed against the warrantee. —It is sufficient, in any case, that the judgment be served upon the warrantee, without any other demand or procedure being necessary.

128. Whenever, according to article 29 of the Civil Code, a person, who does not reside in Lower Canada, is bound to give security, all proceedings in the case may be stayed, upon application of the adverse party, until such security has been given. — The delays for filing preliminary exceptions and pleas to the merits do not begin to run until after the date of the service upon the defendant's advocate of a notice informing him that such security has been given. (*R. S. Q.*, art. 5871).

129. The application for security for costs may be made before the court or before a judge or prothonotary in vacation, and may be adjudicated upon forthwith. — If the person bound to give security fails to do so within such time as the court, judge or prothonotary may fix, the opposite party may obtain a judgment of non-suit. — Saving the foregoing provision, any person from whom security may be demanded in virtue of article 29 of the civil code, may at any time, whether the same has been demanded or not, put in such security after one clear day's notice to the opposite party. (*Id.*, art. 5872).

130. The exception of discussion, whenever it lies, is subject to the general rules contained in this section, and to the special provisions contained in the articles 1941, 1942, 1943, 2066 and 2067 in the Civil Code.

131. Before answering a dilatory exception, or any other preliminary plea filed, 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 such plea to the merits is not filed within eight days from the demand thereof ; in which

case the courts take cognizance of no other issues than those raised upon the preliminary exceptions.

132. If the defendant files his pleas to the merits, 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 of the merits to which he was forced under the provisions of the preceding article.

133. When the defendant has pleaded a dilatory exception, which is afterwards maintained, the foreclosure from pleading to the merits, obtained against him under article 131, is without effect; but he is bound to file his pleas to the merits within eight days after the expiration 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, after the judgment maintaining his dilatory exception, and within eight days, amend his pleas or plead anew, without thereby incurring any costs; in default of his doing so he is presumed to abide by the pleas filed.

134. 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 eight days, counting 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.

135. Grounds of preliminary exception may, in certain cases, be urged by motion, according to the practice of the courts.

SECTION V.

OF THE CONTESTATION UPON THE MERITS.

136. The defendant may plead by peremptory exception:—1. *Lis pendens*;—2. The non-completion of the time, or the non-fulfilment of the condition upon which the right of action depends;—3. The extinction, in whole or in part, of the right claimed by the plaintiff.

137. All pleas to the merits, whether by exception or otherwise, must be filed within eight days after the appearance, except in the cases otherwise provided for in the preceding section. — If they are not filed within such delay, the adverse party may demand them, and if they are not filed within the three next following juridical days, the prothonotary may grant the

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138. The same delay of eight days is allowed the plaintiff to answer the pleas, unless such answer is in the nature of a declinatory or dilatory plea, or of an exception to the form, in which cases the delay is four days only, pursuant to article 107.

139. A like delay of eight days is allowed for the filing of any other pleading necessary to complete the issues.

140. After the expiration of these delays, the party failing to file a pleading is by law foreclosed from doing so, without the consent of the party, or leave of court.

141. Such foreclosure does not, however, take place without an order from the court if the opposite party has not filed with his pleading, in the manner prescribed, the exhibits or written proofs upon which it is founded ; and if such exhibits and written proofs are not filed with such pleading, they cannot afterwards be filed without the consent of the opposite party or leave of court. — A judge may in term or in vacation, extend the delay for filing such exhibits or written proofs.

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

143. When the defendant is foreclosed from pleading, the plaintiff may proceed *ex parte*, and may, if the case admit of it, proceed to judgment, according to the provisions contained in articles 89, 90, 91, 92 and 93.

144. No particular form of words is required in any pleading ; but every fact, the existence or truth of which is not expressly denied or declared to be unknown, is held to be admitted.

145. Every denial of a signature to a bill of exchange, promissory note, or other private writing or document upon which any claim is founded, must be accompanied with an affidavit of the party making the denial, or of some person acting as his agent or clerk, and cognisant of the facts in such capacity, that such instrument or some material part thereof is not genuine, or that his signature or some other on the document is forged, or, in the case of a promissory note or bill of exchange, that the necessary protest, notice and service have not been regularly made, stating in what the irregularity consists ; without prejudice, however, to the recourse of such party by improbation.—In the case of promissory notes, or bills of exchange payable at a particular place, they are presumed, as against the maker or

acceptor, to have been presented at that place at maturity, unless the exception founded upon such want of presentation is accompanied with an affidavit that, at the time they became due, provision had been made for their payment at the specified place. The denial of any document specified in article 1220 of the Civil Code must be accompanied by 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 by 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 genuineness of which is thus denied, may be annexed to the commission required to obtain its proof.

146. When a party has pleaded incompatible or contradictory grounds in the same plea, he may be required by the opposite party to choose between such grounds or plead anew, and in default, of such choice the incompatible grounds are held to be of no effect and are set aside.

147. A demurrer may be pleaded, when the facts alleged in the declaration do not give rise to the right of action which the plaintiff seeks to exercise

SECTION VI.

OF ISSUE JOINED.

148. The issues are completed; — 1. By declaration, pleas and replications, if there are no perpetual exception;—2. By declaration, exceptions, answers to exceptions, and replications to answers, if the answers contain facts that are not alleged in the declaration; —3. They are also held to be completed by foreclosure from filing, or by failure to file answers or replications. —Nevertheless, if the proceedings secondly enumerated are not sufficient to fully set out the grounds of the parties, the court may grant leave to file further pleadings.

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CHAPTER IV.

OF INCIDENTS.

SECTION I.

OF INCIDENTAL DEMANDS.

149. The plaintiff may, in the course of the suit, make an incidental demand :— 1. In order to add to the principal demand something he has omitted to include in it; —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 avoiding a ground of defence set up by the defendant.

150. This incidental demand is made by a petition, accompanied by the documents in support thereof, and served upon the opposite party.

151. The defendant may set up by incidental demand any claim of his arising out of the same causes as the principal demand, and which he cannot plead by exception.— When the principal demand is for the payment of a sum of money, the defendant may also make an incidental demand upon any claim for money arising out of other causes ; but such an incidental demand is distinct from and cannot retard the principal action.—The court, whenever it renders judgment upon both demands a the same time, may order compensation, if the case admits of it.

152. Incidental demands by the defendant are likewise made by petition, accompanied by the documents in support thereof, and served and filed at the same time as the pleas to the merits.

153. Issue is joined upon incidental demands in the same manner as upon the principal demand, and their contestation is subject to the same rules, delays and foreclosures.

SECTION II.

OF INTERVENTIONS.

154. Every person interested in the event of a pending suit is entitled to be admitted a party thereto, in order to maintain his rights.

155. An intervention is formed by a petition, containing the grounds which justify the party in intervening, with conclusions to that effect, and must be accompanied with the exhibits in support thereof.

156. The demand in intervention may be made in court or filed in the prothonotary's office ; but it cannot stay proceedings upon the principal demand unless it is allowed by the court, or by a judge in vacation, upon application made at any time before judgment in the cause.

157. When the intervention is allowed by the court

or judge, the suit is suspended during three days; and if the intervening party fails within that period to have it served upon the parties in the case and to file a certificate of such service, it is held not to have been filed and has no effect; and the filing of the prothonotary's certificate of such default is equivalent to a judgment dismissing the intervention.

158. If the demand in intervention is served within the delay prescribed, the parties to the suit are bound to answer it within eight days after such service, in default of which the intervention is held thenceforward to be admitted by the parties who have not contested it. The intervening party is bound, within eight days from the admission of his intervention, to furnish any grounds he may have to set up in the principal suit.—The subsequent proceedings are the same as in an ordinary suit.

SECTION III.

OF IMPROBATION.

159. Besides the action of improbation which may be brought as a principal and direct action, any party in a suit may proceed by improbation against any authentic document produced by the opposite party, and even against a return of the sheriff or of any other judicial officer.—Nevertheless as regards simple service of summons or of notice, the return may be contested on motion, without an improbation, unless the court otherwise orders.—If the contestation be deemed frivolous the contesting party may be condemned to pay double costs. — The court may, according to circumstances, grant leave to amend the return, by supplying any omissions or correcting any errors therein which might be grounds of improbation.

160. A party may also proceed by improbation against any document filed by himself, and which he is seeking to have delared null.

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

162. The petition must be served upon the opposite party before it is presented.

163. The petition must be accompanied by a deposit in the prothonotary's office of a sum fixed by the court, to meet the costs to be incurred, in whole or in part, in the event of the improbation being dismissed.

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begun at any stage of the suit until the closing of the evidence and even afterwards before judgment, upon proof that the falsity was not ascertained until after evidence was closed.—All proceedings in the principal suit are suspended until the improbation is adjudicated upon.

165. The opposite party must declare whether or not he intends to make use of the document impugned, and file in the prothonotary's office a precise declaration to that effect, previously served upon the plaintiff in improbation. —The declaration must also, on pain of nullity, be signed by the party, or by his attorney under a special power to that effect filed with the declaration. — The declaration must be made within eight days from the filing of the petition, unless the delay is extended by the judge.

166. If the defendant in improbation fails, within the delay prescribed to make such declaration, or declares that he does not intend to make use of the document, it is rejected from the record, and if the conclusions demand it, it is also declared null.

167. If the defendant in improbation declares that he intends to make use of the document, the court, or a judge in vacation, upon the demand of either of the parties, orders that such document, and the original thereof if necessary, be deposited in the prothonotary's office, 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.

168. As soon as the document impugned has been deposited in the office of the prothonotary, he proceeds to draw up a descriptive statement of its condition; this is done at the instance of either party, the other party being either present or duly notified.—The descriptive statement must mention and describe the first and last words of each page, the erasures, words written over, interlineations, marginal notes, paraphs, and signatures upon the document, and all other similar circumstances; the document is initialed, and the statement is signed by the prothonotary, and by the parties or their attorneys, or else mention is made of the reasons why the parties refused to sign upon being required to do so.

169. The parties take communication of the impugned document from the hands of the prothonotary, and without removing it.

170. Eight days after the making of the descriptive statement, the plaintiff must file his article of improbation and serve the same on the defendant.

171. The defendant is allowed a like delay of eight

days to file and serve his answers.

172. In other respects the issues are joined and tried as in ordinary suits, and are subject to the same rules and the same foreclosures.

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

174. While the document impugned remains in the prothonotary's office, no copies thereof can be delivered without an order from the court, after the parties have been heard or have been notified.

175. The provisions of this section, except those of article 163, are observed in so far as they apply, with regard to direct actions of improbation.

SECTION IV.

OF RECUSATIONS.

176. Any judge may be recused :— 1. If he is related or allied to one of the parties within the degree of cousin-germain inclusively; — 2. If he has a suit depending upon the matter in dispute, or has previously taken cognizance of it as an arbitrator; 3. If he has acted as sollicitor for either of the parties or has made known his opinion extra-judicially ; — 4. If a suit 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 suit, 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 donee of either of the parties ; — 7. If he has any interest in favoring either of the parties.

177. A judge is disqualified if he is interested in the suit, either personally, or on account of his wife, or if his wife, when separated from him as to property, is interested in the suit.

178. A judge who is liable to be recused cannot refuse to sit in the case until after he has declared the grounds of recusation that may be invoked against him and the court has ordered that he should not sit.

179. Any 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.

180. Any party to a suit 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.

181. After the declaration of the judge or of one of the parties, the party desirous o

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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.

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

183. A recusation is proposed by means of a petition containing the grounds thereof, and it 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 do abstain from sitting.

184. 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 founded or not, without the recused judge having a right to be present.

185. 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.

186. 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, nor even obtain delay to produce written evidence.

187. 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.

188. 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 for that period forms part of its records.

189. But if the recusation is dismissed, the case is sent back to the former judge, to be by him tried and determined.

190. A party who has a right to recuse a judge may renounce his right, by filing a written consent that the judge should hear and decide the case, except in the case mentioned in article 177.

191. 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.

SECTION V.

OF DISAVOWAL.

192. Any 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.

193. A disavowal may take place during the suit or after judgment.—The latter kind is mentioned in the chapter on petitions in revocation of judgment.

194. A disavowal can only be made by the party himself or his attorney under a special power, and the party himself must declare that he did not authorize the act of procedure which he repudiates.

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

196. 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 or his heirs, and the opposite party.

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

198. The procedure upon the disavowal is the same as in ordinary suits.

199. 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 that the acts were done.

SECTION VI.

OF CHANGE OF ATTORNEYS.

200. If the case has not been heard upon the merits, all proceedings had or judgments rendered since the death of the attorney of one of the parties, 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.

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

202. 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 at law, is sufficiently informed without further notice.

203. When one of the parties ceases to be represented before the case is submitted to the consideration of the court, the opposite party

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204. If the defendant thereupon 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 non-suited.

205. A party's revocation of the powers of his attorney will not be received unless he pays him his fees and disbursements, taxed after hearing or notice given to the party.

206. 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 may be proceeded with as provided in article 204.

CHAPTER V.

OF ARTICULATIONS OF FACTS.

207. Within two days after the issues are perfected according to the prescribed rules, each party is bound to file in the prothonotary's office an articulation of the facts which he has alleged and intends to prove, if the opposite party has not admitted them in his pleadings.

208. This articulation of facts must consist of separate and distinct articles upon each fact, numbered in regular order.—The articles must be in the form of interrogatories, clear and explicit. so as to call for an admission or a denial, and so that the default to answer them will establish an admission of the facts.

209. The articulation of facts must be served upon the opposite party within the same delay of two days.

210. Any document or writing of which a party intends to avail himself at the proof, must be filed with the articulation of facts, if it has not been filed sooner.

211. Within the three days which follow the filing of any articulation of facts the opposite party is bound to answer each article separately and categorically, admitting or denying each fact articulated. or declaring it not to be within his knowledge. — After this delay of three days, the party who has failed to answer cannot be relieved from his default, except upon application made to the court or judge; and upon payment of the costs occasioned by such default and taxed by the judge.

212. The facts set forth in any articulation of facts are held to be proved :— 1. If the opposite party does not answer it within the proper delay ;— 2. If the opposite party does not deny them in an express manner, or does not declare that they are not within his knowledge.

213. If a document not produced with or before the articulation of facts, is after-

wards filed in evidence by a party who should have filed it sooner, the costs resulting therefrom must be borne by such party, whatever may be the issue of the suit.

214. If a fact denied in an answer to an articulation of facts is afterwards proved, the party who denied it must pay the costs incurred by such proof, whatever may be the issue of the suit. — A party who declared that a fact is not within his knowledge may also be condemned to pay the costs incurred in proving it, if the court is of opinion that he must have had knowledge of it

215. A party who has neglected to file his articulation of facts, or who has declared that he had no evidence to adduce and afterwards adduces evidence, must bear the costs occasioned thereby.—The same rule applies if he proves any fact not mentioned in his articulations, whatever may be the result of the trial.

216. If the court is of opinion that the opposite party has been taken by surprise by the addition of evidence as mentioned in the preceding article, it may postpone the proof or trial, or make such order, or impose such terms on the party in fault as it deems just.

217. The articulation of facts may, with the consent in writing of all the parties, be dispensed with; and in such case every allegation of facts by one party, which the other party in his pleadings has not denied or declared not to be within his knowledge, is held to be admitted, and the court may award the costs of such proof, according to its discretion.

218. In the case of articles 213, 214 and 215, the party who desires to be paid such costs must make a special application for that purpose, at the time of the hearing on the merits, and accompany his application with a statement of the facts he has been obliged to prove, and of his costs of proof.

219. In rendering judgment upon the merits, the court also adjudicates upon the application for such costs.

CHAPTER VI.

OF TRIAL.

SECTION I.

PRELIMINARY PROVISION.

220. After the expiration of the three days allowed to answer the articulation of facts, cases may be tried, according to circumstances, either by evidence taken before the court or by a jury.

SECTION II.

OF INTERROGATORIES UPON ARTICULATED FACTS.

221. The parties may be examined upon articulated

facts pertinent to the issues, as soon as the pleas are filed, upon the facts in issue as then joined. (*R. S. Q.*, art. 5873).

222. Parties are summoned to answer interrogatories upon articulated facts, by means of a process issued in the name of the sovereign by the prothonotary, upon a written requisition to that effect, and ordering the party to appear before the court, or the prothonotary, to answer the interrogatories to be put to him.

223. The order to answer upon articulated facts is served upon the person or at the domicile of the party, 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, upon indicating the place where such party then is, to have him examined under a commission.

224. A party summoned to answer interrogatories upon articulated facts must appear in person at the prothonotary's office, in order to give his answers after being previously sworn.—2. Nevertheless, if the party be a corporation or legally recognized body or community, it must, by special resolution, name an attorney to answer in its place, and specify the answer he must give and swear to as being that which such corporation intends to give.—3. When the service is made upon an incorporated company, the answers may also be given by the president manager, secretary, treasurer, or any other officer or employee of the company, if he holds a general authorization for that purpose. — 4. When such service is made upon a foreign corporation carrying on business in this province, answers may also be given by the person who is at the time entrusted with carrying on the affairs of the company, whatever be his designation or official title; but such answers may also be given by any person previously authorized by a special resolution of the board of directors of such foreign corporation, to appear and answer for it the interrogatories that may be served upon it. — 5. The answer so given are as binding upon the company, as if they had been given under a special resolution of the company passed after the service of the rule and interrogatories upon articulated facts. (*R. S. Q.*, art. 5874).

225. If the party served with the rule fail 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 party who thus makes default may, however, answer the interrogatories afterwards, before the hearing of the case,

but he must bear whatever costs are occasioned by his default. — If any dispute arises as to the pertinency of the interrogatories, it is settled at once by the judge, when the answers are taken by the judge; otherwise the parties must go before the court in order to have it decided.

226. A party may also be summoned to answer *viva voce*, in open court, or at proof sittings, or before a jury; and his answers are then taken down by the judge or the prothonotary; and the judge may put any other interrogatories he may deem necessary and pertinent. If the party refuses to answer such interrogatories, the judge causes them to be written out and placed in the record, and they are held to be admitted.

227. 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.

228. The answers must be direct to the question, categorical and precise, and free from injurious or libellous terms.

229. 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.

230. The party who applied for the interrogatories upon articulated facts may refrain from putting them, or may, after they are answered, declare that he does not intend to avail himself of the answers; and upon his so refraining, or upon such declaration being made, the court cannot take cognizance of the answers, which are thereupon held not to have been given.

231. The answer of any party to a question put to him may be divided in the following cases, according to circumstances and the discretion of the court: — 1. When it contains facts which are foreign to te issue; — 2. When the part of the answer objected to is improbable or invalidated by indications of fraud or of bad faith, or by contrary evidence; — 3. When the facts contained in the answers have no connection with each other.

232. The expense of interrogatories upon articulated facts forms part of the costs in the case and is subject to the provisions of article 478. (*R. S. Q.*, art. 5875).

233 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 he cannot claim to be paid before he is sworn or before answering. — He has a right to have his expenses taxed, and such taxation may be enforced by execution against the opposite party.

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SECTION III.

OF PROOFS.

§ 1.—*Of inscription for proof.*

234. When the case is not to be tried by a jury, either of the parties may inscribe it upon the roll for the adduction of evidence.—It cannot, however, be so inscribed before the expiration of the three days allowed for filing answers to the articulations of facts of the parties. — If there be no articulation of facts and the case is susceptible of trial by jury, the inscription cannot take place until five days after issue joined.

235. Notice of the inscription must be given to the opposite party, at least eight days before that fixed for the proof.

236. The evidence is taken down in writing, either at length or in notes, according to the provisions contained in this section.

237. For the purpose of such inscriptions, the prothonotary must keep a roll on which the cases set down for proof are inscribed.

238. Saving the exceptions hereinafter mentioned, in each district of the province, the judge may, from time to time, by a rule of practice promulgated in open court, set apart such days in or out of term as may be deemed convenient for proceeding to proof. (*R. S. Q.*, art. 5876).

238*a*. In the districts of Montreal, Three-Rivers, St. Francis, and St. Hyacinthe, every juridical day is a day for proof sittings. — In the districts of Three-Rivers, St. Francis and St. Hyacinthe, however, and in the other districts to which this article may be made applicable by proclamation of the Lieutenant-Governor, the superior court cannot sit during the days fixed for the terms of the circuit court of the district. (*Id.*).

238*b*. In the district of Quebec, except the first five juridical days, the five juridical days following the fifteenth, and the last four juridical days of each month, all juridical days are days in which the superior court is held for proof sittings. (*Id.*).

238*c*. In the district of Ottawa, with the exception of the days upon which the terms of the superior and circuit courts are held, all juridical days are days for proof sittings. (*Id.*).

239. In default cases, and also by consent of the parties or of their advocates, in contested cases, depositions of witnesses may be taken at any stage of the proceedings, at any place, on any juridical day, in or out of term, and may, after being so taken, be sworn to before a commissioner of the superior court. (*Id.*).

240. In any case wherein it is established upon oath that a witness is about to

depart from Lower Canada, and that thereby one of the parties may be deprived of his testimony, one of the judges of the court may, at any stage of the proceedings after service of summons, receive the deposition 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 proof. The same thing may be done, after issue joined, in cases of evident necessity, when it is established upon oath that the witness is prevented, by serious illness or infirmity, from attending before the court. If the witness is still alive and in the province, and his attendance can be procured, at the time of the proof being taken, he must be examined anew in the ordinary time and manner, if it be required by either party.

241. The court or judge may, if deemed advisable, and without any commission or other formality, order the proof to be taken, or any person, even if he be a party, to be examined either under the decisory oath, or 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. And 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.

242. A copy of such order is transmitted to the prothonotary or the 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 witnesses of the parties to appear at the place named on any proof day, or any day, fixed by the judge, on which a judge will be present at such place, and in the cases of this and of the preceding article the rules contained in articles 248, 249, and 480 apply.

243. Any party may, either in his declaration or in any other pleading, or by a notice served upon the opposite party, declare his option that the case shall be inscribed at the same time for proof and for final hearing immediately after proof; and in such case the cause cannot afterwards be inscribed otherwise. — 2. Except in the districts of Montreal and Quebec, days for proof and hearing are fixed or changed by rule of practice made and promulgated in each district by the judge then holding the court, and the days so fixed may be days in term or for proof sittings. — If such days have not been fixed by the judge, the inscription for proof and hearing may be for any day in term or of proof sittings, except in the districts of Three

Rivers, St. Francis and St. Hyacinthe in which special days must be fixed by the judge. — In the district of Montreal every juridical day is a day for proof and hearing.—In the district of Quebec, all days of proof sittings are equally days for proof and hearing.—3 The days set apart for proof and hearing in term or during proof sittings are deemed to be consecutive; and, except in the district of Quebec if any case commenced upon one of such days is not completed on that day, it may be adjourned to any other day thus set apart, and judgment rendered on that day. — In the district of Quebec, if on the termination of the days fixed for proof and hearing, a case inscribed in that manner is proceeding, such case is continued *de die in diem*. —4. In all the districts, except that of Quebec, cases inscribed for proof and hearing have precedence, on days appointed for that purpose, over those inscribed otherwise and fixed for such days.–5. Except in the district of Montreal the cases inscribed for proof and hearing at the same time, in the superior court, and those inscribed in the circuit court, cannot be inscribed except during the days now fixed or which may hereafter be fixed, according to law, as days for the sittings in each of these courts respectively. (*R. S. Q.*, art. 5877.).

§ 2.— *Of summoning witnesses.*

244. Witnesses, if they do not appear voluntarily, are summoned at the instance and diligence of the party requiring their attendance, by means of a writ of *subpœna*, a copy of which is served upon them one clear day at least before that fixed for their examination, the delay being increased at the rate of one day for every additional five leagues, when the distance exceeds five leagues.

245. Witnesses may be summoned either to declare what they know, or to produce some document in their possession, or to do both.

246. Any person residing in Upper Canada may be compelled to appear as a witness, if the court or judge deems it necessary; provided an action for the same cause be not pending in Upper Canada.

247. The witness in the case mentioned in the preceding article cannot be summoned without a special order granted by the court or judge, if deemed necessary, and such order must be mentioned upon the subpœna.

248. Subpœnas are served in the province by the sheriff or a bailiff of the district in which the witness then is, or according to the provisions of article 461, and in the province of Ontario by any person whatever, who

must return an affidavit of such service. (*R. S. Q.*, art. 5878).

249. Any witness, duly summoned, who, without sufficient cause, fails to attend at the place and time appointed, may, upon a rule served upon him, be condemned by the court or the judge presiding at the proof sittings, 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, independently of any rescourse the party who summoned him may have for damages caused by such default, and of imprisonment for contempt, if it lie; provided that at the time he was served with the subpæna a sufficient sum was tendered him for travelling expenses at the rate usually allowed by the court of his domicile. —If the person summoned to appear as a witness resides in Upper Canada, he can only be punished for his default by the court within whose jurisdiction he resides, upon a certificate transmitted by the former court of his default to appear according to the foregoing provisions.

250. Any person who is present in the room in which the proof is being taken may be examined as a witness, and is bound to answer, under the same penalties as if he had been regularly summoned.

251. Any party to a suit may be subpœnaed, examined, cross-examined, and treated as any other witness; but his evidence cannot avail himself; the adverse party may however declare, before he closes his proof, that he does not intend to avail himself of his testimony, and in such case it is deemed not to have been given.—The answers given by a party thus examined as a witness may by used as a commencement of proof in writing.

251*a*. The parties may, as soon as the pleas are filed be examined as witnesses upon the facts in issue as then joined. (*R. S. Q.*, art. 5879).

252. Relationship, or connection by mariage, except that between consorts, and interest, are not objections to the competency of a witness, but only to his credibility.—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 or judge shall, in view of the circumstances of the case, deem it just and advisable to order such examination.—Whenever such examination is allowed, it shall be as unrestricted as would have been that of the other consort, whether as regards the admissibility of verbal evidence or otherwise.—Upon the im-

probation of an authentic deed, the testimony of the notaries, attesting witnesses or other functionaries who witnessed the deed, may be received. (*Id.*, art. 5880).

253. If the person to be summoned as a witness is in prison, the party requiring him may, upon petition, obtain a writ of *habeas corpus ad testificandum*, ordering the gaoler to bring him before the court to give his evidence.

§ 3.—*Of the examination of witnesses.*

254. Any party may demand that during the examination of any witness, the other witnesses should be out of the room in which the examination is taken.

255. Before the deposition of a witness can be taken, 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."

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

257. Any witness refusing to take the oath or affirmation is deemed to refuse to give evidence.

258. 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.

259. 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 make the oath or the affirmation, nor give evidence, if he does not believe in God, and in a state of rewards and punishments after death.

260. No person can be a witness who does not know the importance of an oath, or who is not in the exercise of his mental faculties.

261. Deaf mutes, who can read and write, may be admitted as witnesses, their oath or affirmation and their answers being written down by themselves.

262. No bailiff who has served the writ of summons in any suit or action can be a witness in support of the plaintiff's demand, except in respect of such service.

§ 4.—*Of proofs taken by a judge.*

263. Saving the provisions of article 239, the witnesses in contested cases, are examined in presence of a judge, the opposite party being either present or duly notified, and the judge may ask the witnesses any questions he may deem necessary. He takes down, or causes to be taken down in writing, under his direction, notes of the material parts of the evi-

dence, and of all objections insisted upon by either of the parties, and of his decision thereupon. The judge may order as many cases to proceed before him at the same time, as in his discretion he deems expedient. (*R. S. Q.*, art. 5881).

264. The notes of evidence are read, and if necessary, explained to the witness, who may make the necessary additions or alterations in order to express correctly the material parts of his evidence, they are then signed by him, if he can write, if not, that fact is mentioned; they are finally signed by the judge or by the prothonotary, and constitute and are held to be the evidence of the witness. (*Id.*, art. 5882).

265. Repealed. (*Id.*, art. 5883).

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

267. The witness must first be asked and must declare his names, surname, age, quality or occupation, and domicile.

268. The opposite party may establish, by a preliminary examination of any witness, or in any other manner, whatever grounds he may have for objecting to such witness.

269. 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 judge, he may prove that at other times he has made a statement inconsistent with his present testimony; provided, in the latter case, the witness be first questioned upon the subject.

270. Witnesses are examined by the party producing them, or his counsel, but only touching the facts in issue; and the questions must not be leading, unless the witness evidently attempts to elude the question or to favor the other party.

271. 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 his examination in chief; or he may require an entry to be made of his declining to cross-examine.

272. 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.

273. When witnesses are called to prove the identity of any object in the possession of one of the parties, the court or judge may order that the party shall, either in court or at any other con-

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venient 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 court 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.

274. A witness may object to answer questions put to him, if his answering would expose him to a criminal prosecution.—This objection can only be made by the witness himself.

275. 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.

276. A witness is bound to produce any document in his possession touching the matter in issue, and to allow a copy 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.

277. Any 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.

278. A witness cannot withdraw without the permission of the judge.

279. 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 judge, which day is mentioned in the notes of his evidence or entered upon the registers of the court, and in default he is liable to the same penalties as for refusing to attend upon the subpœna.

280. It is the duty of the judge 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.

281. The taxation may be enforced by execution against the party who summoned the witness, after the delay and in the manner prescribed for any judgment of the court. And execution may be sued out by the witness against the opposite party condemned to pay the expenses of such witness, 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.

282. When one party has closed his proof, the other

party may enter upon his counter-proof, and have his witnesses examined.

283. If, on the day fixed for proof, the party who is bound to proceed does not produce any witnesses, or give any valid reason for their absence, his proof may be declared closed.

§ 8.—*Of proofs taken down at length.*

284. Upon the consent in writing of all the parties to a case, and subject to such additional costs and fees as may from time to time be fixed by tariff, the proof may be taken down in writing in the manner hereinafter provided, either before a judge or before the prothonotary, who, in such case, may exercise all the powers of a judge, except as to the objections which must be reserved for the decision of the latter. —If the judge is unable to attend court on the day fixed for taking proofs, the prothonotary may preside over them, and in such case he exercises all the powers of the judge, except as regards the objections made by either party, which must be taken down in writing and reserved for the decision of the court at the final hearing of the case.—By consent of the parties or of their advocates, however, all depositions of witnesses may be taken at any stage of the proceedings, at any place, on any juridical day, in or out of term, and may after being so taken, be sworn to before a commissioner of the superior court. (*R. S. Q.*, art. 5884).

285. With the consent of the parties proofs may be taken on any juridical day during term or vacation, before the prothonotary, who presides over them and acts in the manner hereinbefore provided with respect to proof sittings.—The evidence of witnesses may also be taken and sworn in accordance with the last paragraph of the last preceding article. (*Id.*, art. 5885).

286. The court or judge may assign the different rooms wherein proofs may be taken in the court house.

287. The witnesses must take the necessary oath or affirmation before they are examined, and the prothonotary must make a note of the fact of their having done so. —In the case of the last paragraph of article 284, the depositions are sworn to before a commissioner of the superior court after they have been taken (*R. S. Q.*, art. 5886).

288. The deposition of each witness is written out at full length by the prothonotary or by some person employed by him for that purpose except in the case of articles 320*a* and 320*b*, mentioned in article 5888 of the Revised Statutes of Quebec, and of the last paragraph of article 284 of this code.—At the commen-

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cement of the deposition must be mentioned the name of the person presiding over the proof; the designation of the parties: the names, surname, age, quality or occupation and place of residence of the witness; and the fact of his being sworn. (*Id.*, art. 5887).

289. The deposition must contain all that the witness declares concerning the matter at issue between the parties, without omitting any of the circumstances, and as much as possible in the words used by the witness; unless, upon objection by one of the parties, the judge orders otherwise.

290. If the parties disagree as to the pertinency of any question or cross-question, it must be written down in the body of the deposition, either to be submitted for the decision of the judge or to guide the witness in his answer.

291. The objections made by the parties must likewise be inserted in the body of the deposition, as well as the decision thereon, or any consent of the parties concerning the same.

292. The witnesses are examined in the manner provided in § 3 of this section.

293. When the deposition of a witness is concluded, it is read to or by him, he is 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, that fact is mentioned, as well as the reading of the deposition.

294. 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 and acknowledgment of the deposition.

295. No credence is given to unauthenticated marginal notes, nor to words written upon others, nor to interlineations. The number of words struck out and of marginal notes must be mentioned in the jurat.

296. At the examination of each witness, either the parties or their attorneys or counsel must be present or have been duly called. The other witnesses cannot be present if either of the parties object.

297. Articles 259, 260 and 261 apply likewise to proofs written down at length.

298. When one of the parties has closed his proof, the other party may proceed with his counter-proof and have a subsequent day fixed for that purpose; a sufficient delay being allowed to summon his witnesses.

299. If on the day fixed for his proof a party fails to appear or to produce witnesses, and furnishes no valid excuse for their absence, or for not proceeding, his proof may be declared closed, and the opposite party may, if he thinks proper, have a day fixed for his own proof.

§ 6.—*Of proofs before examiners.*

300. The court 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, or the intricacy or multiplicity of the facts to be proved, or any other sufficient cause, it is shown to the court, by any of the parties concerned, that the ends of justice will be better attained by the appointment of such examiners.

301. 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 court or judge upon sufficient cause shown.

302. 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.

303. He must give the parties at least eight days notice of the time and place at which he will begin the examination.

304. The witnesses are summoned, by means of a writ of subpœna issuing from the court before which the suit is pending, to appear before the examiner, who may administer the oath to them, may receive any documentary evidence produced by the parties, and has all the powers of a judge presiding over proofs stated in § 4 of this section.

305. Any party to the suit may also be summoned to answer interrogatories upon articulated facts *vivâ voce* before the examiner. The latter may administer the necessary oath, and put such further questions as he may deem necessary and pertinent.—If the party refuses to answer any such questions, they are reduced to writing, and the facts contained in them are held to be proved. —If the party summoned fails to appear, the party who took out the order cannot take advantage of the default unless he has caused him to be served with the interrogatories which he intends him to answer.

306. After completing the proof, the examiner must make a return of his proceedings, on or before the day fixed by the court or judge.

§ 7.—*Of commissions for the examination of witnesses.*

307. When any of the witnesses or of the parties reside beyond Lower Canada, or even within Lower Canada at a distance of more than thirty miles from the place where the court is held, the party who requires to examine them may obtain a commission appointing one

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308. Application for that purpose must be made by the plaintiff, within four days after the articulations of facts are completed; except under particular circumstances, left to the discretion of the court or judge. Such an application by the defendant must be made within the same delay if the case is to be tried by a jury or is inscribed at the same time for proof and hearing; but if the proof is taken in writing, at length, the defendant may make the application within the four days after the closing of the plaintiff's proof. It may be granted by the court or by a judge in vacation, upon its being satisfactorily shown by affidavit that the commission is necessary, and after notice to the adverse party.

309. The commissioners are chosen as follows:—If both parties join in the commission each furnishes four names. From the list thus formed each party alternately strikes out two names; this is done in the presence of the judge, who out of the four remaining names chooses three, to whom the commission is addressed.—If both parties do not join in the commission it is addressed to the persons chosen by the party who applies for it.

310. The court or judge fixes the number of commissioners who must be present in order to execute the commission, and gives directions and authority for swearing witnesses.

311. Annexed to the commission are the interrogatories and cross-interrogatories of each party, which shall have been allowed by the judge after due notice to the other party.

312. The commission must also be accompanied with instructions addressed to the commissioners, under the signature of the judge, to guide them in its execution.

313. The return consists of a certificate of the commissioners who acted, endorsed upon the commission, and stating that the execution appears by the schedule thereto annexed.—The return must be under a sealed envelope, upon which are endorsed an indication of its contents and the name of the cause. It cannot be opened and published without an order from the court or judge.

314. The party who applies for a commission must himself see to its being transmitted and executed.

315. If both parties have joined in the commission, both are equally bound to have it transmitted and executed.

316. A failure to return the commission will not 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.

§ 8.—*Of proofs* ex parte.

317. When the defendant fails to appear or to plead to the action, the plaintiff, in suits other than those mentioned in articles 89, 90 and 91, may inscribe his case for proof in term or out of term, if any is necessary, and such proof is then proceeded with before a judge, or before the prothonotary who must swear the witnesses, take notes of their evidence, and do whatever else it would be the duty of a judge of the court to do in matters of proof. — A defendant foreclosed from pleading is entitled to at least one clear day's notice before proof; and he may cross-examine the witnesses, and make such objections as he thinks proper, of which the protonotary must take notes; but he is not entitled to produce witnesses. — Proofs *ex parte* may be taken at any time, except between the ninth of July and the first of September.

318. All evidence offered by the plaintiff is filed and remains in the record in the same manner as if the defendant had appeared and pleaded to the action.

§ 9. — *Of the incidents of proofs.*

319. All applications to the court upon any incident of the proof may be made by motion, stating succinctly the object and reasons of the application.

320. The court may, at any time before judgment, in its discretion and under such conditions as it deems just, allow any pleading to be amended so as to agree with the facts proved, and any pleading is sufficiently sustained if the facts alleged agree sufficiently with the facts proved, and if in the opinion of the court the opposite party has not been led into error as to the real nature of the facts intended to be alleged and proved.

§ 9 (*a*).—*Of proofs taken by stenography.*

320*a*. With respect to proofs in the districts of Quebec, Montreal, Three Rivers, St. Francis and Arthabaska: —1. Without prejudice to articles 263 and 264, as to the manner of proceeding and the power given to the judge by those articles, the judge may order, and either of the parties may require, that the evidence be taken by means of stenography.—2. The stenographers employed must be appointed by the council of the section of the bar, upon the report of the committee of examiners appointed by

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the council.—3. Such stenographers after their appointment are considered to be officers of the court, and are paid according to the tariff established by the council of the section, by means of fees advanced by the party producing the witnesses.—4. The judge or the prothonotary has the right, before the witnesses are heard, to require, from each party a deposit sufficient to meet the payment of the stenographer's fees, and further to require, if necessary, an additional deposit.—5. The notes of evidence are taken by the stenographer under the direction of the judge, and whenever the judge finds the tariff established by the council of the section insufficient to properly cover the stenographer's fees, he may himself establish such fees as he deems sufficient.—6. The judge may order that the notes of evidence be read to the witness, and corrected, sitting the court, if necessary.—A copy of these notes is made by transcription by the stenographer of his notes, who certifies it and it forms part of the record.—7. Upon application by the interested party, the judge who heard the evidence may order the errors which may be found in the copy so transcribed to be corrected, in the manner he may deem proper.—The costs of revising and correcting such copy shall be paid by the party found to be in default.—8. The judge has power to render judgment without waiting for the transcription of the notes of the evidence. (*R. S. Q.*, art. 5888).

320*b*. Respecting proofs in the other districts of the province:—1. In all suits inscribed at the same time for proof and hearing, either of the parties may, by a demand in writing, accompanied by a deposit of a sufficient sum of money to pay a stenographer, require that the evidence in the case be taken by means of stenography.—In such case, the stenographer is named by the prothonotary, unless the parties mutually agree upon one; and the stenographer is sworn before the court, judge, or prothonotary.—At the conclusion of each testimony, he reads over the same to the witness, and such testimony, when afterwards transcribed in ordinary writing, forms the record of the evidence in the cause.—2. The evidence taken by means of stenography is a sufficient fulfilment of the last part of article 263 and of article 264; and the sufficiency of the deposit required to pay a stenographer is determined by the court, judge or prothonotary.—3. In any case the parties may, by consent, employ the services of a stenographer, and cause him to be sworn; and the evidence is taken in the manner mentioned in the preceding paragraphs of this article.—4. The expenses of employing a

stenographer form part of the taxed costs of the case. (*Id*).

SECTION IV.

OF EXPERTS, VIEWERS, REFERENCES IN MATTERS OF ACCOUNT, AND ARBITRATORS.

321. Before deciding upon the merits of the case, the court may, if necessary, order an extraordinary investigation in the cases hereinafter mentioned, either before, during, or after the proof.

§ 1. — *Of viewers and experts.*

322. Whenever the facts in contestation between the parties can only be verified by view of the object or premises, or whenever the evidence produced by each party is contradictory, or when the nature of the contest requires it, the court may, of its own accord or upon the application of either party, 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.

323. The investigation must be made by three experts agreed upon by the parties, unless they agree to its being made by one only.

324. If, at the time of the orders for experts, their appointment has been agreed upon by the parties, the order records such appointment.

325. If the experts are not agreed upon by the parties, the court 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.

326. The parties are bound to attend on the day appointed, and if they then fail to agree upon the three experts the court appoints such experts for them. — In the case of any of the experts being validly recused others are appointed in their stead, in the manner above described.

327. The grounds for recusing an expert are; relation or alliance, to the degree of cousin-german inclusively; intimacy; enmity; subornation; interest; being in the domestic service or other employ of one of the parties; being a party in a similar suit, or the attorney or agent of a party in the case; and, generally, the grounds of exclusion applicable to witnesses.

328. 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.

329. 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 jud-

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ge in order that another person may be named in the proper manner to replace such expert.

330. The experts, before taking any proceedings in the investigation, must, on pain of nullity, be sworn to perform their functions with impartiality and do the best of their ability.— This oath must be in writing, and be certified by the person who administers it.

331. 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.

332. A copy of the order for experts, together with the necessary papers, must be given to them, after the prothonotory has taken a receipt therefor.

333. 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 respectively does not exceed five leagues, and one day more for every additional five leagues.

334. The experts must hear the parties and the witnesses in accordance with the terms of the order naming them ; each of them is authorised to administer the oath to the witnesses of the parties, as the case may be, and the witnesses are summoned to attend before the experts, whatever may be the distance.

335. The evidence of the witnesses 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.

336. If all the experts agree, they make one and the same report, if not, each of them makes his separate report, if he thinks proper.

337. The report of the experts must be made on or before the day fixed by the court.—It must contain reasons and details, so as to enable the court to appreciate the facts ; it must also be signed by the experts or be in the form of a notarial original.

338. 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 shew cause why they should not be condemned, and even held by coercive imprisonment, to do so.

339. The court is not bound to adopt the opinion of the experts nor that of a majority of them.

§ 2.—*Of references in matters of account to accountants and practitioners.*

340. 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 court 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 court; and their reports are adopted, homologated or rejected in the same manner as reports of experts.

§ 3.—*Of arbitrators.*

341. The court may, of its own motion or upon the application of one of the parties, refer to the decision of arbitrators any case of dispute between relations, concerning petitions, or other matters of fact which it is difficult for the court to appreciate; and also any other case, if the parties consent to it.

342. 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.

343. Arbitrators can only adjudicate upon the matter submited to them.—They are bound to observe the same formalities as experts in the investigation of facts, according to articles 334 and 335, 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.

