The Legal News.

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APPEALS TO THE PRIVY COUNCIL.

The question as to when an appeal lies to the Privy Council has given rise to innumerable discussions upon motions presented to the Court of Queen's Bench during the last twenty years. These motions are usually made in the last moments of the term, after the rendering of judgments, and it would not be surprising, therefore, to find some discrepancy in the decisions. The rule as to amount laid down in the Consolidated Statutes L.C. c. 77, s. 52, is now incorporated in the Code of Procedure, Art. 1178, §3, as follows: — "In all other cases "wherein the matter in dispute exceeds the "sum or value of five hundred pounds sterling." The amount in dispute has been held, on several occasions, to mean the amount in dispute at the institution of the action, that is to say, the amount demanded by the conclusions (see *Joyce* v. *Hart*, 1 S.C. Rep. 321) and the text of C.S.L.C. cap. 77, s. 25, is express to that effect. But in the case of *Voyer & Richer*, after the Canadian Court of Queen's Bench had refused leave to appeal, on the ground that the amount demanded did not exceed £500 sterling, the Privy Council granted leave to appeal, and made up the £500 by adding interest and costs to the principal amount demanded by the action. That decision the Court of Queen's Bench has not thought proper to follow in the case of *Stanton & The Home Ins. Co.*, noted in the present issue. The jurisprudence established by the Statute, and by a long series of decisions, binds our Courts, but does not bind the Privy Council. That tribunal may, in fact, upon special application, grant leave to appeal in any case whatever. But in rendering judgment in *Stanton & The Home Ins. Co.*, our Court of Appeal seemed to intimate that if the Privy Council, on a future occasion, with our Statute before them, should express the opinion that the accrued interest and costs, should be taken into account, then the Court here would acquiesce in that ruling and thus save parties in future the expense of a special application. Whichever rule be adopted, it may be expected to work with apparent harshness in exceptional cases. If interest be added, then, logically, taxed costs should also be considered, and the Court would often have to enter into a minute calculation before it could decide whether the appeal should be allowed. On the other hand, by applying the same test consistently, the appeal might sometimes have to be refused (contrary to sect. 25) where the amount demanded exceeded £500 sterling. For the plaintiff might have asked £10,000, and yet have acquiesced in a judgment for £100, and if the defendant appealed to the Queen's Bench and the judgment was confirmed, the amount in dispute would then be only the £100, with interest and costs. Upon the whole, the rule laid down has the merit of being easily applied, and it avoids the necessity of straining the language of the Statute so as to make the amount demanded mean the total amount actually at stake, including all interest and costs, at the time the application is made.

THE LEGAL VACATION.

It seems that in the block of business before the English Courts, the Long Vacation is threatened, and forthwith the *Law Times* declares that the abolition of the Long Vacation aforesaid will be the greatest blow yet inflicted upon the efficiency of the Bench and the Bar. Every one will join in the lament that the Long Vacation should be abolished, but we presume that if the event takes place at all, it will be on due consideration of the advantages and disadvantages of that course. It by no means follows, if the Long Vacation is abolished, that Judges are to have no holidays, nor the clerks in attendance, nor the lawyers engaged. They will simply have to arrange, like those engaged in mercantile houses and other avocations, for obtaining relief for a specified term, whilst the legal machine grinds on.

A USEFUL RULE.

The Supreme Court of California has adopted the following rule: "A syllabus of the points "decided shall be stated in writing by the jus- "tice delivering a written opinion in any case, "and a general concurrence by other justices "shall be deemed to be a concurrence only in "the points stated in the syllabus."

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Sept. 17, 1879.

CHANTELOUP v. THE DOMINION OIL CLOTH CO.

Report of Experts—Delay to file—C.C.P. 337.

RAINVILLE, J. This case came up for trial at Enquête and merits before Mr. Justice Jetté, and after the examination of some witnesses, was by him referred to experts, who were to report on or before the 1st of August. The report, however, was only filed on the 17th August. Plaintiff moved to reject it, claiming that under art. 337 C.C.P. the delay was fatal. I cannot agree with him. Art. 338 shows that in case of delay the experts may even be compelled to file their report. I do not consider their report as analogous to that of arbitrators, as urged by plaintiff. The latter is decisive, the former is merely evidence for the information of the Court. The motion is, therefore, rejected with costs. Defendant's counter motion, for extension of the delay until after the date of the filing of the report, is granted, as that may be done even after the delay has expired.

