

C H A P . 71

An Act to amend the Civil Code and the Code of Civil Procedure respecting partitions and licitations and to declare certain partitions and licitations valid

[Assented to, the 15th of March, 1924]

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

- C. C., Bk. III, Tit. I, Ch. V, S. 1, title am. **1.** The title of section first of chapter fifth of title first of book third of the Civil Code is replaced by the following: "OF PARTITION AND ITS FORM".
- C. C., art. 691, am. **2.** Article 691 of the Civil Code is amended:
a. By adding thereto, after the word: "compelled", in the fourth line of the first paragraph thereof, the words: "or required";
b. By adding thereto, after the word: "judicially", in the fifth line of the first paragraph thereof, the words: "in accordance with the provisions of article 693".
- C. C., art. 693, am. **3.** Article 693 of the said Code is amended by replacing the second paragraph thereof by the following:
 Partition or licitation. "If any of the heirs be unwilling, the partition can only be effected by an action. If any of the heirs are minors or interdicted or absent but all the proprietors who are of full age agree, the partition or licitation can be effected voluntarily, without an action, on the mere authorization of a judge in the manner provided in the tenth part of the Code of Civil Procedure. It shall be sufficient to justify the tutor or curator for proceeding in this manner, that he has been so required by one of the coheirs of full age."
- C. C., art. 709, re-placed. **4.** Article 709 of the said Code is replaced by the following:
 Partition or licitation. "**709.** Where partition or licitation takes place by reason of there being amongst the heirs absentees, interdicted persons or minors, even emancipated, and one of the co-proprietors of full age refuses to proceed upon the mere authorization of a judge under the provisions of article 693, it can only be effected by means of an action."
- C. C. art. 1563, am. **5.** Article 1563 of the said Code is amended by adding thereto, after the word: "licitation", in the second line thereof, the words: "and partition".

6. Article 1046 of the Code of Civil Procedure is amended by inserting therein, after the word: "licitation", in the first line thereof, the words: "and voluntary partition".

C. C. P.,
art. 1046,
am.

7. Article 1310 of the Code of Civil Procedure, as amended by the acts 1 George V (2nd session), chapter 55, section 1, and 12 George V, chapter 93, section 4, is replaced by the following:

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

"1310. The prothonotary of the Superior Court may exercise all the powers conferred upon the court or a judge thereof (except in case of voluntary licitation or voluntary partition of property in which persons suffering legal incapacity or absentees have an undivided interest as coproprietors with majors); 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.

Powers of
protho-
notary.

Decision
subject to
revision.

The clerk of the Circuit Court established in and for the county of Temiscamingue, sitting at Ville-Marie, has the same power as the prothonotary of the Superior Court in any other district as to all matters connected with the non-contentious proceedings mentioned in the tenth part of this code."

Powers of
clerk of Cir-
cuit Court
for Temisca-
mingue, at
Ville-Marie.

8. Article 1343 of the Code of Civil Procedure is replaced by the following:

C. C. P., art.
1343, re-
placed.

"1343. 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.

Nomination
of experts.

However, in cases of voluntary licitation or voluntary partition and when all or some of the immovables are in a city, the experts are appointed by a judge of the Superior Court, on petition of the persons mentioned in article 1342, subject to the dispositions of the last paragraph of the said article 1342."

Appointed
by judge in
certain
cases.

9. Article 1351 of the said Code, as replaced by the act 1 Edward VII, chapter 37, section 2, is amended by adding thereto, after the word: "curator", in the fourth line thereof, the words: "or in the presence of the judicial procurator nominated under article 1381, where the share of the person represented by such procurator is less than fifty dollars".

C. C. P.
art. 1351,
am.

10. Article 1357 of the said Code, as amended by the act 1 Edward VII, chapter 37, section 3, is further amended by adding thereto, after the words: "as the case may be",

C. C. P.,
art. 1357,
am.

in the tenth line thereof, the words: "or by the judicial procurator in the case of article 1351".

C. C. P.,
Ch. LXXIA.
art. 1361a,
enacted.

11. The Code of Civil Procedure is amended by inserting therein, after article 1361, as amended by the act 3 Edward VII, chapter 58, section 1, the following chapter and article:

"CHAPTER LXXI A

"VOLUNTARY PARTITION AND LICITATION

Proceedings
applicable
to certain
voluntary
partitions
and licita-
tions.

"1361a. The proceedings respecting the sale of property of minors and other disqualified persons, contained in chapter LXXI of this Code, shall apply, *mutatis mutandis*, to voluntary partitions and voluntary licitations of moveable and immoveable property held in common by coproprietors amongst whom are minors, interdicted persons, or other disqualified persons or absentees, referred to in article 693 of the Civil Code."

Validation.

12. Voluntary partitions and sales by voluntary licitation, under the tenth part of the Code of Civil Procedure, effected by means of a petition and not by an action, before the date of the coming into force of this act, are valid, provided that the proceedings have conformed to the requirements of said tenth part of the Code of Civil Procedure and were regular in all other respects; and notaries practising in the Province of Quebec have and have always had the right to effect the proceedings for licitation and partition referred to in this section and in article 693 of the Civil Code.

Proviso.

Rights of
notaries.

Coming into
force.

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

C H A P . 7 2

An Act to amend article 981o of the Civil Code

[Assented to, the 15th of March, 1924]

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

C. C., art.
981o, am.

1. Article 981o of the Civil Code, as contained in article 5803 of the Revised Statutes, 1888, and as amended by the