343*a*. Except in actions to annul a marriage, in separation of property or from bed and board, to obtain the dissolution of a corporation or the annulling of letters patent, or in which the parties are minors or legally incapable, and in all cases of public interest, the court may, on the written demand of the parties and of their advocates, refer all or any of the issues, either of fact or of law, to the decision of any or more practising advocates appointed according to the manner determined by the consent. (*R. S. Q.*, art. 5889).

343*b*. The referees appointed who do not accept the office are replaced by others, and the majority forms a quorum. (*Id.*).

343*c*. Before proceeding they must be sworn to well and faithfully perform their duties either before the judge, the prothonotary or a commissioner of the superior court. (*Id.*).

343*d*. The trial before such referees is conducted as in cases without a jury before the court; and the referees for such purpose, have all the powers of such court or judge. —The referees have powers to appoint a clerk to assist them. (*Id.*).

343*e*. All the proceedings in the case are filed in the office of the prothonotary of the court of the district in which they are had. — In case they are had in a district other than that in which the case was brought, the record, upon the order of the referees, is transmitted in the manner prescribed by article 241 and 242. (*Id.*).

343*f*. The report of the referees must be in writing and be filed within sixty days after the final hearing, in the office of the prothonotary of the court of the place in which the case was pending at the time of the appointment of the referees.—In default of which, either party may cause a notice to be served upon the advocate of the adverse party and upon the referees that he intends to end the reference.—Upon the filing of such notice in the office of the prothonotary, the case is continued as if it had not been referred —However, the proceedings had and proof adduced before the referees, form part of the record as if they had been had and taken before the court.—The court may also, upon demand of either of the parties, cancel the appointment of the referees if they do not proceed with diligence to the hearing of the case. (*Id.*).

343*g*. On the statement of facts and propositions of law which may be submitted by the parties to the referees, it is the duty of the latter to decide what are pertinent to the issue and to note in the report their findings on each. —The omission to note the same does not however invalidate the report. (*Id.*).

343*h*. The referees shall further set out in their report the text of the judgment to be drawn up. (*Id.*).

343*i*. On the application to homologate the report, the court or judge may examine into the grounds of any nullity which may affect the report, but cannot inquire into the merits of the contestation.—If no ground of nullity be found in the report, the court or judge orders that judgment be recorded by the prothonotary in accordance with the report. (*Id.*).

343*j*. If the reference is had before three or more referees and their report is unanimous, the judgment based thereon is not subject to review by three judges; but an appeal may be brought directly to the court of queen's bench. (*Id.*).

343*k*. In appeal, the court must inquire into the merits of the contestation as well as the grounds of nullity of the referees' report. (*Id.*).

§ 4.—*General provisions applicable to the three preceding paragraphs.*

344. 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.

345. The party who intends to avail himself of a report of experts, practitioners or accountants must make application to have it received; and if the opposite party desires to take advantage of any informalities or causes of nullity therein, he must do so by a counter-application.

346. If a report of experts, practitioners or accountants is free from informalities or causes of nullity, it is received, together with the depositions and documents annexed as part of the evidence in the case.

347. 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 informality or some other cause of nullity.

SECTION V.

OF TRIAL BY JURY.

§ 1.—*Preliminary provisions.*

348. A trial by jury may be had in all actions founded on debts, promises, or agreements of a mercantile nature, either between traders or between traders and non-traders; and also in all suits for the recovery of damages resulting from personal wrongs, or from offences or quasi-offences against moveable property.

349. It is had at the option of either of the parties, when the amount claimed by the suit exceeds two hundred dollars, and only upon the issues raised upon the merits of the case.

350. The option is made either in the declaration or in the pleas, or by a special application to the court within four days after issue joined, or, if these four days expire out of term, the application may be made on the first day of the next term, provided notice be given to the opposite party within four days after issue joined.—If there is no articulation of facts, the inscription cannot take place until five days after issue joined.

351. The jury is composed and summoned in the manner hereinafter provided.

352. No trial by jury is fixed until the court or judge, upon the motion and sugges-

tion of the party claiming the same, has assigned the fact or facts to be inquired into by the jury, and has decided all issues raised respecting the quality of the parties.

353. Each party must furnish the judge with a statement of the facts which he considers ought to be submitted to the jury.

354. The assignment of the facts may, however, be dispensed with, by consent in writing of all the parties to the suit.

355. The trial must be had at the place where the suit is brought, unless, for sufficient cause, the court or 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.

356. In any suit for damages brought against a public officer by reason of any illegal act done by him in the performance of his functions, he may apply to have the trial take place in another district, upon shewing that the case cannot be tried impartially and without prejudice in the district in which the suit is brought.—This application may be granted either by the court or by a judge, and the venue changed accordingly.

§ 2.—*Of the jury.*

357. 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 causes, by taking from the list deposited in his office of persons qualified, according to the terms of the statute, to serve as grand jurors in criminal cases, and in the order in which they then are, the names of all persons residing within a distance of five leagues from the court.

358. The qualification required for such jurors is that they must be males, be entered upon the valuation roll as proprietors of real property of the value of over three thousand dollars or as tenants or occupants of real property of the annual value of over three hundred dollars, in cities or towns of at least twenty thousand souls or in the *banlieue* thereof; or as proprietors of real property of the total value of over one thousand dollars or as tenants or occupants of real property of the annual value of over one hundred dollars within the limits of any municipality in the counties or Gaspé and Bonaventure; of as proprietors of real property of the total value of over two thousand dollars, or as tenants or occupants of real property of the annual value of over one hundred and fifty dollars within the limits of any municipality in the other parts of the province; and have their domicile in such cities, towns, or municipalities.—Any justice

of the peace may be a juror. (*R. S. Q.*, art. 5890).

359. Persons cannot be jurors:—1. Who have not the qualifications and conditions required by the two preceding articles; — 2. Who are below the age of twenty one years; — 3. Who are afflicted with blindness, deafness or any other physical or mental infirmity incompatible with the discharge of the duties of a juror;—4. Who are arrested or under bail upon a charge of treason or felony, or who have been convicted thereof; — 5. Who are aliens. (*R. S. Q.*, art. 5891).

360. The following persons are exempt from serving as jurors: — 1. Members of the Clergy;— 2. Members of the Privy Council, of the Senate or of the House of Commons of Canada, and persons in the employ of the Government of Canada;—3. Members of the Executive Council, Legislative Council or Legislative Assembly of Quebec, and persons in the employ of the Government or of the Legislature of this Province; —4. Judges of the Supreme Court, of the Court of Queen's Bench, and of the Superior Court, Judges of the Sessions, District Magistrates and Recorders;—5. Officers of Her Majesty's Court; — 6. Registrars; — 7. Practising advocates and notaries;—8. Practising physicians, surgeons, dentists and apothecaries;— 9. Professors in universities, colleges, high schools, or normal schools, and teachers; —10. Cashiers, tellers, clerks and accountants of incorporated banks;—11. Clerks, treasurers and other municipal officers of the cities of Quebec and Montreal:— 12. Officers of the army and navy in active service; — 13. Officers, non-commissioned officers, and privates of the active militia;—14. Pilots duly licensed, — 15. Masters and crews of steamboats and masters of schooners, during the season of navigation;— 16. All persons employed in the running of railway trains;—17. All persons employed in the working of grist mills;—18. Firemen;— 19. Persons above sixty years of age;—20. The Members of the Council and of the Board of Arbitration of the Montreal Board of Trade. (*Id.*, art. 5892).

361. 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 without delay to 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, from time to time, to strike out the names of all those whom the sheriff, in any pending case, returns as dead, absent or disqualified, or who are declared by the court to be so. (*Id.*, art. 5893).

§ 3.—*Of the special list and the striking of the panel.*

362. The court, 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 may 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 may, in the latter case, order the record to be sent to the prothonotary of the court in such district.

363. If the suit be of a mercantile 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, and 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 court or 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 ought to be summoned to form the jury, the special list is completed by taking other names from the jury list in the order hereinbefore prescribed.

364. Upon the application of either of the parties, if the opposite party does not object, the court or 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*, the court or judge orders the jury to be composed of equal numbers of persons speaking the French language and of persons speaking the English language.

365. The motion for the fixing of a day for trial must be accompanied with a deposit in the hands of the prothonotary, of the amount fixed by the court.

366. After the granting of such motion by the court or judge, the prothonotary takes from the list of jurors for civil matters, commencing with the name of the first juror having the required qualifications, following that of the last juror included in the special list last previously made the names of forty-eight jurors, whose names are first on the list, having, in the special cases, the qualifications required according to the order of the court or judge, and makes a special

list thereof, to form part of the record in the case.

367. Upon the day and at the hour fixed for striking the panel, the parties must attend for that purpose at the prothonotary's office.

368. 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 each, paraphing each name struck out, and the twenty-four names then remaining form the panel from which the twelve jurors who are to serve in the case are taken.

369. In the case of articles 363 and 364, neither party can strike out the names of more than six persons speaking the French language nor more than six persons speaking the English language, or the names of more than six traders or non-traders, as the case may be

370. 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.

371. If the party who has demanded a trial by jury fails to proceed upon his demand, the opposite party may either adopt the necessary proceedings for summoning a jury or may obtain leave from the court or a judge to inscribe the case for proof in the manner indicated in the chapter on proof.

§ 4.—*Of the summoning of jurors.*

372. As soon as the panel is formed in the manner prescribed in the preceding section, the prothonotary delivers to the party who applies for it a writ of *Venire Facias*, in the name of the sovereign, signed by such prothonotary and sealed with the seal of the court, ordering the sheriff to summon the twenty-four persons whose names compose the panel; and a copy of such panel is annexed to the writ

373. The jurors must be summoned at least four days before the day fixed for the trial.

374. 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 and at the hour 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, the day, place and hour 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.

375. A return of service of such writ must be made in the

same manner as that of ordinary summonses.

§ 5.—*Of the formation of the jury, and of challenges.*

376. 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, and 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 reason shown, reduce or entirely remit such penalty or imprisonment. (*R. S. Q.*, art. 5894).

377. As soon as the case is called on the appointed day, the writ of *Venire Facias* is returned, and after the jurors summoned have been called and a sufficient number to form a jury are in attendance, either party may challenge the array, either on the ground that the officer to whom the *Venire Facias* was addressed is interested or concerned in the suit, or on the ground of such causes of nullity as may be found in the summoning of the jurors or the making up of the lists or panel.

378. This challenge must be in writing, stating the causes of nullity relied upon, and must conclude by demanding that the panel be quashed.

379. The presiding judge decides the challenge, and may, if necessary, order the facts upon which it is based to be substantiated on oath.

380. If the challenge is pronounced to be valid, the party who applied for a trial by jury must obtain the issuing of another *Venire Facias*.

381. If there is no challenge to the array, or if such challenge is overruled, the prothonotary, in order to form the jury, proceeds to the calling and swearing of twelve of the persons summoned, following the order in which they appear on the panel, unless the judge orders otherwise, saving the cases mentioned in article 390.

382. Either of the parties may challenge for cause any person called to form part of the jury, before such person is sworn.

383. The causes of challenge to the polls are either principal or to the favor.

384. The causes of principal challenge are;—1. Want of qualification of the person summoned;—2. Relation or affinity with one of the parties, to the degree of cousin-german inclusively;—3. Interest in the suit;—4. That he has examined into the matter in dispute as an arbitrator named by one of the parties;—

5° That one of the parties has wrought upon the juror and given him money or other things, in order to obtain a verdict to his favor;—6. That the juror is infamous, or attainted of felony or convicted of perjury.

385. Jurors may be challenged for causes of lesser importance, which indicate a probability or give rise to a suspicion that they are biased in favor of or against one of the parties, and such challenges are to the favor.

386. Principal challenges are tried by the court; challenges to the favor are tried in the manner hereinafter explained.

387. If two jurors or more have already been sworn, they try all challenges to the favor; if two have not been sworn, the court appoints two disinterested persons, who are sworn to try the challenge impartially, and who, together with the first juror sworn, if one have been sworn, decide upon it, and upon any other challenges, until two jurors have been sworn.

388. The juror himself may be examined on oath as to the matter of the challenge, provided it does not tend to his dishonor and discredit.

389. A challenge founded upon a judicial condemnation must be accompanied with an authentic certificate of such condemnation.

390. In cases of a mercantile 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.

391. If several of the jurors summoned are challenged or fail to attend, so that the number of twelve duly qualified jurors cannot be completed, the court or sitting judge may, upon consent of the parties, but not otherwise order 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.

392. When a juror called is not challenged, or the challenge is overruled, he must be sworn to try the matter at issue, and to give his verdict in a just and impartial manner, according to the evidence.

§ 6.—*Of the proceedings befor a jury.*

393. Two days at least before that fixed for the trial by jury each of the parties must, under a sealed cover, deliver to the prothonotary, for the use of the judge who is to preside at the trial, a *factum* or case, containing a state-

ment of the facts of the case and the authorities which he cites in support of his pretensions.

394. 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 nonsuit is entered against him, with costs to the defendant.

395. The plaintiff may also, at any time before verdict withdraw from court or abandon his suit, and a like judgment of nonsuit, with costs, is rendered against him by the judge.

396. No paper can be read to the jury without leave from the judge; and if it be not authentic it must first be proved.

397. The witnesses give their evidence orally, in presence of the jury, and the judge is bound to make, or cause to be made under his supervision, full notes of the testimony thus adduced, of all oral admissions, or of all exceptions taken or objections made orally in court. These notes are read out by the judge or by the prothonotary, at the oral request of any party in the suit, during the trial or immediately after it, in order to correct and remedy any errors or omissions that may be found therein.

398. A fair copy of such notes is made out by the prothonotary, and, after being certified by the judge, is filed of record and in case of appeal is held to be the true record of the evidence adduced and of all other proceedings mentioned therein and stands in lieu of any bill or exceptions by either of the parties against the evidence, adduced, or the trial, which bills can no longer be filed.

399. When the witnesses cannot attend before the court, their evidence may be taken by means of a commission for the examination of witnesses, which must be obtained and executed in the manner prescribed in the section concerning such commissions, and must be returned before the jury; but no such commission can issue for the examination of witnesses who are within the circuit in which the jury trial takes place, unless with the consent of both parties, which is entered in the record.

399*a*. Either of the parties may, by a demand in writing, accompanied by a deposit of a sum of money deemed sufficient by the judge or the prothonotary to pay a stenographer, require the evidence to be taken by means of stenography.—In such case the stenographer is named by the prothonotary, unless the parties mutually agree upon one, and the stenographer is

sworn before the court, and he shall, at the conclusion of each testimony, read over the same to the witness. — Such testimony shall, when afterwards transcribed in ordinary writing, form the record of the evidence in the cause. — The requirements of articles 397 and 398 may be fulfilled through the intervention of the stenographer. —The expenses of employing a stenographer form part of the taxed costs of the case. (*R. S. Q.*, art. 5895).

400. When the facts to be proved before the jury have been assigned by the judge, the proof is limited to the facts thus submitted.

401. When, upon the written consent of the parties, the assignment of facts by the judge has been dispensed with, proof may be gone into upon all the facts of the case.

402. Either party may examine the other by interrogatories upon articulated facts, the answers to which are taken either orally in the presence of the jury, or in writing in the prothonotary's office.

403. The plaintiff first opens his case, and adduces his evidence.—The defendant next proceeds with his defence, having the option of addressing the jury either before or after adduction of his evidence. — The plaintiff is afterwards entitled to reply, but if he adduces evidence in rebuttal, the defendant may comment upon such evidence before the reply of the plaintiff.

404. 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.

405. 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; and what is thus written, after being signed by the judge, forms part of the record in the case.

§ 7.—*Of the provinces of judge and jury.*

406. It is the province of the judge to declare whether there is any evidence and whether that evidence is legal, and it is that of the jury to say whether the evidence admitted is sufficient.

407. The jury finds the facts, but must be guided by the directions of the judge as regards the law.

§ 8.—*Of the verdict.*

408. If the jury, when charged with the case, cannot immediately agree upon a verdict, they must retire to a place set apart for them, in charge of some bailiff appointed by the court or judge, until they are ready to render their verdict. — The court or judge may, however, in such

case, and also during the trial, permit them to depart for the night, subject to the obligation of attending again on the next following juridical day.

409. If the jurors fail so to attend again, they are liable to the penalties attached to contempt of court, without prejudice to the recourse of the parties against them for damages.

410. 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.

411. The agreement of nine of the twelve jurors is sufficient to return a verdict.

412. 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.

413. The prothonotary, after ascertaining that all the jurors are present, receives their verdict and enters the same 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.

414. When there is an assignment of facts the verdict must be special and articulated upon each fact submitted, and be explicitly affirmative or negative.

415. 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 favor of the defendant.

416. 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 including both the costs incurred upon the trial and the allowance for the jurors, to whom the same is paid as soon as it is recovered by the prothonotary; and if the trial by jury was demanded by the defendant, the plaintiff may proceed according to article 371.

417. The prothonotary, in the case of such default to pay, must immediately issue against the party liable for costs, a writ of execution, to be enforced by the sheriff, for the recovery of the allowance due the jurors.

418. The verdict must be given upon all the issues submitted to the jury.

419. The verdict cannot in any manner pronounce upon the costs of suit.

420. 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.—If the verdict cannot be rendered by reason of the death, illness or withdrawal of a juror, the jury must be discharged, saving the right of the parties to have another jury summoned. —The judge may, however, in the case of illness or withdrawal of a juror, adjourn the case, in order to give the jury the opportunity to reunite and render their verdict.

§ 9.—*Of judgment after verdict and of remedies against a verdict.*

421. The party in whose favor a verdict has been rendered cannot move for judgment upon the same until the expiration of four days in term after the rendering thereof.

422. The motion for judgment of the verdict can only be opposed by means of a motion for a new trial, a motion in arrest of judgment, or a motion for judgment *non obstante veredicto*.

423. Motions for new trial or for judgment *non obstante veredicto* must be made before the superior court sitting in review, on or before the second day of the next term of such court in review following the tenth day after the rendering of the verdict, and cannot be received after. (*R. S. Q.*, art. 5586).

424. Motions in arrest of judgment must be made within the same delay, unless the party has adopted either of the two other recourses mentioned in the preceding article, in which case it may be made within the two days in term next after the judgment upon the former motion.

425. None of the motions hereinabove mentioned can be adjudicated upon unless the opposite party has been heard or duly notified.

Of motions for new trial.

426. The court may grant a new trial in the following cases:—1. If the assignment of facts submitted to the jury does not comprise all the facts necessary to be proved; —2. If the judge has admitted illegal evidence; —3. If he has rejected legal evidence; —4. If he has wrongly directed the jury upon a point of law; —5. If the jury, not agreeing, have settled their verdict by casting lots, even though it be conformable to the evidence and to the direction of the judge; —6. If the jurors have accepted refreshments from the successful party; —7. If one of the jurors had expressed his intention of favoring the successful party; —8. If he has committed any act of a nature to warrant any suspicion of partiality of the verdict; —9. If anything has been done to bias the opinion of a juror in

favor of the successful party; —10. If the judge, while summing up the case in favor of one of the parties, was stopped by the jury declaring themselves satisfied, and they afterwards rendered a verdict in favor of the other party; —11. If the amount awarded be so small or so excessive that it is evident that the jurors must have been influenced by improper motives, or led into error;—12. If the jurors, or any of them, have received affidavit or evidence out of court;—13. If the verdict is unsupported by proof, or contrary to the evidence adduced;—14. If the party was taken by surprise;—15. If the case was irregularly called in the absence of either of the parties; or if the record was not complete; if an important witness was absent at the time of the trial without any fault on the part of the party who had summoned him and his evidence is still obtainable; and in all cases where the merits of the case could not be discussed, and the party aggrieved and his attorneys are free from blame in that respect;—16. In some particular cases when new evidence has been discovered since the trial;—17. If the verdict is informal or defective:—18. If the writ of *Venire Facias* is wrongly addressed or executed, or if a challenge of the array or if any juror has been erroneously maintained or overruled; —19. If for other causes, there is manifest injustice in the verdict.

427. The causes mentioned in paragraphs 2, 3, 4 and 10, in the preceding article can only be ascertained by means of the judge's notes filed in the record, and when the party has caused his objections to be entered therein.

428 The affidavit of a juror as to the reasons and motives which influenced him cannot be received in any case.

429. Nor can the affidavits of jurors or any other evidence be received for the purpose of establishing that the verdict rendered and recorded is not that which the jurors intended to give.

430. A new trial must be granted when the judgment upon the verdict has been reversed by a higher court.

Of arrest of judgment.

431. The defendant has a right to move in arrest of judgment upon the verdict, whenever it appears on the face of the record, that notwithstanding the verdict, the plaintiff has no right to recover any sum, or that the verdict differs materially from the issues joined, or that the judgment would be reversed in appeal.

432. Arrest of judgment has the effect of annulling the verdict of the jury, which can no longer be carried out.

Of judgment "non obstante veredicto."

433. Whenever the verdict of a jury is upon matters of fact in accordance with the allegations of one of the parties, the court may, notwithstanding such verdict, render judgment in favor of the other party if the allegations of the former party are not sufficient in law to sustain his pretensions.

CHAPTER VII.

OF DIVERS OTHER INCIDENTAL PROCEEDINGS.

SECTION I.

OF CONTINUANCE OF SUITS.

434. When a case is ready for judgment, it cannot be retarded either by change of the civil status of the parties or by loss of the quality in which they were acting.

435. The case is ready for judgment, when the trial is completed, and the case is under advisement.

436 The attorney who is aware of the death or change of civil status of his party, or of the loss of the quality under which he was acting, is bound to notify the opposite party; and all proceedings had up to the day when such notice is given are valid.

437. In cases 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 loss of the quality in 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.

438. A suit may be continued:—1. By the heirs or representatives of a deceased party;—2. By a minor who has attained full age;—3. By the husband who has married a spinster or a widow party in the suit;—4. By a wife who has obtained separation of property from her husband, when the suit affects her private property:—5. By the person who replaces the party who has lost the quality in which he was acting.

439. The continuance may be effected upon petition, filed in the prothonotary's office, after being served upon the opposite party.—This petition may be contested in the same manner as any suit.

440. If the continuance is not contested within the delays prescribed, it is held to be admitted, and in such case, as also when it is declared by the court to be well founded, the opposite party may continue on from the last proceedings originally taken.

441. If the persons 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.

442. In all cases, whether the continuance is voluntary or ordered by the court, it is effected by following up the last valid proceedings originally had in the suit.

SECTION II.

OF THE DECISORY OATH AND THE OATH PUT BY THE COURT.

§ 1.—*Of the decisory oath.*

443. A party whose case is not proved may refer its decision to the oath of the opposite party, either upon the whole or upon a distinct portion of the matter in dispute.

444. The decisory oath cannot be offered by an attorney, without a special power from the party he represents.—The offer must be in writing, and the party obtains, of course, a rule ordering the opposite party to appear before the judge to answer the questions which will be put to him.

445. This rule is served with the same delays as those required in summoning witnesses.

446. If the party served fails to appear or refuses to answer, he is held to admit whatever the opposite party offers to prove by offering the oath.—If the party to whom the oath is offered or referred be a corporation, the answers must be given in the manner provided in article 224 with regard to interrogatories upon articulated facts.

447. The party served may, however, when he refuses to answer, refer the oath back to the opposite party. This is done in writing, and thereupon the party who offered the oath is bound to attend before the court, without further notice

§ 2.—*Of the oat put by the court.*

448. The court may, of its own motion, order either of the parties, or both, to appear and answer such questions as it deems necessary to elucidate the matters in dispute; according to the provisions contained in article 1254 of the Civil Code.

449. The court may order that the party shall appear without notice, or that the rule shall be served upon him at the diligence of the opposite party.

SECTION III.

OF DISCONTINUANCE.

450. A party may, at any time before judgment, discontinue his suit or proceeding on payment of costs.

451. Discontinuance may be effected by a simple declaration to that effect, signed by the party or his attorney, and delivered into court or filed in the prothonotary's

office. It has no effect, however, against the opposite party unless it has been served upon him.

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

453. 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.

SECTION IV.

OF PEREMPTION OF SUITS.

454. Suits are perempted when no proceeding has been had therein during three years.

455. Peremption, however, does not take place : — 1. When the party has ceased to be represented by his attorney, in the cases mentioned in articles 201 and 202; — 2. When the party himself dies, or has changed his civil status; —3. When proceedings are compulsorily stayed by any incidental proceeding or by an interlocutory judgment.

456. Peremption takes place against corporations and against all individuals, even against minors, when they are represented, saving their recourse against those who represent them. It does not take place against the crown.

457. Peremption must be declared by the court, upon a motion of which the attorney, if there is one, has had notice; otherwise the notice must be given to the party himself.

458. Peremption is covered by any useful proceeding taken after the lapse of three 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.

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

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

SECTION V.

MISCELLANEOUS PROVISIONS.

461. 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. This pro-

visions applies also to executions against moveale property and to attachments before or after judgment. (*R. S. Q.*, art. 5897).

462. Every written proceeding in the case must be served upon the opposite party, otherwise it is not deemed to be regularly fyled. —Every notice of inscription for hearing in law or upon the merits must be given by serving a copy of the inscription at least one clear day in term, and four days in vacation, before the day fixed for such hearing.

463. In reckoning the delays in matters of pleading or trial, the first day of September is deemed to be the next day after the thirtieth day of June; and no party to a cause can be obliged to proceed between those two days, without a special order of the court or judge.—Any days between the thirtieth day of June and the first of September shall, however, be reckoned in the delays of eight days fixed by articles 497 and 500. (*R. S. Q.*, art. 5898).

464. Two or more judges of the Superior Court discharging their duties in the same 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 cases and matters submitted to him, and has the same powers as if he were the only judge sitting in such place. (*Id.*, art. 5899).

465. In the absence of the judge from the *chef-lieu* of any district, whenever no judge has his domicile in the *chef-lieu*, or in the absence of the judge from the district, or when he is sick, when he has his domicile in the *chef-lieu*, the prothonotary, in vacation, may perform his duties, in cases of evident necessity, or where by delay a right might otherwise be lost or a wrong sustained.—No judgment or order can be given by the prothonotary unless notice of the application has been given to the opposite party, except in cases by default, and such order may be afterwards revised by the court at its next sitting, or by any judge present in the district, provided the party requiring the revision files in the prothonotary's office, within the three following juridical days, an exception thereto, accompanied by the grounds upon which such revision is demanded.—The judgment or order of the prothonotary cannot be executed until the delay for filing such exception has expired; and after the filing of the exception, the execution of such judgment or order remains suspended until the decision of the judge. (*Id.*, art. 5900).

466. Whenever the sheriff is interested or personally con-

cerned in any suit or action, any writ which ought to be served by him must be addressed to and served by the coroner of the district.

467. If the sheriff is also coroner, then the prothonotary, or his deputy, acts in the place and stead of the sheriff, as if the writ had been addressed to him personally.

467*a*. In cases of *capias*, attachment before judgment, attachment for rent, conservatory attachment, and in all cases of urgency, the writ may be issued outside office hours without having judicial stamps thereon, provided that the amount of such stamps be deposited with the officer issuing the writ, who is bound to affix the stamps upon the *fiat* as soon as possible. (*R. S. Q.*, art. 5901).

CHAPTER VIII.

OF FINAL JUDGMENT.

SECTION I.

OF JUDGMENT ON THE MERITS.

468. Judgment in a suit which is under advisement cannot be stayed by reason of the death of the parties or of their attorneys. — If any 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 has obtained leave of absence, he may render judgment as if no changes had taken place.

469. In all contested cases, and in those not provided for by articles 89, 90, 92 and 93, judgment must be rendered in open court. — The court may, during term, appoint days out of term for rendering judgment in cases taken under advisement.

469*a*. At any time, when a judge who has heard a cause is incapable on account of illness, absence or other cause, of rendering 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 advocates, on the day previously fixed for that purpose by the court which has taken the cause under advisement. — 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. (*R. S. Q.*, art. 5902).

470. In cases inscribed at the same time for proof and hearing, judgment may be rendered during the term and upon the days set apart in vacation for proof and hearing in such cases, and also upon any day out of term

appointed by the court, for rendering judgment in cases taken under advisement. (*Id.* art. 5903).

471. Every judgment for damages must contain a liquidation thereof.

472. 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.

473. The judgment must be entered without delay in the register of the court, in conformity with the draft paraphed by the judge.

474. 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.

475. 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 shewing the receipts, all leases of immoveables, and a statement of the cost of tilling, sowing and harvesting incurred by him.

476. Unless it is expressly ordered, it is not necessary to have the judgment served on the party condemned, except judgments in recognition of hypothecs, rendered against defendants having a known domicile in the province.

477. Any 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 it was in before the judgment.

SECTION II.

OF COSTS.

478. The losing party must pay all costs, unless for special reasons the court thinks proper to reduce them or compensate them, or orders otherwise.—Nevertheless, in actions of damages for personal wrongs, if the damages awarded do not exceed forty shillings sterling, no greater sum can be allowed for costs than the amount of such damages.

478*a*. Costs bear interest from the date of the judgment granting them. (*R. S. Q.*, art. 5904).

479. Costs are taxed by the prothonotary upon production of a bill thereof, and according to the tariffs in force, and if the amount awarded by the judgment is such that

it might have been recovered before an inferior court, the plaintiff is entitled to such costs only as would have been allowed in such inferior court, unless the court otherwise orders; such taxation, may, within six months, be submitted for the revision of a judge after the adverse party has received such notice as the judge may deem 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.

480. 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 court or a judge otherwise orders.

481. In the cases of articles 69 and 246, no greater costs of service can be allowed than if such service had been made by a bailiff residing in the county.

482. Attorneys *ad lites* may demand and obtain distraction of their fees and of all disbursements actually made by them.—If such demand be not made on or before the day on which the judgment was rendered it can only be granted after the opposite party has been notified to show cause against it.

TITLE II.

OF REMEDIES AGAINST JUDGMENTS.

CHAPTER I.

OF REVISION.

SECTION I.

OF THE REVISION OF JUDGMENTS BY DEFAULT.

483. The defendant may apply by petition, within a year and a day, for the revision of any judgment rendered against him by default, in the following cases:—1. In all cases of simple attachment, or attachment by garnishment, when the service has been effected under the provisions of article 68;—2. Whenever he has not been served personally or at his real domicile, or ordinary and actual place of residence.

483*a*. In all cases whatever and not only in those in which the judgment may have been rendered in virtue of articles 89, 90, 91 and 92 of this Code, any party condemned by default to appear or to plead, may pro-

ceed against the judgment, whether rendered in term or in vacation, by opposition made and filed according to articles 484 and following; but no such opposition is allowed, unless the party condemned produces an affidavit that such party has a good defence to the action, which defence must be set out in the opposition, and unless such party has been prevented from filing his defense by surprise, fraud, or other cause, considered just and sufficient by the judge, without whose order no such opposition shall have any effect nor shall it be received by the prothonotary. (*R. S. Q.*, art. 5905, *as amended by* 52 *Vic., cap.* 49).

484. The defendant may seek relief against any judgment rendered in conformity to the provisions of articles 89, 90, 91 or 92, by means of an opposition, made either before of after seizure, but before sale, or within ten days from the date of a return of *nulla bona*, if there is one, or within ten days from the service upon him of any seizure be garnishment, issued in virtue of such judgment.

485. The petition for revision mentioned in article 483, and the opposition mentionned in article 484, must contain, on pain of nullity, all grounds, whether in support of such petition or opposition, or against the judgment, with an election of a domicile within one mile from the place where the court is held, and be accompanied by all documents in support of it.

486. The petition or opposition must, moreover, be accompanied with an affidavit of the defendant, or of one of the defendants, or of some other credible person, that the allegations contained in such petition or opposition are, to his knowledge, true; and, in the case of article 484, a sufficient sum must be deposited with the prothonotary to meet the costs incurred after the return of the writ up to the judgment, including the service thereof; which costs must be paid to the plaintiff as soon as they are taxed, out of the sum so deposited.

487. The opposition mentioned in article 484 is filed in the prothonotary's office: but the prothonotary must not receive it unless a copy thereof is at the same time left for the the plaintiff.

488. The filing of such opposition has the effect of suspending the sale under the seizure until it is decided by the court. The prothonotary must grant a certificate in duplicate of the filing of the opposition mentioned in the preceding article; and one of the duplicates must be given to the officer making the seizure, who must give a receipt therefor, in default of which it is served upon him at his own cost. The officer is thereupon bound to stay his

proceedings, and to return into court the writ of execution and the certificate which he has received.

489. If the opposition is filed before the issuing of a writ of execution, notice of the filing thereof must be given to the plaintiff, and the delays for contesting the same are computed from the date of the service of such notice.

490. The petition for revision, and the opposition, are held to form part of the proceedings upon the original suit, and to be a defence to the action, and, as such, are subject to the provisions concerning the contestation of ordinary suits.

491. If the opposition is maintained, in whole or in part, the costs incurred upon the execution are borne by the plaintiff.

492. If the opposition is maintained by reason of any irregularity in the proceedings of the plaintiff, the court, in maintaining the opposition with costs, may condemn him to such further costs as he may think of it, but not exceeding in amount the sum deposited by the defendant.

493. If no opposition is made to a judgment rendered in vacation, the allegations of the declaration are held to be admitted and proved.

SECTION II.

OF REVIEW BEFORE THREE JUDGES.

494. A review may be had:—1. Upon every final judgment from which an appeal lies, excepting the case of article 343 *j* mentioned in article 5889 of the Revised Statutes of Quebec;—2. Upon every judgment or order rendered by a judge in summary matters under the provisions contained in the third part of this Code;—3. Upon any judgment rendered on any petition or motion to set aside or quash an attachment before judgment or *capias ad respondendum*;—4. From all judgments in matters concerning municipal corporations and municipal offices, on proceedings taken in virtue of chapter ten of title second of book second of the second part of this Code. (*R. S. Q.*, art. 5906).

495. The review takes place before three judges of the Superior Court, and the judge who has rendered the judgment complained of cannot be one of them. (*Id.*, art. 5907).

496. The review of judgments rendered in the districts of Montreal, Ottawa, 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.

497. This review cannot be obtained, until the party demanding it has deposited, in the office of the prothonotary of the court which rendered the judgment, and within eight days from the date of such judgment, a sum of twenty dollars, if the amount of the suit does not exceed four hundred dollars, or of forty dollars if the amount of the suit exceeds four hundred dollars, or if the review is taken in virtue of paragraph 4 of article 494, or if it be a real action; together with an additional sum of three dollars for making up and transmitting the record, when the judgment has been rendered elsewhere than in the cities of Quebec and Montreal.— The amount thus deposited is intended to pay the costs of the review incurred by the opposite party, if the court should grant them, if not, it is returned to the party by whom it was deposited. (*R. S. Q.*, art. 5908).

498. As soon as the necessary deposit has been made, and not before, the party may file, in the same office, an inscription for review, notice of which must be given to the opposite party, and the prothonotary is then bound to transmit the record, without delay, 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.

499. The deposit and inscription have the effect of staying the execution of the judgment and the appeal.

500. The inscription need not be for any particular day, but the case must be heard, in its order, on the day in the sittings in Review next after the expiration of a delay of eight days from the day on which the notice of inscription was filed in the office of the prothonotary of the court in which the judgment was rendered. — In the district of Quebec the last four days of each month are fixed for the sitting of the superior court in review. — In the district of Montreal, the court may appoint special days for such review. (*R. S. Q.*, art. 5909).

500*a*. Cases instituted in virtue of paragraph 4 of article 494 have precedence over all other cases. (*Id.*, art. 5910).

501. The prothonotary to whom the record is transmitted is bound, as soon as he has received it, to set down the case on the roll for hearing, and if the case be pending in the superior court at Quebec or Montreal, he is bound to place it on the roll as soon as the inscription and notice are filed.

502. The judgment in re-

view may be rendered in term or in vacation, by all the judges who heard the case, or by a majority of them; and the judges may confirm, reverse or alter the original judgment, as the case may require; and their decision, 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.—Whenever any cause has been heard in review by three judges, and at the least one of the judges who heard the same is present in court and ready to render an 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 sickness, 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.

503. No change in the personal composition of the court, by the appointment of any assistant judge as puisne judge, or 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.

504. If a judge or an assistant judge, who has heard a case, together with other judges, is removed to another court, or is appointed 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.

CHAPTER II.

OF PETITIONS IN REVOCATION OF JUDGMENT.

505. Judgments which are not susceptible of being appealed from or opposed, as hereinabove provided, may be revoked, upon a petition presented to the same court, by any person who was a party to or was summoned

to be a party to the suit, in the following cases : — 1. Where fraud or artifice has been made use of by the opposite party ;—2. When they have been rendered upon documents which have been only subsequently discovered to be false, or upon any unauthorized tender or consent disavowed after judgment ;—3. When, since they were rendered, documents of a conclusive nature have been discovered which had been withheld or concealed by the opposite party.

506. It can be received only during the six months after the discovery of the fraud or the falsity, or of the documents withheld, and in all other cases only during the six months after the judgment, or a notice thereof has been served.

507. Petitions for revocation of judgment cannot prevent or stay execution, unless an order to suspend is granted by the court or judge

508. The attorney who acted for a party in the cause or suit may also represent him upon the petition in revocation of judgment, without a new power being required.

509. 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 judgment, and the proceedings are the same as in ordinary suits. The court may also give judgment at the same time upon the petition and upon the merits of the original suit. In all cases it adjudicates upon the costs of the first judgment, according to circumstances.

CHAPTER III.

OF OPPOSITIONS BY THIRD PARTIES.

510. 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.

511. This opposition is formed by means of a petition to the court which must contain an election of domicile on pain of nullity, the grounds of opposition, and proper conclusions, and must be served upon the parties in the cause, or upon the advocates who represented them, if it is made within a year and a day after the judgment.—The opposition must, moreover, on pain of nullity, be accompanied with an affidavit of the opposant, or of some other credible person, that the allegations contained in such opposition are, to the best of his knowledge, true. (*R. S. Q.*, art. 5911).

512. The proceedings upon oppositions by third parties are the same as upon ordinary suits.

CHAPTER IV.

OF APPEALS.

513. An appeal from all judgments rendered by the superior court lies to the court of queen's bench, as hereinafter provided in the fourth book.

TITLE III

OF THE EXECUTION OF JUDGMENTS.

CHAPTER I.

OF THE VOLUNTARY EXECUTION OF JUDGMENTS.

SECTION I.

OF PUTTING IN SECURITY.

514. Every judgment ordering security to be given must fix the time within which sureties shall be offered.

515. Sureties are offered after notice served upon the opposite party, and when not objected to, they enter into a bond at the prothonotary's office.

516. Except in cases where the law requires only personal justification, if a surety is objected to, he may be required to give in a declaration of his real property, together with his title thereto. Sureties may in all cases, be required to justify on oath, their sufficiency, and the judge or prothonotary may receive and administer the necessary oath.

517. 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.

518. The sufficiency of a surety is decided upon the documents and affidavits produced, without a proof being ordered.

519. If the surety is accepted, the bond is drawn up and entered into, in conformity with the judgment, and remains in the prothonotary's office as part of the record in the case.

520. 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.

SECTION II.

OF ACCOUNTING.

521. Every judgment ordering an account must fix a delay for rendering it.

522. The account must be rendered nominately to the party entitled to it ; it must be sworn to and be filed in

the prothonotary's office within the delay fixed, together with the vouchers in support thereof. — The court may, however, upon motion, of which notice has been duly given, extend the delay for rendering the account.

523. 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 to be reserved for a separate head.

524. 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.

525. The accounting party cannot place under the head of expenditure the costs of the judgment ordering him to account, unless he is authorised 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 presenting and verifying it, and of whatever copies thereof are required.

526. If the account shows an excess of receipts over expenditure, the party to whom it is rendered may provisionnally demand execution for the balance, saving his right to contest the remainder of the account.

527. Parties accounted to are bound to take communication of the account and vouchers at the prothonotary's office, and to file their contestations of the account, if they contest it, within a delay of fifteen days, which may be extended by the court or a judge upon application pursuant to notice.

528. 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 other parties accounted to to employ attorneys of their own, upon payment of all costs occasioned thereby.

529. The accounting party has a delay of eight 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.

530. In default of filing the contestations, answers or replications within the delay, the party bound to file them is held to admit whatever is contained in the document he fails to contest.

531. After the issues are completed upon the account rendered, the court may order the parties to proof respectively, according to the ordinary course, or may refer the case for settlement to arbitrators, or to a practitioner or an accountant, according to its nature.

532. The judgment upon the account must contain a

computation of the receipts and expenditure, and establish the balance if there be any.

533. If the defendant fails to render an account, the plaintiff may proceed to have one made out in the manner mentioned in the article 523.

SECTION III.

OF SURRENDER.

534. The voluntary execution of any judgment ordering the restitution and delivery of any moveable or immoveable thing is effected, unless the judgment makes other provisions, by delivering the moveable object and surrendering the possession of the immoveable, 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.

535. The voluntary execution of a judgment ordering the surrender of an hypothecated immoveable, is affected by means of a declaration of the defendant, filed in the prothonotary's office, to the effect that he surrenders it in compliance with the judgment and by his relinquishing his possession.

536. When an immoveable is thus surrendered, the court or judge, upon application of the plaintiff, names a curator to the surrender, against whom all ulterior proceedings are directed.

537. 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 immoveable surrendered are treated as realty, and are distributed in the same manner as the price.

SECTION IV.

OF TENDER GENERALLY AND PAYMENT INTO COURT.

538. 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.

539. 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.

540. Tender may be made at the domicile elected in a contract.

541. The authentic document recording the tender, if there is one, must state the answer made by the creditor, or the person representing him, the fact of his being called upon to sign such answer, and in default of his signa-

ture, the reason why it was not signed.

542. A debtor who has made a tender and is afterwards sued, may renew it by his pleadings and pay the amount into court.— If however, under the provisions of the law, the debtor has 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 pleadings. (*R. S. Q.*, art. 5912).

543. 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.

544. The expense of the tender is borne by the debtor; but, if it is declared sufficient, the cost attending the payment into court are borne by the creditor.

CHAPTER II.

OF COMPULSORY EXECUTION OF JUDGMENTS.

SECTION I.

GENERAL PROVISIONS.

545. The judgments of a court can only be put into execution by means of a writ issuing in the name of the Sovereign and addressed to the sheriff or bailiff of the district in which the writ is issued, who may execute it in such district or in any other district, or addressed to the sheriff or a bailiff of the district in which it is to be executed.—The writ is attested and signed in the same manner as original writs, it must bear the seal of the court and must mention the date of the judgment to be executed and fix the day on which it is returnable. (*R. S. Q.*, art. 5913).