L. N. Benjamin, for plaintiff.

Trenholme & Maclaren, for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 20, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER, & CROSS, JJ.

STANTON, Appellant, and THE HOME INSURANCE Co., Respondent.

Appeal to Privy Council—Amount of demand—Interest not to be included.

The appellant Stanton, moved for leave to appeal from the judgment of the Court of Queen's Bench, which confirmed a judgment of the Superior Court, dismissing his action; (*ante*, p. 238).

Sir A. A. DORION, C. J., said this was an application on the part of the appellant, to be permitted to appeal to the Privy Council. The action was for $2,150, a sum less than £500 sterling, but the case had been pending eight years, and the interest and principal united now amounted to considerably more than £500 sterling. In the case of *Voyer & Richer*, the Privy Council allowed an appeal (though this Court had refused it), on the ground that by adding interest and costs the amount in dispute was over £500 sterling. That was contrary to the whole course of decisions in this country, and the decisions in this country were in conformity to the statute (C.S.L.C. cap. 77, s. 25). The attention of the Privy Council perhaps, had not been drawn to the statute, and it might be well that it should be put before them on the next occasion. The statute said the amount of the demand, was what should be looked at, and following this rule, the motion for leave to appeal in this case would be rejected.

RAMSAY, J., said there was great equity in the other rule, no doubt. But the amount demanded was the amount of the demand at the time the action was instituted, and the interest, as a mere incident, could not be considered. The Privy Council had powers which this Court had not, and the Privy Council was not bound by our statute. Until the law was changed, this Court must refuse the appeal in such cases, subject to the right of the party to make special application to the Privy Council.

MONK, J., did not dissent, but was of opinion that the decisions had not been quite harmonious. However, the Court had now come to the conclusion that the amount demanded, without interest, was what gave the right of appeal.

The judgment was as follows :—

"Considering that it is provided by Sect. 25 of chap. 77, C.S.L.C., that whenever the right to appeal from any judgment of any Court is dependent on the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different;

"And considering that the amount which the appellant demanded in and by his declaration in this cause, was less than £500 sterling, to wit, a sum of $2,150, and that according to law and the practice of this Court the interest accrued since the action was served and returned into Court, cannot be added to the principal sum demanded in order to determine the right of appellant to appeal from the judgment rendered in this cause; the Court doth reject the

motion of the appellant for leave to appeal to Her Majesty in Her Privy Council, with costs."

Abbott, Tait, Wotherspoon & Abbott, for appellant.

E. Carter, Q.C., for respondent.

MONTREAL, Sept. 22, 1879.

SIR A. A. DORION, C.J., MONK, RAMSAY, TESSIER, SICOTTE, JJ.

McINNES et al. (plffs. below), Appellants, and VEZINA et al. (defts. below), Respondents.

Sale by Sample—Retaining part of goods (where the purchaser refused to accept goods as not equal to sample) as security for freight.

Sir A. A. DORION, C.J., said that this was an action brought by the appellants, D. McInnes & Co., for the price of goods sold to the respondents, Vezina & Bedard. Upon receiving the goods, consisting of a number of pieces of tweed, Vezina & Bedard immediately wrote to McInnes & Co., that the goods were not according to the sample which had been shown to them, and refused to accept them; and they inquired of McInnes & Co., in what manner they should return them. Not receiving any answer, or receiving an evasive answer, they returned the goods through the Express Company, with the exception of one piece which they retained, on the ground that having paid something for freight, they were entitled to keep one piece of the goods as security for the repayment of the freight. The Court below decided that the goods were not according to sample, and the action was dismissed. The Court here considered that the judgment appealed from was correct in holding that the goods were not according to sample. Then, there was another question—whether Vezina & Bedard having kept one piece of goods as security for the repayment of the freight, they had thereby lost their right to complain. The Court here was of opinion that, under the circumstances, there had been no acceptance of the contract in part. The contract was repudiated for the whole, one piece alone being kept as a pledge that the defendants should be reimbursed what they had paid for freight.

RAMSAY, J., concurred in the judgment simply on the ground that there was a conflict of evidence, and under the circumstances this Court did not think proper to disturb the decision of the Court below.

Judgment confirmed.

Davidson, Monk & Cross for appellants.

Beique & Choquet for respondents.

SIR A. A. DORION, MONK, TESSIER, CROSS, JJ.

The MECHANICS BANK, Appellant, St. JEAN, Respondent, and WYLIE, intervening.

