



## CHAPTER 93

An Act to amend the Code of Civil Procedure and the Revised Statutes, 1925, respecting appeals to the Court of King's Bench

[Assented to, the 22nd of March, 1928]

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

**1.** Article 1215*b* of the Code of Civil Procedure, as C. C. P., art. enacted by the act 15 George V, chapter 85, section 1, is re-<sup>1215*b*, re-</sup>placed by the following: <sup>placed.</sup>

“**1215*b*.** In the actions enumerated in article 1223*a*, Amount of security limited in certain cases. if it be shown to the satisfaction of a judge of the Court of King's Bench or of the Superior Court that the appeal is serious, but that the appellant cannot furnish the security required by article 1214 nor give a sufficient pledge in its stead, such judge may, on petition to that effect, allow the appellant to furnish security only for the costs of appeal, instead of the security required by article 1214.

Such permission is granted upon petition served upon the opposite party with a notice of the day for its presentation, and accompanied by an affidavit of the appellant that he is unable to furnish the required security and that he cannot substitute a sufficient pledge for it. The judge may allow the production of contradictory affidavits and the oral examination of witnesses. <sup>Petition.</sup>

The security for the costs of appeal, so authorized by the judge, shall have the effect of suspending execution of the judgment of the court of first instance. <sup>Execution suspended.</sup>

The judge's order may, on new evidence, be cancelled by a judge of the Court of King's Bench sitting in appeal, and, in that case, the appellant shall furnish, within the delay fixed by the judge who rendered the judgment in reversal, <sup>Cancellation of order.</sup>

the security required by article 1214, otherwise, the appeal is abandoned, saving recourse."

C. C. P., art. 1223a, replaced. **2.** Article 1223a of the Code of Civil Procedure, as enacted by the act 10 George V, chapter 79, section 19, is replaced by the following:

Typewritten memorandum in certain cases only.

**"1223a.** 1. Nevertheless, the memorandum or factum, filed by each of the parties, shall be typewritten only, in the following cases:

a. In every possessory action, *action confessoire*, *action négatoire*, action of boundary, action for separation as to property, for separation from bed and board, for annulment of marriage, or for an alimentary allowance;

b. In every action or proceeding respecting a municipal corporation, or municipal office, taken under chapter XL of this code;

c. In every proceeding or thing mentioned in article 44 and in articles 987 to 1005, inclusive, of this code, and in the provisions of the Revised Statutes of Quebec, 1925, chapter 46, section 25; chapter 102, sections 340 and 514; chapter 106, section 9; and chapter 260, section 55;

d. In every action for damages for slander;

e. In every non-contentious proceeding provided for in the Tenth Part of this code; and

f. In every case in which the sum claimed or the value of the thing demanded is not more than two thousand dollars.

Ten copies of such memorandum or factum shall be filed at the office of the court.

Typewritten copies of record in same cases.

2. In the same cases, the appellant must file, instead of the printed record, ten typewritten copies of a record containing the documents enumerated in paragraph 1 of article 1223. A copy of such record must be furnished to the respondent within the delay above fixed for the transmission to the respondent of the printed record. On failure of the appellant to comply with these provisions, the respondent may move for the dismissal of the appeal.

Penalty for failure.

3. In the same way the appeal may be declared abandoned, or may be heard *ex parte*, according as the appellant or the respondent is in default to file his memorandum or factum within the proper delay.

Documents omitted.

4. The parties may agree that certain documents or depositions shall not be included in the record mentioned in paragraph 2 of this article, or a judge of the court from which the appeal is taken may dispense with them.

Filing of record dispensed with.

5. The parties may likewise agree not to file the record hereinabove mentioned, but to submit the appeal upon a mere statement of the facts, with or without a memorandum or factum. In such case the statement of facts

must be filed within fifteen days after the judgment upon an exception, if any there be, to the proceedings in appeal, or within fifteen days after the expiry of the delay for filing exceptions."

**3.** Article 1227 of the Code of Civil Procedure, as replaced by the act 10 George V, chapter 79, section 21, and amended by the act 11 George V, chapter 87, section 2, and by the act 11 George V, chapter 103, section 1, as to the English version, is replaced by the following: C. C. P., art. 1227, replaced.

"**1227.** 1. The appeal shall be heard by five judges. Five judges.

2. Whenever necessary for the dispatch of business, the Chief Justice may order that, on any day in term or any day of an adjourned term, the court shall hold several sittings at the same time and at the same place, at Quebec or Montreal, in separate rooms; and each division of the court so constituted by the Chief Justice has jurisdiction to hear and decide the cases and matters submitted thereto. More than one sitting may be held.

3. Any lesser number of judges may 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. Formal proceedings.

**4.** Article 1227*a* of the Code of Civil Procedure, as enacted by the act 15 George V, chapter 86, section 1, is repealed. C. C. P., art. 1227*a*, repealed.

**5.** Section 20 of the Courts of Justice Act (Revised Statutes, 1925, chapter 145) is replaced by the following: R. S., c. 145, s. 20, replaced.

"**20.** The Court of King's Bench, sitting in appeal, may, however, sit to render judgments, on any juridical day of the year outside the terms fixed under section 18." Sittings.

**6.** Section 184 of the said Courts of Justice Act is amended by replacing the second paragraph thereof by the following: R. S., c. 145, s. 184, am.

"Such appeals shall be heard by five judges." Five judges.

**7.** Section 139 of the Alcoholic Liquor Act (Revised Statutes, 1925, chapter 37) is amended by replacing the word: "three", in the fifth line of the second paragraph of subsection 6 thereof, by the word: "five". R. S., c. 37, s. 139, am.

**8.** This act shall apply to actions pending in the courts of first instance and to those inscribed or to be inscribed in appeal, but not to actions the hearing whereof, at the date of act to pending cases.

But not where hearing begun. of the coming into force of this act, has begun before the Court of King's Bench composed of three judges, which shall be conducted, heard and decided as if this act did not exist.

Jurisdiction of five instead of three judges. **9.** Every appeal which, at the coming into force of this act, was within the jurisdiction of three judges shall be within the jurisdiction of five judges, notwithstanding the particular provisions of any general or special act, subject, however, to section 8.

Coming into force. **10.** This act shall come into force on the day which it may please the Lieutenant-Governor in Council to fix by proclamation.