546. Judgments can only be executed upon the party against whom they are rendered —If he changes his civil status or dies before execution, judgment cannot be executed against him nor against his representatives, unless another judgment is obtained, declaring that the former may be enforced by execution against him in the one case, or his representatives or assigns in the other. — But if the party dies or changes his civil status after execution has commenced, the execution continues.

547. 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.

548. When the judgment orders the performance of some physical act, the officer charged with its execution

may use the necessary force for that purpose ; observing, however, at the same time, all necessary formalities.

548*a*. Whenever in any suit, a writ of execution has issued, and by reason thereof a demand of payment has been made upon the defendant, no other demand of payment need be made in such suit previous to the further execution of any other such writ, whether in the same or in any other district. (*R. S. Q.*, art. 5914).

SECTION II.

OF EXECUTION IN REAL ACTIONS.

549. When a party condemned to surrender or restore an immoveable 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.

550. The officer entrusted with the execution of such writ must be accompanied by two witnesses, and draw up a minute of his proceedings.

SECTION III.

OF EXECUTION IN PERSONAL ACTIONS.

551. Judgments for the payment of a sum of money cannot be executed before the expiration of fifteen days from their date.—Nevertheless upon an application of the plaintiff accompanied by an affidavit establishing circumstances under which simple attachment might issue before judgment, the judge may allow execution to issue before the expiration of fifteen days, but the sale cannot take place any sooner than if the writ of execution had issued after the ordinary delay.

552. In all suits accompanied with attachment, either in the hands of the defendant or of third persons, in which the defendant has only been summoned through newspapers, a judgment rendered by default cannot be executed within a year, unless the plaintiff, in the presence of and to the satisfaction of a judge, gives good and sufficient sureties to pay back the moneys levied, in the event of the judgment being reversed upon revision, together with the costs of such revision. — This provision does not apply, however, to judgments rendered for wages or salaries due for the manufacture or conveyance of rafts attached for the payment of such wages.

553. Saving the provisions of articles 1743 to 1748 of the Revised Statutes of the Province of Quebec, respecting the protection of settlers, a creditor may cause to be seized in execution the moveable or immoveable property of his debtor, in the possession of such debtor, or moveables of his in the possession either of such creditor himself, or of third persons,

if the latter do not object; if they do, the creditor must adopt a seizure by garnishment. (*R. S. Q.*, art. 5915).

554. A creditor may exercise at the same time the different means of execution which the law allows him. He may cause the moveable property and the immoveables to be seized under the same writ, but he cannot proceed to the sale of the immoveables until after the moveables have been discussed; saving, nevertheless the special provisions of law concerning building societies, cases of pledge, and the case mentioned in article 907; and saving also the cases of judgments rendered for the recovery of rents constituted under the seigniorial act of 1854, and of judgments declaring hypothecs.

555. Seizure of moveables in execution takes place under a writ 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 addressed to the sheriff, or bailiff of the place where the debtor's moveable property is situated, ordering him to levy the amount of the debt, interest if any is due, and the costs, both of the suit and of the execution, and such writ is made returnable on a day certain or sooner if possible. —If there be no moveable property to seize, the writ may be addressed either to the sheriff or a bailiff of the district in which judgment was rendered or to the sheriff or a bailiff of the district in which the debtor has his domicile.—If the creditor has received any part of his judgment claim, he is bound to make mention of it on the back of the writ of execution. —When the moveable property to be seized is at a distance of more than nine miles from the place where the writ issues, the party suing out the writ, or his advocate, may, by a written notice, require the sheriff or bailiff to employ for the seizure a bailiff residing in the locality where it is to take place, and the sheriff or bailiff is bound to comply; and in doing so he is freed from any liability resulting from irregularities or informalities in the execution of the writ. (*R. S. Q.*, art 5916).

§ 1.—*Of seizure of moveables.*

556. Without prejudice to the special provisions of articles 1743 to 1748 of the Revised Statutes of the Province of Quebec, respecting the protection of settlers, the debtor may select and keep from seizure;—1. The bed, bedding or 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 pair of andirons, one pot hook and its accessories, one pair of tongs and one fire

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, twelve chairs, provided that the total value of such effects does not exceed the sum of fifty dollars ; the debtor having in case of seizure the right to choose the things that he may retain to the amount of the said sum ; —5. All spinning wheels and weaving looms in 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, two pails, three flat irons, one blacking brush, one broom and fifty volumes of books, all the family portraits and all drawings and paintings executed by the debtor or the members of his family for their use ;—6. One sewing machine in the hands of tailors or milliners or any person earning his livelihood by working for others with such sewing machine ;—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 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 ; further, the following agricultural implements or utensils : one plough, one harrow, one working sleigh, one tumbril, one hay-cart with its wheels, all harness necessary and intend for farming purposes ;—9. Tools and implements or other chattels ordinarily used in his trade to the value of thirty dollars ; —10. Bees to the extent of fifteen hives. Nevertheless, the things and effects mentioned in paragraphs four, five and six, are not exempt from seizure and sale when the suit is to recover the price of their purchase, or they have been given in pawn. (*Id.*, art. 5917, as amended by 52 Viet., cap. 50).

557. Books of account, titles of debt, or other papers in the possession of the debtor, are exempt from seizure, saving what is mentioned in article 565.

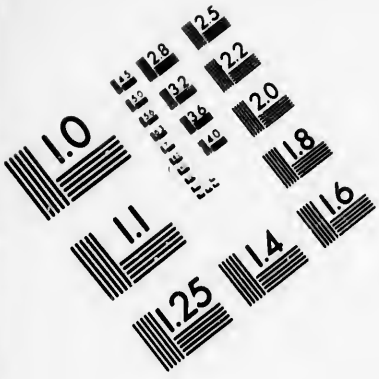
558. The following are also exempt from seizure :—1. Consecrated vessels and things used for religious worship ; —2. Alimentary allowance granted by a court ;—sums of money or objects given or bequeathed upon the condition of their being exempt from seizure ;—4. Sums of money or pension given as aliment, even though the donor or testator has not expressly declared that they should be exempt from seizure ; — 5. Wages and salaries not yet due ; — 6. 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. Alimentary allowances and things given as aliment may however be seized and sold for alimentary debts. (*R. S. Q.*, art. 5918, as amended by 52 Vict., Cap. 50).

559. The seizure of moveables and moveable property is established by an inventory made by the sheriff, or his deputy, or by a bailiff authorized by him to that effect or by the bailiff entrusted with the writ of execution. (*Id.*, art. 5919.

560. The inventory must contain :—1. Mention of the actual 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 guardian, or the name of the depositary furnished by the debtor;—5. The signature of the guardian or depositary, and of the witnesses, in the case of article 569, or mention that they cannot sign, and the signature of the seizing officer:—6. Mention of the day on which the seizure is made, and whether it was made before or after noon.—The sheriff or 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 entrusted to his care.—Sheriffs and bailiffs cannot take their relations or connections, to the degree of cousins-german, as guardians or depositaries of the things seized. Nor can they take as such the judgment debtor nor his wife or children, on pain of being liable for all costs and damages. Brothers, uncles or nephews of the judgment debtor may be appointed guardians, if they consent to be so. The debtor must also, if he is present, be called upon to sign the inventory, and his refusal or inability to do so, or his absence must be stated. (*Id.*, art. 5920).

561. The inventory must be at least in triplicates, one of which must be given to the guardian or depositary and another to the debtor, and each triplicate must be signed by all those whose signatures are required by the preceding article.



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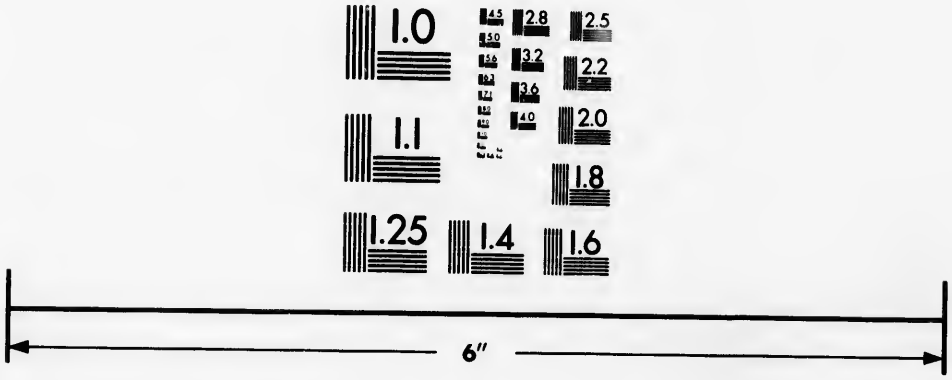

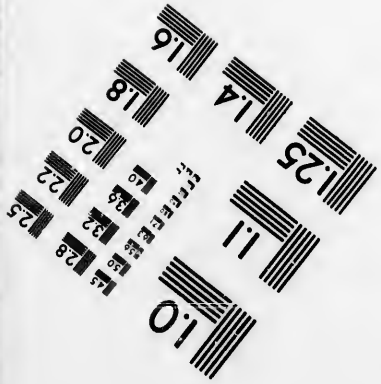

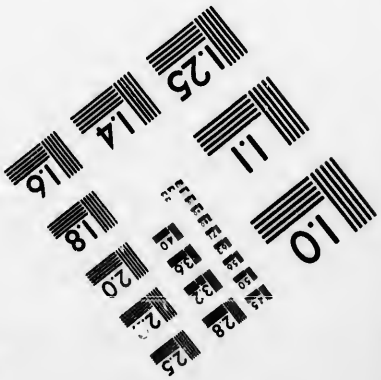

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562. The guardian or depositary has a right, at the time of his appointment, to remove the property in order to keep it in charge, and to place guards, if necessary, in the place where it is.—If the seizing officer cannot find a responsible guardian or depositary, he may, after serving the inventory upon the debtor, have the things taken away and removed to a place of safety, until he finds such guardian or depositary.—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, upon the application of the prosecuting creditor, 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, after a verification and inventory of the whole has been made.

563. The sheriff or the bailiff, upon an order from the judge, granted for cause shewn, upon application in writing by the creditor, may have effects seized in the country parts removed to the nearest town, or some other place specified, in order that he may there sell them.

564. If current money is seized, mention of its kind and quantity must be made in the inventory, and the sheriff must return it with the other moneys levied.

565. Debentures, promissory notes, whether negotiable or not, shares in banks, or other commercial or industrial associations, and other documents of commercial value, payable to order or to bearer, bank-notes included, are liable to seizure, and may be sold like all other moveable effects belonging to the debtor.

566. The seizure of shares in any financial, commercial or industrial company or association, duly incorporated, is made by serving such company with a copy of the writ of execution, together with a notice that all the shares held by the defendant in such company are placed under execution. A similar notice is served upon the debtor.

567. If there is more than one place at which the company 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 company is bound to effect such transmission. — The seizures of such shares includes all benefits and profits attached to them.

568. The sheriff has a right to demand from the

party seizing whatever sums of money may be necessary for the safe-keeping of the property seized, according to the provisions contained in articles 847 and 848.

569. If the debtor is absent, or if there is no person to open the doors, cupboards, trunks, or other closed places, or if he refuses 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. (*R. S. Q.*, art. 5921).

570. If the debtor has no domicile, in the province, or has ceased to reside within the district in which the judgment was rendered, the triplicate of the inventory of seizure is left for him at the office of the prothonotary of the court. (*Id.*, art. 5922).

571. Immediate notice must be given to the debtor, and to the guardian or depositary, of the place and time at which the moveables will be offered for sale.—If the debtor has no domicile in the province, or has ceased to reside within the district in which the judgment was rendered, the notice may be left for him at the office of the prothonotary of the court. (*Id.*, art. 5923).

572. Saving the exception contained in the following article, the sale of moveables must be published by posting and reading a notice, in a loud and distinct manner, at the door of the church of the place where the seizure has been made, immediately after morning service on the Sunday next after the seizure; and if such seizure was not made within a parish, the publication must be made at some public place in the municipality, and the sale cannot take place before the expiration of eight days, reckoning from the day of such publication, and a certificate of such publication must be annexed to the record of the execution.

573. In the cities of Quebec and Montreal and in the town of Sorel, the sale of moveables seized is advertized only by a notice, stating summarily the names of the parties, the nature of the effects and the time and place 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; and 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, which cannot take place until after the expiration of eight days from the day of such publication. —No more than two dollars is allowed for the cost of such advertisement. (*R.S.Q.*, art. 5924).

574. Seizures in execution can only be made between the hours of seven in the morning and seven in the evening, except in cases of fraudulent removal, and may if necessary be continued on following days, affixing seals or placing guards.

575. Seizures cannot be made on Sundays or holidays, except in cases of fraudulent removal, where the property is found upon the highway.

576. If the property has been attached before judgment, it is not necessary to proceed to a verification, but it is sufficient to give notice to the debtor and guardian or depositary of the place and time of sale, as prescribed in in article 571, and to give the notice required by article 572 or 573, as the case may be.

577. If the moveables have already been seized and the debtor dispossessed, any creditor making a second seizure is bound to name the same guardian, who can only be discharged by the sale of the property so seized, the consent of all the seizing parties, or the order of a judge.

578. The party first seizing, who does not proceed with proper diligence, cannot prevent the sale by the next seizing creditor.— If, when there is no opposition, the seizing party does not bring the moveable to sale within the delay fixed for the return of the writ, the seizure lapses, unless the delay for the return of the writ is extended by order of a judge to a certain subsequent day, of which order the prothonotary must make a note in the entry book of executions.

579. A creditor who has made a seizure of the effects of his debtor cannot obtain a second writ of execution, unless the previous writ has been returned or accounted for.

§ 2.—*Of oppositions to the seizure of moveables.*

580. A seizure of moveables in execution may be contested by opposition, either by the debtor himself, or by third parties.

581. The debtor may demand the nullity of a seizure of moveables in execution :— 1. On the ground of informalities in the seizure, or of the exemption of some of the articles seized, under articles 556, 557 and 558 ;—2. On the ground of the extinction of the debt ;—3. For any reason of a nature to affect the judgment sought to be executed. —If a part only of the debt is extinguished, the opposi-

tion has the effect of preventing the sale for more than is due.

582. 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 moveables subject to his claim, and he can only exercise his privilege upon the proceeds of the sale.

583. Oppositions to the seizure and sale of moveables must contain an election of domicile by the opposant, and they stay proceedings, provided they are accompanied with an affidavit that the allegations contained in them are true, and that they are made not with the intent of unjustly retarding the sale, but with the sole view of obtaining justice.

584. Such affidavit is not necessary if the opposition is accompanied with a judge's order to stay proceedings.

585. Oppositions are served upon the sheriff by leaving with him the original thereof, which he is bound to return into court without delay.

586. After the return of the opposition, the opposant moves upon the other parties to the suit to declare whether they intend to admit or to contest it, and in default of such declaration the opposant has a right to be relieved from the seizure, with costs against the judgment debtor, unless the court otherwise orders.

587. If the other parties, or any of them, declare that they intend to contest the opposition, the contestation is subject to the rules which apply in ordinary suits.

588. The rules concerning peremption of suits apply equally to oppositions.

588*a*. Article 664 applies also to seizure of moveables under execution. (*R. S. Q.*, art. 5925).

§ 3.—*Of the sale of moveables under execution.*

589. If there is nothing to prevent the sale of the moveables seized, it takes place at the time and place mentioned in the notice.—If the sale has been retarded by any obstacle, subsequently removed, or if there were no bidders, new notices or publications must be given, but the sale cannot take place after the day fixed for the return of the writ, except in the case mentioned in art. 578.

590. The guardian or depositary is bound, at the time fixed for the sale, to produce all the effects seized, which were placed in his charge.

591. The sheriff or other seizing officer, cannot, either directly or indirectly, bid upon the property put up for sale, nor become purchaser thereof.

592. The officer conducting the sale must make minutes thereof, specifying each arti-

cle put up for sale, the name and residence of each purchaser, and the price of each purchase.

593. The things seized are adjudged to the last and highest bidder, subject to immediate payment of the price, and in default of such payment the thing adjudged is immediately put up again.

594. The officer conducting the sale cannot, either directly or indirectly receive anything beyond the price of the adjudication, under pain of being liable for extortion.

595. The sale must not proceed beyond the amount necessary to pay the debt in principal, interests, and costs, —to this end the judgment debtor has a right to determine the order in which the effects are to be put up for sale.

596. 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.

597. 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 to 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.

598. The adjudication of moveable property under execution transfers, by law, the ownership of the things thus adjudged.—In the case of seizures of shares in any financial, commercial or industrial company or association, duly incorporated, the sheriff is bound within ten days after the sale, to serve such company or association, in the manner mentioned in article 567, with a certified copy of the writ of execution, endorsing thereon a certificate designating the person to whom he adjudged the shares seized, and such purchaser thereupon becomes a shareholder in the company and has all the rights and obligation of one, and may require an entry to be made to that effect, in the manner prescribed by law, by the officer appointed for that purpose by the company.

599. No demand for the annulling or rescinding of a sale of moveables under execution can be received against a purchaser who has paid the price, saving the case of fraud or collusion, and without prejudice to the recourse of the party aggrieved against the seizing creditor and those acting in his behalf.

600. Immediately after the sale, the costs thereof, including the pay of the appointed guardian must be taxed by a judge or by the prothonotary, subject in the latter case to revision, if required.

§ 4.—*Of the payment and distribution of the moneys levied.*

601. The moneys seized or levied, after deducting the duties thereon and taxed costs may be paid by the sheriff or bailiff, four days after the sale, to the seizing creditor, if no opposition for payment has been placed in his hands; otherwise, he must return them into court, to await such judgment as to right shall appertain. (*R. S. Q.*, art. 5926).

602. When the moneys levied have been returned into court, the plaintiff 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 privileged claims.

603. When the moneys are returned into court, as well as in all other cases where moneys of which an account has been rendered into court or moneys other than the proceeds of immoveables are to be distributed, and 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 court or a 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. (*R. S. Q.* art. 5927).

604. The claims may be made out in a summary manner, and it is sufficient for them to state the names, occupation and residence of the claimant, and the nature and amount of his claim.—They must be accompanied with vouchers, if there are any, or, if not, with an affidavit that the sum claimed is lawfully due.

605. The moneys are distributed according to the order prescribed in the title *Of Privileges and Hypothecs*, and the title *Of Merchants Shipping* in the Civil Code, and in the provisions hereinafter contained.

606. The following order is observed as regards the collocation of judicial costs: —1. costs of seizure and of 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 presenting 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 affixing seals, or of inventories, when ordered by the court ;—the plaintiff is next paid his costs of suit. (*R. S. Q.*, art. 5928).

607. The crown has a preference over all other creditors upon the proceeds of execution against moveable property which under particular statutes is subject to any of the following duties ; — customs dues ; excise duties ; duties imposed upon timber cut ; tolls ; inspection dues on vessels, railways or others similar.

608. The owner of a thing, who has lent, leased or pledged it, and who has not prevented its sale, has a right to be paid the proceeds of its sale, after the claims mentioned in article 1995 and 1996 in the Civil Code, and the privileged rights of the crown mentioned in the preceding article, and the claim of the lessor, have been collocated.

609. The same rule applies to the owner of a thing which has been stolen, who would not have lost his right to revendicate it, had it not been judicially sold.

610. Persons who have preserved the right of being collocated upon the price of the thing sold, by reason of a right of pledge or of retention which they had upon such thing, rank according to the nature of the pledge or of their claim.—The following is the order amongst them ; carriers, hotel-keepers, mandataries and consignees, borrowers in loan for use, depositaries, pledgees, workmen upon things repaired by them, purchasers against whom the right of redemption is exercised, for the reimbursement of the price and the moneys laid out upon the property.

611. In the absence of any special privilege, the crown has a preference over chirographic creditors, for sums due to it by the defendant.

SECTION IV.

OF SEIZURE BY GARNISHMENT.

612. Execution upon the moveable effects of a debtor, which are in the possession of a third party, may, in all cases, and must, when such third party does not consent to their immediate seizure, be effected by means of seizure by garnishment. — The same means must be adopted in executing upon debts due to the debtor other than those mentioned in article 565.

613. Seizure by garnishment is made by means of a writ issuing from the court which rendered the judgment ordering the garnishees not to dispossess themselves of the moveable effects belonging to the debtor which are in their possession, nor 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 fixed to declare under oath what effects they have belonging to the debtor, and what sums of money or other things they owe him or will have to pay him.

614. This writ also summons the debtor to shew cause why the seizure should not be declared valid, and mentions the date and amount of the judgment in satisfaction of which it is issued; and is moreover clothed with the formalities of ordinary writs of summons.

615. 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.—Upon satisfactory proof that a garnishee conceals himself in order to avoid such personal service, service at his domicile is held to be sufficient.—If the defendant upon the principal demand has been summoned as an absentee, the summons upon the garnishment may be served upon him at the prothonotary's office, but if he did not leave the province until after service of the principal demand, he must be summoned upon the garnishment according to the provisions of article 68.— The defendant is bound to answer the proceedings by garnishment within the same delays as upon a principal demand.

616. The effect of seizure by garnishment is to place the effects 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.

617. The garnishee is bound to make his declaration in the office of the prothonotary of the court which issued the writ, before such prothonotary, who is authorized to administer to him the necessary oath. Nevertheless, if the garnishee resides in any other district, than the one in which the writ of seizure by garnishment has issued, he may, on or before the day fixed for the return of the writ, make his declaration before the judge or the prothonotary of the district where he resides, and such prothonotary is bound to transmit the same to the court where the suit is pending.—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 224 for answering interrogatories upon articulated facts.—Nevertheless as to the corporation of the city of Montreal, the treasurer of the city may make such declaration. (*R. S. Q.*, art. 5929.

618. The garnishee's declaration must be made on the day appointed by the writ, or on the next following juridical day.—It may be made at any time before the return day at the prothonotary's office from which the writ issued, but in such a case it cannot be received unless it is accompanied with a bailiff's return, certifying that previous notice, of at least twenty-four hours, has been given to the plaintiff, of the garnishee's intention to make his declaration before the return of the writ.

619. 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 debt, and any other seizures 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 moveable effects in his possession belonging to the debtor, and declare by what title he holds them. — The judgment creditor has a right to be present when the garnishee makes his declaration, and to put him any questions tending to prove any obligation of the garnishee towards the judgment debtor, saving all objections which a judge, if present, may decide at once, or which otherwise, the prothonotary must note down for subsequent decision thereon by the court.

620. The garnishee is entitled to his travelling expenses, which must be taxed by the judge or by the prothonotary who receives his declaration, and he may retain the amount thereof out of the sums in which he is indebted; and, if he owes nothing, such taxation may be enforced against the party suing out the writ, by an execution emanating from the court from which the writ issued.

621. 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 court, upon an inscription for judgment, orders him to pay to the plaintiff, on account or to the extent of his debt, the moneys seized, according to their sufficiency. — This judgment must be served, and the delay for executing it dates only from the day of such service.

622. If there are several seizures at the suit of different creditors in the hands of the same garnishee, each seisure has the preference over the subsequent seizure, 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 credit-

ors, in the manner provided in article 108, and the garnishees, in such case, are condemned to pay into court the amounts they acknowledge to owe.

623. If the monies, or other things due by the garnishee, are only payable 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 party, maintain the seizure until such conditions are fulfilled.

624. Garnishees, who do not make their declaration in the manner hereinabove prescribed, are condemned as personal debtors of the seizing party, to the payment of his claim.—They may, however, obtain leave to make their declaration at any time, even after judgment, upon payment of all costs incurred by their default. (*R. S. Q.* art. 5930).

625. 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.

626. The seizing party must declare within eight days whether he intends contesting the garnishee's declaration, unless a further delay be granted to him by the court or judge, and he must at the same time file his grounds of contestation, after serving them upon the garnishee, and notifying the latter to answer the same within the same delay, as is allowed for answering exceptions and pleas.—He cannot, however, forfeit his right to contest without an order of the court to that effect.

627. In other respects, contestations of garnishees' declarations are subject to the same rules as those of ordinary suits.

628. Besides the things enumerated in articles 557 and 558, the following are also exempt from seizure : — 1. Pay and pensions of persons belonging to the Army and Navy ; — 2. Salaries of public officers, saving as respects public officers and employees of the Province : one-fifth of every monthly salary, not exceeding one thousand dollars per annum ; one-fourth of every salary exceeding one thousand dollars but not exceeding two thousand dollars, and one-third of every salary exceeding two thousand dollars per annum ; —3. Contingent emoluments and fees due to ecclesiastics and ministers of worship, by reason of their actual services, and the income of their clerical endowment ; — 4. The salary of school teachers ; — 5. The wages and salaries of workmen and laborers (*operarius*) paid by the day, week, or month, including those who

perform manual labor in factories, and workshops, to the extent of three-fourths thereof. But in such case the attachment by garnishment holds as long as the contract or engagement continues. — The other creditors who have judgments against the debtor, upon filing a copy of such judgments in the office of the prothonotary, in the record of the case, are paid concurrently with the seizing creditor. — Notice of the fyling of such judgments shall be given to the parties interested. — The prothonotary shall determine in a summary manner upon the writ or upon a sheet annexed thereto, the amount coming to each of the creditors of the party seized upon *pro rata* to the amount of the respective claims, saving the case of privileges. — The garnishee shall on making his declaration, deposit the sum which he owes, and if the defendant continues in his service, such garnishee shall renew his declaration every month and deposit it in court. If he neglects to make his declaration, he may be thereto compelled by a judge's order.— If the defendant quits his service, the garnishee shall make a declaration thereof. — The moneys seized and paid remain in the hands of the prothonotary who pays them over to the plaintiff and the other creditors on their demand, three days after they are deposited if there are no oppositions. — The declaration of the garnishee must be made without costs except travelling expenses if there be any, and it may be contested in the ordinary manner. (*R. S. Q.*, art. 5931).

629. If a garnishee declares that he has in his possession moveable effects, the judgment orders that they shall be sold and the garnishee is bound to deliver them to the officer charged with selling them. — If the garnishee has in his hands negociable paper or titles of debt payable to bearer, he may be condemned to deposit them in the prothonotary's office, or to deliver them to a person named by the court, according to circumstances.

630. The proceeds of the sale of such moveable effects are afterwards distributed in the same manner as other moneys levied under execution against moveables.

631. If a garnishee declares that he is not indebted, and he cannot be proved to be so, the court orders him to be discharged from the seizure and condemns the seizing party to pay the costs.

SECTION V.

OF EXECUTION UPON IMMOVEABLES.

§ 1.—*Of the seizure of immoveables in execution.*

632. The seizure of immoveables can only be made

against the judgment debtor, and he must be, or be reputed to be in possession of the same *animo domini*. — No seizure can be made of immoveables declared by the donor or testator thereof, or by law, to be exempt from seizure. — Constituted rents representing seigniorial dues are seized and sold with the formalities prescribed by the act 27-28 Vict., ch. 39.

633. The seizure of immoveables can only be made in virtue of a writ, clothed with the same formalities as writs of execution against moveables, ordering the sheriff to seize the immoveables of the defendant and to sell them in satisfaction of the condemnation pronounced against him in principal, interest and costs. — The date of the judgment must be inserted in or written and certified upon the writ, under the signature of the prothonotary. — Exceptional provisions regulate the sale of immoveables for the payment of municipal taxes and assessments.

634. The writ is addressed to the sheriff of the district in which the immoveables belonging to the judgment debtor are situated, and is executed by the sheriff himself, or by one of his officers.

635. When any of the immoveables to be seized is situated at more than nine miles from the place where the writ of execution issues, the sheriff, upon the written demand of the creditor or of his attorney, is bound to employ for making the seizure, the publications and the adjudication, such bailiff residing in the locality in which the immoveable is situate as the creditor indicates, and in such case the sheriff is discharged from any liability resulting from the acts of such bailiff, and the seizing creditor becomes alone responsible. The seizing creditor, in order to avoid costs, may also undertake the transmission of the documents belonging to the execution, and the bailiff is bound to return them to him, and on doing so is discharged from any consequent responsability. — The other provisions of article 555 apply likewise to writs of execution against immoveables.

636. When an immoveable is situated partly in the district in which the judgment was rendered and partly in another, it may be wholly seized in execution, in the same manner as if it were wholly in the district in which the judgment was rendered.

637. Before proceeding to seize immoveables, the seizing officer calls upon the defendant to declare and specify his immoveable property, except the case of immoveables surrendered in a suit and the cases mentioned in article 641; and upon his failure so to declare and specify, the executing officer may seize the property in posses-

sion of the defendant, at the risk and peril of the latter.

638. The seizure of immoveables is recorded by minutes, which must contain: — 1. Mention of the title under which the seizure is made; 2. Mention of the defendant having been called upon, as required by the preceding article; 3. A description of the immoveables 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 immoveable, if there exists an official plan of the locality; if not, it must mention the coterminous lands. If the property to be seized consists of incorporeal rights, such as rents, leases, or other real 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; — 4. Mention that the minutes are made in duplicate, and that one duplicate thereof has been delivered to the judgment debtor, either personally or at his actual or legal domicile.

639. The seizing party's domicile is elected at the sheriff's office, without its being necessary to elect another, or to mention it in the minutes.

640. The judgment debtor, as well as his seizing creditor, may cause the ground rents and charges upon the immoveables seized to be mentioned in the minutes; but it is not necessary to mention rents established in redemption of seigniorial 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.

641. No minutes are necessary in suits instituted by building societies for bringing to sale the immoveables subject to their hypothec or right of pledge, nor in the case of article 907.

642. When the sheriff has seized an immoveable upon a defendant, he cannot seize it again at the suit of another creditor, or of the same creditor for another debt, as 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 abandoned nor suspended, except in consequence of oppositions applicable as well to the seizing creditor as to those whose writs of execution have been noted as oppositions, or with their consent, or by an order of a judge.

643. In the event of the seizing creditor abandoning 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 credi-

tors, 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.

644. From the moment that immoveables 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 sale, the purchaser or the debtor pays into the hand of the sheriff a sufficient sum to discharge the claims 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.

645 The immoveables seized remain in the possession of the judgment debtor until the adjudication.—But if the sale is prevented by any opposition, the seizing creditor may, according to circumstances, and in the discretion of the court or judge obtain the appointment of a sequestrator to receive the rents, issues and profits of the immoveables. (*R. S. Q.*, art. 5932).

646. The judgment debtor, cannot, nor can any other person, cut timber on the property seized, or in any manner deteriorate the same, on pain of being imprisoned for a term not exceeding six months, under a rule of court or the order of a judge in vacation.

647. The sheriff may, before seizing immoveables, exact from the party who places the writ in his hands the sum of four dollars, to meet the first expenses of the advertisements hereinafter required.

§ 2.—*Of advertisements.*

648. The sheriff is bound to advertise in the Quebec Official Gazette, in the French and English languages, three separate times within the space of two months from the date of the first publication, the sale of immoveables seized. — The advertisement must contain :— 1. The number of the cause and the nature of the writ, whether *fieri facias* or any other ; — 2. The names and surname of the plaintiff in the suit, or if there are several plaintiffs, a designation of the first named in the writ, with an indication that there are others, — 3. The names and surname 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 to minors, 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 immove-

ables, or of the rents, as the case may be, as inserted in the minutes, of the charges therein mentioned, and of those also which the seizing party has requested in writing to have inserted, and mentioning upon which of the defendants the property is seized ;—5. The time and place at which the immoveables or rents will be put up for sale and adjudged ;—6. The date at which the writ of execution is returnable into court. (*R. S. Q.*, art. 5953).

649. The advertisements of sheriff's sales must be printed consecutively and be preceeded by a notice according to form 34 in the appendix to this code, or any other form of like effect.

650. The sheriff must also, the seizure is made in a parish, cause the advertisement prescribed by the two preceding articles to be published and posted, 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.

650*a*. So soon as the sheriff has made a seizure of an immoveable, he must notify the registrar of the registration division wherein it is situated, by sending him, in a registered letter, a printed copy of the notice, prescribed by article 648. (*R. S. Q.*, art. 5934).

650*b*. In addition to the publications and notices which he is bound to make, the sheriff, when no opposition has been made to the seizure and sale of immoveables or rents, or if made, has been disallowed, must cause to be published in one issue at least, of some newspaper nearest to the locality where the land or real rights under seizure are located, a notice briefly detailing the particulars of such sale. (*Id.*).

650*c*. The omission to comply with the provisions of the two preceding articles does not invalidate any proceeding in the cause ; but the sheriff in default is responsible for all damages which may result therefrom. (*Id.*).

650*d*. When the seizure of an immoveable is annulled and the judgment creditor is condemned to pay the costs thereof, the expenses of the seizure and of the cancellation of the notice of seizure are borne by him. (*Id.*).

650*e*. The protonotary is bound to deliver to any person demanding the same, a certificate of the release from seizure of any immoveable that may appear by the record of the cause in which such seizure was made. (*Id.*).

§ 3. — *Of oppositions to the seizure and sale of immoveables.*

651. The sheriff, in the absence of any consent on the part of the seizing creditors, cannot stop the sale of im-

moveables, except upon a judge's order, or upon the filing of an opposition, accompanied with an affidavit on the part of the opposant that all the allegations in the opposition are true, to the best of the deponent's knowledge and belief, and that the opposition is not made with intent unjustly to retard the sale but solely to obtain justice.

652. Every opposition to the seizure and sale of immoveables or rents must be filed at the latest on the fifteenth day before that fixed for the sale.—No opposition filed after this period can stop the sale; but if the object of the opposition is to withdraw, in whole or in part, the immoveable or the rents under seizure, or to impose upon the purchaser some charge which would be destroyed by a sheriff's sale, such opposition has the effect of an opposition for payment out of the money levied. — The sheriff in all cases is bound to return such oppositions into court.

653. Notwithstanding the filing of any opposition to the seizure or sale of immoveables or rents, the sheriff is bound to continue the publications hereinabove described; but he cannot in such case proceed with the sale without an order from the court. — Nevertheless when the opposition is founded upon grounds which only go to reduce the amount claimed, the plaintiff, upon giving the opposant notice that he admits his opposition, may proceed to the sale in conformity with the conclusions of such opposition.

654. Every opposition must be delivered to the sheriff, and the return of its service upon him, if it is required must be made at the foot of a copy thereof.

655. Saving the provisions of article 652 the sheriff is bound to return into court, within twenty four hours, any oppositions to the seizure and sale duly served upon him, together with the writ of execution, and his proceedings, including a duplicate of the advertisement published in the Quebec Official Gazette, and a certificate of the oral publication if it has taken place.

656. Every party who opposes unsuccessfully the sale of an immoveable or of a rent under seizure. is liable towards the party seizing and the defendant, not only for the costs incurred upon his opposition, but also for all damages resulting therefrom, including interest upon the amount due to the plaintiff, for the time during which the sale was stopped.

Of oppositions to annul.

657. The party whose immoveables or rents are seized may oppose the seizure or the sale thereof, whether his opposition be founded on

matters of form or on matters of substance. — Third parties may likewise file similar oppositions when they have an actual interest therein.

Of oppositions to withdraw.

658. Oppositions to withdraw may be filed by third parties who claim as their property part of any immoveable or rent under seizure.

Of oppositions to secure charges.

659. Oppositions to secure charges may be filed by a third party when an immoveable under seizure is advertised to be sold without mention being made of some charge with which it might be discharged by a sheriff's sale.—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 seigniorial rights.

Of oppositions to charges upon immoveables under seizure.

660. Any person aggrieved by reason of an immoveable 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 sureties 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.

§ 4. *General provisions.*

661. The proceedings upon oppositions to the seizure or sale of immoveables or rents are the same as those upon oppositions to the seizure or sale of moveables.

662. When oppositions are decided before the day fixed for sale, if the seizure is not set aside, the sheriff on the day of sale may proceed upon the writ in accordance with the judgment of the court.— But if the oppositions are not decided until after the day fixed for the sale, the sheriff can only proceed to sell under a writ of *venditioni exponas*, and in conformity with the conditions therein mentioned.

663. The writ of *venditioni exponas*, orders the sheriff to proceed with the sale of the immoveable or of the rent under seizure, after one publication in French and English at the church door, on the third sunday before the sale, and two advertisements in the Quebec Official Gazette each such advertisement containing the information required by article 648. — It

contains moreover such other conditions as the court has directed respecting the sale of the immoveable or the rent. (*R. S. Q.*, art. 5935),

664. When all the advertisements and publications required by law upon the first writ have been duly published and made, the execution of a writ of *venditioni exponas* 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 Montreal and Quebec, 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 produced, except in the absence of the judge, which absence shall be established by the certificate of the prothonotary. — Such order is made only after the adverse party has been placed *in morâ*, by notice duly served, upon him, to appear before the judge, before whom the application for such order is to be made, which notice must be given one clear day previously and contain an indication of the day and hour of the appearance. (*R. S. Q.* art. 5936).

§ 5. — *Of bidding and sale.*

665. Bids may be given in writing at the sheriff's office at any time after the seizure, except during the eight days previous to the day fixed in the sheriff's advertisement for the sale of the immoveable or rent, either upon the writ of *fieri facias*, when the sale has not been stopped, or upon the *venditioni exponas*, if the sale was prevented from taking place according to notice under the *fieri facias*.

666. Such bids, if made by the creditor of the judgment debtor, must be accompanied by an affidavit, sworn to before a judge, the prothonotary, a commissioner of the superior court, or before the sheriff, who is authorized to administer such oath, stating the nature or amount of each claim, and declaring that they are made in good faith, and not to delay the proceedings.

667. Such bids by a person who is not a creditor, must be accompanied with an affidavit, sworn to in the manner stated in the preceding article, stating that they are made in good faith, and not for the purpose of delaying the proceedings ; and the sheriff may, if he thinks fit, require security from such bidder, or a deposit of a sufficent sum to cover the costs incurred by the seizing party up to the time of such bid, and the costs of a resale

upon false bidding, in case it should be necessary.

668. Every such bid must be in writing, and must indicate: — 1. The name of the case in which it is made, and the names, quality and residence of the bidder; — 2. The immoveable or rent bid upon; — 3. The amount offered —It must be signed by the bidder or be in the form of a notarial original.

669. The sheriff is bound to endorse on each such bid the date of its filing, and to return it into court with all his other proceedings.

670. The sheriff is bound to furnish the officer by whom the sale is to be made, with a list of such bids as have been filed under the provisions of the above articles.

671. Immoveables under seizure, that are held in free and common soccage or otherwise than *en roture* ou *en franc alleu roturier*, when they are not situated in a parish civilly erected, and those which are situated in the district of Gaspé under whatever tenure they are held, can only be offered for final bidding and adjudication at the registry office for the registration division in which they are situate.—Immoveables which are situate either within the limits of the city of Montreal or without the same, but within the limits of the former parish of Montreal, and those which are situated in any other 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.—All other immoveables must be bid upon and sold at the door of the parish church of the locality where they are situated. (*R. S. Q.*, art. 5937).

672. The sale cannot take place on a Sunday, on pain of nullity.

673. On the day and at the place appointed for the sale, the officer conducting the same, after reading the notice, the charges and conditions of the sale, and the bids filed in the sheriff's office, offers the immoveables for sale, taking as an upset price the highest bid filed with the sheriff, if any were so filed.

674. No bid can be received unless the bidder declares his names, quality or occupation, and residence, and minutes are taken of the bids received.—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.

675. The conditions of the sheriff's sale must express all those contained in the preceding article, in articles 687, 688, 707, 708, and in the advertisements.

676. The party upon whom the property is sold, if personally liable for the debt, cannot become purchaser nor bid, neither can the persons

mentioned in article 1484 in the Civil Code, nor can the sheriff or other officer entrusted with the sale.

677. Verbal bids may be made by proxy.

678. 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 party upon the judgment and seizure, in the following cases:—1. In all cases wherein the sale has been stopped by an opposition; 2. In cases of resale upon false bidding, if the court or judge has imposed that condition at the instance of some party to the suit. (*R. S; Q.*, art. 5938).

679. The court or judge may also order such deposit or payment in any case where the party seizing, or his advocate, declares upon oath that he is credibly informed, and believes that the party seized upon with a view to retard the sale, will cause the immoveable to be adjudged to some insolvent or unknown person. (*Id.*, art. 5839).

680. In any case wherein two resales upon false bidding have taken place, the court or judge may, upon application of any interested party order that every bidder shall be required to deposit or pay a sum equal to one third of the debt due to the seizing party, in principal, interest and costs, but not in any case exceeding four hundred dollars. (*Id.*, 5940).

681. In the cases mentioned in the three preceding articles, the officer conducting the sale may, with the consent of the plaintiff, or of any person authorized by him, receive the bid of any bidder without requiring the prescribed deposit; and such consent must be in writing or given in presence of two competent witnesses whose names such officer must enter in his return.

682. If the bidder fails to deposit forthwith the amount required, his bid is disregarded and the proceedings are resumed upon the previons bid.

683. The sheriff, or other officer conducting the sale, is bound, immediately after adjudication, te refund to every bidder except the purchaser, the amount deposited by each, and the deposit made by the purchaser is retained as part of the purchase money.

684. The adjudication of an immoveable cannot be made before the expiration of a quarter of an hour from the time at which it was put up for sale, and after that delay, the officer before adjudging it must receive all other bids offered.

685. The property must be adjudged to the highest and last bidder.

686. A person who has purchased as proxy, for another is bound to furnish the sheriff, within three days, with the names, quality and

residence of his principal, and 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 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.

687. 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.

688. Nevertheless, the plaintiff or any other 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 good and sufficient sureties for all damages that might result to any party interested, in the event of non-payment of such sum as the court or judge may order such purchaser to pay into the hand of the sheriff. (*R. S. Q.*, art. 5941).

689. Upon payment by the purchaser of the price of the adjudication, or, if he is a creditor, 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. — Such deed must contain: — 1. A designation of the writ under which the sale took place; — 2. The number of the cause, and the names, surnames, additions and residence of the parties; — 3. A description of the immoveable seized; — 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 article 707 and 708; — 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 immoveable.

§ 6. — *Of resale for false bidding.*

690. Upon the sheriff's return that a purchaser has not paid the whole or a balance of his purchase money, nor given security when he may lawfully do so, the plaintiff may demand that the immoveable of which the purchase money thus remains due be resold for false bidding upon the purchaser thus in default. This is done by a petition served upon the latter with the delays required for ordinary summonses; and if the purchaser does not reside or has no domicile in the district where the adjudication took place, the service may

be effected at the office of the prothonotary of the court from which the seizure issued.

691. If the seizing party fails to proceed against the purchaser within a reasonable time, any other creditor whose claim appears upon the record, or the defendant, 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 party or, in his default, the one first served, has the preference over the others, provided the creditor follows it up with proper diligence.

