



## CHAPTER 90

An Act respecting the release of certain debtors

[Assented to, the 12th of April, 1938]

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

**1.** In this act, the terms hereinafter mentioned shall have the following meaning: Interpretation:

*a.* "claim" includes the principal, interest, law costs taxed against the debtor and those effected in the common interest; "Claim";

*b.* "immoveable" includes one or more immoveables; "Immoveable";

*c.* "value", applied to any immoveable or property whatsoever, means its fair yielding, investment or commercial value in times of normal economic activity, regardless of its depreciation for the time being through a regional or general economic depression. "Value".

**2.** Whenever an immoveable has been sold at law and adjudged to the creditor of a debt guaranteed by privilege or hypothec upon such immoveable, the debtor has the right to obtain his release as regards such creditor, with respect to such debt or, as the case may be, with respect to all balance remaining due on such debt, and with respect to any judgment in connection therewith, in the following cases: Obtaining of release by certain debtor.

*a.* When the immoveable, at the time of the adjudication, had a value at least equal to the total amount of the purchaser's claim and of every other hypothecary or privileged claim affecting the immoveable and ranking ahead of that of the purchaser; Cases in which such release may be obtained.

b. When the purchaser has resold the immoveable, or part of the immoveable, for a price at least equal to the total amount of his claim, of the expenses incurred by the purchaser for the maintenance and the improvement of the immoveable with interest at the rate of five per cent per annum upon such expenditure, and of every other hypothecary or privileged claim affecting the immoveable and ranking ahead of that of the purchaser;

c. When, through any transaction or operation whatsoever respecting such immoveable, the purchaser has received or realized, in money or in property, a value at least equal to the total amount of his claim, of every other hypothecary or privileged claim affecting the immoveable and ranking ahead of that of the purchaser, and of the expenses of maintenance and improvement of the said immoveable or of any other immoveable received in exchange.

Application  
of section 2.

**3.** The provisions of section 2 shall apply to every other sale of an immoveable having the effect of the sheriff's sale.

Calculating  
of interest.

**4.** In determining the amount of the claim, interest shall be calculated at a rate of five per cent per annum unless the agreement or the law stipulates a lower rate.

Adding of  
certain sums  
to interest.

In determining such amount, the sums exigible as penalties for the non-fulfilment of any obligation of the debtor shall be added to the interest. However, when the total amount of the interest and of the penalties exceeds the amount which interest at a rate of five per cent per annum upon the principal and the costs would produce, such total amount shall be reduced accordingly.

Paying of  
certain  
difference in  
certain case.

**5.** When the claim is greater than the value of the immoveable at the time of the adjudication, than its resale price or than the value received or realized through transactions or operations respecting the immoveable, the debtor may nevertheless obtain his release by paying to the creditor the amount required to make up the difference.

Immoveable  
deemed  
adjudged to  
creditor.

**6.** An immoveable adjudged to a person who is related, or allied by marriage, to the creditor, and living with him, shall, for the purposes of the application for release, be deemed to have been adjudged to the creditor.

Idem.

**7.** Subject to the provisions of section 6, when the immoveable is adjudged to a third party by collusion between the latter and the creditor in order to evade the re-

course granted to the debtor by this act, the immoveable shall be deemed, for the purpose of exercising such recourse, to have been adjudged to the creditor.

If the third party be an ascendant, a descendant, a brother or a sister of the creditor or a person allied in the first degree to the creditor, there shall be presumption of collusion between the purchaser and the creditor.

**8.** The application for release shall be made by petition before the Superior Court sitting in and for the district wherein is situated, in whole or in part, the immoveable sold or, as the case may be, one of the immoveables sold.

Such petition shall set forth briefly the facts relating to the application and conclude for the release of the debtor with respect to such debt or, as the case may be, the balance remaining due on such debt.

Such petition shall be served and brought in conformity with the rules of the Code of Civil Procedure governing the serving and the bringing of an ordinary action.

The petition shall be the beginning of the suit which, as to the rest, shall be treated as a suit instituted by ordinary action before the Superior Court and be subject to the application of all the rules of the Code of Civil Procedure governing ordinary actions, including the rules respecting appeal.

The amount of the suit shall be that from which the debtor applies to be released.

**9.** The release of the principal debtor entails the release of his sureties and warrantors.

When a debtor has, in virtue of this act, the right to obtain his release with respect to a debt or balance of debt, any person who has become surety or warrantor for the payment of such debt or balance of debt has the right to obtain his own release and may exercise his recourse for such purpose, independently of the principal debtor, by following the procedure hereinabove set forth.

**10.** The debtor may, in so far as his recourse for release is not prescribed, invoke as a defence to a suit, as an opposition to a seizure in execution or as a contestation of a seizure by garnishment, as the case may be, the grounds which he may invoke in support of an application for release, and, upon conclusions to that effect in the said defence, opposition or contestation, the court may award the release.

Prescription of application for release. **11.** The application for release must, under pain of forfeiture, be instituted:

*a.* in the case of paragraph *a* of section 2, within the two years counting from the adjudication;

*b.* in the cases of paragraphs *b* and *c* of the said section, within the two years counting from the date when the right to release arose, but prior to the expiration of the five years following the adjudication.

Application. **12.** The provisions of this act shall apply in the case of sales of immoveables effected since the 1st of January, 1930.

Delay for instituting application for release. In such cases, the application for release must, under pain of forfeiture, be instituted within the two years counting from the coming into force of this act, saving the provisions of the third paragraph of this section.

Delay for instituting application in certain case. If the application for release is based upon the grounds contemplated in paragraphs *b* or *c* of section 2 and if the right to release arise only after the date of the coming into force of this act, the application for release must, under pain of forfeiture, be instituted within the two years counting from the date when the right to release arose, but prior to the expiration of the five years following the coming into force of this act.

Coming into force. **13.** This act shall come into force on the day of its sanction.