Insolvent Act as applied to Banks—Appeal under 39 Vict. c. 31, s. 12—Procedure to be followed—Interlocutory Judgment.

Sir A. A. DORION, C. J., said the Mechanics' Bank had stopped payment some three or four months ago. The Banking Act declares that the charter of a Bank is forfeited after the lapse of 90 days after suspension of payments, and by 39 Vict., c. 31 it is provided that after 90 days' suspension of payments the provisions of the Insolvent Act of 1875 shall apply to Banks, subject to the provisions contained in the 147th section of the Act, and also subject to the provisions of the 39 Vict., c. 31. St. Jean, a creditor of the Bank, after the 90 days had elapsed, applied to the Court for a compulsory writ of attachment, to put the Bank into insolvency. The application was contested by the Bank, and the Judge in the Court below, acting under sub-section 4 of section 147, which authorizes the Judge to order a meeting of creditors to be called, directed that a meeting should be held to consider whether the business should be wound up, or should be continued. From this judgment the Mechanics' Bank had taken an appeal *de plano*, without applying to this Court for leave to appeal. St. Jean had proceeded no further, but allowed the appeal to go on without interference on his part. Then Wylie, one of the creditors of the Bank, filed a petition, alleging that he is interested, being a depositor, and asking to be permitted to intervene, in order to have this appeal quashed as having been taken without right. The application was resisted by the Mechanics' Bank, which alleged that Wylie had no interest in the case, and contended moreover, that the Bank had a right to appeal *de plano*. The question

whether a creditor had a right to intervene in a cause to protect his rights was susceptible of little difficulty. It was done constantly in the Court below, but it has seldom been done in this Court. But if a party had a right to intervene in the Court below in order to protect his interest, there was no reason why he should not have the same right here. In fact, in France, this occasioned no difficulty whatever; creditors take new conclusions in appeal, and although our practice was somewhat different, the Court saw no reason why a creditor should be deprived of the right to intervene here. It was said that Wylie did not prove that he was a creditor. But he made *prima facie* proof by producing his deposit book, and he swore to it.

The next point was as to his right to have the appeal quashed. An appeal was given in insolvency cases by the 128th Section of the Insolvent Act of 1875, in these words:—"In the Province of Quebec all decisions by a Judge in Chambers, in matters of insolvency, shall be considered as judgments of the Superior Court, and any final order or judgment rendered by such Judge or Court may be inscribed for revision or may be appealed from by the parties aggrieved in the same manner as they might inscribe for revision or appeal from a final judgment of the Superior Court, in ordinary cases, under the laws in force when such decision shall be rendered." Under the Insolvent Act of 1875, it had been decided repeatedly that an appeal lies only from final judgments, and that there is no appeal from an interlocutory judgment or order. Now, the judgment from which this appeal had been taken was a judgment simply ordering that the creditors should be called together, and not deciding whether the compulsory writ of attachment had been well taken. The Judge was not bound to follow the opinion of the majority. It was a mere question of procedure. The Judge merely wished to see what the creditors thought it was for their interest should be done, whether the Bank should be wound up at once, or whether the business should go on. The order that the meeting should be called was a mere precautionary measure, and decided nothing as to the merits of the case. Therefore, in every sense this judgment was only an interlocutory judgment, and the Judge himself characterized the judgment as being a mere preliminary order. But the appellants say this: although under the Insolvent Act of 1875 we would have no appeal, yet by the subsequent Act of 1876, 39 Vict., c. 31, applying the Insolvent Act to banks, the appeal had been extended, so that now there is an appeal *de plano* from any order or judgment given by the Judge; section 12 is as follows: "The appeal provided for by the 128th section of the said Act (Insolvent Act of 1875) shall extend to all orders, judgments or decisions of the Judge." So that the matter now stands thus:—By section 128 of the Insolvent Act there is an appeal as regards final judgments; that Act was extended to banks, and as regards banks there is to be an appeal from every order, judgment or decision.

But then another question comes up. Suppose there is an appeal from all orders, &c., is a party to take an appeal *de plano* from an interlocutory order? The appellants contended that they were not obliged to apply here; that they had the same right as in the case of a final judgment. After a good deal of consideration the Court had come to the conclusion that this was not the proper interpretation of the law. Section 12 must be interpreted in the same way as if it had been inserted in section 128, and if the two be read together the Court came to the conclusion that although where a bank is concerned there is an appeal from all orders or decisions of a Judge, yet the appeal must be taken under the ordinary rules of procedure. His Honor cited Dwarris, in support of the proposition that the later Act should be taken as incorporated with the former. Now, in this case the Mechanics' Bank did not apply to the Court, did not obtain leave to appeal, and the appeal had not been properly taken. It might be remarked that if the construction of the law was as pretended by the appellants, there would have been an end to putting banks into insolvency, because at every step an appeal might be taken *de plano*, and the proceedings delayed as long as the bank pleased. This being the view taken by the Court, the writ of appeal would be quashed.