692. The proceedings upon an application for resale for false bidding are summary, and no written contestations can be had thereon without leave of court or judge. (*R. S. Q.*, art. 5942).

693. In all cases the false bidder is liable for all damages and interest accruing to the judgment creditors, or to the defendant, from his failure or delay to pay the purchase money, and he is moreover bound to pay the difference between the amount of his bid and the price brought by the actual sale, if such price be less, without any right, if the price be greater, to the excess, which goes to the benefit of the judgment debtor and his creditors.

694. 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 purchase, and all costs incurred by reason of his default.

695. If the price of 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 form and manner and under the same conditions as that for a resale.

696. Resale for false biding can only take place upon a writ of *venditioni exponas*, ordering the sheriff to proceed with the sale upon such conditions as are fixed by the court. — The writ is subject to the formalities mentioned in article 663, and must contain a summary of the judgment ordering the resale for false bidding.

§ 7.—*Of the return of writs of execution.*

697. The sheriff in whose hands a writ has been placed in order to the sale of the immoveables of a debtor, is bound, on pain of being liable for all costs and damages, to return such writ on the day appointed, together with a certificate of his proceedings, the minutes of seizure,

a duplicate of the advertisements, with a certificate of their publication and of the oral publications, the minutes of the bidding, the conditions of sale, a statement of his fees and disbursements, taxed in conformity with article 705, the certificate of hypothecs charged upon the immoveable seized, and all oppositions and claims placed in his hands, or writs of execution which he has noted as oppositions. — If there be a return of *nulla bona* it must be made forthwith without waiting until the day fixed for the return of the writ. — If the debtor is an insolvent trader, the moneys must, on application to that effect, be given into the hands of the assignee lawfully appointed, together with the certificate of hypothecs.

698. If the sheriff has been unable to procure a certificate of the hypothecs before the day fixed for the return of the writ, he must mention the fact and file the certificate afterwards as soon as he obtains it.

699. As soon as immoveables have been adjudged, the sheriff must procure from the registrar of the registration division in which each immoveable is situated, a certificate of the hypothecs charged upon such immoveable, and registered up to day of sale; which certificate the registrar is bound to furnish on payment of the fee established by order of the Governor in Council. — The word "hypothecs," as regards this certificate, includes privileges and all other charges upon real estate.

700. The certificate must contain :—All hypothecs registered against the property, as soon as hypothecs shall be thus registered, when the plan and book of reference shall be in force in the registration division ; all hypothecs registered against the parties who, during the ten years previous to the sale, were owners of the immoveable ; and all such anterior hypothecs as were registered anew during that period. — It must also contain the date of the act registered as creating or evidencing such hypothec, the date of its registration, 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 immoveables 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 ; and if the registration of a hypothec has been renewed, the certificate must mention both the registration and the renewal. — But the registrar must not include hypothecs which appear by his books to have been extinguished or

wholly discharged; and in searching for the hypothecs the registrar must not go beyong the date of a sheriff's title, a sale in bankruptcy or 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 immoveable 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 extinguished or discharged, he must state so in his certificate.

701. If the registrar cannot ascertain from the books and documents in his office, what persons were owners of the immoveable during the ten years which preceded the sale, he must diligently enquire of the neighboring 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 are possessed of. The registrar, in his certificate, must mention the information he has thus obtained, and take care 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.

702. If the immoveable in question 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 immoveable, nor copies thereof have been transmitted to the registry office of the county or registration division in which the immoveable was situated at the time of the sale, the registrar states the fact in his certificate; and in every such case the sheriff shall obtain from the registrar of such other county or registration division a certificate of all hypothecs registered while the immoveable was within such county or registration division, and the latter registrar likewise is subject to the provisions of the two preceding articles.

703. After the plan and book of reference have been deposited in any registry office, conformably to the provisions of articles 2168, 2169 and 2176*b* of the Civil Code, the Lieutenant-Governor may, by an order in council, change the form of certificate to be given by the registrar as hereinabove prescribed; and every such order is published in the Quebec Official Gazette, and takes effect from and after the day therein named, provided such day be not less than one month after the publication of such order. (*R. S. Q.*, art. 5943).

704. In the case of resale

for false bidding, the sheriff need not obtain a certificate of hypothecs if one has already been filed with the return made upon the first sale.

705. 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 a judge or the prothonotary, and the costs of the certificates of hypothecs; and he most hold the balance subject to the order of the court.

§ 8.— *Of the effect of the sheriff's sale.*

706. No adjudication is perfect until the price is paid, and then it conveys ownership from the time of its date.

707. The purchaser takes the immoveable in the condition in which it is at the time of the adjudication, without regard to deteriorations or improvements subsequent to the seizure.

708. The adjudication is always without any warranty as to the contents of the immoveable, but it conveys all rights which belong to it, and which the judgment debtor might have exercised, and also all active servitudes attached to it, even though they are not mentioned in the minutes of seizure.

709. A sheriff's sale does not discharge immoveables from servitudes with which they are charged.

710. A sheriff's sale does not discharge property from hypothecs resulting from the commutation of seigniorial rights, excepting arrears accrued previously to the sale. — Nor does it discharge property from the right of emphyteusis, or from substitution not yet open, or customary dower not yet open, except when it appears on the face of the proceeding that there exists a prior or preferable claim.

711. A sheriff's sale discharges property from all other real rights not mentioned in the conditions of sale.

711*a*. The sale of immoveables, made by liquidators in virtue of section 31 of chapter 129 of the Revised Statutes of Canada, and followed by the formalities hereinafter mentioned, has the effect of a sheriff's sale. (*R. S. Q.*, art. 5944).

711*b*. A copy of the deed of sale and the certificate from the registrar mentioned in article 955, must be deposited with the liquidator. (*Id*).

711*c*. Notice of such deposit, with mention of the names of those who possessed the immoveable during the last three years, must be given, during one month in the Quebec Official Gazette and be read and posted at the place and in the manner mentioned in article 952, on the second Sunday preceding the delays for bidding hereinafter mentioned. (*Id*;).

711*d*. During the fifteen days following the last insertion of the notice in the Official Gazette, any creditor of the company in liquidation and any person having hypothecary or real rights upon the immoveable sold, have the right to offer an increase over the purchase price mentioned in the deed of sale, provided such increase be at least one tenth of the whole price and that the bidder offers beside to refund to the purchaser his costs and lawful disbursements, and gives him for that purpose security in the ordinary manner or deposits a sum sufficient for that purpose in the discretion of the court or judge, reserving the subsequent completion of the precise amount. (*Id.*).

711*e*. Any other creditors of the company, and any other persons having hypothecary or real rights upon the immoveable sold, may in like manner, and under the same conditions, outbid upon the first increase and may continue outbidding each other, provided that such subsequent increased bid be not less than one-twentieth of the purchase price, over and above the costs and lawful expenses. (*Id.*).

711*f*. The purchaser may however keep and retain the immoveable at the amount of the highest bid offered. (*Id.*).

712. A purchaser who cannot obtain the delivery of the property from the judgment debtor, must demand it of the sheriff, and upon the sheriff's return or certificate of the refusal to deliver, the purchaser may apply to the court or judge by petition, of which the debtor has received notice and obtain an order commanding the sheriff to dispossess the debtor, and to 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. (*Id.*, art. 5945).

713. The proceedings upon this application are the same as upon that for a resale for false bidding.

§ 9.— *Of the vacating of sheriff's sales.*

714. Sheriff's sales may be vacated :—1. At the instance of the judgment debtor, or of any creditor or other interested person.—If fraud or artifice was employed, with the knowledge of the purchaser, to keep persons from bidding. —If the essential conditions and formalities prescribed for the sale have not been observed ; but the seizing party cannot vacate the sale for any want of formalities attributable to himself or his attorney ; — 2. At the suit of the purchaser.—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.— If

the immoveable 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.

715. The application must be made in the suit by a special petition, it must be served upon the seizing party and upon all other interested parties in the suit, and in other respects is subject to the rules of ordinary procedure.—The party who prosecuted the seizure and sale has a preferable right to contest any suit brought to vacate such sale ; 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,

716. Applications on behalf of the judgment debtor to vacate sheriff's sales, must be made within the same delays as are prescribed for appealing from judgments of the superior court.

717. Grounds of nullity of a sheriff's sale may likewise be set up by the purchaser against whom an application is made for a resale for false bidding.

§ 10.— *Of oppositions for payment.*

718. The prothonotary is bound to keep a register in which are entered all returns by the sheriff to writs of execution issued by the court, with mention of the amounts levied, of the oppositions made to the distribution thereof, and of all claims filed as well in the hands of the sheriff as in the prothonotary's office.

719. Oppositions for payment are necessary only for such claims as the registrar is not bound to insert in his certificate of the hypothecs charged upon the immoveable sold, as required by article 700.—They are not necessary for claims resulting from municipal or school taxes, or assessments for the building or repairing of churches, parsonages and church-yards ; and it is sufficient that a statement of such claims, certified by the secretary-treasurer, or other authorized agent of the corporation, be filed in the hands of the sheriff or prothonotary. —Claims for arrears of *cens et rentes*, or other rents constituted in their stead, may likewise be made by filing with the sheriff or prothonotary a statement thereof, under the signature of the seignior, or creditor, or of his agent.

720. Oppositions for payment may be filed with the sheriff, if he has not yet made his return, or in the office of the prothonotary where the return is made, within six days after the return.—After the delay, they cannot be

filed without permission of the court or judge and upon such condition as he or it imposes. (*R. S. Q.*, art. 5946).

721. No costs are allowed the opposant upon oppositions for the payment of any of the claims mentioned in article 719.

722. All oppositions for payment must contain an election of domicile, as prescribed in article 583.

723. When there is no opposition, and the certificate does not establish the existence of any hypothec, a judgment may be prepared by the prothonotary in the name of the court, upon application made in vacation, ordering the moneys to be paid to the seizing party, according to their sufficiency, and to the amount of his claim.

§ 11.— *Of collocation and the distribution of moneys.*

724. Between the sixth and the twelfth day after the sheriff's return certifying that he has levied moneys, the prothonotary is bound to prepare a scheme of collocation or distribution, and to report the same.—If, however, the sheriff has been unable to return the certificate of hypothecs, the delay above prescribed is only reckoned from the filing of such certificate.

725. The report of distribution must mention the names and designation of the parties plaintiff, defendant and opposant, the amount levied, the person in whose hands it is, and the filing of the certificate of hypothecs.

726. 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 immoveable, or part of an immoveable, the nature of the claim and the date of the title and of its registration.

727. In preparing the report of distribution the prothonotary must act according to the apparent rights of the parties, as shewn by the certificate of hypothecs filed by the sheriff, by the oppositions, claims and other documents forming part of the record, and in conformity with the rules contained in the Civil Code, in the title *Of Privileges and Hypothecs*, and *Of Registration of real rights*, and with those hereinafter declared.

728. Law costs must, however, 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. Costs incurred upon the writ of execution against immoveables, and such as may remain due upon the discussion of the moveables; — 4. Costs of cancelling hypothecs, or of

establishing that they are extinguished ; — 5. Costs of affixing seals, and of making any inventory required by law ; — 6. Costs incurred, either in the court below or in appeal, upon proceedings incidental to the seizure and necessary to effect the sale of the immoveables ; — 7. Costs of suit, as provided in article 606.

729. After law costs, those claimants must be collocated in their respective order who had some right of property in the immoveable sold, who failed to set up their rights in due time by opposition to annul, opposition to withdraw, or opposition to secure charges, but 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 immoveable, and the costs mentioned in the preceding article.

730. Conditional hypothecs are collocated in the report according to their rank, but the amounts thereof are made payable to subsequent creditors whose claims are exigible, or in default of these, to the defendant, upon good and sufficient sureties being given for the return of the money, in the event of the condition being fulfilled ; and upon failure of the latter to give such security, within the delays fixed by the court or judge, the amounts may be paid to the conditional creditors, upon their giving good and sufficient sureties 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 court or judge may order. — In the case of neither party furnishing the requisite security, the amount of the conditional claim my be placed in the hands of a sequestrator or depositary, upon whom the parties agree, or whom the court names of its own accord. (*R. S. Q.*, art. 5947).

731. When a prior claim is undetermined and unliquidated, the prothonotary, out of the disposable moneys, must reserve a sufficient sum to cover it; and such sum remains in the sheriff's hands until the claim is liquidated, or until the court otherwise orders.

732. Hypothecary claims due with a term of payment become exigible in consequence of the discussion and sale of the immoveable subject to them, and are beneficially collocated, but if they do not bear interest, the creditor is then collocated and receives the amount of his collocation on condition that he shall give, and after he has given, security to pay interest, until the term expires, to the subsequent creditors mentioned in the report; and if he 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.

733. Claims for the capital of life-rents are determined and collocated according to articles 1914, 1915, 1916 and 1917 of the Civil Code.

734. Interest and arrears of rents preserved by registration of a claim are collocated in the same rank with such claim, up to the day on which the immoveable was 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.

735. When several immoveables, or pieces or parcels of land separately charged with different claims are sold for one and the same price; —when a vendor's claim comes in concurrence with a builder's privilege; or—when a creditor has some preferential claim upon part of an immoveable, by reason of improvements or other cause; —and 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 court or judge. (*R. S. Q.*, art. 5948).

736. Upon the application of one of the parties interested, after notice given to the others, the court or judge orders experts to be named in the ordinary manner, in order to establish the respective values of the immoveables, pieces of land, or improvements, and the proportion which should be allotted to each out of the moneys to be distributed. (*Id.*, art. 5949).

737. The relative valuation being established upon the report of the experts, the case is sent back to the prothonotary by the court or judge in order that he may proceed to determine the order of collocation, and the distribution of the moneys. (*Id.*, art. 5950).

738. The registrar's certificate is *primâ facie* evidence of the facts therein 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 court 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 being served with the order of the court or judge; and the service may be either personal or at domicile, or by advertisement in newspapers if the persons are absent, in the same manner as upon ordinary summons. (*Id.*, art. 5951).

739. Any party to the cause, or any person appear-

ing 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; and the court or judge may thereupon correct the certificate, or order it to be sent back to the registrar for correction, or else the registrar may transmit to the prothonotary a supplementary certificate in amendment to the former one.

740. The registrar is deemed to be an officer of the court for all that concerns such certificate of hypothecs, as also for the taxation of his fees and expenses for services rendered in regard thereto.

741. Any person interested in the distribution of moneys may, either in term or in vacation, even before contestation, cause the defendant or the creditor, or debtor of any hypothecs mentioned in the registrar's certificate or any opposition, or any other person having cognizance of the facts, to be examined before the judge, or, in his absence, before the prothonotary, in order to establish whether such hypothec has not been discharged, in whole or in part, or otherwise extinguished, or to prove any other fact material to the case; and any person thus examined is bound to disclose the existence of any receipt, account, document or writing, relating to such discharge or extinction, and to produce the same if it be in his power; and if it appears by the certificate of hypothecs, or by any opposition in the case, that such person is the creditor of the hypothec, his admissions constitute proof. A person thus examined cannot ask to be taxed as a witness if he is interested in the distribution, nor can he ask to be paid his travelling expenses before answering. — If the hypothecary creditor of the person who was in possession of the immoveables in question at the commencement of the ten years next preceeding the day of the judicial sale, or his legal representatives, cannot be found so as to be summoned and examined, then, 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, the court or a judge may order such creditor, or his representatives, to be summoned in the same manner as absentee defendants, and if such creditor or absentee defendants fail to appear, the distribution takes place in the same manner as if the hypothec had not been mentioned in the certificate of the registrar.

742. The parties are allowed eight days to contest the

report of distribution, reckoning from the day on which it was entered on the posted list, if such day be a Monday, if not, the delay is reckoned from the Monday following.

743. The contestation may relate to the report itself and to the order or rank of the collocations, or it may go to the merits or substance of any of the claims beneficially collocated, and in this case the report becomes impliedly contested and stayed, to the extent of such contestation, without its being necessary to file a special contestation of the report to that end. The contestation in all cases must be accompanied with the reasons and documents in support thereof, if there are any, and a copy of such contestation must be left with the party interested, either at his elected domicile or at the prothonotary's office, if there is no such domicile.

744. Contestation of the report or of the order of collocation may be inscribed forthwith upon the roll for hearing, after notice given to the parties interested, without the necessity of any written answer to such contestation.

745. If the contestation of the report is maintained without being opposed by any party, the costs thereof are taken out of the moneys levied. — 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 monies levied, saving to the creditor who is prejudiced by such collocation, his right to demand subrogation against the party condemned to pay them.

746. When the contestation of the report, or of a collocated claim is maintained, it is so maintained 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.

747. The right of contesting claims, oppositions or collocations belongs to whichever of the interested parties is first to use it.—A party whose 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 the withdrawal or of his neglect or refusal to proceed.

748. Contestations upon the merits of oppositions or claims are subject to the rules of procedure which apply in ordinary suits.

749. 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 these are only to a part.—Such motion cannot, however, be made until after notice thereof has been posted up in the prothonotary's office during at least four days.

750. The homologation may be thus granted either by the court or by the prothonotary, in term or in vacation unless there is a counter-application or a contestation, in which case the court alone can decide.

751. If in any distribution whether homologated or not, a creditor is collocated for any sum that is not due to him, the court, 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 be no authentic discharge, the person thus collocated must be called in, upon application to the court or judge and in such case the provisions of article 741 apply.—If the person collocated has no known domicile in Lower Canada, or if he is dead and his legal representatives are not certainly known, the judge may, upon a certificate of the fact order them to be called in the manner provided in article 68.

752. When no opposition for payment has been filed and no claim appears by the registrar's certificate, or when all the parties consent, 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 made either in term or in vacation.

§ 12. *Of sub-collocation.*

753. Any creditor of a person who is entitled to be collocated, or is beneficially collocated upon moneys levied, has a right to file a sub-opposition, demanding that, to the extent of his claim, the sum accruing to his debtor be not paid to such debtor, but to him. He cannot, however, exercise this right unless his debtor is insolvent, or his claim carries execution,

754. Sub-oppositions must be served upon the party whose moneys are thus stopped.

755. The sub-collocation may follow the collocation,

and be included in the general report, or it may form a separate report, and is subject to the same rules and formalities; but the costs thereof are borne by the creditor whose collocation is thus opposed.

756. If a debtor fails to exercise his rights and claims, his creditor 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.

§ 13. *Of the payment of moneys levied.*

757. At the expiration of fifteen days after the date of the judgment homologating a report of distribution, the sheriff is bound to pay to the parties entitled thereto the moneys which he has received.

758. The amount of the collocation of a creditor mentioned in the registrar's certificate, and who has not filed an opposition remains in the hands of the sheriff until such creditor or his legal representatives demand the same, and give a valid acquittance therefor.

759. The sheriff, or other officer performing his functions, may be held by coercive imprisonment to the payment of the moneys by him levied and received.

760. 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 immoveable upon him for false bidding.

761. 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 registrar's certificate, who has not appeared in the cause, may, moreover, within fifteen days, seek redress by means of an opposition to the judgment.

762. 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 may 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.

SECTION VI

OF ABANDONMENT OF PROPERTY.

763. Any debtor arrested under a writ of *capias ad respondendum*, may make a judicial abandonment of his property for the benefit of his creditors.—In the absence of a capias no abandonment can be made, if the debtor has not been so required as hereinafter provided. (*R. S. Q.*, art. 5952).

763 *a.* Every trader who has ceased his payments may be required to make such abandonment by a creditor, whose claim is unsecured, for a sum of two hundred dollars and upwards. (*Id.* art. 5953).

764. This abandonment is effected by filing a statement, sworn to by the defendant, and making known :—1. All the moveable and immoveable property of which he is possessed; 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. Such statement must be accompanied with a declaration by the debtor that he consents to abandon all his property to his creditors. — The abandonment is made in the office of the prothonotary of the superior court of the district wherein the capias issued and in the absence of capias, of the district of the place where the debtor has his principal place of business, and, in default of such place, of the place of his domicile. (*Id.*, art. 5954).

765. The debtor must give notice of the abandonment, by inserting an advertisement to that effect in the Quebec Official Gazette and by a registered notice sent by mail to the address of each of his creditors.— The notice adressed to the creditors must contain a list of the creditors of the debtor, mentioning the amount due to each.— In default of such notices being given by the debtor any creditor may give them himself. (*Id.*, art. 5965).

766. A debtor who has been admitted to bail is bound to file this statement and declaration within thirty days from the date of the judgment rendered in the suit in which he was arrested.—Any person condemned to pay a sum exceeding eighty dollars, exclusive of interest from service of process and costs, for a debt of a commercial nature, is likewise, after such moveable and immoveable property, as he appears possessed of, have been discussed, bound, upon being required to do so, to file a similar statement.

767. If the debtor is in gaol he may file such statement and declaration at any time.

768. Immediately after the filing of the statement the prothonotary appoints a provisional guardian, whom he, as far as possible, selects

from among 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 the books of account 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. — The abandonment being made, the court or the judge, or the prothonotary in a district in which there is no judge present, upon demand of a party interested, must appoint to the property of such debtor the curator chosen by the majority in number of the creditors then present or duly represented. — Inspectors or advisers may also, in the same manner, be appointed at this or any subsequent meeting. —The meeting shall be convened within a short delay and in the manner which the court or judge deems suitable. — The record of the proceedings upon the abandonment is then transmitted to the prothonotary of the superior court of the district in which the debtor has his place of business. (*R. S. Q.*, art. 5956, as amended by 52 Vict., cap. 51).

769. After the abandonment, any proceeding by way of attachment, attachment for rent or attachment in execution against the moveables of the debtor is suspended; and the guardian or the curator has a right to take possession of the goods seized, upon serving by a bailiff a notice of his appointment upon the seizing creditor or upon his advocate or the bailiff entrusted with the writ. — The costs upon such attachment, made 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 advocate or by the bailiff, and, in all cases, the costs of attachment made eight days after the notice given by the debtor or the curator, cannot be collocated upon the property of the debtor, the proceeds whereof are distributed in consequence of the abandonment. (*Id.*, art. 5957).

770. The curator is bound to make his appointment known by an advertisement in the Quebec Official Gazette and by a registered notice transmitted by mail to the address of each creditor. — In such notice, the curator shall call upon the creditors to file their claims with him within a delay of thirty days. (*Id.*, art. 5958).

770*a*. The curator appointed may be required to give security, the amount whereof is fixed by the court or judge; and he is subject to the summary jurisdiction of the court or judge. — Such security may be given in

favor of the creditors of the debtor generally without mentioning their names (*Id.*, art. 5959).

771. The curator takes possession of all the property mentioned in the statement, and administers it until it is sold in the manner hereinafter mentioned.

772. The curator has likewise a right to receive, collect and recover any other property belonging to the debtor, and which the latter has failed to include in his statement. — 2. The curator may, with the permission of the court or 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. —3. The curator may sell the debts and moveables and immoveables of the debtor in the manner indicated by the court or judge, upon the advice of the parties interested or the inspectors. — 4. Upon the demand of the curator, authorized by the creditors or by the inspectors, or upon the demand of an hypothecary creditor, of which demand sufficient notice must be given to the debtor, the court or judge may authorize the curator, or command him, to issue his warrant addressed to the sheriff of the district where the immoveables of the debtor are situated requiring him to seize and sell such immoveables.—The sheriff executes such warrant without making any service upon the debtor, but by otherwise observing the same formalities as in the case of a writ *de terris;* and all proceedings subsequent to the issue of the warrant up to the distribution of the moneys arising from the sale are had in the superior court. — The distribution of such moneys must be made by the curator in accordance with the provisions of article 5961. (*R. S. Q.*, art. 5960, as amended by 52 Vict., cap. 51).

772*a*. The moneys realized by the curator from the property of the debtor must be distributed among the creditors by means of dividend sheets prepared after the expiration of the delays to file creditors' claims, and are payable fifteen days after notice is given of the preparation of such dividend sheets. —Such notice is given by the insertion of an advertisement in the Quebec Official Gazette, and by a registered notice sent by mail to the address of each of the creditors of the debtor who have filed their claims or who appear upon the list of creditors furnished by him.—The claims or dividends may be contested by any party interested. — The contestation for such purpose is filed with the curator, who is bound to transmit it immediately to the prothonotary of the superior court of the district in which the proceedings upon the abandon-

ment are then deposited, or to such other district as the parties interested in the contestation may agree upon; and such contestation is proceeded upon and decided in a summary manner. (*Id.*, art. 5961.)

773. Any creditor may contest the statement, by reason: —1. Of the omission to mention property of the value of eighty dollars;—2. Of any secreting by the debtor, within the year immediately preceding the institution of the suit, or since, of any portion of his property, with intent to defraud his creditors;—3. Of fraudulent misrepresentations in the statement, with respect to the number of his creditors or the nature or amount of their claims. — In cases where the debtor has given notice of the abandonment of his property to his creditors, as above prescribed, the delay to contest the statement is restricted, as to the creditors to whom the notice is sent, to four months from the date of sending such notice. (*Id.*, art. 5962).

774. The contesting party is bound, within the same delay, to prove his allegations by all legal means. The court may, however, prolong the delay for making such proof, but not beyond two months.

775. The debtor is bound to attend before the court or before a judge, under the penalty hereinafter imposed, in order to answer all questions which may be put to him concerning such statement.

776. If the contesting party establishes any one of the offences mentioned in article 773, or if the debtor refuses to attend or to answer, as required under the preceding article, the court or judge may condemn him to be imprisoned for a term not exceeding one year. — If the debtor so ordered to be imprisoned, does not surrender himself, or is not surrendered for that purpose according to such order, then the sureties are liable to pay the plaintiff the debt, together with interest and all costs. — If the debtor, discharged upon bail, does not produce his statement and declaration within the thirty days mentioned in article 766, such debtor and his sureties are subject to the same penalties and recourse as hereinabove. (*R. S. Q.*, art. 5963).

777. If the allegations to the contestation are not proved, within the delays above mentioned, the court or judge may order the discharge of the debtor; and the latter cannot again be imprisoned for any debt due the plaintiff, or any other creditor, by reason of any cause of action anterior to his statement and declaration of abandonment; and in case of such imprisonment he may obtain his discharge either from the court or from a judge, upon petition and sufficient proof.

778. The abandonment of his property deprives the debtor of the enjoyment of his property, and gives his creditors the right to have it sold for the payment of their respective claims. (*R. S. Q.*, art. 5964).

779. The abandonment of his property discharges the debtor from his debt to the extent only of the amount which his creditors have been paid out of the proceeds of the sale of such property.

780. Whenever a capias could not be executed by reason of the absence of the defendant, or because he could not be found, and when the defendant has left the province or no longer resides therein, and has ceased his payments, there may, after notice to the defendant or debtor, in the manner prescribed by the court or judge, be appointed a guardian and curator, whose powers and obligations shall be the same as if appointed after an abandonment of property. (*R. S. Q.*, art. 5965).

SECTION VII.

OF COERCIVE IMPRISONMENT.

781. Coercive imprisonment cannot be carried into execution without a special rule granted by the court, after personal notice given to the party liable to it, unless such party absconds in order to avoid it.

782. In all cases of resistance to the orders of the court respecting the execution of the judgment by seizure and sale of the property of the debtor, as well as in all cases in which the defendant conveys away or secretes his effects, or uses violence or shuts his doors to prevent the seizure, a judge, out of court, may exercise all the powers of the court, and order the defendant to be imprisoned until he satisfies the judgment.

783. Coercive imprisonment cannot be granted against tutors or curators for any balance of account due by them, until after the expiration of four months from the service upon them of the judgment establishing such balance.

784. Coercive imprisonment can only be effected in the time during which summonses may be served.

785. The debtor cannot be arrested :—1. On a legal holiday ;—2. In a place of public worship, during divine service ;— 3. In a court of justice when the court is sitting, or before any privileged tribunal.

786. Notwithstanding what is contained in the two preceding articles, the court may order the arrest to be made on a holiday, or at any time, if it is established that the defendant is acting in such a manner as to escape it.

787. Coercive imprisonment can only be executed in virtue of a writ or order

from the court or judge, which may be addressed to the same officers, and is clothed with the same formalities, and contains the same matters of recital as those required in writs of execution.

788. Whenever the person condemned to coercive imprisonment resides in another district, the writ must be addressed to and executed by the sheriff of such district.

789. Coercive imprisonment is effected by arresting the debtor and placing him in 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.

790. Any person thus imprisoned, may upon petition to the court or to a judge, previously served upon the creditor, 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 exceeding one dollar per week.

791. If however the debtor afterwards becomes owner of property exceeding in value the amount above mentioned, the creditor may be relieved from paying the weekly allowance.

792. The debtor may, if he has grounds for doing so, seek redress against such imprisonment, by petition or motion, to the court or judge, served upon the creditor.

793. The debtor may obtain his discharge :—1. By paying into the hands of the sheriff or of the prothonotary, the amount of the condemnation, in principal, interest and costs :—2. With the consent of, or a release from the creditor ;—3. Upon the failure of the creditor to pay in advance into the hands of the gaoler the alimentary allowance granted to him ;—4. By the abandonment of his property, as mentioned in the preceeding section ;—5. By means of the discharge from liability, obtained under the provisions of law concerning insolvent traders ;—6. If he has completed his seventieth year.

794. Such discharge must, however, be ordered by a judge upon application, of which notice has been given to the prosecuting creditor.

795. When the debtor has been discharged by reason of default of payment of the alimentary allowance, he is no longer liable to coercive imprisonment for the same debt.

BOOK II.

TITLE I.

OF PROVISIONAL PROCEEDINGS WHICH ACCOMPANY SUMMONS IN CERTAIN CASES.

GENERAL PROVISION.

796. A plaintiff may, in certain cases, simultaneously with the summons, or pending the suit and before judgment, have the person or the property of his debtor, or the object in dispute, placed in judicial custody, as explained in the following chapters; subject to a right of action by the latter to recover damages, upon establishing by proof against the creditor a want of probable cause.

CHAPTER I.

OF CAPIAS AD RESPONDENDUM.

SECTION I

OF THE ISSUING OF THE CAPIAS.

797. When the amount claimed exceeds forty dollars, the plaintiff may obtain from the prothonotary of the superior court, a writ of summons and arrest against the defendant, if the latter is about to leave immediately the province of Canada, or if he secretes his property with intent to defraud his creditors.

798. This writ is obtained upon an affidavit of the plaintiff, his book-keeper, clerk, or legal attorney, declaring that the defendant is personally indebted to the plaintiff in a sum amounting to or exceeding forty dollars, and that the deponent has reason to believe, and verily believes, for reasons specially stated in the affidavit, that the defendant is about to leave immediately the province of Canada, with intent to defraud his creditors in general, or the plaintiff in particular, and that such departure will deprive the plaintiff of his recourse against the defendant; or upon an affidavit establishing, besides the existence of the debt as above mentioned, that the defendant has secreted or made away with, or is about

immediately to secrete or make away with his property and effects with such intent.

799. The writ may also be obtained if the affidavit establish, besides the debt, that the defendant is a trader, that he has ceased his payments and has refused to make an assignment of his property for the benefit of his creditors. (*R. S. Q.*, art. 5966).

800. The writ of capias may likewise be obtained by any creditor having an hypothecary or privileged claim upon an immoveable, upon an affidavit establishing that his claim exceeds forty dollars, and that the defendant, whether he is the original hypothecary debtor or simply the holder of the property, is, with the intent of defrauding the plaintiff, damaging, deteriorating or diminishing the value of the immoveable, or is about to do so himself or by others, so as to prevent the creditor from recovering the whole or any aprt of his claim, to the amount of forty dollars, as provided by chapter 47 of the consolidated statutes for Lower Canada.

801. If the demand be founded upon a claim for unliquidated damages, the writ of capias cannot issue without a judge's order, after examining into the sufficiency of the affidavit; and the affidavit in such case must state the nature, and, moreover, amount of the damages sought, and the facts which gave rise to them, and the judge may, in his discretion, either grant or refuse the capias, and may fix the amount of the bail, upon giving which the defendant may be released.

802. 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 for a fixed day to show cause why the writ should not be declared valid and joined with the principal demand.—The writ may also issue after judgment has been obtained for the recovery of the debt.

803. The amount for which the writ of capias has issued, and the name of the person who made the affidavit must be endorsed upon the writ.

804. It is not necessary that the declaration or statement of the demand should be served upon the defendant at the time of his arrest, but it suffices to leave a copy of it either with him, or at the office of the prothonotary, within the three days which follow the service.

805. Saving the exceptions contained in article 2272 and 2273 in the Civil Code, a writ of capias cannot issue: —1. Against priests or ministers of any religious denomination whatever: — 2. Against septuagenarians;— 3. Against females.

806. It cannot issue for any debt created out of the province of Canada, nor for any debt under forty dollars.

807. The affidavit required in the above articles may be made by one person only, or by several persons swearing each to a portion of the necessary facts, and it may be received and sworn to before a judge of the superior court, or a commissioner of the superior court, or by the prothonotary who certifies the writ of capias.

808. The superior court alone has jurisdiction in matters of capias.

809. When the capias is issued by the prothonotary of the superior court it is addressed either to the sheriff or a bailiff of the district in which such writ issues, and may be by him executed in such district or in any other district, or it is addressed to the sheriff or a bailiff of the district in which such writ is to be executed. (*R. S. Q.*, art. 5967.)

810. It may be issued by a clerk of the circuit court, in which case it is addressed to the sheriff or to any bailiff of the district in which it is to be executed.

811. The clerk of the circuit court acts in such case as an officer of the superior court, and the writ of capias must be worded throughout as if it was issued by the prothonotary.

812. In all cases in which a writ of capias may issue, a warrant of arrest may be granted by a commissioner of the superior court, and be addressed by him either to the sheriff or a bailiff, or any other peace officer in the vicinity. — The commissioner cannot issue such warrant at the *chef-lieu* of a district unless it be established before him by affidavit that it was impossible for the plaintiff or his agent to obtain such writ of capias from the prothonotary or his deputy. (*R. S. Q.*, art. 5968.).

813. Such warrant is in the name of the commissioner who grants it ; it orders the arrest of the person therein designated, and his delivery over to the sheriff of the district, who is commanded to keep him in his custody during forty-eight hours, and no longer, unless before the expiration of that time the plaintiff has obtained and caused to be executed against such defendant a writ of capias in the ordinary course. (*Id.*, art. 5969.).

814. The debtor cannot be detained in prison in virtue of such warrant any longer than forty-eight hours.

815. The commissioner granting such warrant must, without delay, transmit a duplicate of it, together with the original affidavit upon which it was granted, and a certificate of his proceedings to the prothonotary of the superior court of the district, who must file the same and keep them as part of the record in the case.

SECTION II.

OF THE EXECUTION OF WRITS OF CAPIAS.

816. If the writ of capias is addressed to a bailiff, the bailiff who is charged with it arrests the defendant and delivers him over, together with the writ to the sheriff, who therpeupon becomes responsible.

817. If the writ of capias is addressed to the sheriff he is then bound to execute it or to cause it to be executed by his officers.

818. The sheriff is bound to keep the defendant in the common gaol of the district, until the latter gives security or is discharged as hereinafter provided.

SECTION III.

OF THE CONTESTATION OF WRITS OF CAPIAS.

819. Upon a petition presented to the court, or to a judge in term or in vacation, the defendant may obtain his discharge by establishing that he is not liable to be imprisoned, or by showing that the essential allegations of the affidavit upon which the capias is founded are false or insufficient,

820. In order to decide upon this incidental proceeding the court or judge may order the immediate return of the said writ of capias, and of the proceedings had upon it, although the day fixed for the return should not yet be arrived.

821. If the contestation is merely as to the sufficiency of the allegations of the affidavit, the judge or the court may dispose of it, after hearing the parties. — But if the contestation is founded upon the falsity of the allegations, issue must be joined upon the petition of the defendant, in the ordinary course and independently of the contestation upon the principal demand, unless the exigibility of the debt depends upon the truth of the allegations of the affidavit, in which case the writ may be contested together with the merits of the case.

822. A defendant whose application to be discharged is rejected may appeal from the decision.

823. If the court or judge orders the defendant to be discharged, the plaintiff may obtain a suspension of the order, by declaring immediately that he intends to have the decision reviewed and depositing the amount required by article 497. He may likewise appeal from the judgment in review, if he declares immediately his intention of doing so, and causes the writ of appeal to be served within three juridical days from the rendering of the judgment in review. If the plaintiff fails to comply with these formalities the defendant is discharged.

SECTION IV.

OF DISCHARGE UPON BAIL.

824. The defendant may obtain his discharge upon giving two good and sufficient sureties that he will not leave the province of Canada, and that, in case he does so, such sureties will pay the amount of the judgment that may be rendered, in principal, interest and costs, or the amount fixed by the judge in the case of article 801.—But this bail cannot be received after the expiration of the eighth day from the day fixed for the return of the writ of capias, unless with leave of the court, expressly granted upon sufficient cause shown.

825. The defendant may also obtain his discharge at any time before judgment, by giving good and sufficient sureties to the satisfaction of the court, or judge, or prothonotary, that he will surrender himself into the hands of the sheriff, when required to do so by an order of the court or judge, within one month from the service of such order upon him or upon his sureties, and that in default they will pay the amount of the judgment in principal, interest and costs, or the amount fixed by the judge in the case of article 801.

826. This bail is offered after a notice served upon the plaintiff or his attorney, with one intermediate day's delay.

827. The sureties offered must, if required, justify their sufficiency upon oath, but need not justify upon real estate.

828. A defendant arrested upon a capias may obtain his provisional discharge by giving good and sufficient sureties to the sheriff, to the satisfaction of the latter, before the return day of the writ, that he will pay the amount of the judgment that may be rendered upon the demand, in principal, interest and costs, if he fails to give bail pursuant to article 824 or to article 825.

829. The sheriff in such case is responsible only for the sufficiency of the sureties at the time when bail was given.

830. He may free himself by offering an assignment of the bail-bond he has taken.—This assignment may be effected by simply endorsing his name upon the bail-bond.

831. The sureties may at any time arrest the defendant and surrender him into the hands of the sheriff and thus discharge themselves from their bond.

832. The sheriff, however, is not bound to receive the defendant, without a written requisition to that effect 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 par-

ties to the suit, and of the sureties, and must require the sheriff to take the debtor into his custody; and it is the duty of the sheriff to give the sureties a certificate of such surrender.

833. If the sureties apprehend resistance, then upon an affidavit of one of them, alleging their suretyship, sworn to before a judge, the prothonotary, a commissioner of the superior court, or a justice of the peace of the district in which the debtor then is, and upon a requisition to that effect written upon the back of an affidavit, any bailiff or constable may arrest the debtor with such forcible assistance as may be necessary, and hand him over to the sheriff.

CHAPTER II.

OF THE ATTACHMENT BEFORE JUDGMENT.

SECTION I.

OF SIMPLE ATTACHMENT.

834. A creditor has a right, before obtaining judgment, to attach the goods and effects of his debtor: — 1. In the case of the *dernier équipeur*.—2. In all cases where, as plaintiff, he produces an affidavit establishing: that the defendant is personally indebted to him in a sum exceeding five dollars and that the defendant absconds or is about immediately to leave the province or is secreting or is about to secrete his property, with the intent to defraud his creditors, or the plaintiff in particular, or that the defendant is a trader, has ceased his payments and has refused to make an assignment of his property for the benefit of his creditors; and, in either case, that the deponent verily believes that without the benefit of the attachment the plaintiff will lose his debt or sustain damage. (*R. S. Q.*, art. 5970).

835. If the claim is founded on unliquidated damages, the writ of attachment cannot issue without the order of a judge after examining into the sufficiency of the affidavits, which, moreover, must state the nature and amount of the damages claimed and the facts which gave rise to them, and the judge may in his discretion either grant or refuse the writ, and fix the amount of the bail upon giving which the property may be released.

836. Simple attachment is affected by means of a writ addressed, both in the superior court, and in the circuit court to the sheriff or a bailiff of the district in which such writ issues, who may execute it in such district or in any other district, or to the sheriff or a bailiff of the district in which it is to be executed, and when in any other court, to any bailiff, requiring such sheriff or bailiff to seize the moveables and

effects of the defendant, and to summon him to appear on a day fixed at the office of the prothonotary or clerk, to answer the demand and shew cause why the attachment should not be declared valid. (*R. S. Q.*, art. 5971).

837. The amount of the plaintiff's claim must be endorsed upon the writ, or the sum for which security may be given.

838. The writ is issued by the prothonotary or by the clerk of the circuit court, as the case may be, upon a written requisition from the plaintiff.—It may be either in the French or English language. —It is tested in the same manner as writs of summons.

839. The writ may also be issued for the superior court, according to the amount claimed, by any clerk of the circuit court, who, in such case, may likewise receive the necessary affidavit.

840. The provisions contained in articles 810 and 811 concerning writs of capias, apply likewise to simple attachment.

841. The seizure of the goods of the defendant is effected in the same manner as upon the execution of a judgment.— The sheriff or bailiff may make the seizure in another district if the debtor has conveyed his property there or has withdrawn there himself.

842. A warraut of attachmeat may also be issued, in the case of article 834, by any commissioner of the superior court, addressed to the sheriff of the district where the warrant is to be executed, or to the bailiff or peace officer nearest to his residence, commanding him to seize and detain the effects of the debtor.

843. This warrant of attachment is in the name of the commissioner who issues it; it orders the moveables and effects of the defendant to be attached, with the ordinary formalities of seizures, and that they be kept and detained for the period of twelve days from the seizure, and no longer, unless before the expiration of such twelve days a writ of attachment, pursuant to the above provisions issues from the proper court.

844. The effects so seized cannot be detained for a longer period than twelve days under such warrant of a commissioner.

845. The commissioner who granted such warrant must, without delay, transmit a duplicate thereof, together with the original affidavit upon which the warrant was granted and a certificate of his proceedings to the prothonotary, or clerk of the circuit court, who must file and keep the same as part of the record in the case.

846. When in the superior court the writ or the warrant is addressed to a bailiff or any other officer than the sheriff, such bailiff or other

officer is bound to make a return of his proceedings to the sheriff, and to deliver to him the effects seized, in order that they may be disposed of by the court according to law.

847. The sheriff or bailiff may also demand in advance from the party suing out the writ or his attorney *ad litem*, such sum as may be deemed sufficient by the judge or the prothonotary of the superior court from which the writ issued, for the safe keeping of the effects seized.

848. The sheriff or bailiff may renew such demand as often as the sum so advanced is expended, by presenting a petition, of which notice has been given to the party seizing or his attorney *ad litem*; and if the amount fixed by the judge or prothonotary is not paid within twenty-four hours, the seizure is discharged, and the sheriff or bailiff is exonerated from any liability whatever.

