



CHAPTER 96

An Act to amend the Code of Civil Procedure

[Assented to, the 28th of April, 1939]

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. Article 70a of the Code of Civil Procedure, as enacted C.C.P., art. by the act 1 George V (1910), chapter 43, section 3, is ^{70a, am.} amended by striking out the words “, saving the provisions of article 532”, in the sixth and seventh lines thereof.

2. Article 286 of the said Code, as amended by the acts Id., art. 286, 8 Edward VII, chapter 76, section 1; 1 George V (1st ^{am.} Session), chapter 42, section 2; 7 George V, chapter 55, section 1, and 2 George VI, chapter 100, section 1, is again amended by adding thereto, after sub-paragraph 3 thereof, the following sub-paragraph and paragraph:

“4. In actions resulting from an offence or quasi-offence, ^{Actions re-} the person having the charge, direction, custody or ope- ^{sulting from} ration of the thing which caused the damage, whether the ^{offence, etc.} opposite party be a person, corporation, firm or foreign corporation doing business in this Province.

If the person to be examined cannot be summoned or ^{Ordering of} cannot appear, the judge may order the summoning or the ^{examination,} examination upon such conditions, in such manner and ^{etc.} within such delay as he may deem equitable.”

3. Article 286a of the said Code, as enacted by the act C.C.P., art. 16 George V, chapter 65, section 1, and amended by the ^{286a, re-} acts 25-26 George V, chapter 99, section 1, and 2 George VI, ^{placed.} chapter 100, section 2, is replaced by the following:

Summoning
etc., of cer-
tain person in
certain case.

"286a. Before the filing of the plea, upon the request of the defendant, supported by an affidavit justifying that this request is made in good faith and in no wise for the purpose of unjustly delaying the case, the judge, or the prothonotary in the absence of the judge, may summon the plaintiff or the party on whose behalf the claim is made, subject to the provisions of Article 314, to appear before him to be examined as a witness on all the facts relating to the claim; the delays for pleading are then suspended and shall only begin to be reckoned as from the date of such examination.

Summoning
of *prête-nom*.

The defendant may also have summoned and examined as a witness, in conformity with the preceding paragraph, the person for whom the plaintiff is acting as *prête-nom*, in an action on a promissory note or bill of exchange, and the persons mentioned in paragraphs 2, 3 and 4 of Article 286 in the cases contemplated in such paragraphs.

Summoning
of victim.

Notwithstanding the provisions of paragraph 4 of Article 314, the defendant may also obtain, in the same manner, the summoning and examination as a witness of the victim of an offence or quasi-offence in actions for the recovery of damages.

Provisions
applicable.

The provisions of the last paragraph of Article 286 shall apply to the summoning and examining of any person who is subject to the examination contemplated by this Article.

Restriction.

The provisions contemplated herein shall not apply to any actions brought before any court other than the Superior Court."

C.C.P., art.
570a, added.

4. The said Code is amended by adding thereto, after article 570 thereof, the following article:

Summoning
of accounting
party after
notice.

"570a. At any time after the filing of an account, the party to whom it is rendered may, after one clear day's notice to the attorney of the opposite party, summon the accounting party, his bookkeeper, his authorized representative or his manager to appear before the judge or the prothonotary to be examined as a witness on any fact relating to the account filed and to the vouchers connected therewith."

C.C.P., art.
599, am.

5. Article 599 of the said Code, as amended by the acts 62 Victoria, chapter 53, section 1; 3 Edward VII, chapter 55, section 1; 3 Edward VII, chapter 56, section 1; 18 George V, chapter 92, section 1; 19 George V, chapter 84, section 1; 23 George V, chapter 116, section 1, and 24 George V, chapter 78, section 1, is again amended by striking out paragraph 10a thereof.

6. Article 697 of the said Code, as amended by the acts C.C.P., art. 697, am.
 1 George V (1910), chapter 42, section 5, and 25-26 George V, chapter 102, section 1, is again amended by adding thereto, after the word: "garnishee", in the last line of the first paragraph thereof, the words: "and no costs may be taxed against the debtor on any other seizure taken whilst a seizure is continuing against him".

7. The said Code is amended by adding thereto, after article 697 thereof, the following articles: Id., arts. 697a-697h, added.

"697a. No creditor may seize the remuneration, salary or wages of the debtor who, Prohibition contingent upon:

a. within seven days from the judgment or from the resuming of work, after a period of unemployment or at any time before the said remuneration, salary or wage was seized, produces a declaration under oath setting forth the amount and due dates of such remuneration, salary or wage and the name, occupation and address of his employer or employers; Producing of declaration;

b. deposits the seizable portion of such remuneration, salary or wage within the three days following the payment thereof; and Making of certain deposit;

c. continues thereafter, until the extinction of the judgment and claims filed under Article 697c, to deposit, at each payment date and within the same delay, the seizable portion of such remuneration, salary or wage. Continuing of such deposit.