Cross, J., concurred with the order, but would not go the length of saying that the appeal should be dismissed with costs, because

it was a third party who came in and asked for the judgment of the Court on it. The principle on which the judgment should go, was that the petitioner stood merely in the position of *amicus curiæ*. This was not a case, in his Honor's opinion, in which a party should be allowed to intervene in this Court. He might attain his end by making an affidavit in the Court below, and putting the Bank into insolvency at his own instance.

Gilman & Holton for the appellants.

Trenholme & Maclaren for intervening party; *T. W. Ritchie, Q.C.*, Counsel.

STATUTES OF QUEBEC, 1879.

(ASSEMBLY BILL No. 123)

[Mr. Wurtelo, M.P.P.

An act defining the Investments to be made by administrators.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. Administrators, as defined by section one of the act 33 Vict., chapter 19, and including trustees, to be exempt from liability by reason of the investments made by them, saving always the case of fraud in making the same, must invest moneys held by them as such, in dominion or provincial stock or debentures, or in public securities of the United Kingdom or of the United States of America, or in real estate in this province, or on first privilege or hypothec upon real estate in this province valued in the municipal valuation roll at double the amount of the investment; except in the case of executors when they are authorized otherwise by the will, in the case of institutes and curators to a substitution when they are likewise otherwise authorized by the document creating the substitution, and in the case of trustees when they also are otherwise authorized by the document creating the trust.

2. When therefore investments are made otherwise than as above provided, or than as ordered by the will appointing executors or by the document creating a substitution or a trust, the administrators are obliged to indemnify the parties to whom they are accountable for losses caused by the depreciation of the securities invested in, under pain of coercive imprisonment, subject to the provisions contained in the code of civil procedure.

3. In the case of fraud in making investments in the securities mentioned in section 1, administrators are responsible for the damage caused by their fraud under the like pain of coercive imprisonment.

(ASSEMBLY BILL No. 132.)

[Mr. Flynn, M.P.P.

An act to amend article 49 of the Code of Civil Procedure.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. Article 49 of the Code of Civil Procedure is amended by adding to the second paragraph thereof, the following words:

"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 ascertained, provided he be otherwise sufficiently designated in the writ and that such writ be served upon him personally."

2. This act shall come into force on the day of its sanction.

(ASSEMBLY BILL No. 143.)

[Mr. Wurtele, M.P.P.

An act respecting the sale of securities belonging to persons not in the exercise of their civil rights.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. In the case of sale of securities, such as capital sums, shares or interest in financial, commercial or manufacturing joint stock companies or public securities, belonging to minors, interdicts or absentees or to substitutions, the judge or the court, authorising 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 other formalities; and the judge or court, in case he or it may deem the thing advisable, may authorize, during such delay as shall be determined, the gradual disposal of such securities at the current rate upon the Stock Exchange.

2. The person appointed shall make a report of all sales by him made, which shall be deposited in the office of the court where the authorization for the sale has been deposited, with an attestation under oath, showing the current market value of similar securities upon the Stock Exchange on the day of each sale.

3. This act shall come into force on the day of its sanction.

(ASSEMBLY BILL NO. 104.)

[Mr. Gagnon, M.P.P.

An Act to amend certain articles of the Civil Code.

Her Majesty, &c., enacts as follows:

1. Article 2098 is amended by adding to the fourth paragraph the following words: "and the description of the immoveable."

2. The following article is added after article 2147: "2147*a*. The notices, declarations and memorials mentioned in articles 2026, 2098, 2106, 2107, 2111, 2115, 2116, 2120, 2121, 2125, 2131, 2146 may be given either by private writing or by notarial deed the original whereof remains of record."

3. The English version of article 2219 is amended by replacing the word "thirty," in the second line, by the word "forty."

4. This act shall come into force on the day of its sanction.

(ASSEMBLY BILL NO. 157.)

[Mr. Molleur, M.P.P.

An Act to amend the Municipal Code of the Province of Quebec.