849. The writ of attachment must be returned with an inventory of the seizure, and a certificate of service both of the writ and of the declaration, in the same manner as upon a writ of capias.

850. A copy of the writ of attachment must be left with the defendant, as well as a duplicate of the inventory of the seizure, as soon as it is completed. As regards the declaration, it may either be served at the same time as the writ, or within the three days which follow the seizure, by leaving a copy thereof either with the defendant or at the prothonotary's or clerk's office.

851. The effects seized must, in every case, be placed in the custody of a responsible person offered by the defendant, or in default of such offer, in the custody of a responsible person appointed by the sheriff, bailiff, or other officer making the seizure, subject to the provisions respecting guardians and depositaries in cases of executions against moveables.

852. If the defendant is absent from Lower Canada, or conceals himself so as to prevent the service of the writ of attachment, the court, or a judge upon proof of the fact by one credible witness, may dispense with the service, and order the defendant to be summoned in the manner provided in article 68.

853. A defendant whose effects have been seized may get them restored to him by the sheriff within the forty-eight hours from the service of the inventory of seizure:—1. By depositing with the sheriff, bailiff or other officer charged with the writ, the amount endorsed on the writ and costs; or 2. By giving the sheriff, bailiff, or other officer charged with the writ, who is bound to accept them, good and sufficient sureties, who justify under oath to

the amount endorsed upon the writ with interest and costs, 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 court or a judge orders otherwise.

854. Simple attachment may be contested in the same manner as writs of capias.

SECTION II.

OF ATTACHMENT BY GARNISHMENT.

855. In all the cases where a writ of simple attachment may be granted as hereinabove explained, a creditor may also attach any moveable property belonging to his debtor which may be in the hands of third persons, and also whatever sums they may owe him, subject to the restrictions mentioned in articles 558 and 628.

856. This attachment is effected by means of a writ commanding the attachment in the hands of the garnishees of whatever sums of money, things or effects they have or may have belonging or due to the defendant, ordering the garnishees not to dispossess themselves thereof without an order of the court, and to appear at the office of the prothonotary or clerk to make their declaration, and summoning the defendant to answer the demand of the plaintiff.

857. When the writ issues from the superior or the circuit court, it may be addressed either to the sheriff or to a bailiff of the district in which such writ issues, and be by him executed in such district or in any other district, or to the sheriff or a bailiff of such other district in which such writ is to be executed, and in any other court, to a bailiff. (*R. S. Q.*, art. 5972.)

858. It is clothed with all the formalities required for ordinary writs of summons, and is subject to the provisions of articles 838, 839, 340, 842, 845, 846, in so far as they can be applied.

859. A statement of the amount for which the attachment is made or authorized is, moreover, endorsed upon the writ.

860. The provisions contained in articles 614, 615, 616, 617, 618, 619, 620, 622, 623, 624, 625, 629, 630 and 631, are also applicable to cases of attachment by garnishment before judgment.

861. If the declaration of the garnishee is not contested, the court or judge, in rendering judgment upon the principal demand, adjudicates also upon the attachment and the declaration of the garnishee.

862. The plaintiff or the defendant may contest the declaration of the garnishee, upon leave of the court to that effect.—Such contestation is served upon the gar-

nishee, together with a summons to appear on a day fixed to answer the same, the ordinary delays for summoning being observed.

863. In other respects the contestation is subject to the rules of ordinary procedure.

864. If the plaintiff fails to contest the declaration of the garnishee within eight days after the principal judgment, he is foreclosed from doing so, unless the delay is extended by the court.

865. The defendant may contest the attachment made upon him or in the hands of a garnishee, in the manner provided for cases of capias.

CHAPTER III.

OF ATTACHMENT IN REVENDICATION.

866. Whoever has a right to revendicate a moveable may obtain a writ for the purpose of having it attached upon production of an affidavit setting forth his right and describing the moveable 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.

867. 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 mentioned upon the back of the writ.

868. The formalities prescribed in articles 809, 836, 838, 847, 848, 849, 850 and 851, are observed in attachments in revendication in so far as they can apply.

869. The defendant upon a demand in revendication 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 any judicial sequestrator. — Nevertheless the court or judge may, according to circumstances, grant possession of the effects to the plaintiff, subject to the same conditions.

870. 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 ; and this is done by experts named in the ordinary course of procedure.

871. If neither of the parties applies for the effects seized they remain in the custody of the guardian appointed ; or else, at the request of either of the parties, the court or the judge may, if they are of a nature to produce fruits, order them to be

placed in the hands of a sequestrator.

872. If the things seized are of a perishable nature or liable to deteriorate during the pendency of the suit, the court or judge may order them to be sold and the proceeds of the sale to be deposited in the office of the prothonotary or clerk.

CHAPTER IV.

OF ATTACHMENT FOR RENT.

873. The owner or lessor may cause the effects and fruits in or upon the house, premises or land leased and subject to his privilege, to be seized for the rent, farm dues, or other sums payable in virtue of the lease.—He may likewise follow and seize in recaption, even for amounts not yet payable, the moveables and 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; but the moveables and effects mentioned in article 556 must be substracted from the sale.—An attachment in recaption must be served upon the new lessor, who must also be summoned to show cause against its execution. (*R. S. Q.*, art. 5973).

874. The provisions contained in article 841, as well as those contained in article 804, respecting the service of the declaration or statement of the demand, apply likewise to attachment for rent or farm dues. (*Id.*, art. 5974).

875. Effects attached for rent or for farm dues cannot, without the consent of the plaintiff, be left in the custody of the defendant, unless he gives sureties to the satisfaction of the sheriff or bailiff for the production of the effects, and such sureties incur the same obligations and are liable to the same penalties as judicial guardians.

CHAPTER V.

OF JUDICIAL SEQUESTRATION.

876. All demands for sequestration are made by petition to the court or to a judge. It may also, according to circumstances be ordered by the court without being demanded by the parties.

877. The judgment ordering sequestration commands the parties to appear before the court or before a judge, on a day fixed, to name a sequestrator; and if the parties cannot agree, the court or judge, names one of his own accord.

878. 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 seques-

trated. This statement should be signed by the bailiff and also by the sequestrator, if he can sign ; if he cannot, mention should 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.

879. If among the things sequestrated some are consumable or perishable, the sequestrator may cause them to be sold, observing the formalities prescribed for the sale of moveables under execution.

880. If the thing sequestrated consists in a right of enjoyment, the sequestrator, if there is no conventional lease, is bound to give out the lease, by auction.

881. Neither party can, directly or indirectly, become lessee of the things sequestrated.

882. Repairs or other necessary expenditures cannot be made upon the premises sequestrated without the authorization of a court or judge, upon petition, of which the parties have received notice.

883. Sequestrators are subject to the duties and obligations imposed upon guardians in seizures under execution.—They are, moreover, bound to render an account of their administration when judgment has been given upon the contestation, and also whenever, pending the suit, the judge orders them to do so, at the instance of either of the parties and upon cause shown. (*R. S. Q.*, art. 5975).

884. A sequestrator is discharged by law upon his delivering the property sequestrated to the party named in the judgment of the court, and also in the manner stated in the title *Of Deposit* in the Civil Code.

885. Orders of sequestration, are executed provisionally, notwithstanding and without prejudice to any appeal.

886. 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.

SECTION VII.

SPECIAL PROCEEDINGS.

§ 1.—*Of suits against the Crown.*

886*a*. Any person, having a claim to exercise against the government of this Province, whether it be a revendication of moveable 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. (*R. S. Q.*, art. 5976).

886*b*. Such petition is addressed to Her Majesty, and must state the names, the

occupation or quality, and the domicile of the suppliant and of the advocate, if any, by whom the same is presented, set forth with convenient certainty the facts entitling the suppliant to relief, observing the provisions of article 52, and be signed by such suppliant or his advocate. (*Id.*).

886*c*. The petition must be supported by an affidavit of the suppliant or of a competent person attesting the truth of the facts therein alleged. (*Id.*).

886*d*. 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 upon receiving back the petion. (*Id.*).

886*e*. Upon the Lieutenant-Governor's fiat being obtained, the petition and fiat are filed in the office of the prothonary of the superior court in the district of Quebec. (*Id.*).

886*f*. 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. (*Id.*).

886*g*. A copy of the petition and 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 requiring the production of a contestation within thirty days after the date of service. (*Id.*).

886*h*. If, within the delay of thirty days, 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 suit in which the defendant fails to appear.—If a contestation is filed, the subsequent proceedings are the same as in an ordinary suit in which the defendant has pleaded. (*Id.*).

886*i*. In case any petition of right is presented for the recovery of any immoveable or moveable property, which has been granted away or disposed of, by or on behalf of Her Majesty or 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 property, commanding him to appear before the court on the day therein men-

tioned, and to plead to or answer the claim. (*Id.*).

886*j*. An appeal lies to the court of queen's bench, sitting in appeal, from the final judgment rendered by the superior court on any petition of right; but such appeal must be brought within thirty days from the date of the judgment. (*Id.*).

886*k*. The ordinary delays and rules of procedure, in so far as they are not incompatible, apply to suits by petition of right, in the superior court and in appeal; but all suits by petition of right are tried by a judge without a jury, notwithstanding article 348. (*Id.*).

886*l*. The suppliant may be awarded costs or may be condemned to pay costs as in an ordinary suit.— All costs adjudged shall be paid by or to the provincial treasurer, as the case may be. (*Id.*).

886*m*. When the government is adjudged to surrender or restore moveable 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. (*Id.*).

886*n*. When the government is adjudged to surrender or restore immoveable 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. (*Id.*).

886*o*. 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 rendering of the judgment in appeal, a certified copy of the final judgment, entitling the suppliant to such costs, or to such sum of money with or without costs, may be left at the office of the provincial treasurer, and the provincial treasurer shall pay out of any money, in his hands for the time being legally applicable thereto, or which may thereafter voted by the Legislature for that purpose, the amount of any moneys or costs which have been awarded to the suppliant by the judgment. (*Id.*).

SCHEDULE.

Form in connection with article 886*g*.

Petition.

In the Superior Court, District of Quebec.

To the Queen's Most Excellent Majesty:

The humble petition of A. B., of (*residence and calling*)

by his advocate C. D., of (*residence*), sheweth.

That (*state the facts*).

Conclusion:

Your suppliant therefore humbly prays that (*state the relief claimed*).

Dated at..... this..... day of.....A. D.

Form in connection with article 886*g*.

Notice to the Attorney-General.

To the Honorable 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.

Dated at..... this..... day of..... A. D. (*Id.*).

TITLE II.

SPECIAL PROCEEDINGS.

Chapter first of title second, of book second of the second part of the code of civil procedure is repealed, except for the district of Gaspé, and replaced by the following for other portions of the province. (*R. S. Q.*, art. 5977).

CHAPTER I.

SUMMARY MATTERS.

887. The following are deemed to be summary matters and tried as such according to the rules set forth in this chapter:—1. 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 arising from the relations of lessee and lessor; —2. Actions founded on bills of exchange, notes to order or bearer, cheques in orders for payment, *bons* or acknowledgement of debt;—3. Claims of traders for the price and value of goods or articles sold in the ordinary cause of their commercial operations;

—4. Claims for salary and wages of clerks, employees, workmen, laborers or servants, payable by the day, week or month, as well as claims that may arise from the relations between the latter and their masters;—5. Claims for board and lodging by hotel and boarding house keepers; — 6. Claims arising from the purchase or sale of rigging and for fitting out and provisioning vessels; — 7. Claims arising from freighting, chartering and loans upon respondentia;—8. Those arising from engagements, or agreements for wages and hiring of crews; —9. Those arising from engagements of seamen for service in merchant shipping. (*Id.*).

888. The actions mentioned in the first paragraph of the preceding article are instituted either in the superior court or in the circuit court, according to the value or the amount of the rent or the amount of the damages alleged. The lessor may join with his action for rescission a demand for such rent as he is entitled to, with or without an attachment for rent, attachment in reception, if necessary and also an ordinary attachment in the hands of the lessee or of garnishees. (*Id.*)

889. The actions mentioned in the second, third, fourth and fifth paragraphs of article 887 are within the jurisdiction of the superior court, or of the circuit court, according to the amount of the demand. (*Id.*).

890. All the powers, which the superior court, or the circuit court can exercise in term in the matters mentioned in paragraph first of article 887, may also be exercised out of term and even during the vacation between the thirtieth of June and of the first of September. (*Id.*).

891. In the actions mentioned in paragraph first of article 887, the delay upon summons is only one intermediate day when the place of service is within a distance of five leagues, with the ordinary extension when the distance is greater. In the actions mentioned in the other paragraphs of the same article, the delays upon summons are five days when the place of service is within a distance of fifteen miles, with the ordinary extension when the distance is greater. (*Id.*).

892. The defendant is bound to appear on the day fixed by the writ; if he does not, default is recorded against him and the plaintiff may proceed accordingly.—If he appears, he is bound to plead within two days after the appearance, in default whereof the plaintiff may proceed *ex parte*.—The plaintiff is bound to file his answer within the delay of two days after the filing of the pleas, on pain of being foreclosed. (*Id.*).

893. Any other pleading

which may be necessary to complete the issues must be filed on the following juridical day, on pain of foreclosure. (*Id.*).

894. As soon as issue is joined, the case may be inscribed upon the roll for proof for any subsequent juridical day, and the parties proceed to proof on the day appointed and continue on from day to day until the proof is closed on both sides (*Id.*).

895. Either party's proof may be declared closed as soon as he ceases to produce evidence (*Id.*).

896. The evidence of witnesses must be taken down in writing in cases before the superior court or before the circuit court, appealable side, unless the parties agree to take it otherwise ; and in the latter case, notes of such evidence must be taken down, and filed in the record as forming part thereof, and such notes are considered to be evidence adduced in the case. (*Id.*).

897. When the proof is closed on both sides, the case may be inscribed on the roll for hearing on the merits on the next following juridical day without any notice being required, but if it is inscribed for any other day, notice must be given to the opposite party. (*Id.*).

897*a*. Any party may, either in his declaration or in any other pleading, or by a notice served upon the opposite party, declare his option that the case shall be inscribed at the same term for proof and for final hearing immediately after proof and in such case the cause cannot afterwards be inscribed otherwise.—The party who inscribes a case for proof and final hearing immediately after proof shall give five clear days' notice of such inscription to the adverse party. (52 Vict., cap. 52).

897*b*. The provisions of articles 89, 90, 91, 92 and 93 apply to all cases governed by the provisions of this chapter. (*Id.*).

897*c*. The clerk of the circuit court has, as respects such cases, the same powers as the prothonotary of the superior court.— All provisions inconsistent with this act are amended. (*Id.*).

898. 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 the first paragraph of article 887, is within the discretion of the court. (*R. S. Q*, art. 5977).

899. The delays respecting summons and pleadings also apply to all interventions, oppositions or other incidental proceedings of the same nature (*Id.*).

899*a*. The writs of summons, of attachment, of execution and of possession are addressed to the ordinary officers of the court, like all other writs of the same

mature and by them executed (*Id*).

CHAPTER II.

HYPOTHECARY RECOURSE AGAINST IMMOVEABLES OF WHICH THE OWNERS ARE UNKNOWN OR UNCERTAIN.

900. When the owner of an hypothecated immoveable 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.

901. Such petition must contain: 1. All allegations necessary to establish the debt and the hypothec; 2. A description of the immoveable; 3. The name of the occupier, if the immoveable is occupied, and if it is not, the name 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 immoveable be brought to sale.

902. The petition must be accompanied with an affidavit of the petitioner or of a competent person attesting the truth of the facts therein alleged.

903. 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 form No. 47 in the appendix to this code.

904. The notice must be inserted once a week during four consecutive weeks in one newspaper published in the English language and in one newspaper published in the French language, in the district in which the immoveable is situated, or if there be none, then in one of the nearest districts. It must moreover be read and posted up, 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 church, then the notice must be posted up in the registry office of the locality.

905. If, within the delay of two months from the last insertion in the newspapers, and the reading and posting up of such notice, 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 immoveable hypothecated, and orders that it be sold for the payment of the petitioner's claim.

906. Service of this judgment is not necessary.

907. Upon the judgment thus rendered, a writ issues, after the expiration of fifteen days, commanding the sheriff to seize and sell the immoveable hypothecated, observing the formalities required for ordinary seizures and sales of immoveables, saving the minutes of seizure, which are not required.

908. Any proprietor, or any holder entitled to exercise rights of ownership, may, at any time before the rendering of the jugdment ordering the sale, enter an appearance, specifying his title and the extent of his right of property; and at the expiration of a delay of two months, the petitioner is then bound to file in the prothonotary's office a demand against the party appearing, for the recognition of the hypothec, and to serve it upon such party; and the same proceedings are had upon such demand as upon ordinary suits for the recognition of hypothecs.

909. 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.

910. In the case of there being opposite claimants to the property, without any contestation of the petition, the court, may, reserving its decision upon the opposite 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.

911. 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, and proceed in the same suit, in the manner hereinabove provided, against those who are unknown or uncertain, modifying the notice which is to be published, so as to meet the circumstances.

CHAPTER II (A).

OF RE-ENTRY UPON ABANDONED LANDS.

911*a*. Whenever land has been sold, under a deed of sale, promise of sale or contract in the nature of a promise of sale followed by tradition and actual possession, and the seller is entitled, by reason of non-payment of

the price or any other cause, to demand the resolution of the sale, and the buyer has abandoned the land within the meaning of articles 1561*a* and 1561*b* of the Civil Code, and has left it so abandoned during two years or more, the seller may proceed in the manner hereinafter provided to recover the land so sold, and re-enter into possession of the same. (*R. S. Q.*, art. 5978).

911*b*. A notice must be served upon the buyer stating that, at a time and place therein mentioned, the seller will apply to a judge of the superior court to recover the land, or, if the buyer cannot be found within the district, he may be ordered to appear in the manner prescribed by article 68. The notice must likewise be served upon any person then in actual possession of the land. (*Id.*).

911*c*. The delay between the service of the notice and the day on which the application is to be made is that prescribed for ordinary cases by article 75, or that given by the said article 68, as the case may require. (*Id.*).

911*d*. After notice has been so given, and at the time and place mentioned in the notice, the seller may, by a petition setting forth the facts of the case and supported by affidavit, and production of the written evidence of sale, if in his hands, apply to a judge of the superior court to have the deed of sale declared void, and to be put in possession of the land. (*Id.*).

911*e*. No contestation of the petition is allowed except by counter-affidavits produced within three days after the presenting of the petition. (*Id.*).

911*f*. After the delay of three days the judge may in his discretion, either reject the petition or render a judgment declaring the deed of sale void, and ordering the cancelling of the registration thereof and authorizing the petitioner to take possession of the land. In the event of the judgment rejecting the petition, it does not prejudice the seller in any rights he may have of bringing an action in the ordinary manner. (*Id.*).

911*g*. No such judgment is rendered, if the buyer or any person for him or holding under him pays either to the seller or into the office of the prothonotary of the superior court the instalments of purchase money or interest due in virtue of the deed of sale, or fulfils the obligations entered into therein, by the failure to fulfil which the seller had become entitled to demand the dissolution of the sale. (*Id.*).

911*h*. If the seller is prevented by any person from taking possession of the land, in virtue of the judgment, he may demand and obtain from the prothonotary of the su-

perior court a writ of possession to eject such person and to place the seller in possession : and article 550 applies to such writ. (*Id.*).

911*i*. The buyer may obtain a review of the judgment, and articles 495 to 504, inclusively, apply to such review. (*Id.*).

911*j*. All documents forming part of the proceedings under this chapter form part of the records of the superior court. (*Id.*).

911*k*. Articles 2148, 2152, 2153 and 2154 of the Civil Code apply to the registration of any judgment rendered under this chapter, and to the cancelling of the registration of any deed declared void by such judgment, but article 2154 does not apply if under article 911*b* of this Code, the buyer has been notified in the manner prescribed by article 68. (*Id.*).

911*l*. The costs in proceedings taken under this chapter are the same as those allowed by the tariff of the circuit court in cases of over one hundred dollars, but under two hundred dollars; the fees of the advocates shall, if there is no contestation, be the same as those allowed by the said tariff, where the case is settled after inscription upon the roll for the adduction of evidence, but before the closing of the evidence, and, if there is a contestation the same as those allowed where the case is settled after the filing of a plea but before inscription on the roll for the adduction of evidence. (*Id.*).

CHAPTER III.

OF THE PARTITION OF TOWNSHIP LANDS HELD IN COMMON.

912. Any person seized as tenant in common of lands in townships originally granted, by letters-patent under the great seal of the Province of Lower Canada to the grantees therein named as tenants in common, may demand a partition thereof according to the ordinary form of law.—Such demand may be made by petition, without the formality of a writ of summons.

913. The petition must be presented to the superior court in the district in which the lands are situated.

914. Upon proof of the petitioner's right of property, the court may order that his co-tenants shall appear on a certain day in term, but not before the expiration of one year from the date of such order, to answer such demand in partition; that such order shall be posted up in some frequented place in the township in which such lands are situated, or if there is no such frequented place, then in some frequented place in the next adjoining township, six months at least before the day fixed for the appearance of the parties interested; and that such order be published in the Quebec Offi-

cial Gazette once a week during the said period of six months before the day fixed for the appearance. *R. S. Q.*, art, 5979).

915. The co-tenants thus notified to make their claims must do so by an ordinary intervention; and the grounds they may have to urge against the petition for partition must be pleaded, and all issues in the case must be joined in the same manner as upon ordinary suits in partition.

916. The judgment ordering the partition is binding not only upon the parties who have appeared but upon those who have made default.

917. With the consent of the parties in the case, the court may, at any time before final judgment, refer the matters in dispute as well as the partition itself to be decided and finally determined by three arbitrators, one of whom is named by the petitioner, another by the intervening co-tenants and the third by the court. The proceedings of the arbitrators must be had in such place in the township or parish in which the lands are situate, as they or any two of them may appoint; they may examine the witnesses, or the parties who may be sworn before a judge, the prothonotary, a commissioner of the superior court, or a justice of the peace, and the award of such arbitrators, or of any two of them, is final.

918. The court as in all other suits, awards costs according to its discretion.

CHAPTER IV.

OF COMPULSORY PARTITION AND LICITATION.

919. 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.

920. All the co-heirs or co-proprietors must be parties in the suit for a partition, without prejudice to the provisions of the preceeding chapter.

921. A special tutor must be named to each minor whose interests are opposed to those of any other minor.

922. The court before rendering judgment upon the suit for partition, orders that the immoveables 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, in the Civil Code.

923. If all the parties have attained full age they may agree upon one expert.

924. The same proceedings are had upon the report of such expert as upon any other report of experts.

925. 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.

926. 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.

927. When immoveables cannot be advantageously divided, or when there are not as many lots of lands as copartitionners, the court may order that such immoveables be put up to public auction and sold by way of licitation.

928. Rules concerning voluntary licitation are contained in the third part of this code. The provisions of this chapter apply to licitations judicially ordered upon actions for partition.

929. When the court has ordered a licitation, the plaintiff must cause an advertisement to be published three times in the space of two months in the Quebec Official Gazette, in the French and English languages, stating that the immoveables 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 two months from the first insertion of such notice, subject to the condition mentioned in the list of charges, and giving notice that all oppositions to the sale must be filed at least fifteen 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 (*R. S. Q.*, art. 5980).

930. The notice must also be read and published 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, and if there is no church or if the immoveables are not situated within the limits of a parish, then at the most frequented place in the locality, and a copy of such notice must be posted up at the place where such publication is made.

931. 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.

932. Oppositions to secure charges, to withdraw, or to annul, in respect of immoveables which are to be sold by licitation, cannot be received after the fifteenth 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 immoveables.

933. 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 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 three weeks before the day thus fixed. (*R. S. Q.*, art. 5981).

934. Bids may be made in writing at the prothonotary's office, in the same manner as in cases of sale of immoveables by the sheriff, and on the day appointed bids are received at the prothonotary's office, but the adjudication is completed before the court, and minutes are drawn up of such bids and adjudication. —Strangers are in all cases admitted to bid.

935. The adjudication is made in accordance with the conditions contained in the list of charges, which must have been approved by the court or judge, after hearing the parties, and must have been filed in the prothonotary's office at least thirty 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 are to 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 689 are applicable.

936. 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.

937. 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, 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 immoveables sold in execution.

938. All oppositions or claims for payment out of the proceeds of the licitation must be filed in the prothonotary's office 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.

939. The distribution of the purchase money is subject to the same formalities as in cases of confirmation of title, and of execution against immoveables, and the party prosecuting the licitation is bound to obtain the certificate of registered hypothecs which is necessary for that purpose.

940. If any immoveable 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.

CHAPTER V.

OF ACTIONS OF BOUNDARY, OR TO VERIFY OR RECTIFY ANCIENT BOUNDARIES.

941. 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.

942. 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 pretentions of the parties, and with making such other operations as it may deem necessary.

943. The surveyor thus named is bound, under his oath of office, to proceed in the same manner as experts.

944. If the parties desire it, more than one surveyor may be appointed.

945. 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 the provisions contained in chapter 77 of the consolidated statutes of Canada, and must draw up a statement of his operations, and return the original of such statement to the court.

CHAPTER VI.

OF POSSESSORY ACTIONS.

946. The possessor of any immoveable or real right, other than a farmer on shares, or a holder by sufferance, who is disturbed in his possession, may bring an action on disturbance against the person who prevents his enjoyment,

in order to put an end to the disturbance and to be maintained in his possession. — The action for repossession may be brought by any person who has had possession of an immoveable or real right for a year and a day, against any person who has forcibly dispossessed him.

947. Possessory actions must be brought within a year from the disturbance.

948. Saving the provisions of article 1110, actions on disturbance, or for repossession, 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 and the liquidation of the damages, the other party may bring his petitory action, on giving security that he will satisfy such condemnation.

CHAPTER VII.

OF DISCHARGE FROM HYPOTHECS, OR CONFIRMATION OF TITLE.

949. Any person who has acquired immoveable property by purchase, exchange, or other 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.

950. Such person must lodge the title which he seeks to have confirmed in the office of the prothonotary of the superior court, in the district where the immoveable is situated or in which the confirmation of title must be obtained, and obtain from the prothonotary a notice mentioning that the deed has been so lodged, containing a designation of the deed and of the parties thereto, a description of the immoveable, the date at which the application for confirmation will be presented to the court, an indication of the persons who possessed the immoveables during the three years next before such notice, and calling upon all creditors who claim to have any privilege or hypothec upon the immoveable to file their oppositions at least eight days before the day fixed for presenting the application. — If the deed comprises immoveables situated in different districts, an application for confirmation of title should be made in each district, for such immoveables as are situated therein. — When the immoveable is situated partly in one district and partly in another, the proceedings may be had in either district, and avail for the whole of the immoveable.

951. The notice must be

in French and in English, and be inserted three times in the course of two months in the Quebec Official Gazette. (*R. S. Q.*, art. 5982).

952. The notice must be publicly and audibly read, on the third or fourth Sunday before the day on which the application is to be presented, at the door of the church of the parish or place where the immoveable is situated, or, if there is no church, at the most frequented place in the locality, and must be posted up at the place where such publication is made. (*Id.*, art. 5983).

953. In the case of immoveables 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.

954. Upon the day mentioned in the notice, the applicant is bound to present his application for confirmation to the court, together with certificates of the publication and posting up required, and copies of the Quebec Official Gazette containing the advertisement. (*R. S. Q.*, art. 5984).

955. The applicant must, moreover, file with his application a certificate from the registrar or registrars within whose divisions the immoveable is or was situated, mentioning all hypothecs not apparently extinguished, registered previously to the registration of the deed of which ratification is applied for. — The certificate must mention all hypothecs registered against the immoveable itself, whenever hypothecs shall be so registered, when the plan and book of reference will be in force in the registration division; all hypothecs registered against any person who was owner of the land at any time during the ten years immediately preceding the date of the registration of the deed sought to be confirmed; and all previous hypothecs the registration of which has been renewed during that period.—Such certificate must also state the date of the deed registered as creating or giving rise to such hypothec, the date of its registration, the names, occupation and residence of the creditor, the name of the notary or notaries before whom it was passed, if it is notarial, and must mention any partial discharge registered, and the sum which appears to be due, in principal and interest, and, in the case of renewed registration, such certificate must also mention the registration which is thus renewed, and the registrar is not bound to extend his

searches beyond the date of a sheriff's title, a sale in bankruptcy, a judgment of confirmation, or any other deed of a judicial sale having the effect of a sheriff's sale, which has been registered, except for such hypothecs as are not discharged by such deed.—If there are no hypothecs registered, or if, by the registry books, all the hypothecs appear to have been discharged, the registrar must state the fact accordingly in his certificate.

956. The provisions of articles 701, 702 and 703 apply also to the certificate mentioned in the preceding article.

957. 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 eighth day next preceding the day fixed for presenting the application.

958. No opposition is, however, necessary for the preservation of the principal of rents created in place of seigniorial rights.—The provision of articles 719 and 721 apply also to proceedings to obtain confirmation of title.

959. During the two months prescribed for the publications of the notice of an application for confirmation of title, any creditor of the vendor or assignor or of his authors, may appear at the prothonotary's office 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, 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 court or judge, reserving the subsequent completion of the precise amount. (*R. S. Q.*, art. 5985).

960. 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 over and above the costs and lawful expenses.

961. The applicant may, however, retain the immoveables at the amount of the highest bid legally offered.

962. If no such outbidding takes place within the delay above mentioned, the value of the immoveable remains definitively fixed at the price and sum mentioned in the

title deed, saving the provisions hereinafter made.

963. 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 purchased 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 might result to any party interested, in the event of the non-payment of such sum as the court may order such applicant to pay into the hands of the prothonotary; and upon such security being given, the case is dealt with as if the amount so retained had been deposited.—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 deposited is sufficient to pay all the charges which appear, then judgment of confirmation is pronounced purely and simply. (*R. S. Q.*, art. 5986).

964. But if the sum deposited is not sufficient to pay all the charges and hypothecs which appear, and if no price is mentioned in the deed, the court or a 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.

965. 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.

966. 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.

967. 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 958.

968. If the applicant is willing, and files a written declaration to that effect, judgment may be rendered subject to the hypothecs

only as are not mentioned in such judgment.

969. The price deposited is distributed under an order of the court, like monies levied upon the seizure and sale of immoveables under execution.

970. The prothonotary before delivering to any person whatever a copy of any judgment of confirmation of title, is bound to 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.

971. The word "hypothec" in this chapter, includes all privileges affecting real estate.

CHAPTER VIII.

OF SEPARATION BETWEEN CONSORTS.

SECTION I.

OF SEPARATION OF PROPERTY.

972. No suit for separation of property can be brought by a married woman without the previous autorisation of a judge, granted upon petition to that effect or upon conclusions for that purpose contained in the declaration in such suit.

973. Suits for separation of property must be brought only in the cases and within the jurisdiction mentioned in article 1311 of the Civil Code, and in article 35 of this code.

974. The formalities required for 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. (*R. S. Q.*, art. 5587).

975. 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.

976. Separation of property thus sued for cannot be granted upon the confession or the admissions of the defendant; the allegations of the declaration must be established by some other legal proof.

977. The judgment pro-

nouncing separation of property may at the same time determine the reprises of the plaintiff, or order that they shall be determined by a practitioner or by experts, if there be occasion for it.

978. The judgment of separation must be executed and published in accordance with the provisions contained in articles 1312 and 1313 in the Civil Code.

979. The wife who sues for separation may accept or renounce the community, according to circumstances. If the husband fails to make an inventory, she may, upon being authorized, have one made, if she has not renounced.—If she accepts, the partition is effected in the manner provided in the Civil Code, in the title relating to marriage convenants.

980. The wife's renunciation of the community must be registered in the registry office of the division in which the husband was domiciled at the time that the suit was brought.

981. The judgment of separation may be executed voluntarily or by legal means, as provided in article 1312 of the Civil Code, but without prejudice to the rights of third parties. — No married woman, separated as to property, can carry on trade until she has delivered to the prothonotary of the district and the registrar of the county in which she intends carrying on trade, a declaration in writing stating her intention, her names and surname, and those of her husband, and the style under which she proposes carrying on such business. This declaration is entered and transcribed in the same registers as the declaration concerning partnerships mentioned in chapter 65 of the Consolidated Statutes for Lower Canada.—All married women, separate as to property, and carrying on trade at the time of the coming into force of this code are bound to comply with the above mentioned formalities within six months from such time.—Any married woman failing to comply with the requirements of this article is liable to a penalty of two hundred dollars which may be recovered, before any court of competent civil jurisdiction, by any person suing as well in his own name as in behalf of the crown, and one half of such penalty belongs to the prosecutor and the other half to the crown, unless the suit be brought in the name of the crown only, in which case it is entitled to the whole of the penalty.

982. When the reprises of the wife consist of moveable property, the husband may oblige her to invest the proceeds thereof, or a portion of the same, in the purchase of immoveables.

983. If the husband gives up immoveables to his wife in

payment of her reprises, she must apply for and obtain a judgment of confirmation of the deed by which he does so, according to the formalities prescribed in the preceding chapter.

984. If the amount at which the rights of the wife have been determined is not voluntarily paid, execution may be enforced as in ordinary cases. Nevertheless, the husband may compel the wife to receive immoveables in payment, at a valuation by experts, provided such immoveables are available and do not prejudice her interests.

SECTION II.

OF SEPARATION FROM BED AND BOARD.

985. Besides the provisions contained in the Civil Code on the subject of separation from bed and board, those of the present section also apply.

986. 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.

987. If the wife thinks proper to demand an attachment of the moveable property of the community, 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.

988. The wife may also join with her demand for separation an attachment in revendication of such moveables as belong to her.

989. The trial of the case, the judgment, its execution, and its publication are subject to the provisions contained in the preceding section.

CHAPTER IX.

OF OPPOSITIONS TO MARRIAGE.

990. Every opposition to a marriage must be accompanied with a notice indicating the day and hour at which the opposition will be presented to the superior court, or to a judge of such court.

991. 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 five leagues.

992. The proceedings upon the opposition are summary, and conducted in the same manner as those in suits between lessors and lessees.

993. 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.

994. If the opposant fails to proceed in the manner prescribed the opposition is declared abandoned.

995. The court or judge, before rendering judgment upon the opposition may, if there be cause for it, summon the parents, or, in default of parents, the friends of the intending 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.

996. An appeal lies to the court of queen's bench from judgment rendered on such oppositions, the same formalities being observed as in appeals from the circuit court and the proceedings on such appeal take precedence.

CHAPTER X.

PROCEEDINGS AFFECTING CORPORATIONS OR PUBLIC OFFICES.

SECTION I.

OF CORPORATIONS ILLEGALLY FORMED, OR VIOLATING OR EXCEEDING THEIR POWERS.

997. 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: — It is the duty of the attorney general to prosecute, in Her Majesty's name, such violations of the law whenever he has good reason to believe that such facts can be established by proof in every case of public general interest; but in any other case he is not bound to do so unless sufficient security is given to indemnify the government against all costs to be incurred upon such proceeding;

and in such case the special information must mention the names of the person who has solicited the attorney general to take such legal proceedings and of the person who has become security for costs. (*R. S. Q.*, art. 5988).

998. The summons for that purpose must be preceded by the presenting to the superior court, or to a judge, of a special information containing conclusions adapted to the nature of the contravention, and supported by an affidavit to the satisfaction of the court or judge, and the writ of summons cannot issue upon such information without the authorization of the court or judge. — This writ, as well as the writs of *quo warranto*, *mandamus*, and prohibition, must be in the same form as ordinary writs of summons. (*Id.*, 5989).

999. The writ of summons commands the persons acting illegally as a corporation, or the corporation complained of, to appear on a day fixed by the court or judge.—It is served, in the first case, upon some one of the persons usurping corporate rights, or place of business of the association, speaking to a reasonable person ; and, in the second case, according to the provisions contained in articles 61, 62, 63, and 78.

1000. The delay upon summons is three days, with the usual extension when the distance exceeds five leagues, as prescribed by article 75.

1001. The defendants are bound to appear on the day fixed, and if they fail to do so the prosecutor proceeds with his case by default.

1002. If the defendants appear, they must, within four days, plead specialy to the information ; and the prosecutor is bound to answer, within three days.

1003. Within three days from the filing of the answer, the prosecutor must proceed to prove the allegations of the information, in the same manner as proof is made in ordinary cases ; and after the closing of his proof and within a further delay of two days, the defendants are bound to adduce their proof.

1004. As soon as the proof of the defendants is closed, the prosecutor may be allowed to produce evidence in rebuttal, if there is occasion for it ; if he does not, either of the parties may inscribe the cause for hearing on the merits, giving the opposite party notice of at least one day before the day fixed.

1005. The court or judge may extend the delays whenever it is necessary for the ends of justice.

1006. Notwithstanding the provisions contained in article 1002, the defendants may set up against the information such preliminary exceptions or exceptions to the form as they deem advisable, and the plaintiff may demur to the pleas set up in defence.

1007. If the judgment de-

clares the association to have been illegally formed, the persons composing it are personally bound to pay the costs; and if it be rendered against a corporation, public body or board, the costs may be levied either upon the property of such corporation or upon the private property of the directors or other officers thereof.

1008. 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, and a curator is named in due form to administer its property and liquidate its affairs.

1009. The curator, after having given the security required by the court or judge, becomes seized of the property of the dissolved corporation, an inventory of which he must cause to be made in due form of law, in the presence of one or more of the persons who were members of such corporation. He must afterwards dispose of the moveable property to the best advantage.

1010. He is bound to give notice of his appointment by an advertisement to be inserted at least twice in two newspapers designated by the court or judge.

1011. The curator must cause the proceeds realized to be distributed among the creditors of the corporation, by the superior court, in the district in which its principal place of business was situated, after giving notice of the day upon which he will make application for that purpose. —Such notice must be published at least three times in two public newspapers, named by the court, and the first publication must be made two months at least before the day fixed for such application.

1012. If there are any debts remaining due by such corporation, its immoveable property can only be sold upon a suit brought against the curator in the ordinary from.

1013. If there are no debts due by such corporation, or if such debts are not known, then the curator must proceed to the sale of the immoveables to the highest bidder, after giving notice of such sale, in the same manner as the sheriff does in executions against the immoveables of a debtor.

1014. A sale thus effected by the curator after observing the requisite formalities, has all the effects of a sheriff's sale.

1015. The curator is then bound to account, in the same manner as curator to vacant estates.

SECTION II.

USURPATION OF PUBLIC OR CORPORATE OFFICE.

1016. 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 Lower Canada; — 2. Any office in any corporation, or other public body or board; —Whether such office exists under the common law, or was created in virtue of any statute or ordinance.

1017. Such complaint is brought before the superior court, or before a judge of the said court, but the writ of summons cannot issue without leave of the court or judge, obtained in the manner mentioned in article 998; and the same delays and formalities are observed in the proceedings as in the preceding section.

1018. The complainant, in addition to the allegations concerning the usurpation and illegal detention of the office, may, in his petition, declare the name of the person who has a right to such office or franchise, and allege such facts as are necessary to show such right, and the court may in such case adjudicate upon the claims of both parties.

1019. If the complaint is well founded, the judgment orders the defendant to be ousted and excluded from the office, franchise or privilege, and condemns him to pay costs to the complainant; the court or 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 receiver-general of the province.

1020. If the complaint is dismissed, the complainant must be condemned to pay all costs.

1021. Any person whom the judgment declares to be entitled to the office, or the franchise, may, after taking the oath of office, and giving such security as may be required by law, take upon himself the exercise of such office or franchise, and may demand of the defendant all keys, books, papers and insignia, in the possession or custody of such defendant and belonging to such office or franchise, 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 adjuged to be entitled thereto, without prejudice to any criminal proceedings to which such defendant may be liable.

SECTION III.

OF MANDAMUS.

1022. In the following cases:—1. Whenever any corporation 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 mem-

bers as may have been removed without lawful cause:—2. Whenever any person holding any office in any corporation, public body, or court of inferior jurisdiction, omits, neglects or refuses to perform any duty belonging to such office, or any act which by law he is bound to perform;—3. 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;—4. In all cases where a writ of mandamus would lie in England:—Any person interested may apply to the superior court or to a judge in vacation and obtain a writ, commanding the defendant to perform the act or duty required, or to show cause to the contrary on a day fixed.

1023. The application is made by a petition, supported with an affidavit affirming that the facts set forth in said petition are true, and presented to the court or judge, who may thereupon order a writ *of mandamus* to issue. Such writ is served in the same manner as any other writ of summons. (*R.S.Q.*, art. 5990).

1024. The proceedings subsequent to the service are had in accordance with the provisions contained in the first section of this chapter.

1025. If the petition is well founded, the court or judge may order the issuing of a peremptory writ, commanding the defendant to do the thing demanded of him; and if he fails to comply he may be held by coercive imprisonment to do it, unless the defendant is a corporation, in which case it may be condemned to pay a fine not exceeding two thousand dollars, which is levied by execution in the ordinary manner against its moveable and immoveable property.

1026. Any person to whom, or the person representing any corporation to whom, the peremptory writ is directed, is bound to return such writ on the day specified, together with a certificate thereon of its execution.

1027. 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 court or judge, to proceed to such election, at the place and time fixed, and to do every act to be done in order to such election, or show cause to the contrary.

1028. The person to whom such writ or peremptory writ is addressed cannot, however, proceed to such election without giving public notice thereof in writing, in the French and in the English

languages; and such notice must, during at least ten days previous to the day fixed for such election, be posted up at the door of the church of the locality in which the principal office or place of business of such corporation is, and if there is no church, then in one of the most public places in such locality.

1029. Nevertheless, every such election and every act done in order 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.

1030. The peremptory writ is served in the same manner as writs in error or in appeal.

SECTION IV.

Of Prohibitions.

1031. Writs of prohibition are addressed to courts of inferior jurisdiction whenever they exceed their jurisdiction. — They are applied for, obtained and executed in the same manner as writs of mandamus, and with the same formalities.

SECTION V.

General Provisions.

1032. In any case wherein the rights of a municipal corporation are involved, no elector entitled to vote is incompetent, as such, to give evidence.

1033. An appeal from any final judgment rendered under the provisions contained in this chapter lies to the court of queen's bench, except in matters relating to municipal corporations and offices; provided the writ of appeal be issued within forty days from the rendering of the judgment appealed from.

SECTION V (A.)

OF INJUNCTIONS.

