

## CHAP. 73

An Act to amend the Revised Statutes and the Code of Civil Procedure respecting the district of Chicoutimi

[Assented to 7th May, 1909]

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

**1.** Article 5714 of the Revised Statutes is amended by re-R.S.Q., 5714, placing the words "Gaspé, Saguenay, and Chicoutimi" in the <sup>amended.</sup> first line by the words "Gaspé and Saguenay."

**2.** Article 15 of the Code of Civil Procedure is amended C. C. P., 15, by replacing paragraph 12 by the following : "the districts <sup>amended.</sup> of Gaspé and of Saguenay."

**3.** Article 39 of the Code of Civil Procedure is amended Id., 39, by striking out the word "Chicoutimi" in the second line. <sup>amended.</sup>

**4.** This act shall come into force on the day of its sanction. <sup>Coming into force.</sup>

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## CHAP. 74

An Act to amend the Code of Civil Procedure respecting the district magistrate's court, arbitrations and abandonment of property

[Assented to 29th May, 1909]

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

**1.** Article 61 of the Code of Civil Procedure, as amended C. C. P., art. by the acts 3 Edward VII, chapters 51 and 52, and 6 Edward <sup>61, amended.</sup> VII, chapter 42, section 1, is further amended by replacing the words "city or town" in the fifth line of paragraph 3 by the words "or other place."

**2.** The following subsection and articles are inserted in the <sup>Art. 413a, &c., enacted.</sup> said code after article 413.

“ § 3a.—ARBITRATION BY ADVOCATES.

Reference of certain cases to advocates.	“ <b>413a.</b> Except in actions to annul a marriage, in separation of property or from bed and board, to obtain the dissolution of a corporation or the annulling of letters patent, or in which the parties are minors or legally incapable, or in which, in the opinion of the court, some matter of public interest is involved, the court may, on a demand in writing signed by the parties, refer the case to the decision of one or more practising advocates mentioned in such demand, and who consent to act as referees.
Demand for reference.	The demand in writing shall mention the sum which the parties have agreed to pay to each referee, and if such referee thereafter makes or takes part in a report as hereinafter mentioned, such sum shall be part of the costs in the case.
Costs.	
Compensation of referee in certain case.	If any referee is, from death, illness or any other cause which is, in the opinion of the court, sufficient, prevented from making or taking part in the report, he or his representatives, as the case may be, shall receive such compensation not exceeding the sum aforesaid, as the court may fix, and such compensation shall form part of the costs of the case.
Oath of referees.	“ <b>413b.</b> Before acting, the referees shall be sworn before the judge, the prothonotary, or a commissioner of the Superior Court, to faithfully perform their duties.
Notice as to trial.	“ <b>413c.</b> So soon as they are so sworn, the referees shall give the parties notice in writing of not less than four nor more than six clear days, unless the parties consent to other delays, of the place, day and hour, when and where the case will be heard.
Summoning of witnesses, &c.	“ <b>413d.</b> The procedure for the summoning of witnesses and for the trial shall be the same as in cases without a jury before the court ; and the referees for such purpose shall have all the powers of the court or of a judge.
Clerk.	They may appoint a clerk to assist them.
Report of referees.	“ <b>413e.</b> The report of the referees shall be in writing, signed by them, and shall be filed, together with all documents produced in the course of the reference, in the office of the prothonotary of the court of the district where the case is pending ; the whole within fifty days from the date of the judgment appointing the referees, or within such further delay, as the court, upon application of one of the parties, and upon special cause shown, may fix.
Transmission of record in certain cases.	If the proceedings upon the reference are had in another district, the referee or referees shall cause the record to be transmitted in the ordinary manner.

" **413f.** If the report is not so filed or transmitted, as the <sup>Proceedings</sup> case may be, either party may cause a notice to be served <sup>if reference</sup> upon the attorney of the adverse party, and upon the referees, <sup>not filed, &c.</sup> that he considers the reference at an end ; and, upon the filing of such notice in the prothonotary's office, the case shall be continued as if it had not been referred.

The evidence adduced shall nevertheless form part of the <sup>Evidence to</sup> record, and shall avail as if it had been taken in court. <sup>form part of</sup>

The court may also cancel the reference, upon the demand <sup>Cancellation</sup> of either party, if the referees do not proceed with diligence to <sup>of reference.</sup> hear and decide the case.

If the court is of opinion that the failure of the reference <sup>Costs if re-</sup> was due to the fault of one of the parties, such party may be <sup>ference can-</sup> condemned to pay such of the costs of the reference as would <sup>celled, &c.</sup> not have been incurred if the reference had not been had. Such costs shall be taxed in the ordinary manner, and the adverse party shall not be bound to proceed until they are paid.

" **413g.** The report shall be in the form of an ordinary <sup>Form of</sup> judgment of the court, and shall mention those, if any, of the <sup>report, &c.</sup> referees who dissent, and the reasons for such dissent. In case of difference of opinion the decision of the majority shall prevail.