Her Majesty, &c., enacts as follows:

1. Article 37*a*. of the municipal code as amended by 41 Vict., chap. 18, section 3, and 41-42 Vict., chap. 10, section 2, is amended by adding after the word "territory," in the seventh line of the first paragraph of said article, the words: "and by a majority of the electors of the remaining portion of the said municipality."

2. The present Act shall come into force the day of its sanction.

(ASSEMBLY BILL NO. 159.)

[Mr. Taillon, M.P.P.

An Act to amend chapter 18 of the Consolidated Statutes for Lower Canada, respecting the Erection of Parishes.

Her Majesty, &c., enacts as follows:

1. Whenever in a Roman Catholic parish or in two or more neighbouring Roman Catholic parishes, there exists a Catholic minority speaking a language different from that of the majority, such minority or a portion of such minority may be erected into a distinct parish for all temporal purposes of their religion, and shall constitute a corporation under the name of "Congregation of the Catholics of speaking the language."

2. The erection of such minority or portion of such minority into a separate parish, shall be made in the manner determined by chapter 18 of the Consolidated Statutes for Lower Canada, except that the freeholders shall be replaced by the heads of families belonging to the nationality of such minority, excepting however the parish of Ste. Bridgide of Montreal, to which the provisions of the Act of this Province 39 Vict., Chaps. 35 and 36, relative to the erection of certain parishes therein mentioned, shall apply *mutatis mutandis* to the said parish congregations.

3. The head of the family shall determine the nationality to which his family belongs, and no change from one parish to another shall be allowed except when approved by the Diocesan Ordinary.

4. The Roman Catholic Bishop of the diocese in which such congregations shall exist, may annex thereto the parishioners of a neighbouring parish speaking the same language who shall demand to be annexed.

5. The present Act shall come into force on the day of its sanction.

(ASSEMBLY BILL NO. 155.)

[Messrs. Taillon & Wurtele, M.P.P.

An Act respecting the cancellation of the registration of real rights.

Whereas doubts have arisen as to the validity of cancellation of registration of real rights, effected without registration at length or by memorial of the deeds in virtue of which such cancellations have been or may be made; Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, declares and enacts as follows:

1. The cancellation of the registration of real rights has been legally done in the past and shall be legally done in the future by simply presenting and depositing in the registration

office to which it appertains, to remain among the archives and form part thereof, documents or authentic copies or extracts from documents, as the case may be, authorizing the cancellation, and by the mention (in the margin of the registration of the document creating or showing such cancelled rights) of such document thus presented and deposited.

2. This Act shall not affect pending cases, and shall come into force on the day of its sanction.

(ASSEMBLY BILL NO. 138.)

[Mr. Wurtele, M.P.P.

An Act respecting the contract of pledge.

Whereas, doubts have been raised as to the right of the creditor who has received a pledge in this Province, to be maintained in the possession thereof, against the owner when the same was obtained in good faith, from a trader dealing in similar articles; and that it is important to remove such doubts; Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, declares and enacts as follows:

1. Articles 1488, 1489 and 2268 of the Civil Code apply to the Contract of Pledge.

2. This Act shall come into force on the day of its sanction.

(ASSEMBLY BILL NO. 128.)

[Mr Charles Langelier, M.P.P.

An Act to amend the Act of this Province, 33 Vict., chap. 26, intituled: "An Act to provide for the interdiction and cure of habitual drunkards."

Her Majesty, &c., enacts as follows:

1. Section 3 of the said Act is amended so as to read as follows:

"3. The interdiction of any person interdicted as an habitual drunkard, shall have the same effects as those conferred by the laws in force in this Province, in the case of interdiction of any person for prodigality."

2. The present Act shall come into force on the day of its sanction.

(ASSEMBLY BILL NO. 45.)

[Mr. Wurtele, M.P.P.

An act to amend article 2098 of the Civil Code.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. The English version of article 2098 of the Civil Code, is amended by striking out the word: "purchaser," in the last paragraph, and substituting the word: "acquirer."

(ASSEMBLY BILL NO. 66.)

[Honorable Mr. Chapleau, M.P.P.

An Act respecting the sale of immoveables by Sheriffs in the Province of Quebec.