1033a. The superior court, in term, or any judge thereof, in vacation or during term, may grant a writ of injunction, ordering the suspension of any act, proceeding, operation, work of construction or demolition, according to the circumstances, in any of the cases following: —1. Whenever any corporation, unlawfully and without having fulfilled the formalities set forth and prescribed by law or by its act of incorporation, takes possession, or on its own behalf causes possession to be taken, of any land the property of other persons, or makes or causes to be made on any land the property of other persons, excavations or works of demolition or construction; or whenever such corporation acts or takes any proceeding, beyond its powers, or without having ful-

filled the formalities prescribed by law, or by its act of incorporation;—2. Whenever any person, who has not acquired the possession of one year, and who has no valid title to the property, causes work to be carried on, upon any land whereof another is proprietor through a valid title, and of which he is in legal possession; 3. Whenever any person does anything in breach of any written contract or written agreement; 4. To prevent the transfer of shares in any corporation or company, when such shares belong to minors, interdicted persons, married women not separated as to property or unauthorized, or persons legally incapacitated, or when the ownership of such share is in dispute, until the superior court or a judge thereof has adjudicated on the right of property in such shares or stock, or has granted permission for the transfer of such shares; 5. To prevent one or more members of a commercial partnership, either during the existence of the partnership or after its dissolution, from doing acts inconsistent with the terms of the partnership agreement, or with the duties of a partner. This provision applies to persons being or holding themselves out as being representatives of a deceased partner; 6. To prevent any person or corporation from trespassing on the property of the Crown, or from destroying, cutting, or removing any property belonging to the Crown or in which the Crown has any right or interest. (*R. S. Q.*, art. 5991).

1033*b*. The application for the writ of injunction is made by petition, supported by one or more affidavits setting forth the facts of the case, and accompanied by such documentary evidence as may be necessary to establish the petitioner's right to the satisfaction of the court or of the judge, and the proceedings thereon are had in conformity with articles 998 to 1006, inclusively, and with article 1023. (*Id.*).

1033*c*. Except in cases of urgent necessity, the court or judge may, in their discretion, order that notice of the presentation of such petition be served upon the adverse party, in the time and manner the said court or judge sees fit to order. (*Id.*).

1033*d*. Nevertheless the writ of injunction cannot issue, unless the person applying therefor first gives good and sufficient security, in the manner prescribed by and to the satisfaction of the court or judge in the sum of six hundred dollars, or any other higher sum fixed by the said court or judge, for the costs and damages which the defendant, or the person against whom the writ of injunction is directed, may suffer by reason of the issue

thereof. Upon the return of the writ, the court or judge may order that such security be increased to such amount as it may be deemed expedient. (*Id.*).

1033*e*. The writ of injunction enjoins the adverse party to appear before the court or judge to answer the petition, and to suspend all acts, proceedings, operations or works respecting the matters in dispute under pain of all legal penalties. (*Id.*).

1033*f*. The writ of injunction is served in the same manner as any other writ of summons; but, if found necessary, the court or judge may prescribe any other mode of service (*Id.*).

1033*g*. Proceedings commenced before the court in term may be continued before a judge in vacation or even during term, and, in like manner, proceedings commenced before a judge in vacation may be continued before the court in term or before a judge in chambers, even during term. — In any proceeding commencing under the section, any judge of the superior court has at every stage of such proceeding, the same power to act therein as the judge before whom such proceeding was commenced. (*Id.*).

1033*h*. An injunction may, in any of the cases mentioned in article 1033*a*, be granted incidentally upon petition, without the formality of a writ, in a cause pending before the superior court, either by the court or by a judge in chambers, even during term, upon security being given as hereinbefore provided for; and the procedure is to be thereafter conducted to judgment on the incidental proceeding in the same manner as on a writ of injunction. (*Id.*).

1033*i*. In any proceeding instituted under this section, any additional injunction that may be deemed necessary by the court or judge may, upon petition, after due notice, be granted by an interlocutory order, for such length of time and upon such conditions, as to security or otherwise, as the court or judge may deem reasonable. — Such additional injunction, as well as the injunctions contained in the original writ may, from time to time, be suspended for such period and upon such conditions, as to security and otherwise, as the court or judge may deem right. (*Id.*).

1033*j*. Any judgment, rendered by a judge out of court, is subject to review and appeal in the same manner and with the same effect as if, rendered by the court in term. (*Id.*).

1033*k*. Any final judgment taken into review or appeal, and any interlocutory or provisional order from which an appeal has been allowed by the court of queen's bench, shall be executed and in force, prov-

isionally, notwithstanding and without prejudice to such appeal or review ; but the superior court, in review, or the court of appeals, as the case may be, may, in their discretion, provisionally suspend the injunction. (*Id.*).

1033*l* The judgment, if in favor of the petitioner, pronounces the injunctions required, and adjudicates as to costs ; it must be served upon the adverse party. (*Id.*).

1033*m*. If a party, against whom the injunction is directed, violates or refuses to obey the injunctions laid upon him, either by the writ or by any interlocutory or final judgment, the court or judge may cause to be destroyed whatever may have been done in contravention to the injunction, if it be practicable ; —The court or judge may also punish the party contravening, by an imprisonment not exceeding thirty days, but which may be repeatedly inflicted until the party obeys the order of the court or judge. — 2. If the party violating the injunction is a company or corporation, such company or corporation may be condemned to pay a fine not exceeding two thousand dollars, but which may be repeatedly inflicted until it obeys the order of the court or judge.—3. The party aggrieved by the disobedience of such person, company or corporation may also recover from such person, company or corporation such damages as he may show that he has sustained. (*Id.*).

1033*n*. All fines imposed under and in virtue of the provisions of this section are the property of the Crown and form part of the consolidated revenue fund of the Province. (*Id.*).

CHAPTER XI.

OF THE ANNULLING OF LETTERS-PATENT.

1034. Any letters-patent granted by the crown may be declared null and be repealed by the superior court : — 1. Where such letters were obtained by means of some fraudulent suggestion, or where 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.

1035. All demands for annulling letters-patent may be made by suits in the ordinary form, or by *scire facias*, upon information brought by Her Majesty's Attorney-General, or solicitor-general, or

any other officer duly authorized for that purpose.

1036. The information is served upon the person who holds or relies upon such letters-patent, and is heard, tried and determined in the same manner as ordinary suits.

1037. An appeal lies from the final judgment rendered upon such information, provided the writ of appeal issues within forty days from the rendering of the judgment.

1038, 1039. These two articles are repealed. (*R. S. Q.*, art. 5992).

CHAPTER XII.

OF HABEAS CORPUS AD SUBJICIENDUM IN CIVIL MATTERS.

1040. Any person who is confined or restrained of his liberty, otherwise than from 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 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.

1041. The application must be supported by an affidavit, shewing that there are probable and reasonable grounds for the application.

1042. The writ issues in the name of the sovereign, is sealed with the seal of the court to which the judge 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 the term be so near that the writ cannot properly be executed during the term it may be made returnable during the following vacation.

1043. The writ is served personally, or at the place where the person is confined or restrained, speaking to a domestic servant or an agent of the person to whom it is addressed, and leaving the writ itself; and the return of service is made upon a certified copy.

1044. In default of compliance with the writ of *habeas corpus*, the person upon whom it was served 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 judge or before the court, for his imprisonment.

1045. Upon the return of the writ of *habeas corpus*, or of the rule mentioned in ar-

ticle 1044, the judge proceeds as soon as he conveniently can, to examine, by means of depositions under oath or affirmation, into the truth of the facts alleged, and decides accordingly.

1046. 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 recognizance with one or more sureties or, in the case of infancy or coverture upon security being given by recognizance, in a reasonable sum, for his appearance 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.

1047. 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.

1048. 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 judges, as such court or judge may think proper.

1049. The same proceedings are had in term in the court of queen's bench and in the superior court, respectively, for controverting the truth of the return.

1050. The court or the judge may pronounce upon all costs incurred in the issuing, contestation or execution of the writ of *habeas corpus*.

1051. 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 the place where appeals are brought from the district in which the application is made.

1052. The provisions of this chapter cannot be extended to the discharge of any person imprisoned for debt, or under any action or process in civil matters.

BOOK III.

OF THE CIRCUIT COURT.

TITLE I.

POWERS AND JURISDICTION OF THE COURT.

1053. The circuit court has ultimate jurisdiction to the exclusion of the superior court. — 1. In all suits wherein the amount or the value of the thing demanded is less than one hundred dollars, saving the exceptions contained in the following article, and such cases as fall exclusively within the jurisdiction of the court of vice-admiralty and suits in matters of petition of right ; — 2. In all suits for school taxes or school fees, and all suits concerning assessments for the building or repairing of churches, parsonages, and church-yards, whatever may be the amount of such suits. (*R. S. Q.*, art 5993).

1054. Except at the chef-lieu of each district, the circuit court has jurisdiction to the exclusion of the superior court, but subject to appeal :—1. In all suits in which the sum or the 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 title to lands or tenements, to annual rents, or such like matters whereby rights in future may be bound, even though the amount claimed be under one hundred dollars. (*R. S. Q.*, art. 5994).

1055. The circuit court may take cognizance, upon evocation of any suit brought before the commissionners' court for the summary trial of small causes, in the cases secondly enumerated in the preceding article.

1056. The circuit court has also concurrent jurisdiction with the superior court, by means of *certiorari*, over judgments rendered, within the limits of the district or circuit for which it is held, by the commissionners' court mentioned in the preceding article, or by justices of the peace, wherever a *certiorari* lies.

1057. It has also an appellate jurisdiction over judgments rendered by a commissioners' court or by justices

of the peace, for taxes, assessments or penalties, imposed under the Municipal Code. (*R. S. Q.*, art. 5995).

1058. Whenever any suit or action relates to fees of office, rights, rents, revenues or sums of money payable to the crown; titles to lands or tenements; annual rents or other matters by which rights in future may be affected, 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 court tries the cause and renders judgment therein, and 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 immoveable, in such a manner as might impair or injuriously affect the plaintiff's rights in future, the latter may evoke the suit, and proceedings are then had as in cases of evocation by the defendant.

1059. The rules contained in the first part of this code, and in the first book of the second part part of this code, namely:—in the preliminary provisions; — in the third, fourth, fifth, sixth, seventh, and eighth chapters of title first; — in the first, second and third chapters of title second;—in the first chapter, and in sections 1, 3, 4, 6, 7, and §§ 1, 12 of section 5, of the second chapter of title third; — and in the second book, in the second, third, fourth and fifth chapters of title first, — apply in like manner to the circuit court, except as regards trial by jury and such rules as are inconsistent with the provisions of the present book and such as can only apply to the superior court.—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, and 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 book, 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. — The clerk of the circuit court has the power of administering oaths whenever they are required by law or by rules of practice.

1060. 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.

1061. The circuit court for any district is held at the same place as the superior court, and its jurisdiction extends over the whole district, and is designated by the name of such district.— 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.

1062. It may also, upon proclamation of the Lieutenant Governor, be held in any other county than that in which the superior court for the district is held, excepting the counties of Hochelaga, Jacques-Cartier, Laval, St. Maurice and Quebec; or in more than one place in the counties of Beauce, Bonaventure, Charlevoix, Chicoutimi, Gaspé, Missisquoi, Ottawa, Pontiac, Richmond, Rimouski, Saguenay and Stanstead. The court is then designated as "the circuit court in and for the county of " (*naming the county*) and if there are more than one n the same county, the words at " (*naming the place of sitting*) are added to such designation. Upon proclamation of the Lieutenant-Governor any such circuit court may be abolished. (*R. S. Q.*, art. 5996).

1063. 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.

1064. When it is necessary for the despatch of business, the circuit court at any place must be held by two or more judges of the superior court, residing in the same district, simultaneously but in separate apartments.

TITLE II.

ORDINARY PROCEDURE.

CHAPTER I.

OF SUMMONS.

1065. The provisions concerning summonses for the superior court apply equally to the circuit court, saving the provisions hereinafter contained.

1066. The delay upon summons is five intermediate days, when the distance from the defendant's domicile to the place where the court is held does not exceed five leagues, with the ordinary extension when the distance is greater.

1067. When the writ of summons is to be served in another district, it may be addressed to the sheriff or to a bailiff of such other district.—It may also be so addressed when it is to be served in more than one district.—In the latter case, as many originals of the writ of summons must be issued as there are districts in which it requires to be served.

1068. In the case mentioned in article 1067, the writ of summons issuing from the circuit court of a district may be served by any bailiff of such district; but he is entitled to no more costs than if the service had been effected by the nearest bailiff to the residence of the defendant thus summoned.—Any writ of summons, subpœna or writ of execution issued out of any circuit court in any county, may be served or executed by any bailiff residing in the district but no more costs and emoluments for serving or executing such writ are allowed or taxed against any defendant, than would have been allowed had such writ been served by the bailiff residing nearest to the residence of the person summoned or against whom the execution is taken; provided, nevertheless, in any case in which it is established, to the satisfaction of the clerk of the court, or the judge having jurisdiction in the district in which such writ issues, 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 to be taxed as from the office of the sheriff or from the residence of such bailiff, and for the distance actually travelled by him. (*R. S. Q.*, art. 5937).

CHAPTER II.

PROVISIONS CONCERNING APPEALABLE CASES.

SECTION I.

PROCEEDINGS BEFORE CONTESTATION, OR IN UNCONTESTED SUITS.

1069. The provisions respecting appearance and default, election of domicile, judgments by default or upon confession, filing of exhibits and proofs *ex parte*, in the superior court, apply also to appealable cases in the circuit court.

SECTION II.

OF CONTESTATION.

1070. The contestation and pleadings in appealable cases in the circuit court are subject to the provisions concerning the same matters in the superior court, except as regards the delays, which are regulated as follows:—The delay for filing preliminary exceptions is four days, and that for answering the same is five days.—The delay for filing any other pleading necessary to complete the issues is five days.—The delay for pleading to the merits is five days from the appearance of the defendant. If no plea be filed within the three days after the service of a demand of plea, the party in default is foreclosed by an act of the clerk of the court without any other proceeding. There is a like delay of five days, on pain of foreclosure, between each subsequent pleading allowed by law, without any demand of plea being necessary.

SECTION III.

OF PROOF AND HEARING.

1071. Proofs may be made on every day during a term of the circuit court.

1072. Contested cases are inscribed at the same time for proof and for hearing on the merits.

1073. Notice of such inscription must be given to the opposite party, with one intermediate day's delay if notice is given in term, and four intermediate days if it is given in vacation.

1074. The evidence is given orally, without notes thereof being taken, unless, before the commencement of the proof, the parties, or one of them, files a declaration in writing, requesting that notes of the evidence be taken down in writing, in which cases it is taken in the manner provided for proofs before the judge in the superior court. —After the witnesses have been examined, the parties are heard upon the merits, unless the court deems it advisable to adjourn the case on account of the absence of some material witness or evidence.

1075. In the same manner and by observing the rules prescribed for the superior court, the proof may, with the consent of all the parties, take place on any juridical day in or out of term, and may be written down at length.—The clerk of the circuit court may receive the depositions and swear the witnesses in the absence of the judge ; or they may be taken before an examiner.—In default cases, and with the consent of the parties or their advocates in contested cases, depositions of witnesses may be taken at any stage of the proceedings on any juridical day in or out of term and at any place whatever and be sworn thereafter before a commissioner of the superior court. (*R. S. Q.*, art. 5998).

1076. No person residing at a distance of more than fifteen leagues from the place where the proof is to be taken, or beyond the limits of the circuit, is bound to attend as a witness, unless he is summoned in conformity with the provisions contained in articles 246 and 247.

1077. Whenever a demurrer has been filed, the case may, nevertheless, be inscribed for proof and hearing, reserving the argument upon the law issues until after the proof.

1078. The court 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 article 241.

SECTION IV.

OF JUDGMENTS.

1079. The provisions which relate to judgments and to costs in the superior court apply also to judgments rendered in the circuit court.

1080. When a judge who has heard a cause is incapable on account of illness, absence or other cause, of rendering judgment in person, he may transmit the draft of the judgment, certified by him, to the clerk with instructions to record such judgment and to read it, or to give communication of it on demand to the parties or to their advocates on the day previously fixed for that purpose by the court which shall have taken the cause *en délibéré*.—The clerk, on receiving the draft of the 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. (*R.S.Q.*, art. 5999).

SECTION V.

OF THE EXECUTION OF JUDGMENTS.

1081. Writs of execution

for the payment of a sum of money issue against the moveable property of the debtor situated either in the district in which the judgment was rendered or in any other district. — They are addressed to the sheriff or to a bailiff of the district, in which such writ issues, and may be by him executed in such district or in any other district, or they are addressed to the sheriff or to the bailiff of the district in which such writs are to be executed. (*R. S. Q.*, art. 6000).

1082. If it appears by the return of such writ that the debtor has not, in such district, sufficient moveables and effects to satisfy the judgment, the creditor may obtain another writ to be executed upon any moveable property and effects to the debtor situate in any other district, and such writ may be addressed to the sheriff or to any bailiff of the district in which such writ issues, or to the sheriff or to any bailiff of such other district in which such writ is to be executed. (*R. S. Q.*, art. 6001).

1083. All oppositions to an execution against moveable property, whatever may be the amount or the value of the thing claimed, are within the jurisdiction of the court which issued the writ.

1084. An order to stay execution in consequence of an opposition to the seizure and sale, may be granted by the judge, either within or beyond the limits of the circuit, or by the clerk, and for that purpose the judge and clerk are empowered to administer the necessary oath, and the bailiff on being notified, by the delivery to him of a copy of the opposition and of the order, is bound to return forthwith the writ and his proceedings thereon to the court from which such writ issued.

1085. In default of moveable property and effects, the judgment may be executed upon such immoveables of the debtor as are within the limits of the district in which the judgment was rendered, or in any other district.

1086. The writ for that purpose is addressed to the sheriff of such district, and is returnable to the superior court of such district.

1087. In the case of an immoveable which is declared by judgment to be hypothecated, and has been surrendered, or in cases of arrears of rents constituted under the seigniorial act of 1854, whatever may be the amount thereof, a writ of execution may issue immediately against such immoveable, addressed to the sheriff of the district in which it is situated.

1088. All proceedings incidental to the seizure or sale of the immoveables seized in virtue of the foregoing provisions are carried on before the superior court into which the writ of execution is re-

turnable, in the same manner as if the judgment had been rendered by such court.

1089. In other respects the formalities of the seizure and the sale of moveables are the same as upon executions of judgments of the superior court, and the provisions concerning seizure by garnishment after judgment in the superior court apply likewise to such seizures issuing from the circuit court.

1090. Upon the return into the superior court of a writ of execution against immoveables, 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.

SECTION VI.

OF REMEDIES AGAINST JUDGMENTS.

1091. Any party who deems himself aggrieved by a judgment of the circuit court may obtain a rehearing of the case before three judges of the superior court, according to the provisions contained in articles 494 to 504.

1092. Such party has likewise a remedy by appeal, in conformity with the provisions contained in the fourth book of this code.

CHAPTER III.

PROVISIONS PARTICULAR TO NON-APPEALABLE CASES.

1092*a*. Except in the districts of Beauce, Rimouski and Terrebonne, to which articles 1093, 1094, 1095, 1096, 1097, 1098 and 1100 exclusively apply, if the action is returnable in term, the proceedings with respect to appearance, default, judgment by default, and relief therefrom, confession of judgment, written pleadings and the inscription of the case, are the same as in actions returnable in vacation under article 1099. *R. S. Q.*, art. 6002.

1093. When a non-appealable case is returnable during term in the circuit court, the defendant is bound to appear in open court on the day and at the hour specified, without having a delay until the next day to file his appearance.

1094. If the judge is absent the case may be called, and appearance or default recorded by the clerk.

1095. Confessions of judgment may be given orally in open court; or out of term pursuant to the provisions contained in articles 94 and following, and judgment may be rendered accordingly. On any day during a term or the time fixed for the holding thereof, if the judge is absent or cannot hold the court on that day, such confessions may be given in the same

manner as out of term. *R. S. Q.*, art. 6003.

1096. If the defendant fails to appear, the plaintiff may forthwith proceed with his proof, and the court may thereupon render judgment accordingly.

1097. If the case is returnable in term, the defendant, upon appearing, is bound to plead forthwith. He may do so in writing or orally, at his option, unless the court orders that the pleas shall, within a fixed delay, be made out in writing; but the plaintiff is not bound to answer in writing unless the court so orders.

1098. If the defendant does not plead in writing, he is called upon by the court to specify what allegations of the declaration he admits, and such admissions are recorded. If he makes no such admissions he is held to have denied all the facts alleged, and is liable for the costs of proving such of them as may be proved. No other articulation of facts is required.

1099. If the action is returnable in vacation, the proceedings with respect to appearance, default, judgment by default and relief therefrom, confession of judgment, written pleadings and the inscription of the case, are the same as in appealable cases; but no demand of plea or of answer is necessary in order to obtain a foreclosure; the notice of inscription for proof and hearing must be given at least three days beforehand; and if the defendant fails to appear or to plead, the plaintiff is not bound to give notice of the inscription of the case for proof, when such proof is necessary.

1100. If the defendant fails to appear or to plead in any case returnable in term, the plaintiff may at any time proceed to judgment in the same manner as if the action were returnable in vacation.

1101. The proof in all cases is made orally and in open court, without its being necessary to take notes of the evidence.

1102. Judgments for sums not exceeding forty dollars can only be executed upon the moveable property of the debtor, except in the case of hypothecary actions, or of rents created under the seigniorial act of 1854, in which cases the court may issue execution against the immoveable charged according to the formalities prescribed in the preceding chapter.

1103. The provisions concerning oppositions and stay of proceedings, contained in the preceding chapter, as well as those concerning seizures by garnishment after judgment, must also be observed in non-appealable cases.

1104. All non-appealable suits 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. The provisions of article 1080 apply to non-appealable cases.

TITLE III.

OF SUITS BETWEEN LESSORS AND LESSEES.

1105. The circuit court has jurisdiction in cases between lessors and lessees, whenever the rent, or the annual value or the amount of damages claimed, does not exceed two hundred dollars.

1106. The provisions contained in the first chapter of title second of the second part of this code apply to suits brought before the circuit court.

TITLE IV.

SUITS IN CASES OF ILLEGAL DETENTION OF LANDS HELD IN FREE AND COMMON SOCCAGE.

1107. Concurrently with the jurisdiction of the superior court in such matters, petitory or possessory actions against persons illegally detaining lands held in free and common soccage in the townships may be brought before the circuit court in the circuit within which such lands are situated, or out of term before a judge of the superior court, who may hear and determine such suits in vacation, as the circuit court might also do, whatever may be the value of the lands; and the proceedings in all such cases form part of the records of the circuit court.

1108. The plaintiff in any such suits may add conclusions for the rents, issues and profits of such lands, and for any other damages he may have suffered.

1109. Such suits are subject to the same provisions as other appealable cases in the circuit court, as regards summons, pleading and proof.

1110. The defendant may plead all matters of defence, even adverse title, and may also claim, by incidental demand, whatever sum he may be entitled to for improvements made upon the lands.

1111. If either of the parties is aggrieved by the judgment he may inscribe the case for hearing before three jud-

ges of the superior court, according to the provisions contained in articles 494 and following, and without prejudice to the right of appeal to the court of queen's bench.

1112. The judgment may, when the plaintiff is entitled to it, declare him owner of the lands in question, and order the defendant to restore them to him within twenty days from service of judgment, and such judgment may be carried into effect by means of a writ of possession, as prescribed in articles 549 and 550.

1113. An appeal lies from such judgment to the court of queen's bench, in the same manner as any other appeal from the circuit court; nevertheless, the security must be by two sureties, upon real property to the value of two hundred dollars each; and the petition must be served within fifteen days after the judgment, and be presented on the first day of the term next after the expiration of such fifteen days.

BOOK IV.

COURT OF QUEEN'S BENCH (APPEAL SIDE.)

CHAPTER I.

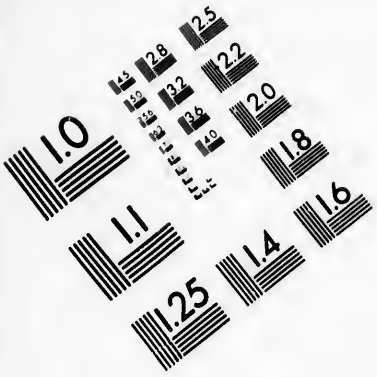
OF ERROR AND APPEAL FROM JUDGMENTS OF THE SUPERIOR COURT.

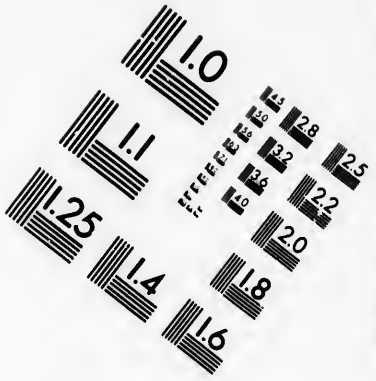
1114. Error may be brought by means of a writ of error, against any judgment of the superior court founded upon a general verdict given by a special jury. — It must be brought before the court of queen's bench sitting in appeal.—Questions of law only can be argued in error.

1115. An appeal lies to the same court upon any other final judgment rendered by the superior court, except in cases of *certiorari*, and in matters concerning municipal corporations or offices, as provided in article 1033. (*R. S. Q.*, art. 6004).

1115*a*. Nevertheless, no person, who has inscribed in review before three judges any cause in the superior court, and on such inscription has proceeded to judgment, is entitled to appeal to the court of queen's bench, from the judgment of the superior court sitting in review, if such judgment confirms tha rendered in the first instance. (*Id.*, art. 6005.)

1116. An appeal also lies from interlocutory judgments in the following cases: — 1. When they in part decide





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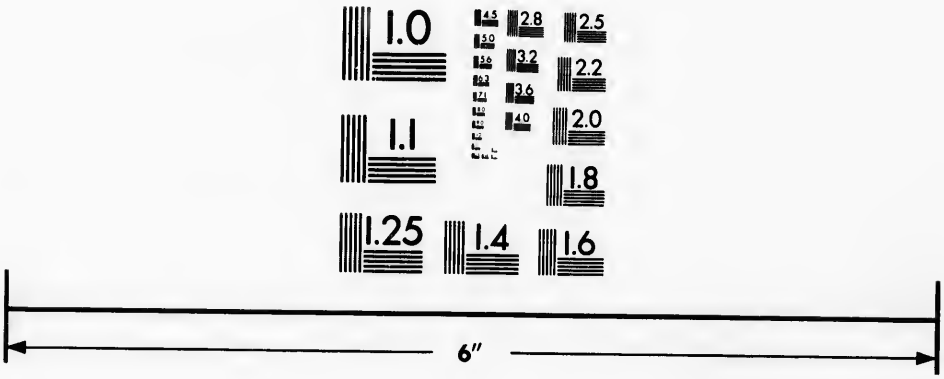

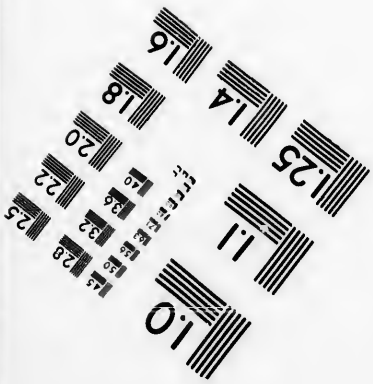

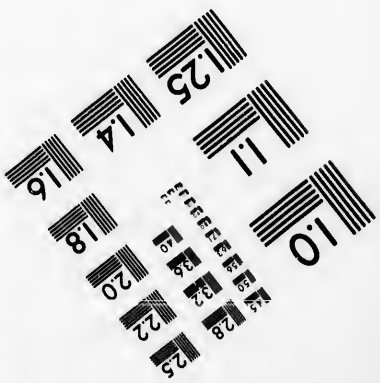

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the issues; — 2. When they order the doing of anything which cannot be remedied by the final judgment; — 3. When they unnecessarily delay the trial of the suit.

1117. Proceedings in error or appeal from judgments rendered in the districts of Montreal, Ottawa, Terrebonne, Joliette, Richelieu, St. Francis, Bedford, St. Hyacinthe, Iberville and Beauharnois, are brought, heard and determined in the city of Montreal, and the writ is made returnable there, and the like proceedings against 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, and the writ is made returnable there.

1118. Saving the cases provided for by articles 823, 1033 and 1037, proceedings in error or in appeal must be brought within a year of the date of the judgment.—This delay of a year is binding even upon minors, women under coverture, persons of unsound mind or interdicted, 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 reckoned only from the day of his death, against his heirs or his legal representatives.—Proceedings in error or in appeal may be taken during the delay allowed for demanding a review before three judges, and after proceedings in review have been commenced if the party who has taken such proceedings discontinues the same. — In cases of judgment by default in vacation, the delay for appealing runs only from the expiration of the time allowed for filing an opposition thereto. (*R. S. Q.*, art. 6006).

1119. If the appeal is from an interlocutory judgment, it must first be allowed by the court of queen's bench, upon a motion, supported with copies of such portion 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 1116. — The motion must be made during the term next after such rendering of the judgment, and cannot be received afterwards; saving, however, the party's right to urge his reasons against such judgment upon an appeal from or proceedings in error against the final judgment.

1120. The motion 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 below.

1121. Proceedings in error or in appeal are brought by means of a writ, in the English or in the French language, issued from the court of queen's bench, upon the written demand of the party aggrieved, containing the names and description of the parties in the suit before the court below, and mentioning the place and time at which the judgment was rendered. —It is addressed, in the name of the sovereign, to the judges of the superior court, commanding them to send up, within twenty days, the record in the case, together with a transcript of all entries made in such case in the registers of the superior court and of the judgment; it is signed by the clerk of appeals or his deputy, and sealed with the seal of the court of queen's bench; but this latter formality is not required on pain of nullity. — If the appeal is from an interlocutory judgment, the clerk must endorse upon the writ that it is issued by order of the court.

1122. The delay for returning the writ may be extended, according to the distance between the place where the judgment was rendered and the place where the writ is to be returned.

1123. The writ of error or of appeal must be served upon the opposite party by leaving a copy with him or at his domicile, or with his attorney *ad litem* in person; and it must afterwards be deposited with the prothonotary of the court by which the judgment was rendered. —A return of such service and deposit must be made by the bailiff upon an authentic copy of the writ of appeal or error, which copy must be filed in the office of the clerk of appeals.

1124. The appellant or plaintiff in error must, before the record can be sent up, give good and sufficient security that he will effectually prosecute the appeal or proceedings in error, and 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 at the office of the prothonotary of the court, whose judgment is appealed from, that he does not object to the judgment rendered against him being executed according to law, in which case 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.

1125 The security must be received before one of the judges or the prothonotary of the court in which the judgment was rendered; and such judge or prothonotary may swear the sureties offered and ask them any pertinent question with respect to their sufficiency.

1126. As soon as the sureties have been received and the bond has been formally executed, it is the duty of the prothonotary of the court in which the judgment was rendered to 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, and, upon being paid his fees, charges and costs of transmission, to send them up to the court of appeals; and such return shall be certified on the back of the writ by the judge or by the prothonotary.

1127. If the writ of error or of appeal is not returned on the day fixed, the appellant may obtain a rule against the prothonotary in whose hands it is, ordering him to return it. — The respondent in such case cannot be condemned if he fails to appear; and if the prothonotary is in default, a new writ must be issued and served in the same manner as the first, without lapse of the proceedings already had.

1128. The appellant and the respondent are both bound, if the writ is returned within the proper delay, to file an appearance in the office of the clerk of appeals, before the expiration of the eight days next after the day fixed for the return of the writ and record, on pain of being foreclosed.

1129. In default of the writ and the record being returned on the day fixed, the respondent, upon producing the copy served upon him, may obtain judgment of nonpros and be discharged from the appeal, unless the appellant proves diligence.

1130. Unless the court otherwise orders, the respondent may, within eight days next after the period allowed for filing his appearance, set up by motion all grounds of exception or of demurrer, and all grounds of defence resulting from: — 1. Irregularities in the issuing or service of the writ; — 2. Insufficiency of the appeal bond; — 3. Non-existence or forfeiture of the right to proceed by error or appeal; — 4. Acquiescence in the judgment; — 5. The renunciation of the judgment in the court below.

1131. The appellant may apply by motion for a reduction of excessive security, if he has been obliged to give it.

1132. If both parties seek redress against the judgment, their cross-proceedings in error or in appeal may be joined.

1133. The appellant must file his reasons of appeal or assignment of error within eight days after the return of the writ and record; he cannot, however, be foreclosed from doing so until the expiration of another delay of six days, counting from the demand thereof.

1134. If, however, there are demurrers to the proceeding in appeal or error, the demand of reasons cannot be made before the judgment upon the demurrers.

1135. The respondent has a like delay of eight days to answer the reasons of appeal or error; but he cannot be foreclosed from doing so until after another delay of four days from the demand of such answer.

1136. The court, or a judge in vacation, upon application, of which the opposite party has had notice, may, for good cause shown, prolong the delays fixed by the two preceding articles.

1137. If the reasons in appeal or error are not filed within the delay prescribed, the respondent may demand the dismissal of the appeal or proceeding in error, with costs.

1138. If the respondent fails to file his answer within the delays prescribed, he is foreclosed from doing so, and the appellant may proceed as if the respondent had not appeared.

1139. The provisions concerning election of domicile by parties and their advocates and attorneys in the superior court apply also in matters before the court of queen's bench.

1140. Within ten days after the filing of the respondent's answers, each party must file in the clerk's office a printed factum, or case, and, in default of his doing so, the proceedings in appeal or error may be declared to have been abandoned with costs against the appellant if he is in default, or the case may be heard *exparte* if the respondent is in default.

1141. As soon as the answers are filed, either party may, after filing his factum or case, inscribe the case on the roll for hearing, after the delay for filing factums has expired, upon giving the opposite party at least two days notice before the case is called.

1141*a*. Every appeal from interlocutory judgments must be inscribed by the clerk of the court, and heard by privilege in a summary manner, without any reasons of appeal or error or factums being fyled. (*R. S. Q.*, art. 6007).

CHAPTER II.

OF APPEALS FROM THE CIRCUIT COURT.

1142. An appeal lies to the court of queen's bench from any judgment rendered by the circuit court, in the following cases: — 1. When the sum or the value of the thing

demanded amounts to or exceeds one hundred dollars; except, however, in suits for the recovery of assessments for schools or school-houses, or for monthly contributions for schools, and in suits for the recovery of assessments imposed for the building or repairing of churches, personages and church-yards. Cases in which the evidence has not been taken down in writing can only be appealed on points of law;—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, though 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.—Special provisions regulate appeals from judgments rendered in the Magdalen Islands.

1142*a*. Nevertheless no person, who has inscribed in review before three judges, any cause in the circuit court susceptible of appeal to the court of queen's bench, and on such inscription has proceeded to judgment, is entitled to appeal to the court of queen's bench, from the judgment of the superior court sitting in review, if such judgment confirms that rendered in the first instance. (*R. S. Q.*, art. 6008).

1143. The party appealing must, within fifteen days after the rendering of the judgment, but without being bound to give notice, give good and sufficient sureties, who must justify their sufficiency to the satisfaction of the person receiving their security, that he will prosecute the appeal, will answer the condemnation, and pay the costs, in the event of the judgment appealed from being confirmed.

1144. The security may be given either before a judge of the court of queen's bench or the clerk of appeals, or else before a judge of the superior court, or the clerk of the circuit court, at the place where the judgment was rendered, and the bond remains deposited among the records of the court where it was given.

1145. Any one surety suffices if he is the owner of real property of the value of two hundred dollars, over and above all incumbrances upon the same, saving the exception contained in article 1113; and the persons authorized to receive the security have power to administer any oath necessary for that purpose.

1146. If, within the fifteen days, the appellant files with the clerk of either court a declaration in writing that he does not object to the execution of the judgment, or if he deposits the amount thereof in the hands of the clerk

of appeals or clerk of the circuit court, he need only give security for the costs in appeal and whatever damages may be awarded.

1147. In the case of the preceding article, the provisions of article 1124 also apply.

1148. The appeal is brought by a petition stating succinctly the grounds of appeal, and that security has been given, and praying for the reversal of the judgment, and the rendering of such judgment as ought to have been rendered. — This petition and a notice of the day on which it will be presented, must, within twenty-five days from the rendering of the judgment, be served upon the opposite party personally, or at his domicile, or upon his attorney *ad litem*, together with a copy of the appeal bond, certified by the clerk with whom it is deposited.

1149. Within the same delay of twenty-five days, the appellant must file his petition and notice and the return of service with the clerk of the circuit court, together with a certificate from the clerk of appeals, stating that security has been given, if the bond be in the hands of that officer ; and the clerk of the circuit court must give the appellant a certificate of such filing, for the purpose of proving, when requisite, that the appeal has been instituted. The clerk of the circuit court is, moreover, bound to certify, under his hand and the seal of the circuit court, and to transmit to the clerk of appeals at the proper place, the said petition and the record in the case, with a transcript of the entries contained in the registers of the circuit court in relation to such case.

1150. Before the day on which the appeal may be heard, each of the parties is bound to file an appearance in the office of the clerk of appeals ; and the clerk of appeals is bound to record such appearance in the register, or the default thereof, and to enter each case in which the record has been transmitted to him. If the appellant does not appear, his appeal may be declared to have been abandoned, with costs; and if the respondent fails to appear, the appellant may proceed by default.

1151. The appellant may prove due diligence on his part, and if, on the day fixed, the record and proceedings have not been transmitted, he may proceed against the clerk of the circuit court in the manner prescribed in article 1127.

1152. At the first term of the court of queen's bench, sitting in appeal, at the place to which the record has been transmitted, after the expiration of forty days from the rendering of the judgment, or at any subsequent sitting,

and without any other formality than the filing of a printed factum, if the court requires it, the case is heard in a summary manner, and judgment rendered therein as in any other appeal.

1153. If the appellant fails to serve and file his petition, or to effectually prosecute his appeal, he may be declared to have forfeited his right of appeal, and be condemned to pay costs.

CHAPTER III.

GENERAL PROVISIONS.

1154. Proceedings in appeal or error may be brought by the legal representative of a party to a suit who has died.—Proceedings in appeal or error, upon judgments rendered against an unmarried woman or widow 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 or other person who assisted him in the original suit.

1155. If one of several appellants or respondents dies after the institution of proceedings in appeal or error, such proceedings may be continued by and between the other surviving parties.

1156. Four judges of the court of queen's bench constitute 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.

1157. The judges in cases of appeal or error may be recused for the same causes and in the same manner as in the superior court.

1158. Any judge who sat in the court below at the rendering of the final or interlocutory judgment appealed from, is incompetent to sit in appeal or error upon the same.

1159. No petition in recusation is necessary if the cause of incompetency appears on the face of the record.

1160. Every leave of absence for more than two months granted to any judge of the court of queen's bench is notified to the clerk of appeals by a letter from the provincial secretary, which must be deposited among the records of the court and entered in the register thereof.

1161. When a judge of the court of queen's bench is disqualified or incompetent to sit in a case, or is suspended

from office, or absent from the province, or on leave, the clerk of appeals, when thereto required, must record the fact in the register, and upon the order of a judge of the court, must notify the chief-justice of the superior court.

1162. The judges of the superior court replace those of the court of queen's bench, in all cases of incompetency, absence, suspension, or leave of absence, and upon the chief justice of the superior court communicating with the other judges of the said court, it is arranged between them which of them individually will replace any particular judge of the court of queen's bench, who is unable to sit in the case.—The foregoing provisions, as well as those of the preceding article, apply likewise in the case of death, absence, disqualification or incompetency of the judge thus appointed to replace another.

1163. The return of the judge replaced, the expiration of his leave, or his ceasing to be incompetent, do not affect the powers of the judge appointed to replace him, as regards cases of which he has taken judicial cognizance, nor are they affected by the appointment of a judge of the court of queen's bench who would not be incompetent in the case.

1164. 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.

1165. If the record in the case is incomplete, either by reason of the absence of any document, or of the inobservance of any important formalities, the court of appeals may, upon the suggestion of either party, order the court below to perfect the record, and this is done by an order in the form of a writ issuing in the name of the sovereign, addressed to the judges of the court below, commanding them to do what is necessary, and to make a duly certified return thereof.

1166. Interventions may take place in appeal with the leave of the court, and so may also other incidental proceedings, such as petitions for continuance, disavowals, changes of attorney, and like proceedings, according to the formalities prescribed by the court.

1167. Discontinuance in appeal is affected in the same manner and under the same conditions as in the superior court.

1168. The provisions concerning peremption of suits in the superior court apply also to appeals. Peremptions of appeals or of proceedings in error has the effect of rendering the judgment appealed from final.

1169. The parties are bound to be present in court to be heard upon the appeal after the delay mentioned in article 1141.

1170. 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 the five judges. The provisions relative to judgements, contained in articles 503 and 504 apply in similar cases as regards judgments to be rendered by the court of queen's bench.—Whenever a case has been heard by the 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, sickness 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 drawn up 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.

1171. 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.

1172. The court may adjourn to any day in vacation, and thence from day to day, for the purpose of rendering judgment.

1173. Judgment may be rendered by the court at another place, where its sittings are held, than that where the case was heard, if the judges are of opinion that otherwise the parties will be exposed to unnecessary delay; but in such case the court in term, or a majority of the judges in vacation, orders the clerk to give the parties interested notice at least six days before that on which judgment is to be rendered, and the judgment is nevertheless entered and registered at the place where judgment would have been rendered in the ordinary course.

1174. Every judgment in appeal or error 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 must adjudicate upon the costs.

1175. The costs are taxed by the clerk of appeals, saving a revision of such taxation by a judge within six months, either in term or out of term, after sufficient notice given to the opposite party,

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but such revision cannot prevent or stay execution, and the decision of the judge in that behalf has the same effect as a judgment of the court.

1176. Judgments on appeal or error are executed both for principal and costs by the court below, and for that purpose, the record is sent back to it, unless a further appeal to a higher court has been moved for.

1177. The court sitting in appeal or error may exercise all the powers necessary for such jurisdiction and make such order as it may deem proper for the purpose of remedying any insufficiencies of the record; of staying proceedings in the court below in cases from which appeal or error has been brought; 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.—Such court may also make such rules of practice as may be necessary, for governing the proceedings in all cases brought before it, provided such rules be not contrary to any existing law.—It may also make and establish tariffs or fees for the counsel, advocates and attorneys practising before it, and also for its bailiffs.

CHAPTER IV.

OF APPEALS TO HER MAJESTY.