" **413h.** On the application to homologate the report, the <sup>Application</sup> court or judge may examine into the grounds of any nullity <sup>to homolo-</sup> which may affect the report, but cannot inquire into the merits <sup>gate report,</sup> of the contestation. <sup>&c.</sup>

If no ground of nullity be found in the report, the court or <sup>Recording</sup> judge shall order that the judgment be recorded by the protho- <sup>of report if</sup> notary in accordance with the report. <sup>no nullity.</sup>

If any formality have been omitted, the omission whereof is <sup>Supplying of</sup> a ground of nullity, the court, if of opinion that such formality <sup>informalities.</sup> may, without injustice to either party, be performed either under the direction of the court, or by the referees, may, in its discretion, make such order in the premises either by re-mitting the case to the referees or otherwise, as it may think proper.

" **413i.** If there be three or more referees and their report <sup>Appeal.</sup> be unanimous, no appeal from the judgment based thereon can be taken to the Court of Review, but an appeal therefrom shall lie to the Court of King's Bench, if such an appeal would have been open had the judgment been rendered by the Superior Court in the ordinary manner.

" **413j.** Upon the appeal, the court shall inquire into the <sup>Powers of</sup>

appellate  
court.

merits of the contestation, as well as into the grounds of nullity which may affect the report, and shall have the powers mentioned in the last paragraph of article 413*h*."

C C P., c.  
XIX, s. VIII,  
par. 4,  
amended.

**3.** The title of paragraph fourth of section eighth of chapter nineteenth of the said code is amended by replacing the word "three" by the word "four."

Id., art. 853,  
amended.

**4.** Article 853 of the said Code, as amended by the act 61 Victoria, chapter 47, section 5, is further amended by adding thereto after the word "by", in the second line of paragraph 2, the words : "the prothonotary on behalf of."

Id., art. 854,  
replaced.  
Demand of  
abandon-  
ment how  
made.

**5.** Article 854 of the said code is replaced by the following :

"**854.** The demand required by paragraph 2 of article 853, must be preceded by a *fiat* or *præcipe* signed by the creditor or by his agent specially authorized in that behalf, or, if the creditor is a corporation, by its president, or manager, or by its local agent in and for the district where such abandonment is to be made, or by its agent specially authorized in that behalf, requiring the prothonotary to issue a demand of abandonment of property upon the trader who has so ceased his payments. Such *fiat* or *præcipe* shall be accompanied by a sworn claim with vouchers, and with the power of attorney, if any, in virtue of which it is made.

Contents of  
demand of  
abandon-  
ment, &c.

"**854a.** The demand of abandonment shall be signed by the prothonotary and shall require the debtor to make an abandonment of his property for the benefit of his creditors, at the prothonotary's office in the court-house, on or before the second day after the service of such demand, and shall state the name of the creditor mentioned in the *fiat* or *præcipe* filed with the prothonotary, as well as the unsecured claim for the sum of two hundred dollars or upwards."

Id., art. 856,  
replaced.  
Return of  
demand.

**6.** Article 856 of the said code is replaced by the following :

"**856.** The demand of abandonment shall be returned to the prothonotary's office on or before the second day after the service thereof.

Dismissal if  
demand not  
returned.

If it is not returned the debtor may obtain from the judge a default against the creditor, and a dismissal of the summons, with costs, on complying with the requirements of article 154.

Extension of  
time to re-  
turn.

The creditor on complying with the requirements of article 154, may obtain permission to file his demand in the prothonotary's office after the legal delays, upon the terms imposed by the judge."

7. Article 857 of the said code is amended by replacing the <sup>Id., art. 857,</sup> first paragraph thereof by the following : <sup>amended.</sup>

“ **857.** The demand of abandonment may be contested by <sup>Contestation</sup> contestation in writing served upon the opposite party, and <sup>of demand.</sup> filed in the prothonotary's office within the two days next following the expiration of the delay fixed for the return of the demand.”

8. The following article is inserted in the said code after <sup>Id., art. 857a,</sup> article 857 : <sup>enacted.</sup>

“ **857a.** A debtor who consents to make an abandonment <sup>Filing of</sup> of his property, shall file his statement upon the first demand of <sup>statement.</sup> abandonment served upon him, unless there be a contestation.”

9. Article 859 of the said code is amended by replacing the <sup>Id., art. 859,</sup> first paragraph by the following : <sup>amended.</sup>

“ **859.** If the debtor does not contest the demand, he <sup>Declaration</sup> must, within two days following the expiration of the delay <sup>of consent to</sup> fixed for the return thereof, file at the place where by law <sup>abandon, &c.</sup> the abandonment must be made, a declaration that he consents to abandon all his property to his creditors; and he must deposit his statement within four days following the expiration of such delay.”

10. This act shall come into force on the day of its sanction. <sup>Coming into</sup> <sup>force.</sup>

## CHAP. 75

An Act to amend the Municipal Code respecting the erection of village municipalities in the neighbourhood of the National Transcontinental Railway

[Assented to 29th May, 1909]

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

1. The following article is inserted in the Municipal Code <sup>Mun Code,</sup> after article 65a, as the same is contained in article 6042 of <sup>art. 65b,</sup> the Revised Statutes : <sup>enacted.</sup>

“ **65b.** Every territory, not already forming part of a city, <sup>Certain terri-</sup> town, village or parish municipality, and situate within a <sup>tory near</sup> radius of three miles from the National Transcontinental Rail- <sup>Nat. Transc.</sup> way, may, on a petition to that effect signed by twenty-five <sup>Ry. may be</sup> <sup>made village.</sup>