Whereas certain formalities required by law have been omitted in certain sales of immoveables made by the Sheriffs in their official capacity, and whereas such omissions may occasion serious inconvenience to the purchasers; Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. In the registration divisions in which official plans and books of reference are in force, all Sheriffs' titles respecting real estate situated within such divisions, *procès-verbaux* of seizures of the said properties, advertisements, publications and notices posted up, in which the properties seized and sold have not been designated by the numbers shown on such official plans and books of reference, are hereby declared valid for all legal purposes whatsoever, notwithstanding any law to the contrary, and specially articles 638, 648, 650 and 689 of the Code of Civil Procedure, and every law or statute amending the said articles; provided, however, that a notice indicating the official numbers of the properties described in the titles shall have been given, within six months from the passing of the present Act, to the registrars of such registration divisions by the Sheriffs or any of the parties interested.

2. This Act shall not apply to sales made prior to its passing and shall not affect pending cases, and shall come into force on the day of its sanction.

(ASSEMBLY BILL NO. 84.)

[Mr. Loranger, M.P.P.

An Act to amend the Quebec Election Act.

Her Majesty, &c., enacts as follows:

1. In case it is made to appear within four days after that on which the Returning Officer has made the final addition of the votes for the purpose of declaring the candidate (or candi-

dates) elected, on the affidavit of any credible witness, to a Judge of the Superior Court ordinarily discharging his duties in any judicial district in which the electoral district or any part thereof is situated, that such witness believes that any Deputy Returning Officer at any election in such electoral district, in counting the votes, has improperly counted or rejected any ballot papers at such election or that the Returning Officer has improperly summed up the votes; and in case the applicant deposits within the said time, with the Clerk of the Court, the sum of one hundred dollars, as a security for the costs of the candidate, in respect of the re-count, appearing by the addition to be elected, the said Judge shall appoint a time, within four days after the receipt of the said affidavit by him, to re-count the votes, or to make the final addition, as the case may be, and shall give notice in writing to the candidates or their agents of the time and place at which he will proceed to re-count the same, or to make such final addition, as the case may be, and shall summon and command the Returning Officer and his election clerk, to attend then and there with the parcels containing the ballots used at the election,—which command the Returning Officer and his election clerk shall obey.

2. The said Judge, the Returning Officer and his election clerk, and each candidate, or his agent appointed to attend such re-count of votes, or, in case any candidate cannot attend, then not more than one agent of such candidate, and if the candidates and their agents are absent, then at least three electors shall be present at such re-count of the votes.

3. At the time and place appointed, the said Judge shall proceed to re-count all the votes or ballot papers returned by the several Deputy Returning Officers, and shall, in the presence of the parties aforesaid, if they attend, open the sealed packets containing: 1st. the used ballot papers which have been counted; 2nd. the rejected ballot papers; 3rd. the spoiled ballot papers and no other papers, commencing and proceeding in alphabetical or numerical order of the polls.

4. The Judge shall, as far as practicable, proceed continuously, except on Sundays and non-juridical days, with such re-count of the votes, allowing only time for refreshment, and excluding (except so far as he and the parties aforesaid agree) the hours between six o'clock in the evening and nine on the succeeding morning. During the excluded time and recess for refreshments, the said Judge shall place the ballot papers and other documents relating to the election, close under his own seal and the seals of such other of the parties as desire to affix their seals, and shall otherwise take necessary precautions for the security of such papers and documents.

5. The Judge shall proceed to re-count the vote, according to the rules set forth in section one hundred and eighty-nine of the Quebec Election Act, as hereby amended, and shall verify or correct the ballot papers, account and statement of the number of votes given for each candidate, by deciding the objections without delay, and as fast as they are made; and upon the completion of such re-count, or as soon as he has thus ascertained the result of the poll, he shall seal up all the said ballot papers in separate packets, and shall forthwith certify the result to the Returning Officer, who shall then declare to be elected, the candidate having the highest number of votes, and in case of an equality of votes, the Returning Officer shall give the casting vote, in like manner as provided in section two hundred and fifty of the Quebec Election Act.

6. The Returning Officer, after the receipt of a notice from the Judge, of such re-count of ballots, shall delay making his return to the clerk of the crown in chancery, until he receives a certificate from the Judge of the result of such re-count, and upon receipt of such certificate, the Returning Officer shall proceed to make his return in the form of Schedule Y of the said Act.

7. In case the re-count or addition does not so alter the result of the poll as to affect the return, the Judge shall order the costs of the candidate appearing to be elected, to be paid by the applicant, and the said deposit shall be paid out to the said candidate, on account thereof, so far as necessary; and the Judge shall tax the costs on giving his decision; and if the deposit is insufficient, the party in whose favor costs are allowed, shall have his action for the balance.