1178. An appeal lies to Her Majesty in her privy council from final judgments rendered in appeal or error by the court of queen's bench;—1. In all cases where the matter in dispute relates to any fee of office, duty, rents, revenue, or any sum of money payable to her majesty;—2. In cases concerning titles to lands or tenements, annual rents and other matters by which the rights in future of parties may be affected;—3. In all other cases wherein the matter in dispute exceeds the sum or value of five hundred pounds sterling.

1178*a*. 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 1115*a* and 1142*a*, may nevertheless be appealed to Her Majesty by observing the same formalities and provisions and subject to the same conditions, as in the case of judgments rendered by the court of queen's bench (appeal side), and with the same effect, as if every provision of law, in relation to appeals to Her Majesty from judgments of the court of queen's bench, was enacted in this article with respect to the superior court sitting in review, its judges, its offi-

cers or their office. (*R. S. Q.* art. 6009).

1179. Nevertheless, the execution of a judgment of the court of queen's bench cannot be prevented or stayed unless the party aggrieved gives good and sufficient sureties, within the delay fixed by the court, 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 of queen's bench.—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, provided that the value of such real estate is equal 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, and such questions and the answers thereto may be taken down in writing.—The party 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 with the clerk of the court of queen's bench or with the sheriff, as the judge may direct. (*Id.*, art. 6010).

1180. The appellant may also consent to the judgment being executed, and in such case may give security only for the costs in appeal, under the same conditions as under article 1124.

1181. The execution of any judgment of the court of queen's bench 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 appeals, a certificate, signed by the clerk of Her Majesty's privy council, or any other competent officer, and stating that the appeal has been lodged within such delay, and that proceedings have been had therein.

1182. The clerk of appeals of the court of queen's bench is bound to 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 of the court of queen's bench to that effect, and to send back the record in the case to the court below, to-

gether with a copy of such exemplification which has been registered as above mentioned.

BOOK V.

INFERIOR JURISDICTIONS.

CHAPTER I.

COMMISSIONERS' COURT FOR THE SUMMARY TRIAL OF SMALL CAUSES.

1183. 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.

1184. 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 Lower-Canada.

1185. They may be recused for the same reasons as judges of other courts.

1186. The recusation must be in writing.

1187. 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 cost of such recusation against the party who made it.

1188. The commissioners' court exercises an ultimate jurisdiction in all suits purely personal or relating to moveable property, which arise from contracts or quasi-contracts, and wherein the sum or value demanded does not exceed twenty-five dollars, and the defendant resides: — 1. In the locality of the court; — 2. In another locality, but in the same district and within a distance of five leagues, if the debt has been contracted in the locality for which the court is established; — 3. In a neighboring locality in which there are no commissioners, or in which the commissioners cannot sit by reason of illness, absence, or other inability to act, pro-

vided such locality is in the same district within a distance not exceeding ten leagues but such court has no jurisdiction in the cities of Montreal, Quebec, Three Rivers and St. Hyacinthe, if there are other courts having jurisdiction to take cognizance of the matter in issue. (*R. S. Q.*, art. 6011).

1189. It has no jurisdiction in suits for slander, or for assault and battery, or relating to civil status, paternity, or seduction, or lying-in expenses; nor in suits for the recovery of any fine or penalty whatever.

1190. It has jurisdiction in suits for the recovery of assessments, not exceeding twenty-five dollars, imposed for the building of churches, parsonages and church yards.

1191. It may in matters within its jurisdiction, grant; —attachments for rent:—attachments in revendication; —attachments 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 or is about to secrete his property or absconds or is immediately about to leave the province, with intent to defraud his creditors.

1192. [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 simple attachment in revendication, attachment for rent, attachment by garnishment or seizure by garnishment, must be made returnable on a day named, within forty days, and the return with a certificate of the proceedings must be made on the day so named. — Such affidavit may be received either by one of the commissioners or by the clerk of the court.

1192*a*. In the case of attachment by garnishment before or after judgment, the garnishee within three days after the writ of seizure 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. (*R. S. Q.* art. 6012).

1192*b*. 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 through the post by a registered and stamped letter, to the clerk of the commissioners's 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. (*Id.*).

1192*c*. 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 favor of the garnishee against the plaintiff in the suit and may be executed by seizure, after the same delay, and in the same manner as any other judgment of such court. (*Id.*).

1193. 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.

1194. The delay upon ordinary summons must be at least three clear days when defendant does not reside more than two leagues from the place to which he is summoned, with the usual addition of delay, when the distance exceeds two leagues, according to article 75.—But if the summons is accompanied with an attachment, the delay must be at least fifteen days and not more than forty days.

1195. The writ of summons commands the defendant to pay the plaintiff the amount demanded or to appear before the court to answer such demand.—It must also contain: The names, surname, residence and occupation, both of the plaintiff and of the defendant; —a summary statement of the cause of the action;—the day on which the defendant must appear; — the date of the writ;— the signature of the commissioner.

1196. Ordinary writs of summons may be served by any bailiff of the superior court or by any sergeant of militia residing in the locality.

1197. If the summons is accompanied with an attachment it can only be served by a bailiff.

1198. Either party may evoke the case to the circuit court in the district when the contestation relates:—to any title to immoveable property;— to any fee of office, or to any sum of money due to the Crown;— to any duty, rents, revenue, or annual rent, payment or other matter by which rights in future might be bound.

1199. The improbation of any act or document produced before the court has the effect of an evocation to the circuit court.

1200. 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 the 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.

1201. In default of such security being given within the delay fixed by the court, the party forfeits his rights of evocation, and the commissioners' court may proceed to hear and determine the case without regard to the improbation.

1202. 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.

1203. No person can act as attorney of either of the parties before a commissioners' court, except 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. Bailiffs and sergeants of militia can in no case act as attorneys.

1204. Any person, other than an advocate or attorney at law, who acts for one of the parties must do so gratuitously; and if such person for so acting receives, either directly or indirectly, any fee, emolument or remuneration whatever, he is deemed to have received the same under false pretences and may be punished accordingly and is, moreover, disqualified from ever acting as attorney before a commissioners' court.

1205. No clerk of such court can act as the attorney of either of the parties.

1206. 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.

1207. 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.

1208. The cases are heard, tried and determined in a summary manner, without any written pleading being necessary.

1209. Oral testimony is admitted in all cases, and one

witness, even if related, is sufficient.—But the bailiff or sergeant who served the writ of summons cannot be witness for the party who employed him, except as regards the service itself.

1210. 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, nor more than four dollars, for every default to attend as commanded.

1211. 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 judgment does not exceed two dollars, the court may reduce the costs to the same amount as that for which judgment is rendered.

1212. 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 such seizable moveables as he may have within the district in which the court was held.—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 comprises the expense of feeding cattle, if any have been seized.—The warrant of execution must be made returnable and be returned like the other warrants mentioned in article 1192.

1213. No opposition to the sale of moveables under seizure can stay proceedings, unless it is allowed by a commissioner and accompanied with an order to that effect.

1214. Oppositions thus allowed are heard and determined in the same manner as other cases before the court.

1215. The clerk, and the bailiffs or sergeants of militia cannot demand any other emoluments than those mentioned in form number 56 in the appendix to this code.

CHAPTER I (A).

OF THE DISTRICT MAGISTRATES' COURT.

1215*a*. The magistrates' court has ultimate civil jurisdiction to hear, try and determine :—1. All suits, whether personal or real, wherein the sum or value demanded does not exceed ninety-nine dollars in the county of Gaspé, including the Magdalen Island, and also in the county of Saguenay for that part of it extending to the east as far as the Jeremy Island, and fifty dollars in the rest of the Province : — 2. All suits for the recovery of school rates, taxes, assessments, penalties, damages, or sums of money whatever, due or payable 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 repecting abuses prejudicial to agriculture ;—3. All suits for the recovery of penalties incurred, and of sums due to the treasury of this Province under the license law.—In all such suits however the defendant must reside within the county for which the court is held, or the debt must have been contracted therein and the defendant be resident in the Province. (*R. S. Q.* art. 6013).

1215*b*. When the amount of rent claimed or the amount of damages alleged does not exceed fifty dollars, the magistrates' 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-fulfilment of any of the obligations which the law attaches to it, or which result from the relation of lessor and lessee. — All proceedings in and the proof and hearing of such actions take place in a summary manner and on any juridical day fixed or not as one of the days on which the court can sit. (*Id.*).

1215*c*. The provisions of the third book of this Code apply in like manner to the district magistrates' court and to the magistrate holding the same, and the officers thereof, except in so far as such provisions are inconsistent with the provisions of this chapter, or are such as can only apply to the superior court or to appealable cases in the circuit court, as if the words 'circuit court' or 'judge' meant and included respectively the words 'magistrates' court' or 'district magistrate.' (*Id.*).

1215*d*. Articles 1184, 1190, 1191, 1192, (except the part thereof contained within brackets), 1193, 1194, 1195, (except the words 'the signature of the commissioner,' in the three last mentioned articles,) 1196, 1197, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, the first and last paragraphs of article 1212, and articles 1213 and 1214 apply to every magistrates' court in the same manner as if the words 'commissioners' court,' 'commissioner' or 'commissioners,' meant and included respectively the words 'magistrates' court' or 'district magistrate.' (*Id.*).

1215*e*. 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. (*Id.*).

1215*f*. The proceedings mentioned in article 1191, when issued from the magistrates' court, may be executed anywhere within this Province ; but in the case of

attachments by garnishment, either before or after judgment, the garnishee may, within three days of 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 receive 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 magistrates' court from which the writ of attachment issued, together with his receipt for the said sum of one dollar. (*Id.*).

1215*g*. 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 magistrates' court, stands as a judgment of the said court in favor 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. (*Id.*).

1215*h*. No proceedings or suits, in civil matters before any such district magistrate, or before a magistrates' court, can be removed to any other court, by *certiorari* or otherwise. (*Id.*).

1215*i*. Judgments rendered by the magistrates' court for sums exceeding forty dollars may, in default of moveable property and effects, be executed upon the immoveables of the debtor.—The writ is addressed to the sheriff of the district in which the immoveables are situated, and is returnable before the superior court of such district, there to be proceeded upon in the same manner as like writs issuing from the circuit court. (*Id.*).

1215*j*. The district magistrates' court may grant such costs as are fixed by the lieutenant-governor in council, and in default thereof, such fees as are allowed by the tariff of the circuit court in similar matters. (*Id.*).

CHAPTER II.

OF JUSTICES OF THE PEACE AND OTHER INFERIOR CIVIL JURISDICTIONS.

1216. Justices of the peace have also 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 the country parts, seamen's wages, claims of pawners against pawnbrokers, and other matters.

1217. In certain cities the recorder's court has also jurisdiction for the recovery of certain municipal claims, and

in matters of dispute between lessors and lessees, and master and servant.

1218. The Trinity House also exercises a civil jurisdiction in matters connected with 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.

1219. The extent of the jurisdiction of these special courts and the manner of proceeding before them are regulated by the statutes which create them or relate to them, and in certain respects by the practice therein followed.

CHAPTER III.

REMEDIES AGAINST THE PROCEEDINGS AND JUDGMENTS OF THE ABOVE MENTIONED COURTS.

1220. In all cases where no appeal is given from the inferior courts above mentioned, 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.

1221. 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; — 2. When the proceedings contain gross irregularities and there is reason to believe that justice has not been or will not be done.

1222. The writ of *certiorari* can only be granted upon motion, supported by an affidavit of the facts and circumstances of the case.

1223. A previous notice of time and place at which the motion will be presented must be served upon the functionary seized of the case, or who rendered the judgment, and a return of such service is made as in any other case.

1224. The service of such notice has the effect of suspending all proceedings in the court below.

1225. The motion must be presented to the superior court or the circuit court or to a judge. The opposite party is entitled to appear and make any oral objections of a nature to prevent the granting of the writ of *certiorari*.

1226. Writs of *certiorari* are in the name of the sovereign; they are sealed with the seal of the court, and clothed with the other formalities required for other writs, 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.

1227. Mention must be made on the back of the writ

that it has issued by order of the court.

1228. 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 and 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.

1229. 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.

1230. If they fail to comply with the writ they are liable to coercive imprisonment, in the ordinary manner.

1231. 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.

1232. All interlocutory or final judgments upon writs of *certiorari* are drawn up and served in the same manner as in ordinary suits.

1233. The court, in rendering judgment upon the writ, may award costs in its discretion.

1234. No appeal lies from the judgment on the application for the writ, or from the judgment upon the writ itself; nor are such judgments subject to review.

1235. The procedure regulated by this chapter applies also to all other cases in which the writ of *certiorari* will lie, and against any other court not mentioned in this book; but it does not apply with respect to the court of vice-admiralty, over which the superior court, as well as the circuit cout, has no control.

PART THIRD.

NON-CONTENTIOUS PROCEEDINGS.

TITLE I.

OF REGISTERS AND THEIR AUTHENTICATION.

CHAPTER I.

OF REGISTERS OF CIVIL STATUS.

1236. 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 such leaf written in words, at full length, and be sealed with the seal of the superior court, or the seal 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 such registers and secured inside of the cover thereof; and upon the first leaf must be written an attestation under the signature of a 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 proscribed by special acts with regard to certain religious congregations have been fulfilled. (*R. S. Q.*, art. 6014).

1237. 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.

1238. *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.

1239. Any person who desires to have any register rectified must present to the court 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.

1240. The court may also order any person to be called in whom it deems interested in the application. — Such person is thereupon summoned in the ordinary manner.

1241. 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.

1241*a*. When the registers of civil status of a parish or a portion of such registers, have been destroyed by fire or in any other manner, the priest and churchwardens of the *fabrique* of such parish may, after resolution establishing the loss and destruction of such registers or a portion thereof, cause to be delivered by the prothonotary of the district, in whose office are deposited the registers of civil status of such parish, or having the custody of such registers, a copy of such registers or of any portion thereof which have been destroyed as aforesaid. (*R. S. Q.*, art. 6015).

1241*b*. Every prothonotary or clerk, having the custody of the registers of civil status of such parish, shall be bound to deliver, within a reasonable time, an authentic copy of all registers or any portion thereof required by the priest and churchwardens of the *fabrique* of such parish. (*Id.*).

1241*c*. The priest and churchwardens of the *fabrique* of any parish, requiring copies of registers or of portions thereof, so destroyed, must furnish the registers and books necessary for such purpose, which must be numbered and initialed in the manner prescribed by article 1236. (*Id.*).

1241*d*. The fees of any prothonotary for all copies of registers of civil status or of any portion thereof, required are as follows : six cents for each certificate of baptism or burial and eighteen cents for each certificate of marriage. (*Id.*).

1241*e*. The certificate of authenticity of such copies of registers or portion thereof must be delivered by the prothonotary of the district and be inscribed after the last entry in each book or register. (*Id.*).

1241*f*. Every copy of registers, so authenticated and delivered, is considered as an original register ; and the extracts, certified by the parish priest, vicar, or priest in charge of the said parish, depositary of the said registers, are authentic ; but the parish priest vicar or priest in charge is bound to declare, in the extracts which he delivers, that the registers from which they are taken are copies, so certified of the only existing duplicate. (*Id.*).

1241*g*. The copy so made of the said registers must be a *fac simile* of the sole existing duplicate, in so far as it must contain and reproduce all the words struck out, the marginal notes, lengthened lines and interlineations that may be in the latter, as well as the certificate which certifies as to the number thereof, strictly following the same spelling. (*Id.*).

1241*h*. Any *curé*, minister, or other person authorized to keep registers of civil status may, with the authorization of the ordinary board of the *fabrique* or of the trustees, as the case may be, at the expense of the parish church, mission, congregation or religious community, of which he is such *curé* or minister, replace, in so far as the writing may be deciphered, the said registers of civil status kept up to the year 1800, in his custody, by others reproducing them as exactly as possible. (*Id.*).

1241*i*. Every such person so authorized to keep registers of civil status, after having carefully compared such copy made by him, with the original, shall affix at the end thereof a certificate attesting that it has been examined and compared and that it agrees, with the register of which it is a copy. Such certificate is made under oath before the prothonotary of the superior court of the district. Such copy shall be authenticated and initiated by the prothonotary before being used. (*Id.*).

1241*j*. Nothwithstanding the authenticity of such copy, which shall have the same effect as the original register, the latter must be preserved so that reference may be had thereto. (*Id.*).

CHAPTER SECOND.

REGISTERS OF REGISTRY OFFICES.

1242. Every register 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 superior court 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.

CHAPTER III.

REGISTERS OF SHERIFFS AND CORONERS.

1243. 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 prothonotary of the superior court for the district.

1244. Such registers must be authenticated in the same manner as those of the registry offices mentioned in article 1242.

TITLE II.

OF INSPECTION OF DOCUMENTS.

1245. 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.

1246. 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 nature that it should be registered.

1247. If the notary refuses to give such communication, copies or extracts, as required, the person demanding the same may, by petition duly served upon such notary, apply to a judge for an order for inspection, which is granted upon proof of his right or his interest.

1248. If communication only be demanded, the order fixes the day and hour when communication of the act must be given.—If a copy or extract be demanded, the order fixes the time at which it must be furnished.

1249. The service of the order of the judge upon the notary must give a sufficient delay for a compliance with such order.

1250. 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.

1251. If the notary fails to comply with the order of the judge, he is liable for all

consequent damages, and to coercive imprisonment.

1252. When the original of any authentic act or 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 court or judge for leave to deposit the same with such public officer as the court or judge will name, to be there used and considered as an original, the copies of which will be deemed authentic.

1253. A similar application may be made by any party to a deed, in order to oblige any other party to the same, who is in possession of an authentic copy thereof, to deposit such copy for the same purpose, and such other party is bound to comply with the order of the court or judge in that behalf, under pain of all damages. The whole nevertheless at the cost and expenses of the party requiring such deposit, who is obliged to furnish him with a copy of the deed and to indemnify him for all travelling and other expenses.

1254. The petition must be served upon all other interested parties mentioned in the act.

1255. Upon satisfactory proof, the court or 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 practise, then in the prothonotary's office in which the records of such notary are deposited; and every regular copy of the document thus deposited avails for proof in the same manner as if such document was the original.

TITLE III.

Of Family Councils.

1256. Whenever application is made to provide minors, interdicted persons, absentees or substitutes, with tutors, or tutors *ad hoc*, or curators, or to authorize such tutors or curators to do some particular act, or for leave to alienate immoveables belonging to persons who have not the free exercise of their rights, or for the emancipation of minors, the judge or the court cannot act without previously having taken the advice of a family council.

1257. Family councils are convened and composed in the manner provided in the

ninth title of the first book of the Civil Code.

1258. 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 five leagues from the place where the family council is to meet, with the usual additional delay when the distance exceeds five leagues, according to article 75.

1259. The relations and friends must be sworn before giving their advice upon the matters submitted to them.

1260. The minutes of the advice given by the relations and friends must be signed by them, or must mention the reasons which prevent them from signing.

1261. The superior court and the circuit court, and any judge of the superior court at any place where sittings of either of the said courts are held, and either 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.

TITLE IV.

Of Tutorships and Curatorships.

1262. The proceedings to be taken for the appointment of tutors to minors, and of curators to interdicted persons, emancipated minors and absentees, are explained in the different titles of the Civil Code which treat of such matters respectively.

1263. The proceedings to be taken for the appointment of curators to successions that are vacant or accepted under benefit of inventory, or to property judicially abandoned by insolvent debtors, are regulated under the respective titles in this code concerning such matters.

1264. The proceedings for the appointment of curators to the property of corporations that have been dissolved, or declared illegal, are regulated in the Civil Code, under the title *Of Corporations*, and in the eighth chapter of the second book of the second part of this code.

1265. The proceedings for the appointment of curators to substitutions are the same as those for the appointment of tutors to minors.

1266. Every curator is

bound, before acting as such, to make oath that he will well and truly perform the duties devolving upon him.

TITLE V.

Of the sale of immoveables belonging to minors or other disqualified persons.

1267. No voluntary alienation of immoveable property, or of shares or stock in manufacturing or financial associations, belonging to minors or interdicted persons can be made without the order and permission of the court or of a judge.

1268. In addition to the formalities prescribed by the Civil Code, such alienation cannot take place unless, before taking the advice of a family council, the immoveable has been inspected by two experts, one of whom was named by the tutor and the other by the subrogate-tutor; and such experts must not be related either to the parties or to the persons acting for them.

1269. 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.

1270. The experts, after being sworn before the judge, prothonotary, clerk or notary, must ascertain the condition and value of each immoveable, and the truth of the other circumstances on account of which the sale is demanded, and make their report by a notarial act, delivered in original form.

1271. If the experts cannot agree each must report his respective opinion, giving the reasons upon which such opinion is based.

1272. The report is submitted to the family council, together with the application to be authorised.

1273. If the matter relates to the investment of moneys, or to shares or stock, in manufacturing or financial associations, the value thereof must be ascertained.

1274. The judge, if he authorises the sale, must fix an upset price for each immoveable, share or stock, and, independently of the other conditions imposed upon the sale, such upset price cannot be less than the value ascertained by the experts.

1275. If the judge refuses to authorise the sale, the reason for such refusal must be given in writing, and form part of the record.

1276. The place and time of the sale must be published on three consecutive Sundays, at the door of the parish

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church of the place where the immoveables are situated; or, if there is no church, at the most public place in the locality; and notice thereof must be posted up immediately after the first publication, and such notice must contain a description of the immoveables.

1277. 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.

1278. In the case of a voluntary licitation of an immoveable, 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*.

1278*a* In the case of sale of securities such as capital sums, shares or interest in financial, commercial or manufacturing joint stocks companies or public securities, belonging to minors, interdicted persons or absentees or to substitutions, the judge or the court authorizing such sale, upon the advice of a family council, may, if he or it deem it meet, 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 formalities, and may, when deemed advisable, authorize the gradual disposal, during such delay as shall be determined, of such securities at the current rate upon 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 clerk's office 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. (*R. S. Q.*, art. 6016).

§ 2.—*Of the sale of immoveables, &c., not exceeding four hundred dollars in value, belonging to disqualified persons.*

1278*b*. Whenever the real value of the whole of the immoveables or immoveable rights, capital sums, shares or interest in any financial, commercial or manufacturing joint stock company, belonging to a minor or disqualified person, does not exceed the sum of four hundred dollars, a judge of the superior court 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, 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 (*Id.*).

1278*c*. 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. (*Id.*).

1278*d*. Notice of the place, day and hour of such is given twice in fifteen days, in the Quebec Official Gazette, and in two newspapers indicated by the judge, one of which s published in the French and the other in the English language, in the district in which the property is situated, and in the event of there being no newspapers published in such district, then such notice is given in the newspapers of the nearest district. (*Id.*).

1278*e*. The judge may, when he deems it advisable, dispense the petitioners from the necessity of publishing the notices mentioned in the preceding article and authorize them to proceed to the sale of such property, by mutual consent, to any person paying the price fixed by such judge. (*Id.*).

TITLE VI.

PROCEEDINGS RELATING TO SUCCESSIONS.

CHAPTER FIRST.

OF SEALS.

SECTION I.

OF THE AFFIXING OF SEALS.

1279. Seals can be affixed on the property of a succession so long only as an inventory thereof has not been made.

1280. Whenever seals are required to be affixed a commissioner is named for that purpose by a judge of the superior court in the district, upon the application of any party interested.

1281. 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.

1282. The commissioner must draw up minutes of the

proceedings, 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 of the persons concerned, and whatever they may state; 5. A description of the places, bureaus, chests or closets, over the openings of which the 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.

1283. The seals are affixed upon each extremity of a band passing over the keyhole of the lock, if there be one: or, if not, upon 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.

1284. 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 prothonotary's office, together with his minutes, in order that the probate may be effected at the instance of the persons interested.

1285. When the commissioner finds the doors fastened, or is refused admittance, he must report the fact to the judge, who may authorize him to employ a locksmith and such force as may be necessary.—The commissioner may, in the meantime, place guards around the premises, in order to prevent fraudulent removals.

1286. 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.

1287. The judge decides forthwith upon the opposition, either by countermanding or restricting the affixing of seals, or by ordering the proceedings to continue on.

1288. 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.

1289. If there are no movable effects, the commissioner must state so in his minutes.

1290. As soon as the commissioner has completed his minutes he is bound to deposit them in the prothonotary's office, to form part of the records thereof.

1291. 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.

SECTION II.

OF THE REMOVAL OF SEALS.

1292. All applications for the removal of seals, when contested, and all opposition made after the affixing of seals has been completed, are heard summarily, unless the pleadings are ordered to be in writing.

1293. 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.

1294. If, however, seals have been affixed a second time, the complete removal cannot take place until both sealings have been adjudicated upon.

1295. 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.

1296. The removal of seals from the whole or from a part of the property may, in all cases 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 seal, according to their respective rights; and the right to prosecute such demand belongs to him who first made it.

1297. The removal of seals must be applied for by petition to the court or judge, in order that the inventory may be proceeded with after notifying all persons interested.

1298. The court or 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 the known legatees.—If the persons entitled to be present at the removal of seals or to take part in an inventory, reside outside of the Prov-

ince, they need not be summoned; but in such case a judicial procurator is named by a judge of the superior court, on application of the person demanding the removal of seals or the making of an inventory, to represent such persons; and such judicial procurator must be present or have been notified to be present — Notwithstanding the nomination of a judicial procurator to represent the persons above mentioned, 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; and such appearance or appointment of a mandatary terminates the mandate of the judicial procurator. (*R. S. Q.*, art. 6017).

1299. 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.

1300. The seals are removed in succession, as the making of the inventory progresses. If the effects contained under any seals are not all inventoried at one time, the seals are reaffixed upon the remainder.

1301. One or more returns of removal of seals must be made, as the inventory progresses.

1302. 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 1297 have been given; — 5. What persons were 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.

1303. If papers or effects be found which do not belong to the succession or the community, and are claimed by third persons, they are delivered to the proper persons, after describing them in the return, if such description is demanded.

CHAPTER II.

OF THE INVENTORY.

SECTION I.

OF THE MAKING OF THE INVENTORY.

1304. 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.

1305. All persons entitled to take part in it must be present at the inventory or be represented thereat in accordance with article 1298, or have been notified to be present in the same manner as for the removal of seals. (*R. S. Q.*, art. 6018).

1306. 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.

1307. The inventory must be in authentic form.

1308. 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, pretentions 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 moveable 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 one of the notaries ; — 5. All declarations of claims or 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 depositing of the papers and effects in the hands and custody of the person agreed upon by the parties or named by the judge.

1309. If, while the inventory is being made, difficulties arise between the parties as to their respective rights and pretentions, the notary is bound to record such pretentions in the inventory, together with all protestations against the same, leaving the parties their judicial recourse.

1310. Any of the parties may petition the judge to oblige the notary to enter

their pretentions 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.

1311. In the case mentioned in article 1309, 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.

1312. 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.

1313. 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.

1314. The formalities and proceedings prescribed by the present section apply to all other cases in which an inventory is required.

SECTION II.

OF THE SALE.

1315. When the sale of the moveables is demanded by any of the heirs, pursuant to article 697 of the Civil Code, or by any other copartitioner, it takes place upon a day fixed, of which public notice must have been given.

1316. The sale takes place wherever the effects are situated, and for cash, unless it is otherwise agreed or ordered.

1317. The sale is affected by a bailiff or a public crier, or by any person agreed upon by the parties, and the moneys are received by the person thus employed.

1318. 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.

1319. Minutes of the sale are drawn up, stating who of the persons interested were present, 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.

1320. If any of the coheirs or copartitioners are minors, the notice of sale must also be published and posted up in the same manner as in cases of sale of moveables under execution.

CHAPTER III.

OF BENEFIT OF INVENTORY.

1321. Benefit of inventory can only be granted upon petition to the court or 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 his interest not to confound his rights with the obligations of the succession.

1322. The beneficiary heir is bound to give notice of his character as such, by an advertisement, as mentioned in article 1010.

1323. Benefit of inventory is only granted 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 shall, if thereunto required, as provided by article 663 of the civil code, give security to the amount and in the manner fixed by the court or judge. (*R. S. Q.*, art. 6019.)

1324. An heir under benefit of inventory cannot sell the moveable property of the succession without observing the formalities required for the sale of moveables under execution.

1325. He may sell the immoveables or the shares and stocks in industrial or financial companies, by observing the formalities provided by law for voluntary licitations, on the advice of the parties interested at a meeting convened for that purpose in the manner prescribed by the judge.—Such sale cannot take place respecting immoveables except with the consent of all the hypothecary creditors. (*R. S. Q.*, art. 6020).

1326. [In cases where the beneficiary heir has any claims to exercise against the succession, he must cause a curator to be named, the same formalities being observed as are prescribed for the appointment of curators to vacant successions.]

CHAPTER III. (A.)

OF LETTERS OF VERIFICATION.

1326*a*. Whenever, in this Province, an abintestate succession devolves, having property situate outside of its limits or debts due by persons not residing therein, the heirs, or one or more of them, may apply to the superior court, or to one of the judges of the court, in the district in which the deceased had his domicile, or if he had none to the superior court or to one of the judges of the court in the district in which he died, for letters of verification establishing upon whom the succession has devolved. (*R. S. Q.*, art. 6021).

1326*b*. The application is made by a petition, setting forth the death of the person whose succession has devolved, the fact that he died without leaving a will, and

leaving property situate outside the province or debts due by persons not residing therein, the persons who are his heirs, their relationship to him and their filiation, and praying for letters of verification which declare what persons have been proved to be the heirs of the deceased and in what proportions. (*Id.*).

1326*c*. The petition must be accompanied with an affidavit of the petitioner, or of a competent person, attesting the truth of the facts therein alleged. (*Id.*).

1326*d*. The petition, with a notice of the time when it will be presented, must be served upon the other known heirs who reside in the province; and 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 newspaper published in the English language, in the district. There must be an interval of at least five days between the day of service of the petition and that fixed for the presentation thereof, with an additional day for each additional five leagues when the distance between the Court House and the place of the service exceeds five leagues; and the day of such presentation must be at least thirty days from the last insertion of the summary notice. (*Id.*).

1326*e*. The petitioner must produce with the petition the acts of civil status necessary to establish the allegations; and when any such act of civil status cannot be produced, the petition must be accompanied by an affidavit to justify its absence. (*Id.*).

1326*f*. Any heir or his legal representative may enter an appearance, and may contest either the application or any allegation of the petition. (*Id.*).

1326*g*. The intervening parties are bound to plead, within four days from their appearance, and the petitioner must answer within three days from the filing of the pleas, on pain in either case of foreclosure, unless a longer delay be granted by the court or a judge. (*Id.*).

1326*h*. Proof is made and the parties are heard according to the ordinary rules of procedure; the written proof produced and the depositions or the notes of the evidence must remain of record. (*Id.*).

1326*i*. When the application has been proved, the court or judge renders judgment granting letters of verification, which declare what persons have been proved and found to be the heirs of the deceased and specify in what proportions. (*Id.*).

1326*j*. Letters of verification may be contested, by an action to that end before the superior court in the district where they were granted, by

any heir of whom mention has been omitted and who has not intervened. (*Id.*).

1326*k*. The declaration, in an action in contestation of letters of verification, must be accompanied with an affidavit of the plaintiff or of a competent person, denying the correctness of the letters, stating in what their incorrectness consists, and further 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. (*Id.*).

1326*l*. The declaration and affidavit must be produced and 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 summary notice of an application for letters of verification. (*Id*).

1326*m*. When the action in contestation of letters of verification is maintained, the judgment either alters and corrects them, or revokes and annuls 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. (*Id.*).

1326*n*. 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 of the province, in all proceedings and circumstances, where it is required to prove who are the heirs of the deceased or to obtain ancillary or subsidiary letters of administration. (*Id.*).

CHAPTER IV.

PROVISIONAL POSSESSION.

1327. Provisional possession, whenever it may be demanded, must be applied for by petition to the superior court, in the district in which the absentee or deceased person had his last domicile, or, if he had no domicile in Lower Canada, in the district in which the property is situate.

1328. The petition in the case of absentees must be accompanied with an act of notoriety, by three witnesses duly sworn, and establishing the facts upon which the petition is based, and also with such other proof as the court may deem necessary.

1329. Provisional possession cannot be granted until after 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 or the property in

question to bring their claims before the court.

1330. The proceedings upon such claims and upon the petition for provisional possession are the same as upon ordinary suits.

CHAPTER V.

OF VACANT SUCCESSIONS.

1331. If the natural or testamentary heir renounces the succession, and no person comes forward to accept it within the delays allowed for making an inventory and deliberating; or if there is no known heir, the succession is deemed vacant.

1332. When a succession is deemed vacant, any creditor or legatee, or the heir who has renounced, may demand the appointment of a curator to such vacant succession.

1333. The judge proceeds to such appointment after taking the advice of the relations and creditors of the deceased, convened in the manner prescribed by such judge.

1334. The curator is bound: 1. To make oath that he will faithfully and to the best of his ability administer the property of the succession and render an account thereof:— 2. To give notice of his appointment in the same manner as curators to the property of dissolved corporations; —3. To cause an inventory to be made, observing the same formalities as in ordinary succession; — 4. To cause the moveables to be sold, observing the same formalities as in the case of successions in which minors are concerned.

1335. He may sell the immoveables and shares or stock in manufacturing or financial associations, by following the formalities established by law for voluntary licitations, 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 immoveables, cannot be had except with the consent of all the hypothecary creditors. (*R. S. Q.*, art. 6022).

1336. 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 a judge to do so.

TITLE VII.

GENERAL PROVISIONS APPLYING TO THE DIFFERENT TITLES OF THE THIRD PART OF THIS CODE.

1337. In all proceedings under the different titles of the third part of this code, the delays upon summons are the same as those prescribed in article 390.

1338. All applications made or proceedings brought before a judge must remain in the records of the court and form part thereof.

1339. 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.

1340. All decisions of a court or a judge are also subject to a review by three judges of the superior court, according to and in conformity with the provisions contained in articles 494 and following.

TITLE VIII.

OF ARBITRATIONS IN GENERAL.

1341. Submission is an act by which persons in order to prevent or put an end to a lawsuit, agree to abide by the decision of one or more arbitrators whom they agree upon.

1342. Those persons only can enter into a submission who have the legal capacity to dispose of the objects comprised in it.

1343. The appointment of arbitrators by the court is regulated in the second part of this code.

1344. Deeds of submission made out of court must state the names and additions of the parties and arbitrators, the objects in dispute, and the time within which the award of the arbitrators must be given.

1345. Submission must be in writing,

1346. 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, or unless they have been named as mediators. 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.

1347. 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.

1348. The submission becomes inoperative: — 1. In the case of the death, refusal, withdrawal or inability to act of one of the arbitrators, unless some clause provide 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 object which forms the subject of the submission;— 6. By the extinction of the obligation which formed the subject of the submission.— 7. By revocation in the case of the preceding article.

1349. Arbitrators cannot be recused, except for reasons which have arisen or have been discovered since their appointment.

1350. 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 over again.

1351. 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.

1352. Awards of arbitrators are made out in notarial form, or deposited with a notary, who draws up an authentic act of the deposit, and they must be given or pronounced to the parties, or served upon them, within the delay fixed by the submission.

1353. Extra-judicial awards 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 them.

1354. The court before whom 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 enquire into the merits of the contestations; nevertheless, when a penalty has been stipulated in the submission, the court may do so whenever the party contesting has paid or ten-

dered the amount of the penalty either to the party who accepts the award or into court.

TITLE IX.

DIVISION OF LOWER CANADA INTO DISTRICTS FOR THE ADMINISTRATION OF JUSTICE.

1355. The province is divided into twenty judicial districts in the manner set forth in the table to be found in section fourth of chapter second of title first of the Revised Statutes of the province of Quebec ; the first column whereof contains the names of each district ;—the second column, the places which are comprised within the district; —and the third column, the name of the place at or near which the sittings of the superior court are held, and where the district court-house and gaol are situated. (*R. S. Q.*, art. 6023).—The courts of civil jurisdiction of the district of Quebec have over the county of Bellechasse, concurrent jurisdiction with those of the district of Montmagny. (*Id.*, art. 6024).

1356. If the name of the place which is the chief-place of a district is changed, such place nevertheless continues to be the chief-place under its new name. If the name of such place has been changed since the passing of the Lower Canada Judicature acts of 1857 and 1858, and is different from that mentioned in the above schedule, the chief-place must be designated by the name given by such change.

1357. The officers connected with the administration of justice in each of the new districts created by the Lower Canada Judicature acts of 1857 and 1858, are the same as in the old districts subsisting immediately before the time when such new districts were constituted, and proper persons may in like manner be appointed to fill such offices; and all the provisions of law touching such offices respectively, as well with regard to the security to be given by the persons holding the same, or the appointment of deputies, as with regard to other matters, extend to the like officers in the new districts, subject always to any provisions of any other act then in force.

1358. The *banlieue* of Quebec, as defined in chapter 75 of the consolidated statutes for Lower Canada, is and always has been part of the district of Quebec. The *banlieue* of Three Rivere is and always has been part of the district of Three Rivers.

FINAL PROVISIONS.

1359. The forms contained in the appendix to this code, whether in connection with this code or with the Civil Code, or others to the same effect, may be used in the cases to which they are intended to apply.

1360. The laws concerning procedure 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 law 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 relate. — Except always that as regards proceedings, matters and things anterior to the coming into force of this code, 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 and things remain in force and apply to them, and this code applies to them only in so far as it coincides with such provisions.

1361. If in any article of this code founded on the laws existing at the time of its promulgation, there be a difference between the English and French texts, that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded ; and if there be any such difference in an article changing the existing laws, that version shall prevail which is most consistent with the intention of the article, and the ordinary rules of legal interpretation shall apply in determining such intention.

APPENDIX

PART FIRST.

FORMS CONNECTED WITH THE CIVIL CODE.

No. 1.

In connection with article 1834.

Lower Canada,
District of ..... }

We, ..., of.....in ..... (*Grocers*) hereby certify that we (have carried on and) intend to carry on trade and business, as (*Grocers*), at..... in partnership, under the name and firm of....., (*or as the case may be*), *or* I (*or* we) the undersigned, of....., hereby certify that I (*or* we (have carried on and) intend to carry on trade and business as..... at....., in partnership with C. D., of....., and E. F., of....., and that the said partnership hath subsisted since the ..... day of....., one thousand....., and that we (*or* I *or* we and the said C. D. and E. F.) are and have been since the said day, the only members of the said partnership.

Witness our (*or any* of our) hands at....., this..... day of ....., one thousand....., (*or as the case may be*).

No. 2.

In connection with article 2299.

NOTING FOR NON-ACCEPTANCE.

(*Copy of bill and endorsement.*)

On the....., 18..., the above bill was by me, at the request of....., presented for acceptance to E. F. the drawee, personally, (*or* at his residence, office or usual place of business) in the city (town or village) of....., and I have received for answer "....." ; the said bill is therefore noted for non-acceptance.

A. B.
Not. Pub.

....., ... 18...

Due notice of the above was by me served upon { A. B., / C. D., } the { drawer / endorser } personally, on the.....of....., (*or*, at his residence, or usual place of business in....., on the .....day of.....,) *or*, by depositing such notice, direct-

ed to him, at....., in Her Majesty's post office, in this city (town or village), on the.....day of....., and prepaying the postage thereon.

A. B.
Not. Pub.

....., ..., 18...

No 3.

In connection with article 2203.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

(*Copy of bill and endorsement.*)

On this.....day of....., in the year 18..., I, A B., notary public, for Lower Canada, dwelling at....., in Lower Canada, at the request of....., did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the { drawee / acceptor } thereof, personally, (*or*, at is residence, office or usual place of business in.....,) and speaking to himself (*or* his wife, his clerk, *or* his servant, &c.) did demand { acceptance / payment } thereof; unto which demand { he / she } answered, ".....;"

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers (*or*, drawer and endorsers) of the said bill, and other parties thereto, or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance / payment } of the said bill.

All which I attest under my signature.

(Protested in duplicate.)

A. B., *Not. Pub.*

No 4.

In connection with article 2203.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE AT A STATED PLACE.

(*Copy of bill and endorsements.*)

On this.....day of....., in the year 18..., I, A. B., notary public for Lower Canada, dwelling at....., in Lower Canada, at the request of....., did exhibit the original bill of exchange whereof a true copy is above written, unto E. F., the { drawee / acceptor } thereof, at....., being the stated place where the said bill is payable, and there, speaking to....., did

demand { acceptance / payment } of said bill; unto which demand he answered "....."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers (*or*, drawer and endorsers) of the said bill, and all other parties thereto, or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come for want of { acceptance / payment } of the said bill.

All which I attest under my signature.

(Protested in duplicate.)

A. B.,
Not. Pub.

No. 5.

In connection with article 2320.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PROTESTED, FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, beginning with the words "And afterwards, on &c.," *continuing as in the last preceding form, but introducing between the words* "did exhibit," *the word* "again;" *and, in a parenthesis between the words* "written unto," *the words* "and which bill was by me, duly noted for non-acceptance on.....day of.....last."

But if the protest be not made by the same notary, then it should follow a copy of the original bill and endorsements and noting marked on the bill,.....and then in the protest introduce in a parenthesis, between the words "written unto," *the words* "and which bill was, on the.....day of.....last, by....., public notary for Lower Canada, noted for non-acceptance, as appears by his note thereof marked on the said bill."

No 6

In connection with article 2320.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY,

(*Copy of note and endorsements.*)

On this.....day of....., in the year 18..., I, A. B., notary public for Lower Canada, dwelling at....., in Lower Canada, at the request of....., did exhibit the original promisso.y note, whereof a true copy is above written, unto....., the pro-

missor, personally (or at his residence, office or usual place of business, in.....), and speaking to himself (or his wife, his clerk, or his servant, &c.), did demand payment thereof; unto which demand { he / she } answered "....."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promissor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest present and to come, for want of payment of the said note.

All which I attest under my signature.

(Protested in duplicate.)

A. B.,
Not. Pub.

No 7.

In connection with article 2320.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

(*Copy of note and endorsements.*)

On this..... day of....., in the year 18..., I, A. B., notary public for Lower Canada, dwelling at....., in Lower Canada, at the request of....., did exhibit the original promissory note, whereof a true copy is above written, unto..., the promissor, at....., being the stated place where the said note is payable, and there, speaking to....., did demand payment of the said note, unto which demand he answered " ..... "

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promissor and endorsers of the said note, and all other, parties thereto, or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All which I attest under my signature.

(Protested in duplicate.)

A. B.,
Not. Pub.

No 8.

In connection with articles 2303, 2326.

NOTARIAL NOTICE OF A NOTING, OR OF PROTEST FOR NON-ACCEPTANCE, OR OF A PROTEST FOR NON-PAYMENT OF A BILL.

(*Place and date of noting or of protest.*)

[First.]

To P. Q. (*the drawer*), at.....