"697b. Such declaration and deposit shall be made, if the debtor has his domicile in the city of Montreal, in the office of the Circuit Court of that district, and, if his domicile is elsewhere, in the office of the Magistrate's Court of the district or county where he is domiciled. Where declaration, etc., to be made.

The declaration and the deposits shall be entered under the title of the record of the court rendering the judgment, which the debtor seeks to satisfy. Such judgment may issue from another court than that where the debtor makes his declaration and deposits. Entering of declaration, etc.

A debtor who changes his employment or whose conditions of engagement are altered must, within seven days, file a declaration under oath with the clerk of the court testifying to such changes. Filing of certain declaration.

If the debtor ceases to work, he must file with the clerk and within the same delay a declaration to that effect; when he resumes work, he must also, within seven days, file with the clerk another declaration in the manner contemplated in sub-paragraph *a* of Article 697a and comply with the provisions of sub-paragraphs *b* and *c* of the same Article. Idem.

Filing of claim.

"697c. Any creditor other than the plaintiff may file his claim in the record. The plaintiff may also file therein any claim not already included in the judgment.

Contents of claim.

Each claim must state the nature and amount of the debt, be accompanied by the documents invoked in its support and be attested under oath.

Producing of account.

If the claim be on an account, the latter must be produced in detail, with the claim.

Obtaining the dismissal of claim in default of certain filing.

In default of the filing of the documents or of the detailed account in support of the claim, as the case may be, the debtor and any creditor interested may, at any time, on a motion served, filed and presented according to the ordinary rules of procedure, obtain from a judge or a magistrate sitting in the court where the debtor makes his deposits the dismissal of the said claim, unless the creditor establish the impossibility, for any reason deemed sufficient by the judge or the magistrate, of filing such account or such documents and unless he adduce other proof, to the satisfaction of the judge or of the magistrate, that his claim is well founded.

Giving of certain notice.

"697d. The claimant must, under penalty of the nullity of the filing of his claim, give notice thereof to the plaintiff and the debtor prior to or within the three days following such filing.

Contents of notice.

Such notice must state the name of the claimant, the nature and amount of the debt, the documents or, as the case may be, the account filed in support thereof and the date of filing the claim.

Service in lieu of notice.

The service, in either of the ways contemplated in the following paragraph, of a copy of the claim, with notice of the date of its filing, may take the place of the above-mentioned notice.

How notice served.

Such notice may be served either by a bailiff or by sending it by registered mail to the last address of the plaintiff or of the debtor known to the clerk of the court where the debtor makes his deposits.

Filing of proof of service.

Proof of the service of such notice must be filed in the office of the court with the claim, if the notice is given before the filing of the latter, and within six days from the filing of the claim, if the notice is given after the filing of the claim.

How proof made.

Such proof is made by filing the return of the service by the bailiff or, as the case may be, of the registered letter certificate attached to a copy of the notice given, with an affidavit that it is a true copy of such notice.

Contesting of declarations.

"697e. The first and every subsequent declaration by the debtor may be contested by any interested party in

the same manner and within the same delay as the declaration of a garnishee, before the court where such declaration was made.

"697f. Every person who, in bad faith or through inexcusable carelessness or neglect to properly inform himself, seizes the remuneration, salary or wage of a debtor who has complied with the requirements of Articles 697a and 697b, or who, after such seizure, refuses to give the debtor a release therefrom when it has been sufficiently demonstrated to him that the debtor has complied with the provisions of the said Articles, is liable to the latter for all damages which may be caused to him through the effecting of such seizure or, as the case may be, the creditor's refusal to grant him such release.

Liability for acting in bad faith, etc.

"697g. Any interested party may contest a claim filed in the record.

Contesting of claim.

Such contestation must be served upon the claimant, the debtor and the clerk of the court where the contested claim is filed. It must be brought before the court having jurisdiction for the amount in dispute, in the district in which the claim is filed, and the record, if need be, must be transmitted to the office of such court.

How contestation served.

From and after the filing and service of such contestation, the contested claim remains suspended and is not to be collocated in the distribution of the moneys deposited by the debtor prior to the final decision upon such contestation; but the clerk must, pending such contestation, retain, at the time of the distribution, the sums to which the claimant would be entitled if his claim had not been contested, in order to pay them to the claimant or distribute them among the creditors, according to their rights, after the final adjudication on the contestation.

Suspending of contested claim.

Any interested party may intervene in the contestation, to protect his rights or to hasten the proceedings and the trial of the case when the parties are not proceeding with reasonable diligence.

Intervening in contestation.

"697h. The clerk of the court where the debtor makes his deposits, collocates, in the first place, the plaintiff for his costs of suit and, every quarter, fixes summarily, rateably and without cost, the amount coming to each creditor, to whom he remits such amount to the last address which the creditor has furnished to him, unless the creditor or a person authorized by him has claimed it at the office of the clerk within fifteen days of the distribution."

Collocation.

C.C.P., art.
988, am.

Certificate
and contents
thereof.

8. Article 988 of the said Code is amended by adding thereto the following paragraph:

"In addition, the special information contemplated in Article 980 must be accompanied by a certificate from the prothonotary affirming that the applicant has deposited, in the office of the Superior Court, the sum of two hundred dollars to be applied to the payment, to the extent thereof, of the costs of the opposite party, if the court awards the latter costs; should the contrary be the case, the amount is returned to the petitioner."

C.C.P., art.
1089, am.

9. Article 1089 of the said Code is amended:

a. By inserting therein, after the word: 'writing', in the third line of the first paragraph thereof, the words: " , over his signature or that of his attorney";

b. By adding thereto, after the said first paragraph thereof, the following paragraph:

Service.

"Such putting in default may be served by a bailiff."

C.C.P., art.
1143, repeal-
ed.

10. Article 1143 of the said Code is repealed.

Id., art.
1223a, Fr.
version, am.

11. Article 1223a of the said Code, as enacted by the act 10 George V, chapter 79, section 19, and replaced by the act 18 George V, chapter 93, section 2, is amended by striking out the words: "(écrit au *typewriter*)", in the third line of paragraph 1 of the French version thereof.

C.C.P., art.
1289, re-
placed.

12. Article 1289 of the said Code, as enacted by the act 13 George V, chapter 78, section 4, and amended by the act 2 George VI, chapter 100, section 5, is replaced by the following:

Provisions ap-
plicable to
certain suits.

"**1289.** Articles 1273, 1274, 1275 and 1277 apply to all suits brought before the District Magistrate's Court sitting elsewhere than at the chief place in the district of Gaspé, and before the Magistrates' Courts established in the county of Saguenay."

C.C.P., art.
1310, re-
placed.

13. Article 1310 of the said Code, as amended by the acts 1 George V (2nd session), chapter 55, section 1, and 12 George V, chapter 93, section 4, and replaced by the act 14 George V, chapter 71, section 7, and amended by the act 2 George VI, chapter 102, section 1, is replaced by the following:

Exercising of
certain
powers by
prothonotary
of S.C.

"**1310.** The prothonotary of the Superior Court may exercise all the powers conferred upon the court or a judge thereof."

The prothonotary, in the cases contemplated by Article 33, may exercise all the powers conferred upon the court or a judge thereof in the case of voluntary licitation or of voluntary partition of property in which persons suffering legal incapacity or absentees have an undivided interest as co-proprietors with majors.

In case of voluntary licitation, etc

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.

Decision subject to revision.

The clerk of the Circuit Court established in and for the county of Temiscamingue, sitting at Ville-Marie, and the clerks of the Circuit Court in and for the county of Pontiac, in the village of Chapeau and at Rouyn, have the same powers as the prothonotary of the Superior Court in any other district as to all matters connected with the non-contentions proceedings mentioned in the Tenth Part of this Code."

Powers of certain clerks, of certain Circuit Courts.

14. Any debtor may, notwithstanding the seizure of his remuneration, salary or wage, prior to or during the sixty days following the coming into force of this act, avail himself of the provisions enacted by section 7, by conforming to the said provisions, within sixty days from such coming into force.

Privilege of debtor whose salary has been seized during a certain period.

15. The debtor who, prior to the coming into force of this act, has complied with the requirements of Article 1143 of the Code of Civil Procedure shall not be bound to make the declaration contemplated by Article 697a in order to benefit from the provisions enacted by section 7 and he may continue to deposit the seizable portion of his remuneration, salary or wage, under the declaration or declarations already made, in the record and court where he filed his declaration or declarations.

No declaration required in certain case.

The provisions enacted by section 7 shall apply, as to the rest, to the cases contemplated by this section.

Application of section 7.

16. The prothonotaries of the Superior Court are deemed to have had, between the 15th of March, 1924, and the date of the coming into force of this act, the same jurisdiction as the Superior Court or a judge of this court in cases of voluntary licitation or voluntary partition of property in which persons suffering from legal incapacity or absentees have an undivided interest as co-proprietors with majors.

Jurisdiction of prothonotaries confirmed.

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

Coming into force.