Sir,

Your bill of exchange for $....., dated at.....,

the....., upon E. F., in favor of C. D., payable..... days after { sight, / date, } was this day, at the request of..., duly { noted / protested } by me for { non-acceptance. / non-payment. }

A. B.,
Not. Pub.

(*Place and date of noting or of protest.*)

[Second.]

To C. D. (*endorser.*) (*or* F. G.),

at.....

Sir,

Mr. P. Q.'s bill of exchange for $.....,dated at..., the....., upon E. F., in your favor (or in favor of C. D.), payable....days after { sight, / date, } and by you endorsed, was this day, at the request of.....,duly { noted / protested } by me for { non-acceptance. / non-payment. }

A. B.,
Not. Pub.

No. 9.

In connection with articles 2303, 2326.

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

(*Place and date of protest.*)

To....., at.....

Sir.—Mr. P. Q.'s promissory note for $....., dated at..... the....., payable { days / months / on..... } after date to { you / E. F. } or order. and endorsed by you, was this day, at the request of....., duly protested by me for non-payment.

A. B.
Not. Pub.

No. 10.

In connection with articles 2303, 2326.

ACT OF NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR NON-PAYMENT OF A BILL, OR OF NON-PAYMENT OF A NOTE (TO BE SUBJOINED TO THE PROTEST.)

And afterwards, I, the aforesaid protesting notary public, did serve due notice in the form prescribed by law

of the foregoing protest for {non-acceptance / non payment} of the {bill / note} thereby protested upon {P. Q. / C. D.} the {drawer / endorsers} personally, on the..... day of.....[or at his residence, office or usual place of business in....., on the.....day of.....; or, by depositing such notice, directed to the said {P. Q., / C. D.,} at ....., in Her Majesty's post office in this city (town or village), on the.....day of ....., and prepaying the postage thereon].

In testimony whereof, I have, on the last-mentioned day and year, at.....aforesaid, signed these presents.

A. B.
Not. Pub.

No. 11.

In connection with articles 2304, 2305, 2320, 2327.

PROTEST OF A JUSTICE OF THE PEACE (WHERE THERE IS NO NOTARY) FOR NON-ACCEPTANCE OF A BILL, OR NON-PAYMENT OF A BILL OR NOTE.

(*Copy of bill or note and endorsements.*)

On this.....day of.....in the year 18.... I, N. O., one of Her Majesty's justices of the peace for the district of .....in Lower Canada, dwelling at (or near) the village of....., in the said district, there being no practising notary public resident at or near the said village, (*or any other legal cause*), did, at the request of....., a householder in the said district, well known unto me, exhibit the original {bill / note} whereof a true copy is above written unto P. Q., the {drawer / acceptor / promissor} thereof, personally,, (or at his residence, office or usual place of business in.....), and speaking to himself (his wife, his clerk, or his servant, &c.), did demand {acceptance / payment} thereof unto which demand {he / she} answered "....."

Whereof, I, the said justice of the peace, at the request aforesaid, have protested, and by these presents do protest against the {drawer and endorsers / promissor and endorsers / acceptor, drawer and endorsers} of the said {bill / note} and all other parties thereto and therein concerned for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of {acceptance / payment} of the said {bill / note.}

All which is by these presents attested under the signature of the said (*the witness*) and under my hand and seal.

(Protested in duplicate.)

(*Signature of the witness.*)
(*Signature and seal of the J. P.*)

No. 12.

In connection with article 2337.

SCHEDULE OF FEES AND CHARGES.

	$ cts.
For presenting and noting any bill of exchange, and keeping the same on record.....	1 00
Copy of the same when required by the holder	0 50
For noting and protesting for non-payment any bill of exchange or promissory note, draft or order, and putting the same on record.....	1 00
For making and furnishing the holder of any protest for non-acceptance or non-payment, with certificate of service and copy of notice served upon the drawer and endorsers.....	0 50
For every notice, including the service and recording copy of the same, to an endorser or drawer, in addition to the postages actually paid...	0 50

No. 13.

In connection with article 2134.

FORM OF A DEED OF BARGAIN AND SALE EXECUTED BEFORE WITNESSES.

This deed, made the.....day of....., &c., between A. B., of....., &c., of the one part, and C. D., of....., &c., of the other part, witnesseth: That, for and in consideration of the sum of.....to the said A. B. in hand paid by the said C. D., at or before the execution of these presents (the receipt whereof is hereby acknowledged by the said A. B.), he, the said A. B., doth hereby grant, bargain, sell and confirm unto the said C. D., his heirs and assigns for ever, all that certain lot of land, &c., (*insert here a description of the property sold*): To have and to hold the said lot of land and premises hereinbefore granted, bargained and sold, or intended so to be, with their and every of there appurtenances, unto the said C. D., his heirs and assings for ever. In witness, &c.

A. B. [L. S.]
C. D. [L. S.]

Signed, sealed and delivered, in the presence of } E. F., G. H.

No. 14.

In connection with article 2139.

MEMORIAL OF A DEED OF BARGAIN AND SALE EXECUTED BEFORE WITNESSES.

A memorial to be registered of a deed of bargain and sale, bearing date the..... day of....., in the year of our Lord....., made between A. B., of ..... esquire, of the one part, and C. D., of..... &c., of the other part (*a full description of the parties to be inserted, as in the deed*), by which said deed the said A. B., for the considerations therein expressed, did grant, bargain, sell and confirm unto the said C. D., his heirs and assigns, all that, &c., (*insert a description of the property sold*) : To hold to the said C. D., his heirs and assigns for ever : Which said deed is witnessed, &c. (*specify here the names of the witnesses to the execution of the deed*) : and the said deed is required to be registered by the said C. D. As witness his hand, this.....day of....., &c.

C. D.

Signed in the presence of

J. K.
L. M.

No. 15.

In connection with article 2041.

MEMORIAL OF A DEED OF BARGAIN AND SALE, BY WAY OF MORTGAGE, BEFORE WITNESSES.

A memorial to be registered of a deed of bargain and sale, bearing date the.....day of....., in the year of our Lord....., made between A. B., of.....; &c., of the one part, and C. D., of....., &c., of the other part, by which said deed, the said A. B. of ....., did grant bargain, sell and confirm unto the said C. D., his heirs and assigns, all that, &c. (*here insert a description of the mortgaged premises*) : To holdt o the said C. D., his heirs and assigns for ever,... subject, nevertheless, to redemption, upon payment to the said C. D., his heirs, executors, curators, administrators, or assigns, of the sum of.....dollars, and lawful interest, as in the said deed is expressed : which said deed is witnessed (*specify here the names of the witnesses as in form* 14) : and the same deed is hereby required to be registered by the said C. D. As witness his hand, this..... day of, &c.

C. D.

Signed in the presence of

E. F.
G. H.

No. 16.

In connection with articles 2098, 2139.

MEMORIAL OF AN ONEROUS DEED OF GIFT INTER VIVOS.

A memorial to be registered of a notarial copy of a deed of gift *inter vivos*, bearing date at....., on the.....day of....., in the year of our Lord....., made between A. B., of &c., (and C. D., his wife by him in this behalf duly authorized,) of the one part, and E. F. of, &c., of the other part, (*a full description of the parties to be inserted, as in the deed*) : before G. H., public notary and witnesses, (*or* before J. K., and another, public notaries *as the case may be*,) by which said deed of gift, the said A. B., and C. D., his wife, did give, grant and confirm unto the said E. F., his heirs and assigns, all that, &c., (*insert a description of the property conveyed by the deed of gift* :) to hold to the said E. F. his heirs and assigns for ever ; subject, nevertheless, to a certain life-rent, consisting of &c., (*here insert the particulars of which the life-rent is composed* ;) which said life-rent is payable by the said E. F., to the said A. B. and C. D., his wife, each and every year during the term of their natural lives, as in the said deed of gift *inter vivos*, is expressed : And the said deed or gift is hereby required to be registered by (the said E. F.) As witness his hand, this.....day of..... &c.

E. F.

Signed in the presence of
L. M.
N. P.

No. 17.

In connection with the articles 2098, 2139.

MEMORIAL OF A WILL, OR OF A PROBATE, OR AN OFFICE COPY, OR A NOTARIAL COPY THEREOF.

A memorial to be registered of the probate (*or*, of the original will, *or* an office *or* notarial copy, *or as the case may be*,) of the last will and testament of G. H., late of....., bearing date, &c., by which will the said testator did give and devise unto, &c., (*as in the will*,) to hold, &c. ; which said will was executed by the said testator, in the presence of A. B. of, &c., C. D. of, &c. : And the probate of the said will, (*or*, the original, *or* an office *or* notarial copy, *or as the case may be*,) is hereby required to be registered by (O. P., one of the devisees therein named.) As witness his hand, this...,....day of...

O. P.

Signed in the presence of
R. S.
T. V.

No. 18.

In connection with the articles 2098, 2139.

MEMORIAL OF A NOTARIAL OBLIGATION.

A memorial to be registered of a notarial copy of a notarial obligation (*or* of the original, *if it be the original*,) bearing date the.....day of.., in the year of our Lord....., made and entered into by A. B., of....., &c., before E. F., public notary and witnessess, (*or* before G. H. and another, public notaries, *if the case be so*,) whereby the said A. B. owned himself to be indebted to C. D., of....., &c., in the sum of.....dollars, to be paid, &c.,.... and for securing the payment of the said sum of money and interest, hypothecated all that, &c., (*insert the description of the hypothecated premises, as contained in the notarial obligation:*) Which said notarial copy of the said notarial obligation is hereby required to be registered by the said C.D. As witness his hand, this..... day of....., &c.

C. D.

Signed in the presence of

J. K.
L. M.

No. 19.

In connection with the articles 2117, 2139.

MEMORIAL OF THE APPOINTMENT OF A TUTOR TO MINORS FOR THE PRESERVATION OF THE LEGAL OR TACIT HYPOTHEC RESULTING FROM SUCH APPOINTMENT.

A memorial to be registered of the appointment of A. B. of, &c., (*insert the place of abode and addition of the tutor;*) to be tutor to C. D., E. F., &c., minors under the age of twenty-one years, issue of the marriage of the late G. H., (*the name of the father*) deceased, with the late J. K., (*the name of the mother*) also deceased, which appointment was made by and under the authority of L. M. (*insert the name and description of the judge by whom the appointment has been made;*) at &c. (*the place where the appointment was made*, on the..... day of....., in the year of our Lord....., and the said appointment is hereby required to be registered, for the preservation of the hypothec resulting therefrom, on the real estate of the said A. B., situate in the.....of (*the name of the registration county or division within which the registration is to be made, and describe the property*) by N. O. of &c. (*insert the name and description of the person requiring the registration*). As

witness his hand, this.....day of....., &c.

N. O.

Signed in the presence of

O. P.
R. S.

No. 20.

In connection with the articles 2121, 2139.

MEMORIAL OF A JUDGMENT.

A memorial to be registered of a judgment in Her Majesty's court of....., at....., in the year of our Lord....., between A. B., of....., &c., plaintiff, and C. D., of....., &c., defendant, for.....dollars, with interest from, &c., and costs taxed at...dollars; which said judgment was rendered on the.....day of the said month of....., and is hereby required to be registered by (the said A. B.) As witness his hand, this....day of....., &c.

A. B.

Signed in the presence of

J. F.
T. P.

No. 21.

In connection with article 2151.

CERTIFICATE OF DISCHARGE FROM A JUDGMENT WHICH HAS BEEN REGISTERED.

To the registrar of.....

I, A. B,, of, &c., do hereby certify, that C. D., of, &c., hath paid me the sum of money due upon a judgment recovered in Her Majesty's court of....., at....., in the year of our Lord....., by me, the said A. B. against the said C. D., for..... dollars, debt, and.....dollars, costs, which judgment was registered on the.....day of....., in the year of our Lord.....; and I do hereby require an entry of such payment to be made, in the register wherein the same is registered, pursuant to law.

As witness my hand, this ..... day of ....., in the year of our Lord.....

A. B.

Signed in the presence of

J. K., of.....,&c.
L. M., of....., &c.

No. 22.

In connection with article 2151.

A CERTIFICATE TO DISCHARGE A MORTGAGE.

To the registrar of... .

I, A. B., of &c., (*the mortgagee in the deed, or his heirs, executors, curators, or administrators,*) do hereby certify, that C. D., of, &c., hath paid the sum of money due upon a deed of mortgage, bearing date the.....day of....., in the year of our Lord...., made between the said C. D., of the one part, and me, the said A. B. (or E. F., *as the case may be,*) of the other part, which was registered on the.....day of....., in the year of our Lord..... ; and I hereby require an entry of such payment to be made in the register, wherein the same is registered, pursuant to law.

As witness my hand, this..... day of....., in the year of our Lord.....

A. B.

Signed in the presence of

O. P., of.....&c.
R. S., of.....,&c.

No. 23.

In connection with article 2151.

A CERTIFICATE TO DISCHARGE A NOTARIAL OBLIGATION, AND EXTINGUISH THE HYPOTHEC THEREBY CONSTITUTED.

To the Registrar of.....

I, A. B., of, &c., (*the hypothecary creditor, his heirs, executors, curators or administrators,*) do hereby certify, that C. D., of &c., hath paid the sum of money due upon a notarial obligation, bearing date the.....day of....., in the year of our Lord....., made by the said C. D., to me, and in my favour, (*or in favour of G. H., as the case may be,*) as the obligee therein named, before E. F., public notary and witnesses, (or before E. F. and another, public notaries, *as the case may be,*) which was registered on the.....day of....., in the year of our Lord..... ; and I do hereby require an entry of such payment to be made in the register, wherein the same is registered, pursuant to law.

As witness my hand, this.. day of....., in the year of our Lord.....

A. B.

Signed in the presence of
J. K., of....., &c.
L. M., of....., &c.

No. 24.

In connection with articles 2115, 2120, 2121.

To the registrar for the County (*or* registration division) of.....

SIR,—I hereby notify you that the following real property, lying in your county (*or* registration division) that is to say—(*describe the property sufficiently, as then required by the civil code, observing the requirements of article* 2168, *if it is then in force in such county or registration division,*) is now in the possession of A. B., of....., as his property; and I give you this notice, to the end that the said property may become bound and effected by the general hypothec on the lands and real property of...., of.... created by (*describe the instrument as in form No.* 36,) which is already registered (*or* herewith filed for registration) in your office, in favour of C. D., of....., (*party in whose favour the hypothec exists*) and may be indexed by you as being so bound and affected.

Witness my hand, this..... day of....., 18....

E. F.

(*Quality in which E.F. acts.*)

No. 25.

In connection with article 2131.

To the registrar for the county (*or* registration division) of.....

SIR,—Take notice, that I hereby renew the registration of the hypothec created by the (*describe the instrument as in form* 24), registered in your office, on the ..... day of....., 18....., and binding and affecting the following property lying in your county (*or* registration division), that is to say; (*describe the property as in form* 24), which property is now in the possession of C. D., of..... &c., as the owner thereof.....

Witness my hand, this..... day of....., 18...

E. F.

(*Quality in which E. F. acts*)

No. 26.

In connection with article 2172.

To the registrar of the county (*or* registration division) of.....

SIR,—Take notice, that the property mentioned in and affected by the (*describe the instrument as in form* 24), filed for registration in your office, on the..... day of.....,

18..., is properly described under the provisions of article 2168 of the civil code, as follows: (*Insert the description as required by the said article, showing clearly of what number or numbers, or what part or parts of any number or numbers in the proper plan and book of reference, such property consists,*) and I give you this notice under the requirements and for the purposes of the said article.

Witness my hand at.....this .....day of, 18...

A. B.

PART SECOND.

FORMS CONNECTED WITH CIVIL PROCEDURE.

No. 27.

In connection with article 69.

AFFIDAVIT OF SERVICE UNDER ARTICLE SIXTY-NINE OF THE CODE OF CIVIL PROCEDURE, TO BE ENDORSED ON THE WRIT OF SUMMONS.

A. B., of....., being duly sworn, doth depose and say, (that he is a Bailiff entitled to serve process of the County Court of the County of....., in Upper Canada,) and that he served the within Writ of Summons on C. D., the Defendant (*or as the case may be*) therein named, on the .....day of....., 18....., at..... o'clock in the..... at....., in the said County, by delivering to *him* personally a true copy of the said Writ (*or as the case may be*) by leaving a true copy thereof for the said C. D. with a grown up person of *his* family at *his* domicile in the said County : and Deponent hath signed.

A. B.

Sworn before me, at..... this .....day of....., 18.....,

J. P.

Signature of the Commissioner or Justice of the Place.

[N. B. — *Omit the words* "that he is a Bailiff entitled to serve process of the County Court of the County of..... in Upper Canada,"—*when the service has been made by a person who is not a Bailiff, or being a Bailiff is not entitled to serve process of the County Court in such County.*]

No. 28.

In connection with article 91.

AFFIDAVIT OF THE PLAINTIFF (OR ONE OF THE PLAINTIFFS).

Lower Canada
District (or Circuit) of }

In the superior (or circuit court.)

A. B.,

Plaintiff,

vs.

C. D.,

Defendant.

A. B., of....., the plaintiff, (or one of the plaintiffs) in this cause, being duly sworn, doth depose and say, that the sum of....., being the amount demanded of the defendant in this cause, is justly due by him to the plaintiff (or plaintiffs) therein, for the causes in his (or their) demand mentioned; and the said deponent hath signed, (or hath declared himself unable to sign being thereunto duly required.)

Signature, A. B.

Sworn before me at....., this..... day of....., 18.....

J. S. P.

Signature of the judge, prothonotary, clerk or commissioner.

No. 29.

In connection with article 91.

AFFIDAVIT OF A PERSON OTHER THAN A PLAINTIFF.

Lower Canada
District (or Circuit) of }

In the superior (or circuit) court.

E. F., of....., being duly sworn, doth depose and say, that to his personal knowledge, the sum of....., being the whole (or part, as the case may be) of the amount demanded of the defendant in this cause is justly due by him to the plaintiff (or plaintiffs) for the causes in his (or their) demand mentioned; and the said deponent hath signed, or hath declared himself unable to sign, being thereunto duly required).

Signature A. B.

Sworn before me at....., this.....day of....., 13.....

J. S. P.

Signature of the judge, prothonotary, clerk or commissioner.

No. 30.

In connection with article 330.

THE OATH TO BE ADMINISTERED TO EXPERTS.

I, A. B., of the parish of ....., in the county of....., (*if there be two or more persons to be sworn say*, I, A. B., of....., and I, C. D., of.....,) do make oath and swear, that in the presence of E. F., the plaintiff, and G. H., the defendant named in the interlocutory judgment pronounced in (*here insert the name of the court*) in the district of....., bearing date the.....day of ....., or in their absence, after due notification shall have been given them, to attend at a place to be designated, and on a day and hour to be specifically named to them respectively, I will faithfully proceed as an expert to the view and examination required by the said interlocutory sentence; and that I will truly report my opinion in the premises, without favour or partiality towards either of the said parties; So help me God.

No. 31.

CERTIFICATE, TO BE MADE AND SIGNED BY THE COMMISSIONER, OF THE DUE ADMINISTRATION OF THE OATH.

Sworn before me....., a commissioner of the superior court in the district of....., (*or* sub-delegate authorized by the commission (*or* the judgment, *as the case may be*) hereunto annexed, *as the case may be*) at..... on the.....day of the month of....., in the year.....

No. 32.

In connection with article 334.

THE OATH TO BE ADMINISTERED TO WITNESSES.

I, ..., (*insert the name, profession or quality and place of residence of the witness*) do make oath and swear that I am not related or allied to, or a servant or domestic of E. F., the plaintiff, or G. H., the defendant, and that I am not interested in the event of the cause pending between them, (*or if 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 family of either of them,*) and I do also swear that the evidence which I shall give between the said parties before the experts (*or* arbiters *or* arbitrators *as the case may be*), named in the interlocutory judgment pronounced by (*here insert the name of the court*), in the said cause, shall be the truth, the whole truth, and nothing but the truth; So help me God.

No 33.

In connection with article 486.

AFFIDAVIT OF AN OPPOSANT OR OF SOME OTHER PERSON.

Canada,
Province of Quebec,
District (or circuit of.....)

In the superior (or circuit) court.

A. B., plaintiff, *vs* C. D., defendant, and G. H. opposant.

G. H., of..... ....., the opposant, (or one of the opposants in this cause), (*or other person, as the case may be*) being duly sworn doth depose and say, that the facts articulated and set forth in the annexed opposition, and each and every of them, is and are true; and that the said opposition is not made with any intent unjustly to retard or delay the execution of the judgment recorded in this cause, but that the same is made in good faith for the purpose of obtaining justice, and the said deponent hath signed (or hath declared himself unable to sign, being thereunto duty required).

Signature. G. H.

Sworn before me, at....., this..... day of..... 18.....

J. P.

Signature of the judge, prothonotary, clerk or commissioner.

No 34.

In connection with article 649.

ADVERTISEMENT OF SHERIFF'S SALE.

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. All persons having claims on the same which the registrar is not bound to include in his certificate under article 700 are hereby required to make them known according to law. All oppositions to withdraw, to annul, to secure charges, or other oppositions to the sale, except in cases of *vendition exponas*, are required to be filed with the undersigned, at his office, previously to the fifteen days next preceding the day of sale. Oppositions for payment may be filed at any time within six days next after the return of the writ.

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,*) (*insert the description of the land or other immoveable property, parish, seigniory or township, and the county and district in which the same is situate,*).....in the

county, &c., bounded, &c. To be sold at....., on the..... day of....., at..... o'clock in the (forenoon); the said writ returnable on the..... day of ..... next.

A. P.,
Sheriff.

No..... *Venditioni exponas.*
No..... *Alias fieri facias.*

No 35.

In connection with article 1065.

Lower Canada
District (*or* circuit) of }

In the circuit court.

A. B., of.....

Plaintiff,

and

C. D., of.....

Defendant.

[L. S.] Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith.

To C. D., the defendant above mentioned.

Whereas A. B,, the plaintiff aforesaid, demand of you the sum of.....due by you to him for (*state sufficiently the cause of action*) which said sum you have (as he saith) refused to pay him. (*If the action be to recover a thing wrongfully detained, &c., vary the statement of the cause of action accordingly. If there be a declaration annexed, refer to it; and omitting the words after* "the plaintiff aforesaid," say "hath, by his declaration hereunto annexed, made complaint against you in the manner therein set forth.") And the plaintiff prays judgment accordingly.

You are therefore required to satisfy the demand of the said plaintiff in this cause, with costs, or to appear in person or by your attorney before our said court, at the court house at.....in the said circuit, at..... o'clock in the forenoon, (*omit these words if the case be appeable*), on the ..... day, of..... instant (*or* next), to answer the said demand; otherwise judgment may be given against you by default.

In witness whereof, we have caused the seal of our said court to be hereunto affixed, at.....this.....day of .....in the year of our Lord, one thousand eight hundred and.....

E. F.

Clerk of the said court for the said district (*or circuit*).

No. 36.

In connection with articles 700, 935, 955.

CERTIFICATE OF THE REGISTRAR.

Lower Canada,
County (*or* registration division of.....)

Privileges and hypothecs registered in my office, which do not appear by the books therein to have been wholly discharged, and of which I am, under the provisions of the code of civil procedure of Lower Canada, required to grant a certificate, at the instance of A. B., of....., (Esquire, *or as the case may be*) the applicant named in the annexed notice of application for confirmation of title—*or* of C. D., &c., Sheriff of the district of...having the execution of the annexed notice of sheriff's sale,.....*or* of E. F., &c., the party prosecuting the licitation mentioned in the annexed notice .....*or* of G. H. applying for such certificate :.....

First. Against the property to which the judgment of confirmation... *or* the said notice of sheriff's sale...*or* the said notice of licitation is to apply.—*or* described in the application of the said G. H.; the following, viz : ...a hypothec (*or as the case may be*) created by a (*description of instrument*) between..... and..... (*names and qualities of parties*) bearing date the.....day of .....18..., and registered on the..... day o..... 18.....; passed (*if the instrument be notarial*) before..... notary public and his colleague, at....., as to which no discharge is registered (*or as the case may be, mentioning any partial discharge registered,*) and the sum which appear to be due for principal and interest secured by which hypothec appears to be $....., and the registration of which hypothec has not been renewed (*or* was renewed on the.....day of..... 18....., (*as the case may be.*) *And so on in the same form for any other privileges or hypothecs registered against such property.*

Secondly. Against parties who within ten years next preceding the date of the registration of the title sought to be confirmed as aforesaid,.....*or* next preceding the date of the notice of sheriff's sale,.....*or* next preceding the date of the notice of sale by licitation (*as the case may be*)..... *or* next preceding the date of the application of the said G. H..... have been owners of the said property, the following, viz :

A hypothec created, &c., (*as under next preceding head.*)

Thirdly. In case of demand of certificate under article 2177 of the civil code.) Against G. H., of....., &c., ...the immediate author

of the party who owned the said property at the commencement of the said ten years, the following, viz : A hypothec created, &c., (*as under preceding heads.*)

If there is no privilege or hypothec required to be certified under any one or more of the foregoing heads, the Registrar will instead of the words, " the following, viz : " *insert the word* " None. "

Until plans and books of reference, under articles 2168 *and* 2169 *of the civil code, are in force in the county or registration division, the registrar may omit the first head.*

If the registrar was not able to ascertain from the books and documents in his office, who were the owners of the property during the ten years aforesaid, or who was the author of the party who was the owner thereof at the commencement of the said ten years, he will add :

And inasmuch as I was not able to ascertain, from the books and documents in my office, who all the owners of the property during the ten years aforesaid were, (*or* whe was the author, &c., *stating the requisite fact or facts which he was not able to ascertain from the books or documents in his office*),—I have, therefore, as required by the said Act, ascertained by the affidavits of..... and....., hereunto annexed, that..... was the owner of the said property in the year 18... (*or, as the case may be, mentioning all the facts so ascertained*) : all which I hereby certify to all whom it may concern. Witness my hand, at..... this..... day of....., 18.....

O. K.,

Registrar of the county *or* registration division of.....

No. 37.

In connection with article 701.

Lower Canada }
District of..... }

A. B., of....., in the county (*or* registration division) of ....., (*farmer*) maketh oath, (*or* solemn affirmation) as follows :

That to the personal knowledge of this deponent (*or* affirmant) A. B., of....., was, in or about the year 18.....in possession as owner of the following property (*describe the property as in the foregoing form, or if such party was so in possession of part only of the said property say,*) was in or about the year18.....in possession as owners of (*describe the part*), forming part of the following property (*describe the property as in the foregoing form and if the property was in the possession of several persons during the ten*

years, declare in the same manner the time during which each of them has possessed the property or any portion of it,) and the deponent (*or* affirmant) hath signed.

E. F.

Sworn (*or* solemnly affirmed) before me, at....., this..... day of....., 18.....

L. M.

Registrar *or* Justice of the peace for district of.....

The words of the foregoing are to be varied so as to meet the circumstances of the cases in which they are used.

No. 38.

In connection with article 751.

Lower Canada,
District of..... |

In the Superior Court. (*date.*)

Present: X. Y., Judge.

A. B.,

Plaintiff,

vs.

G. D.,

Defendant,

et

E. F.,

Créancier colloqué.

It is ordered that the said E. F. (*his quality and domicile*) or his legal representatives do appear before this Court on the.....day of....., in order to answer the contestation of his claim.

By order,

R. S.
Prothonotary.

No. 39.

In connection with article 766.

To C. D., of (*state here the address and calling of the party*) defendant in the cause wherein the judgment an authentic copy whereof is hereunto affixed, has been rendered.

Take notice that the undersigned, A. B., plaintiff in the said cause, hereby demands of you, under and by virtue of the provisions contained in article 766 of the Code of Civil Procedure of Lower Canada, a copy of which article is hereunto subjoined for your further information in the premises—that, within thirty days from the personal service to be made upon you of the foregoing certified copy of the said judgment, together with this notice, you do make and file the statement prescribed in the same article, in the manner and under the penalties therein set forth.

Done at....., this.....day of....., 18...

A. B.
Plaintiff.

(*Here insert a copy of the said article.*)

No. 40.

In connection with article 768.

Lower Canada, District of..... }

In the Superior Court.

No. (*here state the number of the action.*)

A. B.,

Plaintiff,

vs.

C. D.,

Defendant.

Public Notice is hereby given, in pursuance of the provisions of article 708 of the Code of Civil Procedure of Lower Canada, that at the hour of..... in the..... noon of..... the..... day of ..... next (*or* instant *as the case may be*), or as soon after that hour as may be, at the Court House at..... (*or, as the case may be,*) at the Chambers of the Judge, (*sufficiently describing the same*), the said A. B., Plaintiff in this cause, will apply to (*naming the Court, and indicating whether the application is to be made to such Court, or to a Judge thereof*), for the appointment of a fit and proper person to be Curator to the property, real and personal, of the said C. D., Defendant in this cause, who has made and filed in the Office of the Prothonotary of the said Court, a statement under oath of the same, and also of his Creditors and their claims, together with a declaration that he is willing to abandon his property for the benefit of his Creditors—the whole as by the said Code required.

And all persons, creditors of the said C. D., are hereby notified then and there to attend, to make to the said Court (*or* Judge, *as the case may be*) such representation or statement in the premises as they may see fit to make.

Given at ....., this..... day of....., 18.....

A. B.,
Plaintiff.

No. 41.

In connection with article 770.

Lower Canada District of..... }

In the superior court.

No. (*here state the number of the action.*)

A. B.,

Plaintiff,

vs.

C. D.,

Defendant,

and

E. F.,

Curator of the property and effect of the said Defendant.

Public notice is hereby given, in pursuance of the

provisions of article 770 of the Code of Civil Procedure of Lower Canada, that on the .....day of..... instant (*or* last past, *as the case may be.*) the said E. F., of (*state here the address and calling of the Curator,*) was by order of (*describe here the court or judge in question*), appointed to be Curator to the property and effects, of every kind, real and personal, of the said C. D., Defendant in this cause, abandoned by the said C. D., for the benefit of his creditors the whole as by the said Code provided.

And all persons, creditors or debtors of the said C. D., are hereby notified and required to govern themselves in the premises accordingly.

Given at....., this..... day of.....,18.....

E. F.,
Curator.

(*Or* A. B., Plaintiff, or C. D., Defendant, *as the case may be.*

No. 42.

In connection with articles 812, 813.

AFFIDAVIT FOR WARRANT OF ARREST.

A. B. of....., &c , being duly sworn, doth depose and say that C. D., of....., is personally indebted to..... in a sum exceeding forty dollars, to wit ; in the sum of.....

That this deponent is credibly informed, hath every reason to believe, and doth verily and in his conscience believe, that the said.....is immediately about to leave the province of Canada), (*allege specially the reasons which lead to the belief that the defendant is about to leave the province of Canada*), whereby the said..... without the benefit of a warrant of attachment against the body of the said ....., may be deprived of ..... remedy against the said..... ; and this deponent hath signed.

Sworn before me, ... this .....day of.....

No. 43.

In connection with articles 812, 813.

WARRANT TO ARREST THE PERSON.

Canada, *Province of Quebec*, District of.....

A. B., Esquire, commissioner of the superior court In the district of..... To ..... and to the keeper of the common gaol of the said district, greeting :

I command you, that you take .....of .....in the

county of .....in the district of.....if he be found in.....and him, with all due diligence, convey to the common gaol of the said district, and deliver to the keeper thereof, together with this warrant: and I do hereby command you, the said keeper, to receive the said..... and him safely keep for the space of forty-eight hours, and no longer, unless before the expiration of that time, a writ of *capias ad respondendum* be duly served upon him to compel him to be and appear personally in the superior court for the said district on the day of the return of such writ, to answer.....of ..... of a certain debt, interest and costs, amounting to the sum of.....

Given under my hand and seal, this ..... day of..... in the..... year of Her present Majesty.

No. 44.

In connection with article 828.

FORM OF BAIL-BOND.

Know all men by these presents, that we, (*name here the defendant and his bail,*) are held and firmly bound to (*name here the sheriff,*) sheriff of the district of....., in Lower Canada, in the sum of (*state here the amount sworn to and endorsed on the writ, with twenty-five per centum added for interest and costs,*) to be paid to the said sheriff, or his certain attorney, executors, administrators or assigns; for which payment, to be well and faithfully made, we bind ourselves, and each of us by himself, for the whole and every part thereof, and the heirs, executors, and administrators of us, and every of us, firmly by these presents sealed with our seals, and dated this..... day of....., in the..... year of the reign of our sovereign lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of our Lord one thousand eight hundred and.....

Whereas the above bounden (*name here the defendant*) has been by the said sheriff arrested under and by virtue of a certain writ sued out of the superior court in the district of....., at the instance of (*name here the plaintiff,*) and to the said sheriff in due course of law delivered;

The condition of this obligation is such that if the said (*name here the defendant*) do, on (*state here the return day of the writ,*) or at any time previously thereto, or within eight days thereafter, give good and sufficient security to the satisfaction of the superior court in the said district or of any one of the judges of the said court, that

he, the said (*name here the defendant,*) will surrender himself into the custody of the said sheriff whenever required so to do by any order of the said court, or of any judge thereof, made as by law provided, or in default thereof, will pay to the said (*name here the plaintiff,*) the debt for which he the said (*name here the defendant,*) has been arrested as aforesaid, with interest and costs; or do, on (*state here the return day of the writ,*) or at any time previously thereto, or within eight days thereafter, put in special bail, as by law provided, to the action wherein the said writ has been sued out as aforesaid, then this obligation shall be void and of no force, but otherwise shall stand in full force, vigor and effect.

Signed, sealed and delivered in presence of.....

No. 45.

In connection with articles 842, 843.

AFFIDAVIT TO OBTAIN WARRANT OF ATTACHMENT.

A. B., of....., being duly sworn, doth depose and say that C. D., of.....is indebted to..... of..... in a sum exceeding forty dollars, to wit; in the sum of.....(*Here state succinctly the cause of indebtedness.*)

That this deponent is credibly informed and hath every reason to believe, and doth verily and in his conscience believe, that the said .....is now about immediately to secrete..... estate, debt and effects, and do...abscond and do...intend suddenly to depart from Lower Canada, with an intent to defraud the said.....and.....creditors.

This deponent further saith, that he doth verily believe, that without the benefit of a warrant of attachment..... against the said..... the said ..... will lose his debt and sustain damage, and hath signed.

Sworn before me, at..... this.....

No. 46.

In connection with article 843.

WARRANT OF ATTACHMENT.

A. B., esquire, commissioner of the superior court in the district of.....

To.....greeting:

I command you, at the instance of....., to attach..... of and belonging to....., if the same shall be found in the..... to the value of..... and the said..... keep and detain in your charge and custody for the period of

twelve days, from the date hereof, and no longer, unless before the expiration of twelve days, the said..... shall be seized by writ of attachment issuing from the superior or circuit court (*as the case may be*) at..... at the suit of the said.....

Given under my hand and seal, at.....this.....day of..... in the.....year of the reign of Her Majesty.

No. 47.

In connection with article 903.

FORM OF NOTICE IN THE NEWSPAPERS.

Lower Canada,
District of.....

(*Name of place*).....day 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 immoveable situated in the said district, to wit: A land containing..... arpents in front, by.....in depth, in the first range of the seigniory of.....,in the parish of..... in the county of....., bounded as follows, to wit:... which land is now occupied by D. C. (*or* has not been occupied for..... years, and was last occupied by N.) and the said A. B., alleging 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 immoveable hereinabove described, for the sum of....., claims from the present proprietor of the said immoveable the sum of..... due to him for.....

The said A. B. further alleges that the present proprietor of the said immoveable 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 immoveable to appear before the said court, at....., within two months, to be reckoned from the fourth publication of this present notice, to answer to the demand of the said A. B., failing which, the court will order that the said immoveable be sold by sheriff's sale.

First insertion

(*date*) H. P.,
Prothonotary.

No. 48.

In connection with article 905.

FORM OF WRIT FOR THE SALE OF THE IMMOVEABLE.

To the Sheriff of the District of.....

Whereas the following notice hath been given in conformity with article 903 of the Code of Civil Procedure of Lower Canada (*recite the notice*); and whereas judgment was rendered on the....., day of....., ordering the sale of the immoveable described in the said notice, you are hereby enjoined to make the ordinary announcements thereof and to sell the said immoveable 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 on the.....

H. P.

No. 49.

In connection with article 908.

FORM OF APPEARANCE.

I, B. C. appear to answer to the petition of A. B., as proprietor of the immoveable described in the said petition, by virtue of (*state by virtue of what title you are proprietor, and give the date of the Acts or Deeds by virtue of which you are such proprietor.*)

No. 50.

In connection with article 950.

Public 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*) made and executed before A. B. and colleague, notaries public, on the.....day of..... between C. D. of....., of the one part; and E. F. of....., of the other part; being a (*sale*) by the said C D. to the said E. F., of (*a lot or a parcel of land*) situate, &c., and possessed by.....as proprietor, for the three years now last past; and all persons who have or claim to have any privilege or hypothec under any title or by any means whatsoever in or upon the said (*lot of land*), immediately previous to and at the time the same were acquired by the said C. D. are hereby notified that application will be made to the said court on....., the.....day of.....for a judgment of confirmation, and that unless their claims are such as the registrar is bound by the provisions of chapter thirty six of the Consolidated Statutes

for Lower Canada, to include in his certificate to be filed in this case under the said act, they are hereby required to signify in writing their oppositions, and file the same in the office of the said prothonotary eight days at least before the said day, in default of which they will be for ever precluded from the right of so doing.

No. 51.

In connection with article 929.

Lower Canada, District of..... } LICITATION.

Public notice is hereby given that under and by virtue of a judgment of the Superior Court sitting at....., in the district of....., on the .....day of....., one thousand eight hundred and....., in a cause in which A. B. (*description at length*) is defendant ordering the licitation of certain immoveables 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.....day of..... next, sitting the court, in the court room of the court house in the said city (*or* town) of.....subject to the charges, causes and conditions contained in the list of charges, deposited in the office of the prothonotary of the said court; and any opposition to annul, to secure charges, or to withdraw, to be made to the said licitation must be filed on the office of the prothonotary of the said court fifteen days at least before the day fixed as aforesaid for the sale and adjudication, and failing the parties to file such oppositions within the delays hereby limited, they will be foreclosed from so doing.

No. 52.

In connection with article 1269.

On the.....day of....., in the year one thousand eight hundred and.....at....o'clock in the ..... noon, before the undersigned public notaries for Lower Canada, residing in the district of.....came and appeared A, residing..... of the one part, and B, residing.....of the other part, who have appointed that is to say, the said A.....the person of.... and the said B.....that of..... 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, (*or one of the undersigned notaries*) to ascertain the value thereof, (*and if the sale is demanded on account of indivisibility*)

and whether or not it can advantageously be divided.

No. 53.

In connection with article 1269.

On the.....day of..... in the year one thousand eight hundred and.....at... o'clock in the.....noon, before me, the undersigned notary public for Lower Canada, 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 cause 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 above named having appeared, we have caused to be read the said act of declaration, the report of the experts made before....., notary, and his colleague, 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.*

No. 54.

In connection with article 1270.

I,..... and I,..... do make oath and 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 favor or partiality for any of the parties interested in the matter in question. So help me God.

Sworn before me the undersigned notary.

No. 55.

In connection with article 1270.

On the.....day of.....in the year one thousand eight hundred and.....at.....o'clock in the.....noon, before me the undersigned public notary for Lower Canada, residing in the district of.....came and appeared.....the experts appointed by the act above executed by the undersigned notaries, on..... who declare

that having previously made oath as appears by the certificate hereunto annexed, they proceeded on the.....day of .....to the inspection of the real estate, appurtenances and dependencies mentioned and described in the declaration of.....received by....., notary, the....., and after due examination and obtaining every information necessary for the purposes mentioned in their said act of appointment, they value and estimate the said real estate .....(*if there be several immoveables, they should be valued separately,*) and further, (*if the sale is made on account of indivisibility*) 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.

Whereof act in original form is delivered at.....

No. 56.

In connection with art'cle 1272.

Lower Canada, }
District of..... }

To the honorable the judge (or judges) of the superior court, at &c., &c.

A. (*addition and place of residence*) humbly represents that he has caused the relations and friends of.....to be consulted by....., notary, at... on the.....day of....., 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 honors will take these proceedings into consideration and homologate them, if they ought to be so homologated, and you will do justice.

At.....the.....one thousand eight hundred.....

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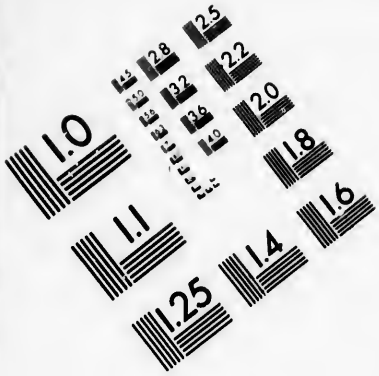

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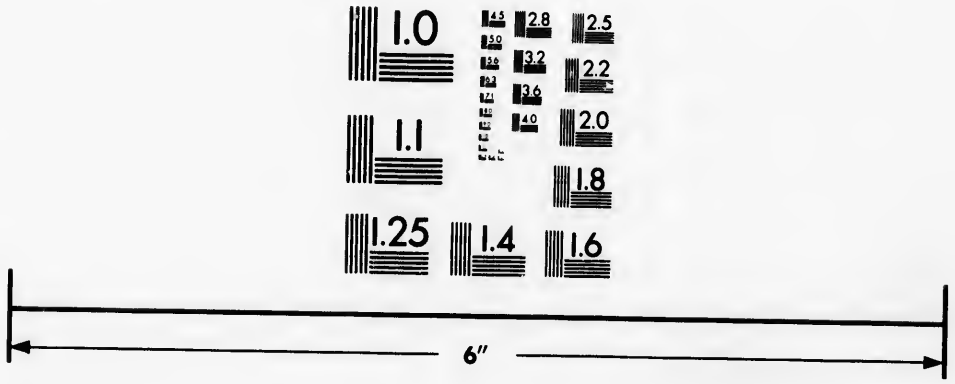

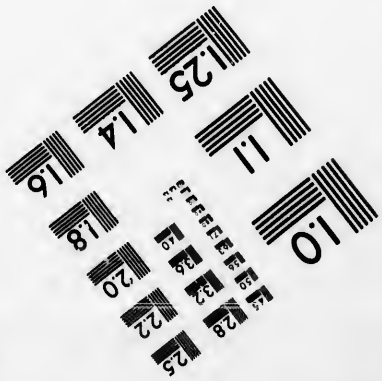

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